EASEMENTS

How-to’s and What-nots
Of creating and insuring
Appurtenant easements
DEFINITION of an EASEMENT:

The right of one to use the land of another for a limited purpose or enjoyment.
TYPES OF EASEMENTS

• In Gross:
  - Does not benefit any land
  - Personal to easement holder
  - Cannot be assigned OR INSURED

• Appurtenant:
  - Attaches as “appurtenance” to land
  - Cannot exist apart from appurtenant land
  - Transfers with appurtenant land
  - Does not have to be contiguous
  - Creates an INSURABLE easement interest
EASEMENT TERMS

• **Dominant Tenement:**
  - The land which benefits from the easement right

• **Servient Tenement:**
  - The land burdened with the easement
Easement

Servient Tenement

Dominant Tenement
MORE EASEMENT TERMS

• Exclusive:
  - Servient owner cannot grant same easement FOR SAME PURPOSE to another property owner

• Non-Exclusive:
  - Same easement can be granted to other owners
  - Easement is presumed to be Non-exclusive unless specified exclusive
TERMS continued…

- **Right-of-way**
  - Can be an easement OR fee title
  - Generally refers to a public street or railroad

- **License**
  - a temporary right to use of land
  - can be terminated at will of Grantor
  - Must show as exception in Schedule B
  - NEVER insure a license as an easement right
WHAT DOCUMENTS CAN CREATE AN EASEMENT?

- Grant of Easement, Easement Agreement
- Deed
- Reservation on Deed
- Deed of Trust
- Dedication (on plat)
- Court Order
Required Elements for Insurability:

- Created by Grant, Agreement or Reservation
- Preferred phrases/words of conveyance/creation: Convey, Grant, together with Reserving, excepting (to Grantor)
- NON-preferred phrases/words: Subject to, including, agrees to grant, will grant (future tense)
REQUIRED ELEMENTS:
(continued)

• Creates an interest in land of ANOTHER
  - same person cannot be both Grantor and Grantee

• Appurtenance: must be granted/reserved for the benefit of a parcel (appurtenant), NOT personal to the Grantee/Grantor (in gross)
MORE PREFERRED LANGUAGE
to assure easement runs with the land

• ... appurtenant to and for the benefit of the following described property:....
  (easement rights pass/transfer with the land)

• ...to the Grantee (or reserving to the Grantor), his heirs, successors and assigns
REQUIRED ELEMENTS:  
(continued)

- Purpose of Easement
- Legal description of Easement
- Description of appurtenant land  
  (Dominant tenement)
EXAMINING
AN APPURTENANT EASEMENT

- CREATING NEW EASEMENT:
  - Must do full search of Servient tenement
  - Confirm ownership of property by Grantor
  - Call for consents from any lenders
  - Call for any unpaid taxes to be paid

- TRANSFERRING EXISTING EASEMENT:
  - Trace easement back to creation
  - Review creation document for proper conveyance, appurtenance to your land
  - Review subsequent chain for merger, termination, amendment, foreclosures of prior liens
  - Is easement described in subsequent deeds?
RECIPROCAL EASEMENTS

- Rights AND Obligations shared by two or more property owners

- Usually created by Declaration of Reciprocal Easement or Reciprocal Easement (NOT deed)

- Creates both an insurable easement interest in Schedule A AND a Schedule B exception (easements and restrictions)
TWO-PARTY RECIPROCAL EASEMENT
PROPER EASEMENT RESERVATION (on Deed)

- Remember the Basic Elements:
  - Grantor/Grantee
  - Conveyance/reservation language
  - Appurtenant property described
  - Proper appurtenance language

- Cannot reserve easement for the benefit of a third party/property owned by someone other than Grantor (lack of conveyance/constructive notice)
TERMINATION OF EASEMENTS (intended or NOT!)

- Express release or abandonment (recorded document)
- Foreclosure of lien recorded PRIOR to creation of easement right, if easement holder is noticed
- Court action
- Abandonment (by non-use)
- Merger of Title
MERGER SCENARIO 2

A

B

C

Street
MERGER SCENARIO 2 (continued)
MORE EASEMENT NO-NO’S!

- Enlargement of Easement:
  - Expanding the dominant tenement
  - Enlarging the easement area
  - Adding to the permitted uses
EASEMENT ENLARGEMENT

Section line >>
MORE EASEMENT NO-NO’S!

• Enlargement of Easement:
  - Expanding the dominant tenement
  - Enlarging the easement area
  - Adding to the permitted uses

• Overburdening of Easement:
  - Increasing the use of the easement beyond the scope intended by the original grant
TOP FIVE EASEMENT BOO-BOO’S
(and we do it to ourselves!)

1. Conveying “together with” an easement that should be reserved.
2. “Reserving” an easement that should be “together with”.
3. Insuring an appurtenant easement which was never granted to benefit the subject property.
4. Failure to re-create an easement which was terminated by merger of title.
5. Failure to include an easement which was properly reserved or granted to Seller, in subsequent conveyance from that Seller.
SAMPLE LEGAL DESCRIPTION – EASEMENT BOTH RESERVED AND GRANTED (NEW)

• **OPTION 1:**
  Parcel No. 1:
  Parcel B, according to Record of Survey recorded in Book 22, page 33, records of Coconino County, Arizona, being a portion of Section 1, Township 21 North, Range 9 East, Gila and Salt River Base and Meridian, Coconino County, Arizona.

  • **RESERVING TO THE GRANTOR,** his heirs, successors or assigns, an easement for ingress and egress and utilities over the South 30 feet of said Parcel No. 1. Said easement is appurtenant to and for the benefit of {grantor’s remaining property as described in Document No. XX-XXXXX} (OR Parcel C, according to Record of Survey recorded in Book 22, page 33} Said easement is appurtenant to and for the benefit of Parcel No. 1 described herein.

Parcel No. 2:

• An easement for ingress and egress and utilities over the South 30 feet of Parcel A, according to Record of Survey recorded in Book 22, page 33, records of Coconino County, Arizona, being a portion of Section 1, Township 21 North, Range 9 East, Gila and Salt River Base and Meridian, Coconino County, Arizona.

• Said easement is appurtenant to and for the benefit of Parcel No. 1 described herein.
SAMPLE LEGAL DESCRIPTION –
EASEMENT BOTH RESERVED AND GRANTED (NEW)

• **OPTION 2:**

Parcel B, according to Record of Survey recorded in Book 22, page 33, records of Coconino County, Arizona, being a portion of Section 1, Township 21 North, Range 9 East, Gila and Salt River Base and Meridian, Coconino County, Arizona.

RESERVING TO THE GRANTOR, his heirs, successors or assigns, an easement for ingress and egress and utilities over the South 30 feet of said Parcel No. 1. Said easement is appurtenant to and for the benefit of {grantor’s remaining property as described in Document No. XX-XXXXX} (OR Parcel C, According to Record of Survey recorded in Book 22, page 33}

TOGETHER WITH an easement for ingress and egress and utilities over the South 30 feet of Parcel A, according to Record of Survey recorded in Book 22, page 33, records of Coconino County, Arizona, being a portion of Section 1, Township 21 North, Range 9 East, Gila and Salt River Base and Meridian, Coconino County, Arizona.
SAMPLE LEGAL DESCRIPTION – INCLUDING APPURTENANT EASEMENT (EXISTING)

- **Parcel No. 1:**
  Parcel B, according to Record of Survey recorded in Book 22, page 33, records of Coconino County, Arizona, being a portion of Section 1, Township 21 North, Range 9 East, Gila and Salt River Base and Meridian, Coconino County, Arizona.

- **Parcel No. 2:**
  An easement for ingress and egress and utilities, as created in instrument recorded in Instrument No 3561295, records of Coconino County, Arizona, over the South 30 feet of Parcel A, according to Record of Survey recorded in Book 22, page 33, records of Coconino County, Arizona, being a portion of Section 1, Township 21 North, Range 9 East, Gila and Salt River Base and Meridian, Coconino County, Arizona.

  Said easement is appurtenant to and for the benefit of Parcel No. 1 described herein.