

CORNER TO CORNER

The Greeting

Welcome to **Corner To Corner**. With this publication, RDM Surveying is bringing our clients, friends, & fellow professionals thought-provoking topics of interest and concern. This issue is the first issue of 2017. In this issue, we will talk about old directions and new directions. We hope you will find reading **Corner To Corner** helpful and informative, and we always welcome your comments. Please pass this publication on to a colleague, and if you would like additional copies of an issue, just call us. As always, feel free to contact us if you have any comments or questions.

*“We only do it one way,
The Right Way! That’s
the way we do business”*

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Easements

What is an easement?

It is a right in the owner of one parcel of land, by reason of such ownership, to use the lands of another for a special purpose. It is a limited non-possessory interest in the land of another. It is an interest in real property.

A properly created easement has a grantor, a grantee, a granting clause describing the interest in the easement, a consideration, a legal description for the land burdened by the easement, a legal description for the land benefited by the easement, proper execution by the grantor and proper notary acknowledgement for the grantor.

The land burdened by the easement is called the servient tenement parcel and the land benefitting from the use of the easement is known as the dominant tenement parcel.

Appurtenant Easements vs Easements in Gross.

An appurtenant easement is an easement that is attached to and which passes with the dominant real property. These easements should clearly identify the benefitted and the burdened parcels. This easement will run with the lands and is not terminated

when ownership of the land is transferred. So, let’s think in terms of a described right of way for ingress and egress over the servient to the dominant estate. This benefits the dominant estate.

An Easement in Gross is not attached to the dominant parcel, it is the personal right of a person or entity to use the lands of another. It could be a pole line easement crossing the parcel.

It has been held that an appurtenant easement, that is an easement necessary for the enjoyment of the land, passes with title automatically whether recited or not. It also has been held by courts that one cannot enlarge an easement for ingress and egress to include the installation of utilities. It is very important to read the original language of said easement because such written errors can be devastating for the test of time. The location of easements by surveyor’s can be problematic. Surveyors may not be able to define the exact location of the easement and will so state on their plat or map as to whether the easement is plottable or not.

The next easement that needs to be explored is an Easement by Prescription. This is a mode of acquiring

title to property by immemorial or long-continued enjoyment and refers to some personal usage of the land of another. So, let’s think in terms of a driveway that has been used over one’s land to access another’s. The usage typically should be for the statute period in that state to affect adverse possession.

One party may tack onto the use of his predecessor in use to reach the statutory timeline.

An easement of necessity is one in which the easement is indispensable to the enjoyment of the dominant estate. This kind of easement is one in which you would have purchased a landlocked parcel and there is only one way in to the land.

An Implied Easement is rests upon the principle that, where the owner of two or more adjacent lots sells a part thereof, he grants by implication to the grantee all those apparent and visible easements which are necessary for the reasonable use of the property granted, which at the time of the grant are used by the owner of the entirety for the benefit of the part granted.

Easements

“Land surveys are done to inform and protect you as a purchaser. It’s a onetime investment, don’t be penny wise or talked out of not having one done!”

A Negative Easement is where the owner of the servient estate is prohibited from doing something otherwise lawful upon his estate, because it will affect then dominant estate. Such an easement could be the interrupting of light and air.

This is a general discussion to speak to those easements that you

as a purchaser could encounter in a typical real estate transfer. When closing on a piece of property, have your attorney and /or the title company insuring the premises go over all the easements that are set forth in schedule B of the policy. The land survey should set forth any prescriptive uses and locate if descriptively possible those easements

in gross or that are appurtenant.

Remember, being informed is one step closer to not being taken advantage of.

Conservation Easements

A conservation easement is a permanent legal agreement entered into by a landowner and state or local government, or a non-profit land trust. It identifies the open space values being protected and clearly describes the restrictions being placed on the property. An appraiser will determine the value of the property rights given up by the landowner and then the easement is purchased, or it can be donated resulting a variety of tax benefits. When the state accepts, and holds a conservation easement it takes on the responsibility to monitor and enforce the terms of the easement in perpetuity; the easement is recorded with the deed

and is binding on future owners.

Every easement is unique the purposes and terms of each easement is tailored to the specific characteristics of each property. An easement designed to protect agricultural land, is different from one to protect a scenic area, or one focused on protecting endangered species habitat. Most conservation easements, however; are structured to meet multiple objectives. Some easements prohibit all future development, while others allow for limited new buildings or improvements. Most easements allow traditional uses of the land, such as forestry,

agriculture or recreation to continue, as long as the conservation goals of the property are being met. Most conservation easements are acquired on properties that buffer existing state lands providing additional public recreation and maintaining large working forests.

The amount of public access depends largely on the goals and objectives of the landowner at the time the easements is negotiated. People who plan to visit a conservation easement property that is open for public recreation are encouraged to find out ahead of time which activities are permitted.

For more information about
Conservation Easements
contact
NYS DEC
Lands and Forests Office

The Top Ten Reasons

After 45 years in this business, I've about heard it all. For all the problems, we've found after a land purchase without a survey, I could write a book. I've seen houses constructed on the wrong lots, a boundary line going through the center of a house, half of a garage on the neighbor's land, no access to the property, thousands of fences in the wrong spot and supposed good neighbors, who really had bad intentions.

In every instance, no one had a survey done before they moved in, why you ask, that brings us to the top ten.

- #1: The seller said they never had a problem.
- #2: Costs too much!
- #3: Takes too long!
- #4: My lawyer didn't think we needed it done.
- #5: The bank didn't ask for it!
- #6: The realtor showed us the boundary lines!
- #7: There's fences in the back yard, who cares.
- #8: You know, we need new furniture.
- #9: We bought a title policy insuring the bank.
- #10: We bought a title policy insuring us. We're all set.

So, it begs the questions, do all these people go to the doctor for a yearly checkup? I've got my suspicions about that also. Some of the most intelligent people do the dumbest things. It comes from ignorance plain and simple. Some people drive the speed limit, others talk on cell phones and don't care. It all comes down to you, do you like to be informed? Protected? I like to think the average person wants to be protected, but just haven't been exposed to enough information or good mentoring. I always recommend a fee title policy and working with a

good real estate attorney. It could be a once in a lifetime transaction and people need good counseling.

Land Surveyors are in business to protect you. Our job is to do a history and physical, just like a doctor and render an opinion on the health of the property, BEFORE you close and move in.

We had a case years ago, where the purchasers opted not to get a survey and were encouraged not to do so, time constraint! They moved in, wife pregnant with child and the neighbors show up claiming that part of the house was on them. Here comes part of the Top Ten: The seller knew, never disclosed and had beat feet out of town, the realtor told a great story and the lawyer suggested, you don't need a survey and had them sign a disclaimer. Yes, you guessed it, they had to hire an attorney, not covered by the title company, because no survey done and they had to borrow the money to do so. A mess, yes, a mess! Should never have happened.

Back in the 1980's banks were regularly making purchasers have a survey done. Today, unless it's a commercial loan, or new construction residential, that isn't the case. Only the smart attorneys and trust me I know quite a few, make the recommendation to have a land survey done. I guess they too have seen enough issues to encourage their clients to think wisely.

If you don't have a land survey done and read into the title insurance policy, you have no defense costs coverages against a physical claim, as it relates to the boundaries.

The catch all statement in Schedule B of the title policy reads: Subject to any statement of facts an accurate survey of the premises would disclose.

You can drive an eighteen-wheeler through that statement!

It all comes down to taking advise, from good counsel and wanting to protect you, your family and your interests in your investment.

We at RDM want to help, so please call and we can review your purchase with you. We have the largest private collection of historical survey records in Rensselaer County.



Some things to think about!

Corner To Corner is a publication of RDM Surveying Consultants. It is intended to inform our clients and friends of items of interest in the surveying profession.

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www.RDMSurveying.net

When is enough evidence enough? When it can sway an impartial mind.

- Rod Michael-

What can be asserted without evidence, can also be dismissed without evidence.

-Hitchens-

I believe in evidence. I believe in observation, measurement and reasoning confirmed by independent observers. I'll believe anything, no matter how wild and ridiculous, if there is evidence for it. The wilder and more ridiculous something is however; the firmer and more solid the evidence will have to be!

-Asimov-

Truth can only be seen by those who have truth in them. He who does not have truth in his heart, will always be blind to her.

-Kassen-

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