TITLE INSURANCE & PROPERTY SURVEY



Title Insurance and Property Surveys

Ensuring Comprehensive Coverage and Accurate Boundaries

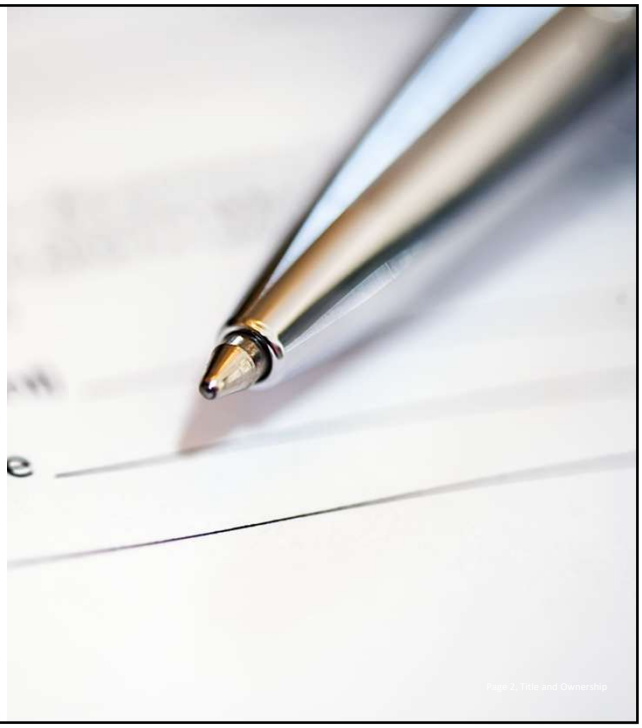


1

Title Insurance

- Protects owners and/or lenders against losses arising from title defects such as forged documents, undisclosed heirs, misfiled documents, confusion arising from similarity of names, mental incompetence, etc.
  - Standard exceptions include rights of parties in possession (including unrecorded easements), any facts that an accurate survey would reveal, taxes and assessments not yet due or payable, zoning and government restrictions.
- **Owner's policy**: Protects the buyer
- **Lender's policy**: Protects the lender against the items listed above plus anything that would affect the validity of the lender's lien.

© Moseley Flint, Inc. All rights reserved.



2



Title Insurance

Paragraph 7 of the Residential Contract of Purchase

Purchaser may, at Purchaser's expense, purchase owner's title insurance. Depending on the particular circumstances of the transaction, such insurance could include affirmative coverage against possible mechanics' and materialmen's liens for labor and materials performed prior to Settlement and which, though not recorded at the time of recordation of Purchaser's deed, could be subsequently recorded and would adversely affect Purchaser's title to the Property. The coverage afforded by such title insurance would be governed by the terms and conditions thereof, and the premium for obtaining such title insurance coverage will be determined by its coverage. Purchaser may purchase title insurance at either "standard' or "enhanced' coverage and rates. For purposes of owner's policy premium rate disclosure by Purchaser's lender(s), if any, Purchaser and Seller require that enhanced rates be quoted by Purchaser's lender(s). Purchaser understand that nothing herein obligates Purchaser to obtain any owner's title insurance coverage at any time, including at Settlement, and that the availability of enhanced coverage is subject to underwriting criteria of the title insurer.

3

Title Insurance

Paragraph 14 of the Residential Contract of Purchase

At settlement Seller shall convey the Property to Purchaser by general warranty deed containing English covenants of title (except that conveyance from a personal representative of an estate or from a trustee or institutional lender shall be by special warranty deed), free of all encumbrances, tenancies, and liens (for taxes and otherwise), but subject to such restrictive covenants ands utility easements of record which do not materially and adversely affect the use of the Property for residential purposes or render the title unmarketable. If the Property does not abut a public road, title to the property must include a recorded easement providing adequate access thereto. In the event this sale is subject to a financing contingency under paragraph 2(a) or 2(b), the access to a public road must be acceptable to each lender. If the examination reveals a title defect of a character that can be remedied by legal action or otherwise within a reasonable time, then Seller, at Seller's expense and subject to the Remediation Limit set forth in paragraph 17, shall promptly take such action as is necessary to cure such defect. If the defect is not cured within 60 days after Seller receives notice of the defect, then Purchaser shall have the right to (i) terminate this Contract, in which event the Deposit shall be returned to Purchaser, and Purchaser and Seller shall have no further obligations hereunder, or (ii) waive the defect and proceed to settlement with no adjustment to the Purchase Price. If Seller has agreed to cure such defect, the parties agree that the settlement date prescribed in paragraph 8 shall be extended as necessary to enable Seller to cure such title defect, but not for more than 60 days unless agreed by the parties.



4



ALTA COMMITMENT FOR TITLE INSURANCE
issued by
TITLE INSURANCE COMPANY
NOTICE

IMPORTANT – READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.
THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.
THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I – Requirements; Schedule B, Part II – Exceptions; and the Commitment Conditions, Old Republic National Title Insurance Company, a Florida corporation (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Amount of Insurance and the name of the Proposed Insured.
If all of the Schedule B, Part I – Requirements have not been met within six months after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

Copyright 2021 American Land Title Association. All rights reserved.

5

5



COMMITMENT CONDITIONS

2. If all of the Schedule B, Part I – Requirements have not been met within the time period specified in the Commitment to Issue Policy, this Commitment terminates and the Company's liability and obligation end.

3. The Company's liability and obligation is limited by and this Commitment is not valid without:
a) the Notice;
b) the Commitment to Issue Policy;
c) the Commitment Conditions;
d) Schedule A;
e) Schedule B, Part I – Requirements; and
f) Schedule B, Part II – Exceptions; and
g) a counter-signature by the Company or its issuing agent that may be in electronic form.

4. COMPANY'S RIGHT TO AMEND
The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company is not liable for any other amendment to this Commitment.

5. LIMITATIONS OF LIABILITY
a) The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:
I. comply with the Schedule B, Part I – Requirements;
II. eliminate, with the Company's written consent, any Schedule B, Part II – Exceptions; or
III. acquire the Title or create the Mortgage covered by this Commitment.

a) The Company is not liable under Commitment Condition 5.a. if the Proposed Insured requested the amendment or had knowledge of the matter and did not notify the Company about it in writing.
b) The Company is only liable under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.
c) The Company's liability does not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Condition 5.a. or the Proposed Amount of Insurance.
d) The Company is not liable for the content of the Transaction Identification Data, if any.
e) The Company is not obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I –Requirements have been met to the satisfaction of the Company.
f) The Company's liability is further limited by the terms and provisions of the Policy to be issued to the Proposed Insured.

Copyright 2021 American Land Title Association. All rights reserved.

6

6

SCHEDULE A
COMMITMENT

1. Commitment Date: _____ 8:00 AM

2. Policy to be issued:
   (a) 2021 ALTA Owner's Policy
   Proposed Insured: NAME OF PURCHASER
   Proposed Amount of Insurance: PURCHASE PRICE OF PROPERTY
   The estate or interest to be insured: FEE SIMPLE
   (b) 2021 ALTA Loan Policy
   Proposed Insured: NAME OF LENDER

   Proposed Amount of Insurance: LOAN AMOUNT
   The estate or interest to be insured: FEE SIMPLE

3. The estate or interest in the Land at the Commitment Date is: fee simple

4. The Title is, at the Commitment Date, vested in: CURRENT OWNERS NAME

5. The Land is described as follows:
   See Exhibit A attached hereto and made a part hereof.



7

SCHEDULE B-1: REQUIREMENTS

All of the following Requirements must be met:
1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.

2. Pay the agreed amount for the estate or interest to be insured.

3. Pay the premiums, fees, and charges for the Policy to the Company.

4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.

5. You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.

6. Duly authorized and executed Warranty Deed from SELLER to BUYER, to be executed and recorded at closing.

Duly authorized and executed Deed of Trust from BORROWER, to LENDER, securing its loan in the amount of $ LOAN AMOUNT.

7. In the event the Deed or Deed of Trust required above is to be executed pursuant to a Power of Attorney, the Company must review the Power of Attorney prior to closing and further requirements may be necessary.

8. Cancellation and release of the following Deed of Trust: DESCRIBE IN LEGAL RECORD DETAIL

9. a) Receipt of acceptable variance of home violating 30' building setback line as shown on survey made by SURVEYOR NAME, DATE OF SURVEY
b) Receipt of acceptable recorded easement agreement regarding driveway encroachment upon 15' right of way and adjoining properties. Easement agreement between PARCEL NUMBERS

10. Satisfactory Owner's Affidavit as to mechanic's liens and possession. Note: If construction has been performed on the premises within the last 123 days, additional requirements and/or exceptions may be made.



8

SCHEDULE B-I: REQUIREMENTS

11. Payment of all taxes, charges, and assessments which are due and payable.

DETAILS PROVIDED BY THE TREASURER OF THE COUNTY/CITY OF THE SUBJECT PROPERTY

NOTE: THIS TAX INFORMATION IS FURNISHED FOR YOUR INFORMATION ONLY. NO LIABILITY OF ANY NATURE WHATSOEVER IS HEREBY ASSUMED FOR ANY ERRORS CONTAINED THEREIN. FIGURES MUST BE VERIFIED FOR THE PURPOSE OF PREPARING PRORATIONS.



12. Run PACER report on current owners to determine if bankruptcy has been filed. If any party is in bankruptcy, the Company must receive a satisfactory, final and non-appealable* Court Order (a) authorizing the transaction to be insured, or (b) declaring the property exempt. In a Chapter 7 Bankruptcy the trustee may give written notice the real estate is abandoned. Additional requirements or exceptions may be made upon review. (*After the 14 day appeal period has passed without appeal.)

13. If transaction is a purchase: Examination of the appropriate public records in the name(s) of the purchaser(s) of the property proposed to be insured and described in this title commitment, and disclosure to the Company of all United States liens revealed. Unless released of record.

9

SCHEDULE B-II: EXCEPTIONS

Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This Commitment and the Policy treat any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document will be excepted from coverage.

The Policy will not insure against loss or damage resulting from the terms and conditions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I—Requirements are met.

2. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law, and not shown by the public records.

3. Any discrepancies or conflicts in boundary lines or shortage in are or encroachments, and other facts which a correct survey or any inspection of the premises would disclose. NOTE, AS TO OWNERS POLICY ONLY: If ALTA Homeowner's policy is chosen by purchaser, and no survey is obtained, Covered Risks 21, 22, 23 and 24 are deleted from the Owner's Policy If a standard ALTA Owner's policy is chosen without a survey, Covered Risk 2(c) is deleted.

4. Rights or claims of parties in possession.
NOTE: Exceptions in #2-4 will be deleted from the loan policy upon requirements being met.

5. Real estate taxes, including supplemental taxes, if applicable, and municipal charges for current tax year and subsequent years, not yet due and payable.

6. Easement granted to Virginia Telephone & Telegraph Company, dated and recorded in the aforesaid Clerk's Office in Deed Book___ page ___. Grants easement for communication system and appurtenances thereto, at designated and undesignated locations, with rights of ingress, egress and clearage.

7. Road Maintenance Agreement dated and recorded in Deed Book___, page___. Note: The policy will not/does not, subsequent to the effective date (t)hereof, assume any liability for the payment of any road maintenance fees.

8. Access agreement dated and recorded in Deed Book___, page___.

9. Rights of others in and to use of the ingress/egress easement as described under Schedule A, Legal Description.

10. All matters as shown on the recorded plat in Plat Card ___ and plat in Deed Book___, page___.

11.Matters as shown on survey made by SURVEYOR'S NAME shows, including but not limited to:
a) 15' right of way easement of which driveway encroaches
b) Driveway encroaching onto adjoining properties to easterly side and southerly side of insured premises
c) Building setback lines of 50' along rear and 30' along sides
d) Violation of 30' building setback along easterly side of premises by primary dwelling
e) All survey notes



10

EXHIBIT A

LEGAL DESCRIPTION OF SUBJECT PROPERTY:
The Land referred to herein below is situated in the County of _____, State of Virginia, and is described as follows:

ALL THAT certain tract or parcel of land situated in the Magisterial District of County, Virginia, being a total of ____ acres, more or less, as shown on plat entitled "Plat Showing Boundary Survey and Lot Line Adjustment, dated, and recorded as Plat Card ____, the said _____ acres being comprised of a parcel of land of _____ acres, more or less as described in Deed Book, page, and a parcel of land containing _____ acres as shown on the above- mentioned plat.

ACCESS EASEMENT THAT RUNS WITH THE LAND: TOGETHER WITH AND SUBJECT TO a non-exclusive easement for ingress and egress as shown on the aforesaid plat recorded as Plat Card ____, for the benefit of the adjoining property identified on said plat as _____ acres, the property of _____ and that certain 15" right of way, as set forth in Deed Book, page.

SOURCE OF TITLE: It being the same property as that conveyed to _____ by deed from _____, dated and recorded in the Clerk's Office aforesaid on DATE as Instrument Number _____.

Further being the same property conveyed to _____, as tenants by the entirety in Deed Book, page, as to the _____ acre parcel of land. The said _____ died on DATE, thereby vesting title in _____ as the surviving tenant.

And further being the same property conveyed to _____, by deed recorded in Instrument _____ as to the _____ acre parcel.



11

_____ **TENANTS BY THE ENTIRETY** with the common law right of survivorship. This is only available to people who are married to each other. The important aspects are that it automatically transfers the property to a surviving spouse in the event of an untimely death, and it protects the property from individual creditors (thought not necessarily from joint creditors). It is recommended for married couples.

_____ **JOINT TENANTS** with the common law right of survivorship. This is recommended for couples who are not married to each other but who are buying a home together, and also for family members buying together. An important aspect is that is automatically transfers the property to a surviving owner or owners, in the event of an untimely death of one of the owners. You own the shares in equal percentages.

_____ **TENANTS IN COMMON.** This is recommended for investors, or for people who want to own their shares of the property separately without survivorship. If you are a tenant in common then when you die you share will go to your estate and not to the co-owner(s). The percentages of your shares can be uneven. You will need to tell me what percentage each of you wishes to own.

_____ **SOLE OWNER.** If you are buying the property alone then this will be your option.

_____ **LIVING TRUST.** If you have an estate plan in place that allows you to own property in a trust, you need to contact sales representative, title company, and your lender and advise them of this. Be prepared to provide an abstract of your trust or a copy of the trust itself.

_____ **OTHER/BUSINESS/TAX-DEFERRED EXCHANGE.** If you are a married couple buying with another party or parties and none of the options above seem to be what you want, please contact me. If you have formed an LLC or other business entity, please contact your sales representative, title company, and your lender and advise them, then have them contact me.

_____ **ADDING PEOPLE TO THE CONTRACT OR DEED:** As a rule, people who are not parties to the contract cannot be added to a deed without a contract addendum. You should not consider adding children without consulting an attorney. Please contact your sales representative, title company, and your lender if you want to add someone.

© 2015 Benjamin C. Winn, Jr. Esquire PLC



12



Title Search

•**Initiation of Title Insurance Policy**: The purchaser or their representative contacts the title insurer before settlement, triggering a search of relevant land records.

•**Title Examination**: A title examiner reviews indexes at the recorder's office, analyzes pertinent documents, and determines how these documents affect the property's title. The search reveals any liens, encumbrances, or other third-party interests in the property.

•**Title Report and Commitment**: The title report is incorporated into a commitment to issue a policy, contingent upon satisfying the items listed in the commitment's "requirements" section (schedule B-1 of the ALTA commitment).

•**Closing Obligations**: The closing attorney or agent ensures each requirement is met at or before settlement. If the seller cannot address any requirements satisfactorily, the contract usually allows the purchaser to avoid the transaction.

•**Policy Issuance**: After settlement, the attorney or agent certifies to the insurer that the commitment requirements have been met, which triggers the issuance of the policy.

13

Title Search cont.

•**Historical Origin of Property Titles in Virginia**: All property titles in Virginia predate the founding of the Commonwealth and originate from grants by the King of England.

•**Comparison with Western States**: Most western states established property titles predominantly through homesteading.

•**Customary Length of Title Search**: Title searches in Virginia typically extend back a minimum of sixty years, covering only a portion of the property's history. The length of the search is determined arbitrarily by the insurer.

•**Risk and Cost Considerations**: Limiting the length of the title search involves risk, but insurers generally accept this risk to avoid the cost and exposure of searching back to the original King's grant.

•**Market Conditions and Title Search Period**: During robust sales markets, insurers may shorten the title search period, increasing the likelihood of claims. The insurer decides the level of risk it is willing to absorb.



14



The Owner's Policy

- Like most insurance policies, a title insurance policy is dense with details.
- An owner's title insurance policy guarantees access to the insured property and assures the purchaser that the title is vested in the buyer, free of all defects, liens, and encumbrances except those explicitly listed as exceptions (enumerated in Schedule B of the policy).
- An owner's policy is personal and not limited to the duration the named insured holds the title. If the insured faces a claim concerning a title issue originating before their ownership, even after selling the property, the policy remains enforceable, providing protection against claims from subsequent owners. This coverage importantly includes the costs of defending the title.

15

The Owner's Policy(cont.)

- There are two types of coverage available to a property owner: Standard and Enhanced. Among the most significant of the differences in coverage is that pertaining to appreciation afforded by an enhanced policy. By this provision the amount of liability assumed by the insurer increases as the value of the property grows over time. The amount of increased coverage is capped at fifty percent (50%) above the original purchase price.
- While the premium for enhanced coverage is larger than that for standard coverage (generally by about 20%), this coverage, as with all other provisions of an enhanced policy, accrues without payment of any future or additional premium.
- The decision to purchase an owner's policy of title insurance is independent of a lender's requirement that the owner obtain title insurance coverage for the benefit of the lender, an all but universal requirement as a condition of making the loan.



16



The Lender's Policy

- Similar to hazard insurance, institutional lenders almost always require a lender's title insurance policy to protect their investment. A lender's policy offers no coverage or benefits to the property owner. This means that if a covered loss occurs and there is only lender's coverage without an owner's coverage, the policy will protect only the lender's interest.
- For example, if a property valued at $200 has an insured loan of $150 and a $50 loss occurs, the owner will bear the full loss (the policy does not apply). If a $100 loss occurs, the lender will receive $50, reducing the principal balance of the loan, but the owner remains responsible for repaying the loan according to its terms.

17

Scope of Coverage

A standard title insurance policy covers the following matters:

- Forgery
- Fraud in the execution of a document
- Undue influence over a grantor
- Certain cases of false impersonation by someone pretending to be the property owner (excluding identity theft—see Exhibit A)
- Undisclosed or missing heirs
- Improperly probated wills
- Misrepresentation of wills and trusts



18

Scope of Coverage cont.

A standard title insurance policy covers the following matters:

- Mental incompetence of a grantor
- Transfer of title by a minor
- Heirs born after the execution of a will
- Incorrect legal descriptions
- Deeds executed under false or expired powers of attorney
- Incorrect indexing of land records
- Clerical errors in recording
- Delivery of deeds after the grantor's death



19

Scope of Coverage cont.

Each title policy includes standard and specific exceptions to coverage, limiting protection to issues not listed in these exception sections. Standard exceptions typically include:

- Governmental regulations such as zoning ordinances
- Eminent domain and other exercises of governmental police power rights, unless such rights are validly recorded in the land records
- Defects created by the insured
- Defects known by the insured before settlement but not disclosed to the insurer
- Defects that attach to the property after settlement and are not recorded in public records before settlement (e.g., mechanics' liens)
- Superior rights of parties in possession of the property before settlement
- Easement rights not shown in public records
- Matters revealed by a current survey or inspection of the property



20



21

Property Survey

A property survey is a detailed examination of a property, often conducted by a professional surveyor, to determine various aspects of the land and its features. The primary goals of a property survey are to define the property's boundaries, identify any structures or improvements on the land, and check for any potential issues or encroachments.

Here are some key elements of a property survey:

1. **Boundary Lines:** A survey will establish the exact boundaries of the property, helping to resolve disputes and ensure that fences, buildings, or other structures are within legal limits.
2. **Topographical Features:** It maps out natural features like slopes, rivers, or trees, which can be important for development or landscaping.
3. **Existing Structures:** The survey will document the location and dimensions of any buildings, roads, and other improvements on the land.
4. **Legal Descriptions:** It provides a detailed legal description of the property, which is essential for property transactions and legal documentation.
5. **Easements and Encroachments:** The survey identifies any easements (rights to use parts of the property for specific purposes) and encroachments (when a structure intrudes on a neighbor's property).

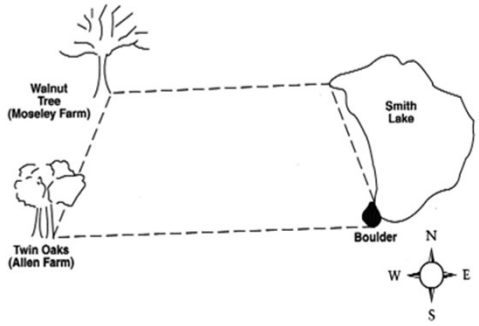
Property surveys are crucial for real estate transactions, construction projects, and legal disputes. They provide valuable information that helps ensure that property development is done correctly and within legal boundaries.



22

Survey With Irregularly Shaped Land Descriptions

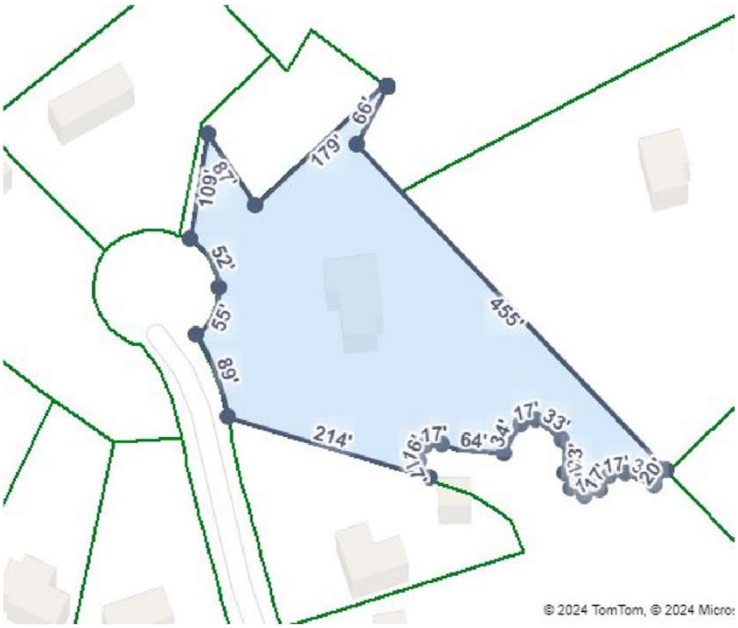
- Monuments – Metes and Bounds



Beginning at the walnut tree at the southeast corner of the Moseley farm, proceed directly east to the west shore of Smith Lake, proceed southeast to the large boulder on the southwest edge of Smith Lake, proceed west to the twin oaks on the Allen farm, thence north to the walnut tree at the southeast corner of the Moseley farm

© Moseley Flint, Inc. All rights reserved.

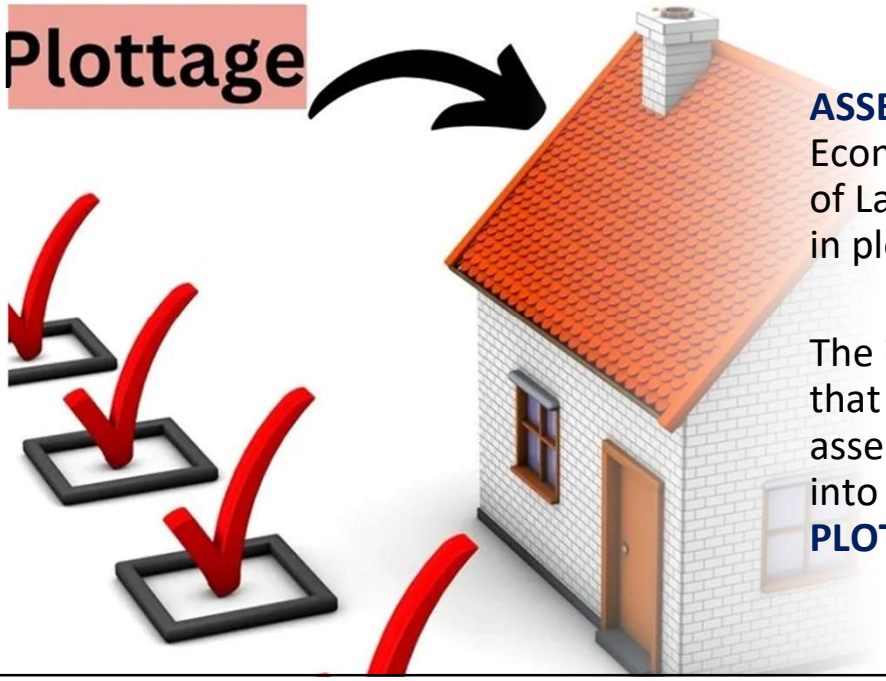
23



Example of a metes and bounds legal description

24

24



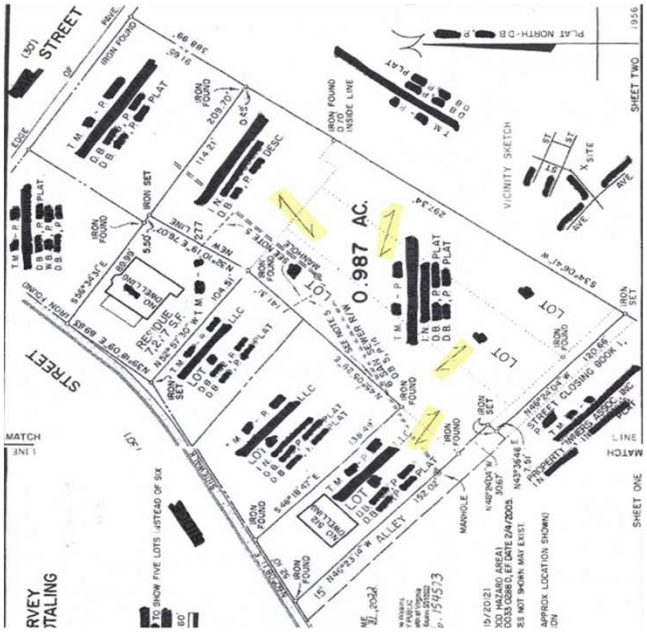
ASSEMBLAGE is an Economic Characteristic of Land as it may result in plottage.

The increase in value that results from assembling small parcels into one larger one is **PLOTTAGE**.

25

25

Example of assemblage, which can benefit the owner economically by result in plottage, or an increase in value.



26

26

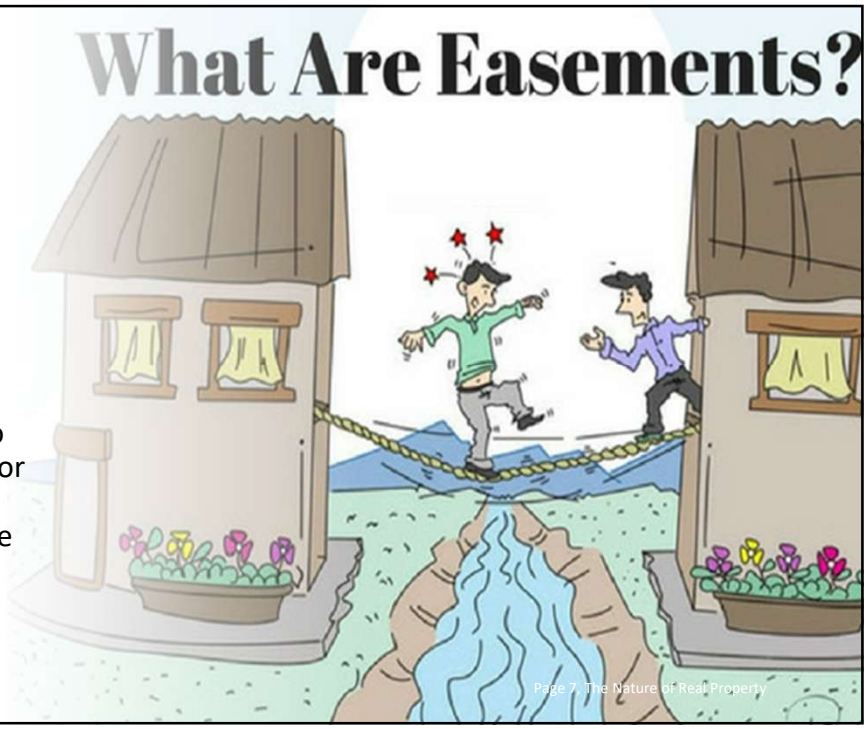
What Are Easements?

Appurtenances

"run with the land" – legal description followed by "together with…"

Easements

Usually means the right to cross another's land to get to another parcel, a waterway, or a road access, etc. A bridge might be used as a part of the easement.



© Moseley Flint, Inc. All rights reserved.

27

Example of an appurtenant easement showing the typical together-with language which helps to define "appurtenant".

BOOK [redacted]

both said parties to divide said land and allot a specific portion to each of them, or as they may direct;

AND WHEREAS, [redacted] desires to convey her one-half interest in the said property to [redacted], reserving unto herself and [redacted], or the survivor of them, a life estate as hereinafter described.

NOW, THEREFORE, BY THESE PRESENTS, WITNESSETH:

THAT for in consideration of the premises and the sum of Ten Dollars ($10.00), cash in hand paid, the receipt of which is hereby acknowledged by [redacted], [redacted] does hereby grant and convey with SPECIAL WARRANTY OF TITLE unto [redacted] all her right title and interest in and to the following tract or parcel of land, to wit:

ALL that certain tract or parcel of land with all improvements thereon and together with all privileges and appurtenances thereunto belonging, lying and being situate in the [redacted] District of [redacted] County, Virginia fronting along that certain 20' right of way hereinafter described, containing [redacted] acres, more or less, and being more particularly shown and described as Parcel [redacted] on that certain plat of survey entitled "Boundary Survey and Division of [redacted] Estate and [redacted] Estate..." by Milton Terry Estes, C.L.S., Inc., dated [redacted], 1998, a copy of which is attached hereto and made a part of this deed. Reference is hereby made to the said plat for a more particular description as contained in the said plat; and further, the metes and bounds description therein is incorporated herein by reference as if the same were textually contained herein.

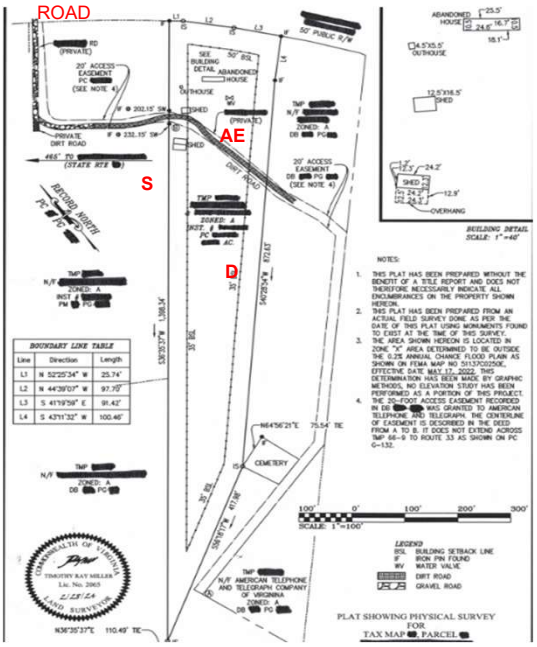
TOGETHER WITH and SUBJECT TO that certain nonexclusive easement 12' in width over the aforesaid property through the hereinafter described property for purposes of ingress and egress to and from the above described property and said U.S. Route [redacted] as shown on the aforesaid plat and described in that certain deed from [redacted], unmarried, to American Telephone and Telegraph Company of Virginia, dated [redacted], 1957 and recorded in Deed Book [redacted], at page [redacted] of said Clerk's Office.

28

28

AE= Appurtenant Easement

S= Servient
D=Dominant



29

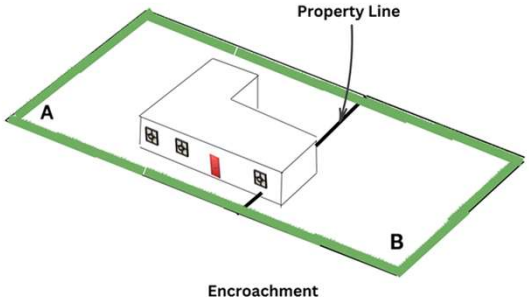
29

Encroachments

Sara builds an addition to her home, part of which turns out to be on land belonging to June. This is an examples of ENCROACHMENT.

An ENCROACHMENT is an encumbrance that affects the property physically.

A private limitation on title is an ENCROACHMENT.



30

30

Encroachments

- Trespass improvements
- Nuisance airspace
- Not covered by title insurance unless surveyed



© Moseley Flint, Inc. All rights reserved.

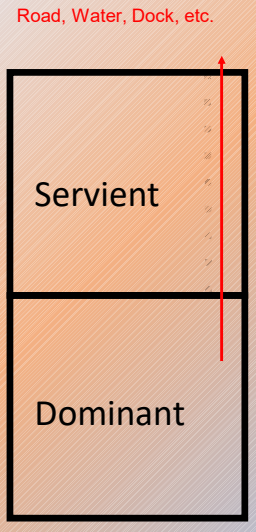
31

31

- Appurtenant easements – "run with the land"
  - Always involve one or more adjacent parcels

Dominant Tenement (estate)
Benefits from the easement

Servient Tenement (estate)
Encumbered by the easement



© Moseley Flint, Inc. All rights reserved.

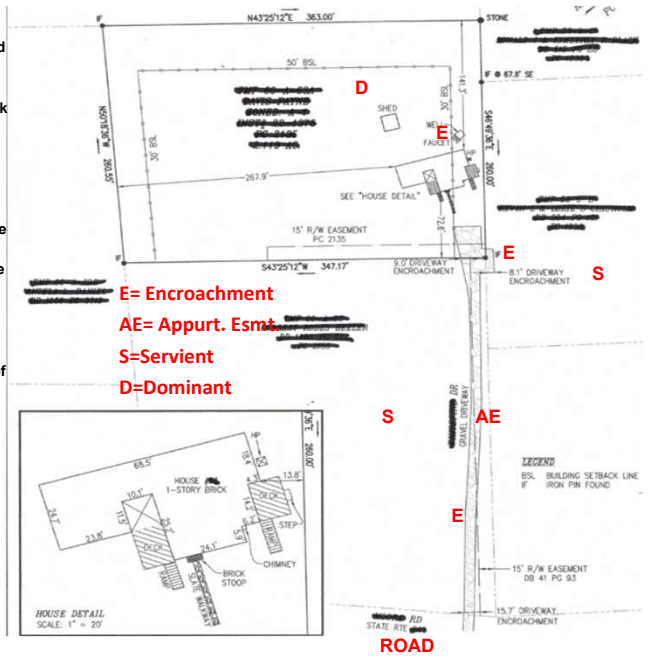
32

PROBLEMS:

1. **The 1995 survey was just a boundary line adjustment survey, so it showed the house being only 2' away from the property line, but ilt did not show the setback lines.**
2. **The new 2024 survey the house was encroaching over the 30' side setback line by 28'.**
3. **The turn-around parking area for this property was encroaching onto the neighbor's property to the right by 8.1'.**
4. **The physical driveway was encroaching onto the neighbor's property on the left of the property by 15.7'.**
5. **The neighbors weren't willing to come to the attorney's office to help solve the clouds on title issues. Without further efforts, this property would never go to settlement, because the title insurance company wanted these defects (or clouds) on title to be remedied.**

SOLUTIONS:

1. **A good Realtor would advise their buyer to get a new physical survey showing all the easements and setbacks, etc.**
2. **After speaking with the county official, we found out the original portion of the house that was encroaching the setback was built in 1975, which was before the setback ordinance in that area was implemented. The left side addition of the house that was built in 1978. We requested a variance and county official letter issuing a non-conforming zoning determination. Therefore, solving the title issue and wiping out that violation.**
3. **We got the settlement attorneys to draft a new easement, based on a new survey, including the subject property and the 2 adjacent neighbors. The turn-around was included so that the 8.1' driveway encroachment would be legal.**
4. **The driveway easement was increased from the original 15' to 35' to encompass the physical portion of the driveway which fell outside the original easement.**
5. **I asked the listing agent to come with me to the neighbor's houses as a witness, while I presented the easement and I notarized their signatures respectively on the easement.**



33

Easements in Gross

- Personal easement in gross:
  - Attaches to a person; non-assignable
  - Servient estate only



- Commercial easement in gross
  - Attaches to a company – often a utility
  - Servient estate only – usually assignable



© Moseley Flint, Inc. All rights reserved.

34

Easement Appurtenant	Personal Easement In Gross	Commercial Easement In Gross
Attaches to land	Attaches to a person	Attaches to company
Adjoining parcels	Not assignable	Usually assignable
Dominant & Servient estates	Servient estate only	Servient estate only
Survives death or sale	Does not survive death or sale	Survives death or sale

© Moseley Flint, Inc. All rights reserved.

35

Creation of Easements

- Express grant: Deed creates easement only – no title transfer
- Express reservation: Easement reserved indeed for conveyance
- Necessity: e.g., landlocked parcel
- Implication: e.g., right of access implied by mineral lease
- Prescription: Open, notorious and hostile use for some years
- Agreement: Contract through negotiation
- Condemnation: Easement by eminent domain

© Moseley Flint, Inc. All rights reserved.

36

Creation of Easements cont.

A type of easement that runs with the land Appurtenant easement

A type of easement that attaches to a person or company Easement in gross

A type of easement for landlocked parcels Easement by necessity

The lot that benefits from an easement Dominant tenement

The lot that is burdened by an easement Servient tenement

An easement created by hostile use Prescriptive easement

© Moseley Flint, Inc. All rights reserved.

37

Termination of Easements

- Necessity no longer exists
- Dominant and servient tenements are merged
- Holder of dominant estate releases the servient estate
- Dominant estate is abandoned
- Servient estate is destroyed
- Terminated by court order



© Moseley Flint, Inc. All rights reserved.

38



Contact Me!

Cynthia Hash
Hash@findhomesusa.com

39

39