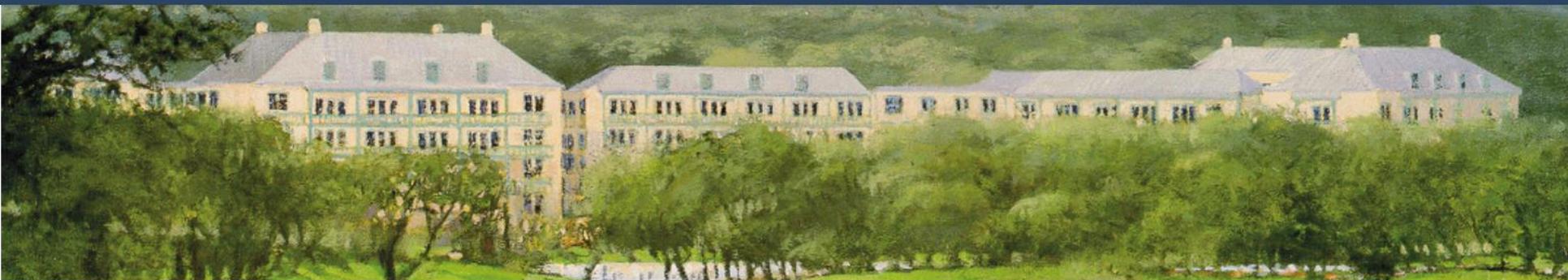


St. Mary's University School of Law and Texas Land Title Association Present

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Easements and Rights-of-Way: How do they disappear?

- To name a few: abandonment; necessity terminates; use for which easement was created becomes impossible.
- Salient in today's real estate litigation practice.



How is an Easement or Right-of-Way Created?

- Express grant
- Reservation
- Recording



Termination of an Easement: By Abandonment

- Actual intent is necessary; mere non-use won't do it!
- However, can be established by circumstantial evidence.



Termination by Abandonment: Case Illustration

- *Milligan v. Niebuhr*
- Two neighbors, formerly married, litigated over an easement.
- Holding: an unambiguous contract divesting another party of all rights, title, interest, and claim in such property presented the requisite intent to abandon an easement.



Termination: Use for Which Easement was Created Becomes Impossible.

- An easement will terminate when the original purpose for which it was granted becomes impossible.

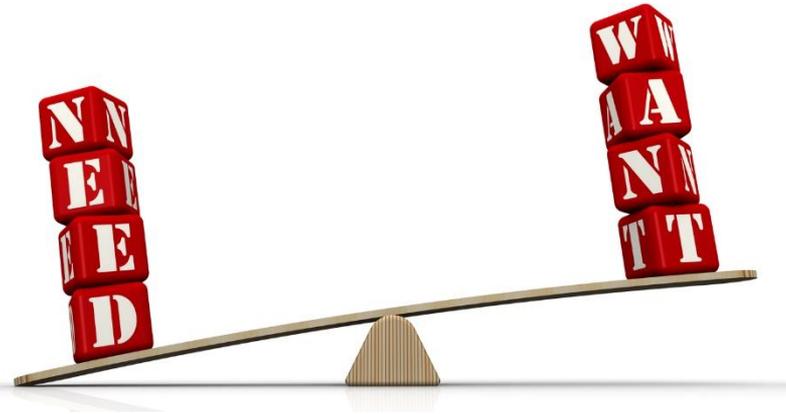


Termination: Easement Appurtenant vs. Easement in Gross

- Appurtenant: when it benefits the holder in his physical use or enjoyment of another tract of land.
- In gross: the holder of an easement acquires a right to use the servient tenement independent of his or her possession of another tract of land.

Termination: Easement by Necessity

- Typically arises when a landowner sells a portion of its tract and by this division, deprives another lot access to a public road or utility line.
- Terminate upon cessation of the necessity.



Easement by Agreement: Determinable Easement

- Perhaps the easiest way to terminate.
- Determinable easements end without notice.



Misuse of Easement: Does it Terminate?

- Misuse *alone* does not provide a basis to terminate.



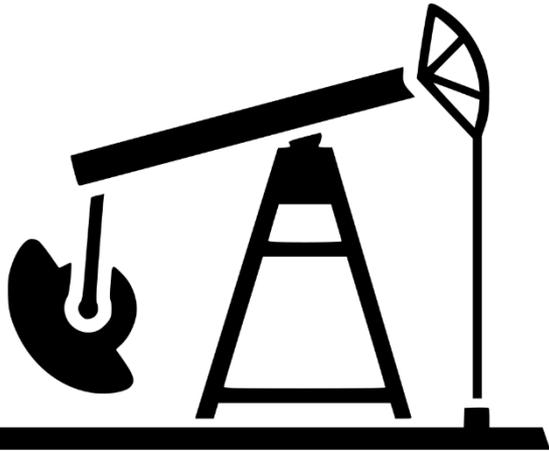
Failure to Repair an Easement

- Any repairs and maintenance is the duty of the dominant estate, unless by agreement.



Establishment of an Easement's Location: Quasi-Blanket Easement

- A quasi-blanket easement does not specify within the instrument the easement's location.
- This was a common practice in the 1930s and 1940s, and is still common in oil and gas leases.



Establishing an Easement's Location: True Blanket Easement

- A true blanket easement is one in which the wording of the easement purpose is to lay multiple lines at varying locations from time to time over any portion of the servient estate.
- The intent of the parties, expressed in the instrument, will control.

Pipeline Easements

- Since 1994, the Texas Natural Resources Code has included a section providing some statutory relief for servient estate owners whose lands have been burdened with blanket easements for pipelines.



Pipeline Easement: Story

- A colleague was working on acquiring a several hundred acre parcel of land for a large company.
- She ran into a blanket pipeline easement that she had to work to eliminate as an exception from the owner's title policy.

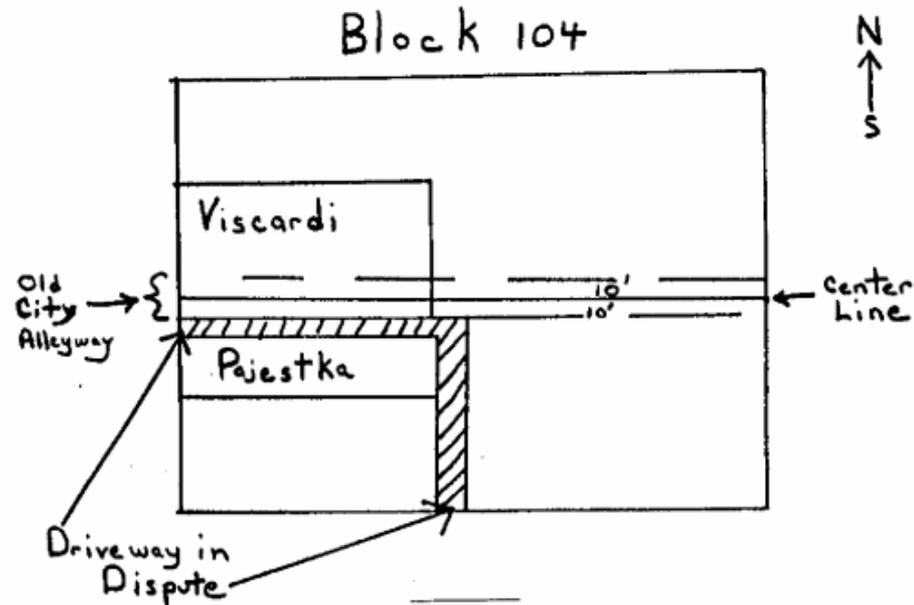
Dedication to the Public



- Four elements: (1) the person who makes the dedication must have the ability to do so, i.e., have fee simple title; (2) there must be a public purpose served by the dedication; (3) the person must make either an express or implied offer; and (4) there must be an acceptance of that offer.

Dedication to the Public: Case Illustration

- *Viscardi v. Pajestka*

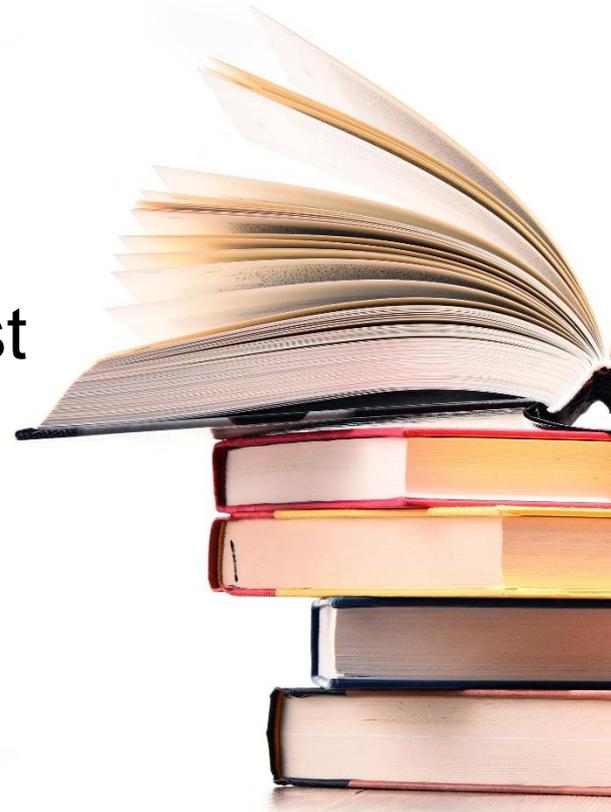


Platted Easements

- Vacating a dedicated plat can terminate public easements.
- The procedure required for the termination depends on whether the original plat was filed pursuant to Chapter 212 or Chapter 232 of the Texas Local Government Code.

Easement vs. License

- Easement: interest in real property that can pass to subsequent owners.
- License: does not create an interest in real property, and you cannot obtain title insurance on a license.



In conclusion...

- There are many ways that easements or rights-of-way can disappear.
- Hopefully, this presentation has given you some background on some of those ways.

