

Easements Not Mentioned Grantor's Road as Boundary

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by

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The following is the second of four articles discussing implied easements. Readers are cautioned that they should investigate state cases dealing with the particular application of the law to determine how the law applies in their state. Many states have modified the common law that is presented in the article.

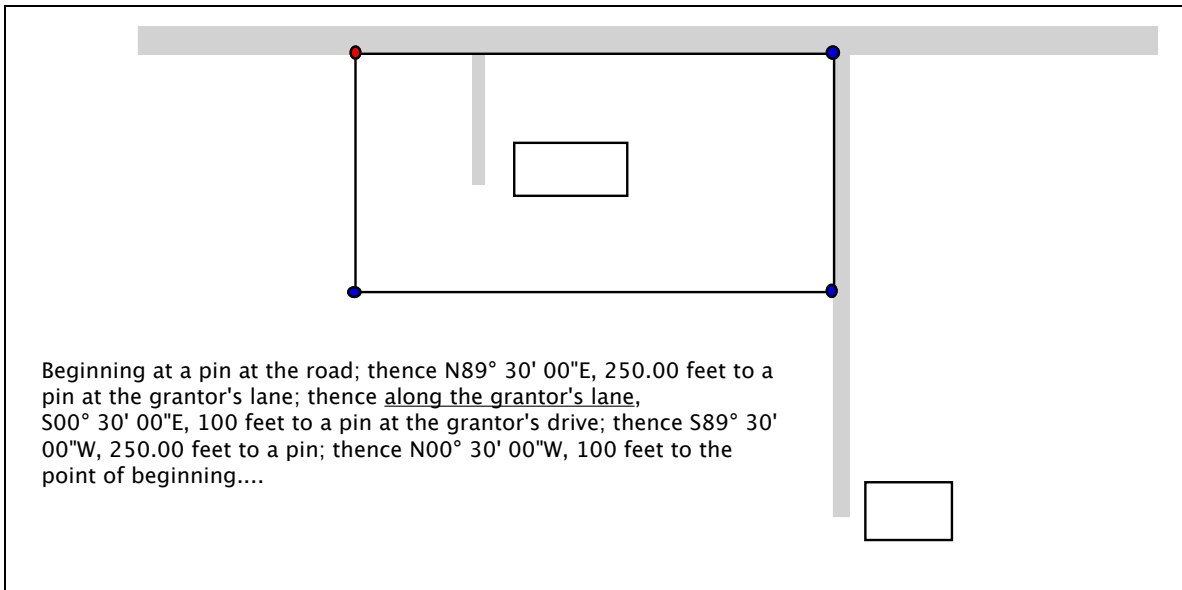
The previous article titled: *Easements Not Mentioned, Deed Reference to a Subdivision Plat* stated that surveyors are often obligated to show the location and extent of easements that may not be expressly created. Standards such as the ACSM/ALTA Land Title Standards obligate the surveyor to be aware and consider easements that may arise by implication and are known as implied easements.

One often overlooked implied easement arises within the content of the deed description conveying property where there is a call for the grantor's road as a boundary.

The doctrine arises where the grantor conveys property: 1) calling for a private road as a boundary and 2) the grantor owns the road at the time of the initial conveyance of the lot. As a consequence of these conditions, the grantor gives the grantee an easement in the private road by implication.¹

Consider the following diagram showing a lot the grantor is conveying using the description shown:

¹ See e.g., *Fowler v. Wilbanks*, 48 S.W.3d 738 (Tenn. App. 2000); *Glennon v. Mayo*, 221 A.D.2d 504; 633 N.Y.S.2d 400 (1995); "An implied easement may arise over a private road where the road is one of the boundaries of the conveyed property." *Maciey v. Woods*, Del. Supr. 154 A.2d 901, 903 (1959). But see e.g., *Tarolli v. Westvale Genesee, Inc.*, 6 N.Y.2d 32; 159 N.E.2d 558; 187 N.Y.S.2d 762 (1959)



As a result of the underlined phrase in the description, the grantee of the lot obtains an appurtenant easement in the grantor's road. The fact that the easement is not necessary for access to the lot is not significant in many states.

It is important for the surveyor to understand that once the appurtenant easement is created, it remains in favor of the lot. In other words, even though the ownership changes, the easement once created, continues to benefit the lot.

When preparing descriptions, the surveyor should not mention the grantor's road as a boundary or if the description does call for the grantor's road, a statement should be included that there is no implied easement in the road (unless, of course, one is intended). This is one instance where ignorance of the law would subject the surveyor to liability.

When retracing a lot where the deed description originally called for the grantor's road as a boundary, the surveyor should be aware the drive may be an appurtenant easement and look for encroachments.

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