

Common Research Mistakes Surveyors Make (Easements)

by

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In previous articles I have explained three of the five common mistakes made by surveyors in researching the records. In the first article I discussed mistakes made in determining senior title often required when assessing the boundaries involving an overlap. In the second article I explained the deficiency that may exist when a forward search is omitted. In the third of five common mistakes I explained the necessity for researching the road records. In this article, I will explain the fourth deficiency – researching and identifying easements.

The failure to identify and locate easement records is a major source of liability for surveyors. There are numerous reasons for research difficulties associated with easements. Because some easements are public easements they suffer from the same difficulties associated with locating road records.

Other problems arise by the legal nature of the easement itself. An easement appurtenant to property that was created in, for example, 1823 by recorded grant need not be mentioned in any property records thereafter yet will still effectively burden property and benefit another property (appurtenant property).

The law presumes that an appurtenant easement is a part of the appurtenant property and passes with the conveyance of the appurtenant property even though the easement is not mentioned in subsequent records for the appurtenant property. For example, it is not unreasonable for a surveyor to stop the search of property records long before reaching the ancient property records where the deed for the easement was recorded - especially if all the boundaries to the property being surveyed were created subsequent in time to when the easement was created.

Another problem is that easements often arise from records that are not deeds. The sale of a lot by reference to a subdivision plan may give the lot owner an appurtenant easement in every road or other benefit shown on the plan (such as a park). Also, the call for a private road as a boundary, owned by the grantor at the time of the conveyance, may give an easement to the grantee in the grantor's private road. Unless the surveyor is aware of the law regarding implied easements, the surveyor may fail to research, locate, and mention the implied easement.

Finally, many easements that are evidenced by a deed are so poorly described that it is virtually impossible to locate or fix the width of the easement. These easements are often categorized as "blanket easements."

I hereby convey to William Surry an easement to install and maintain a water pipe across my property.

Where the surveyor has stopped research prior to a grant from the government, the surveyor would be wise to inform the client of a caveat regarding the presence of easements that may not have been discovered and shown on the surveyor's plat.

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