

2013 WLTA Underwriting Seminar

November 2, 2013
Everett, WA

Topic and slides
prepared by
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**ACCESS AND
EASEMENTS**

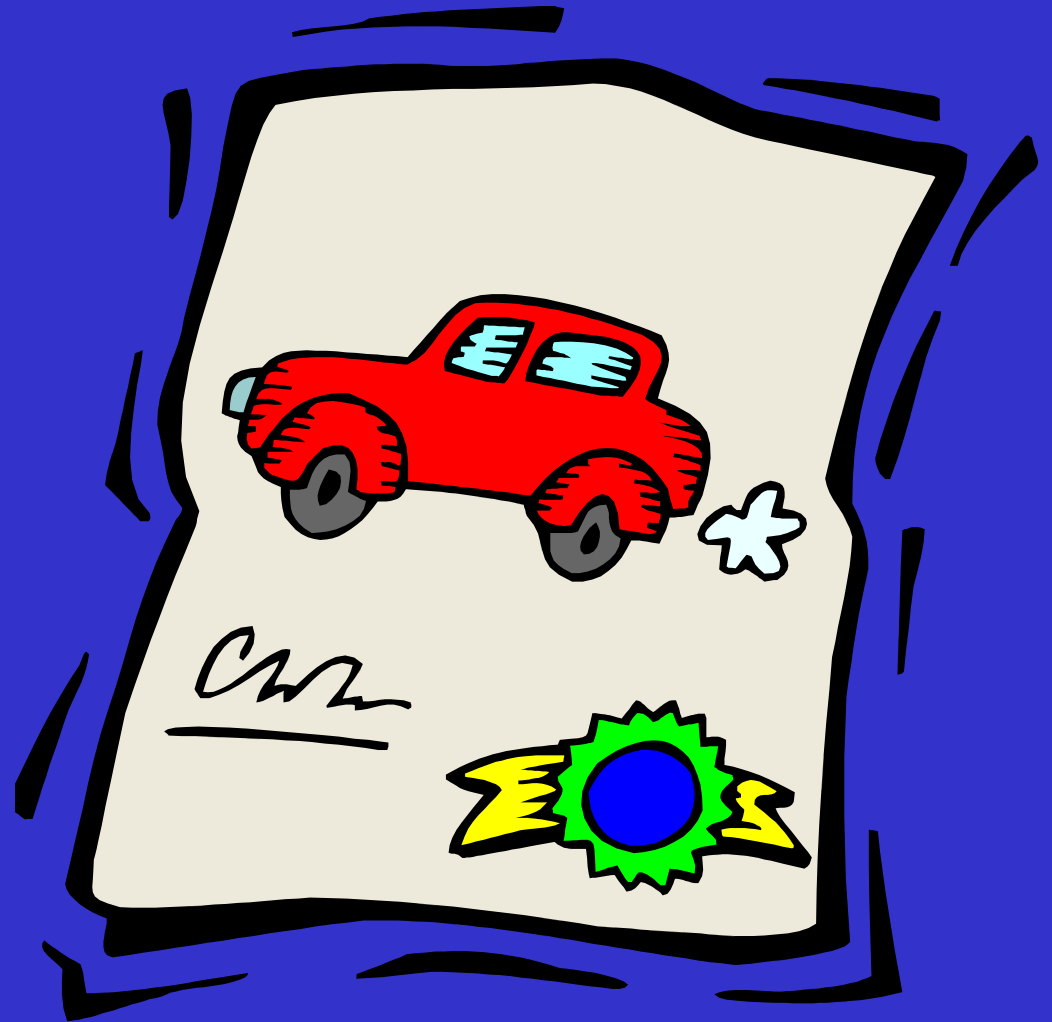
ACCESS

A stylized landscape illustration. At the top, the word "ACCESS" is written in large, bold, yellow letters with a black outline. Below the text, a grey road with a yellow center line and white edge lines winds through rolling green hills. A bright yellow sun is positioned on the horizon behind the hills. The sky is a solid light blue, with a single, soft purple cloud in the upper right. The overall style is simple and colorful.

WHERE DO WE
GO FROM
HERE?

The policy insures
against loss due to ...

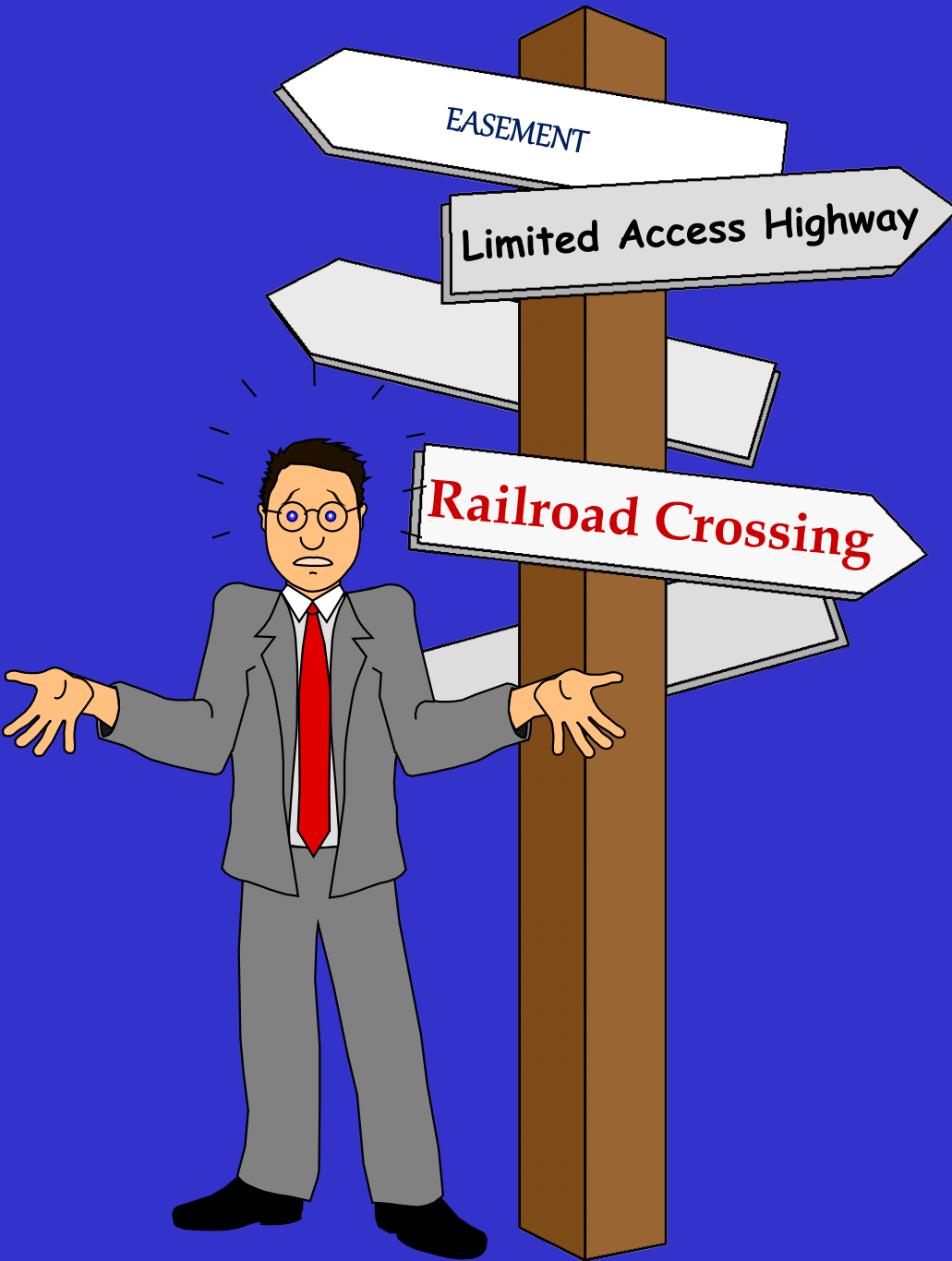
4. A lack of
a right of
access to
and from
the land



What losses can occur if there is no right of access?

- ◆ stops use or development
- ◆ leaves insurer at the mercy of neighbors
- ◆ can be as expensive as complete title failure

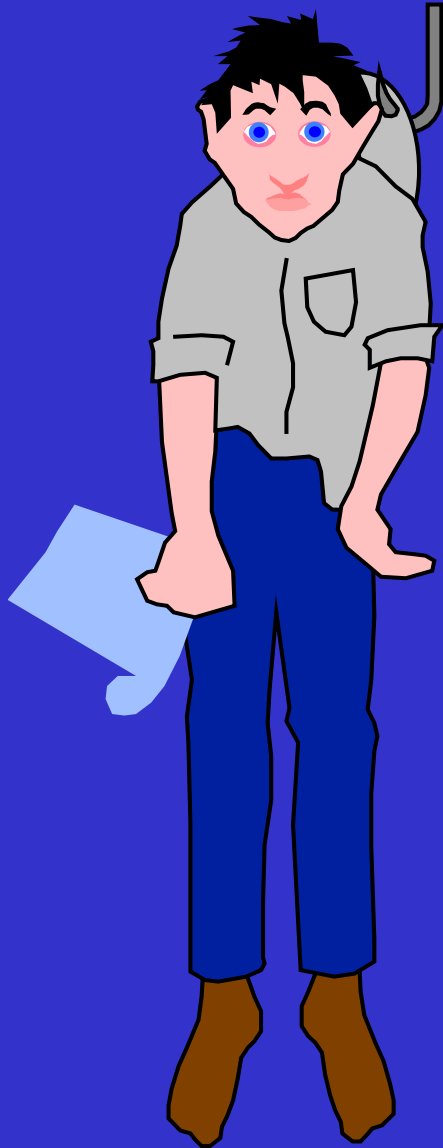




Insuring Access

- ◆ Can You Insure?
- ◆ Should You Insure?
- ◆ Should You Limit Your Insurance?

Don't get "hung up" on prior insurance



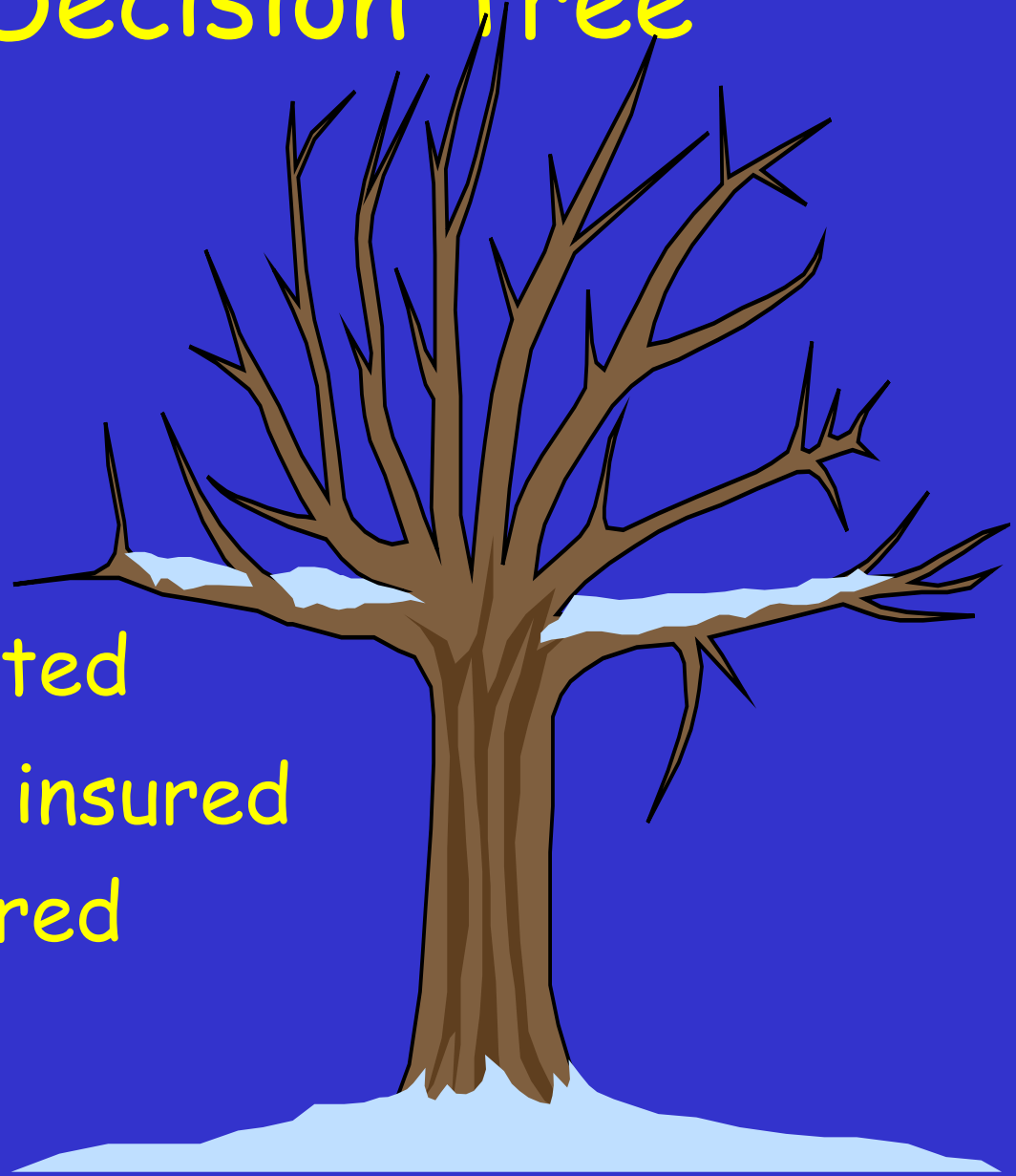
Just because we
insured before
does not obligate
us to do it again!!

What kind of access is there?

- ◆ Public road?
- ◆ Private road?
- ◆ Easement appurtenant?
- ◆ *Insurable* easement appurtenant?

Access Decision Tree

- ◆ Public roads
- ◆ Private roads
- ◆ Easements
 - ◆ to be created
 - ◆ previously insured
 - ◆ never insured

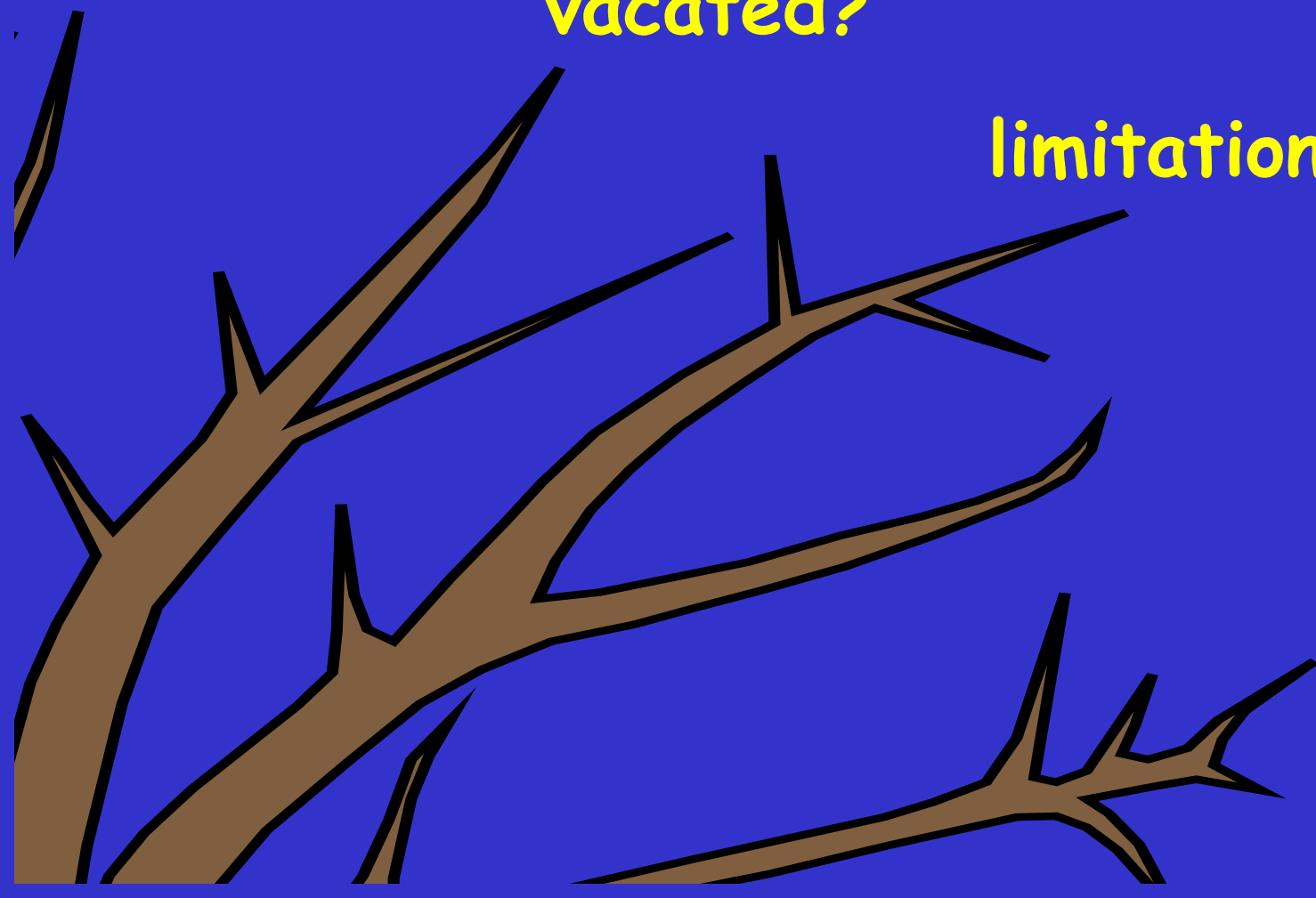


Public Roads

public?

vacated?

limitations?



Public Roads

- ◆ Is it *really* public?
 - ◆ Dedicated in plat?
 - ◆ "Conveyed" by deed?
 - ◆ Condemned by court action?
- ◆ Has it been vacated?
- ◆ Are there limitations on its use?
 - ◆ Limited access (usually state/federal)

A map or an address can be deceiving when it comes to public access





BUT:

Lack of public
(*city or county*)
maintenance
does not create
a "lack of a right
of access"

Private Roads

formal easement grant?

connects to public road?

"overburdening"
problem?



Private roads are not public - and
can only be used by abutters



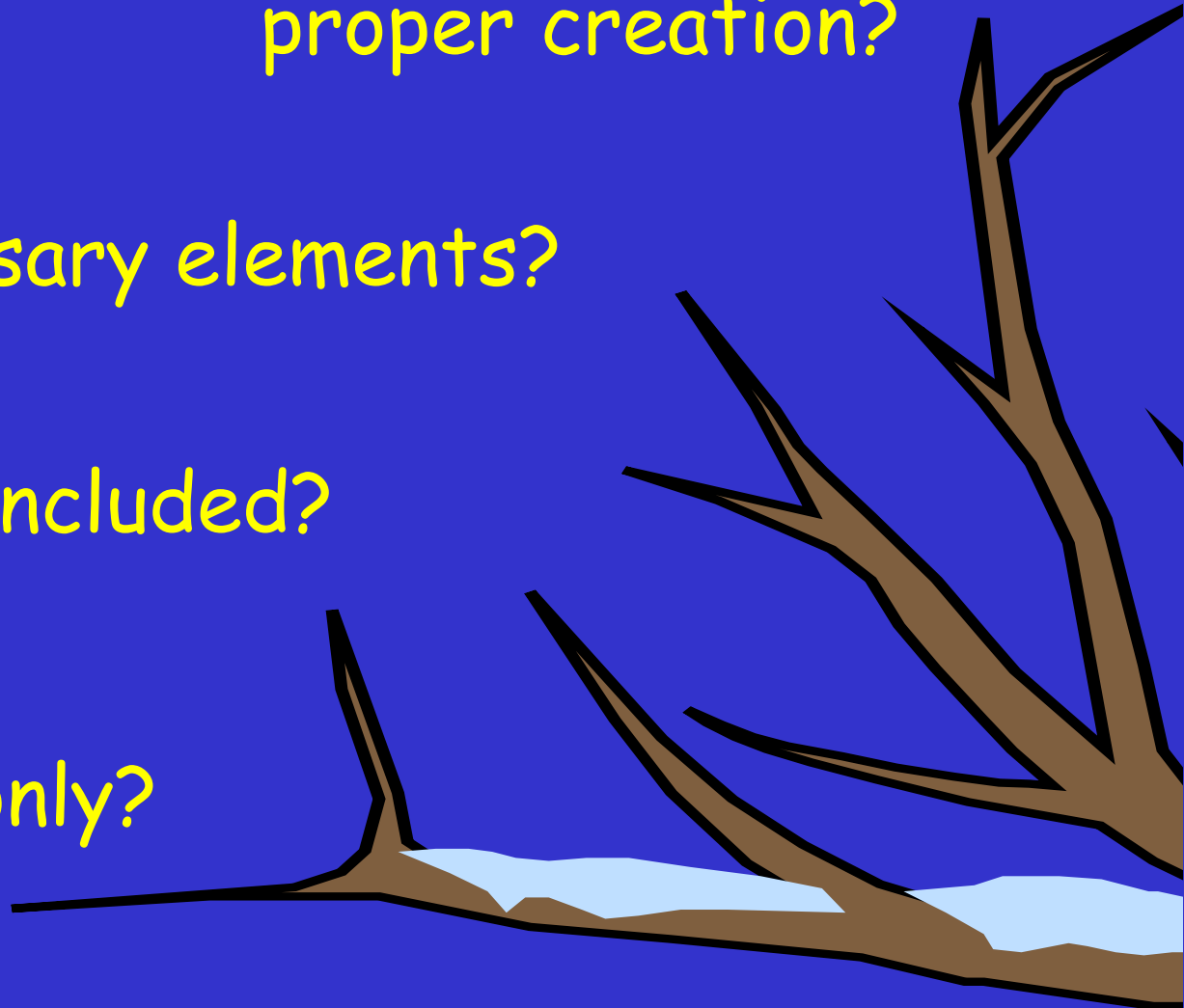
Easements

proper creation?

all necessary elements?

description included?

prescriptive only?



Easements

connects to public road?

overburdening problem?

release or termination?

limits on use?



What the record and the maps say looks like this...



...actually looks like this!



Non-use, by itself, does not mean abandonment.

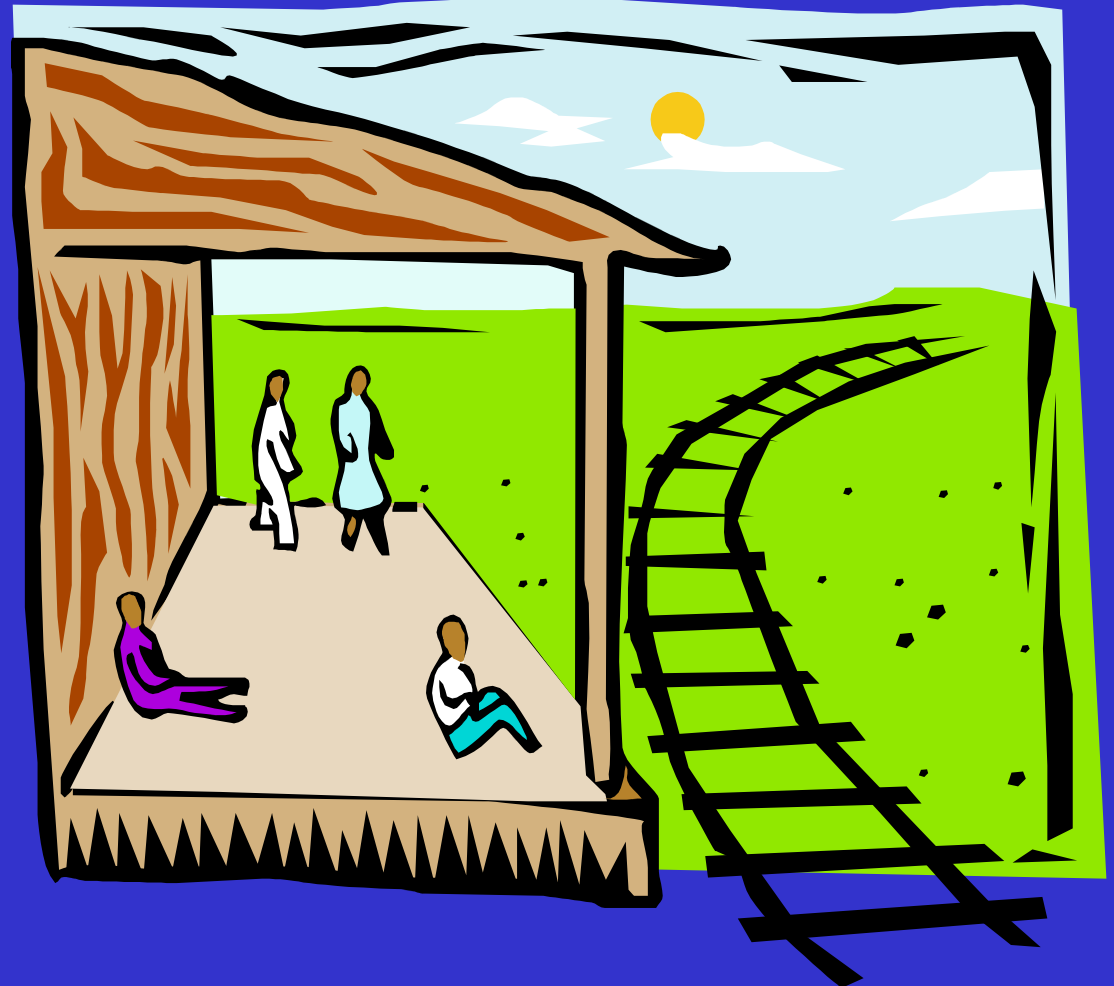
A photograph of a white sign with black text mounted on a wooden post. The sign is rectangular with rounded corners and reads "OWNER WILL MAINTAIN" in bold, uppercase letters. The sign is positioned in a wooded area with many trees and green leaves. The background is slightly blurred, showing more trees and foliage. The sign is the central focus of the image.

**OWNER WILL
MAINTAIN**

The right to cross railroad tracks

is a
personal
right

it does not
"run with
the land"



The
buyer
must get
a new
permit
from the
railroad
to cross
the
tracks.



Forest service Roads



Are not
public roads

Forest service Roads



They may be
used by the public...

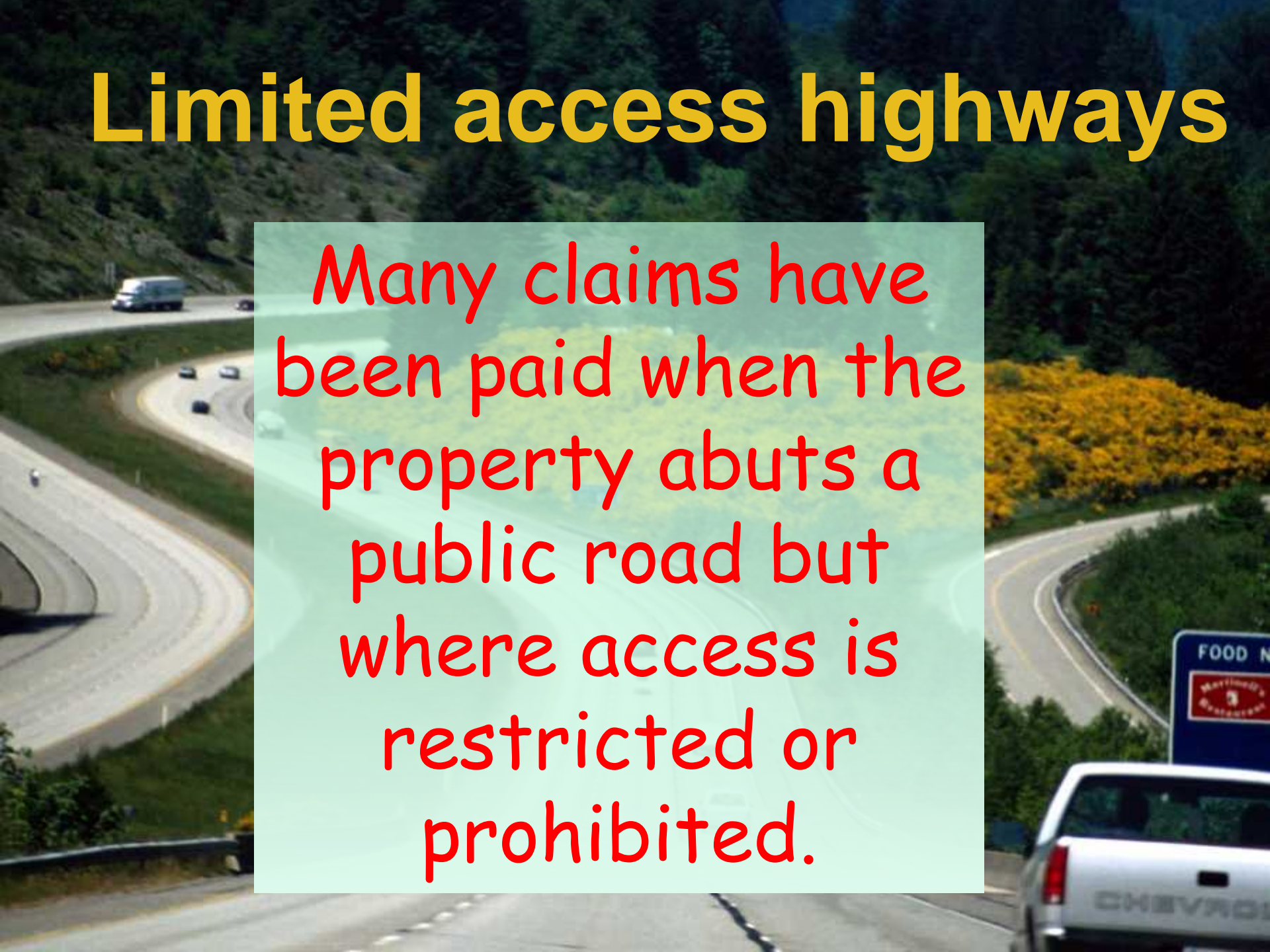
Forest service Roads



...BUT - the public
has no *right* to use
them

Limited access highways

Many claims have been paid when the property abuts a public road but where access is restricted or prohibited.



Is this an
easement?



Is this an easement?



What you
see is a
road.

What is an easement?

What one can see on a map or on the ground is a *road*.

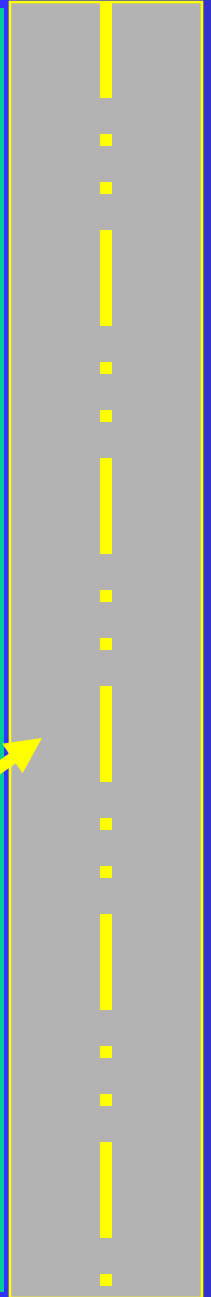
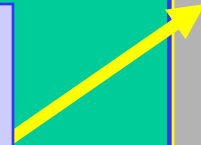
But, the *right to use the road* is called an *easement*.

An "easement" is a limited non-possessory interest in the land of another.

A

B

**PUBLIC
ROAD**



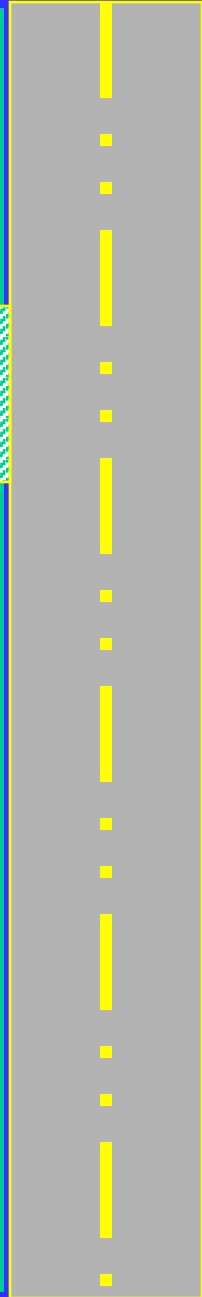
A

B

Easement

Dominant
Tenement
Parcel

Servient
Tenement
Parcel



A

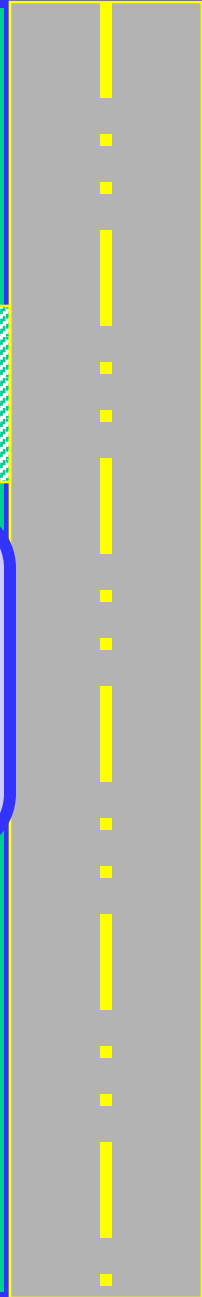
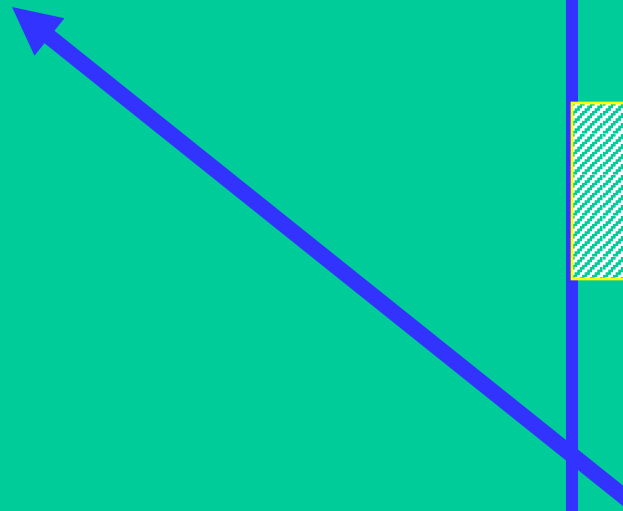
B

Easement

The easement is
appurtenant to
Parcel A

Dominant
Tenement
Parcel

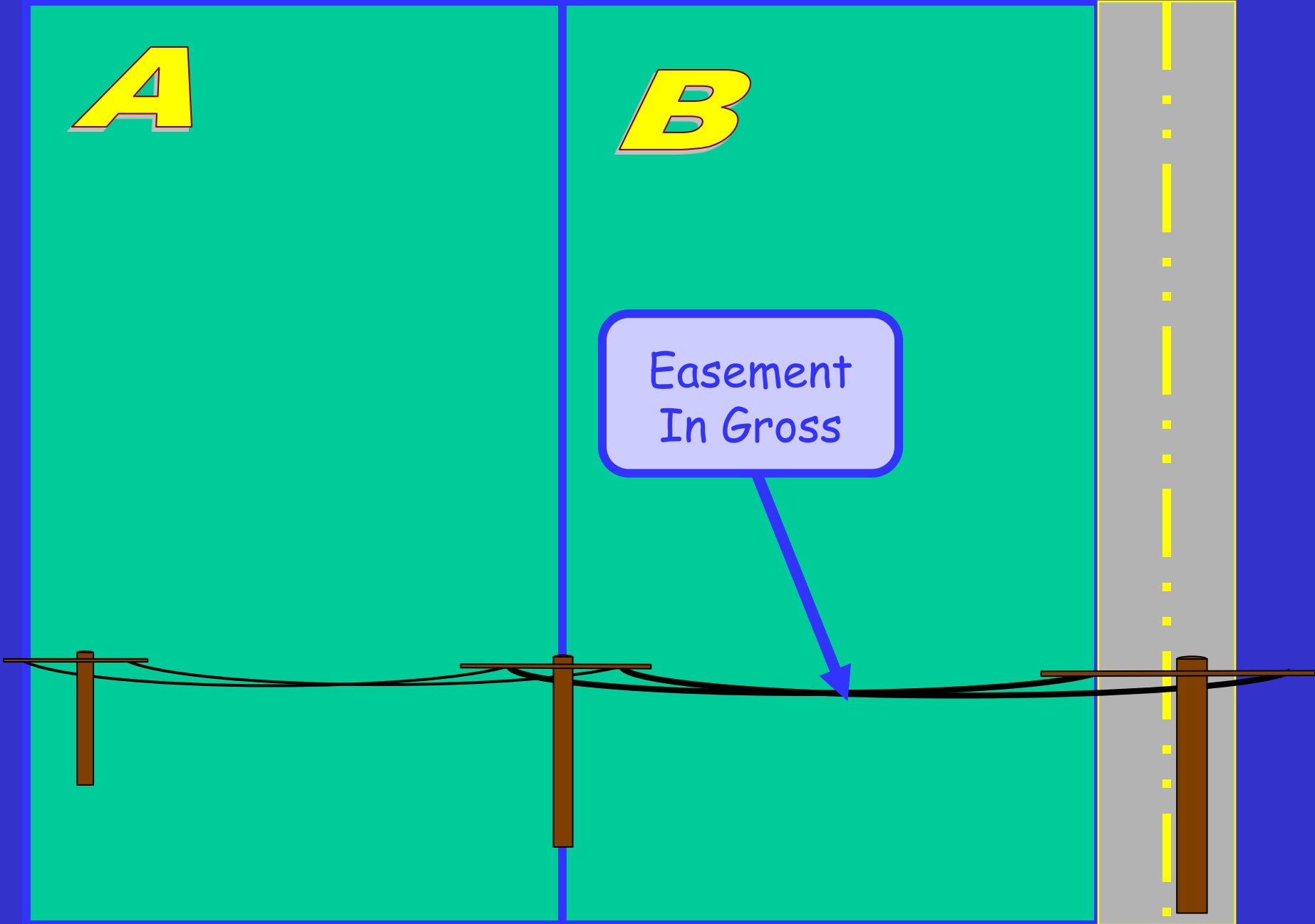
Servient
Tenement
Parcel



A

B

Easement
In Gross



A

Easement Appurtenant

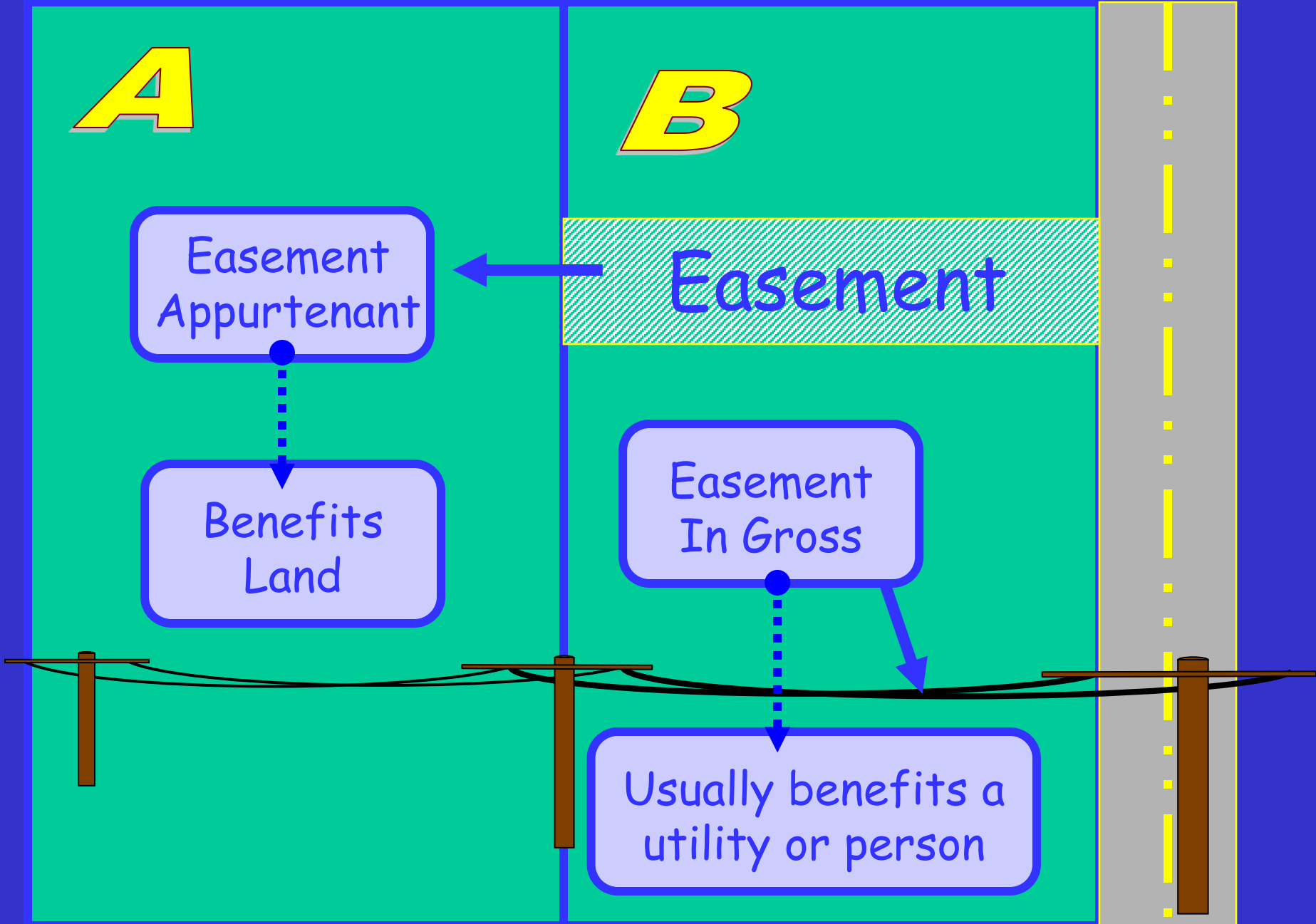
Benefits Land

B

Easement

Easement In Gross

Usually benefits a utility or person



A

Easement is assumed to be *non-exclusive* unless it states otherwise

B

Easement

So - Owner of Servient Tenement Parcel can grant it to others

A

B

... AND can connect here

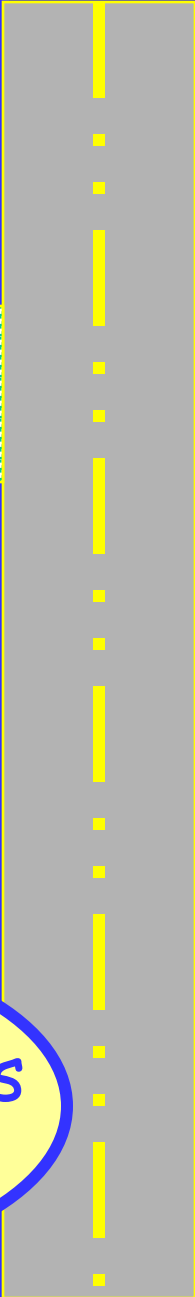
Easement 1

If: Dominant Tenement Parcel has *non-exclusive* use

Servient Tenement owner ...

Easement 2

... can grant this easement ...



A

If it is
exclusive...

B

Easement

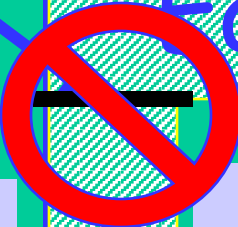
Owner of
Servient
Tenement
cannot
grant it to
others

A

B

... but cannot connect here

Easement 1

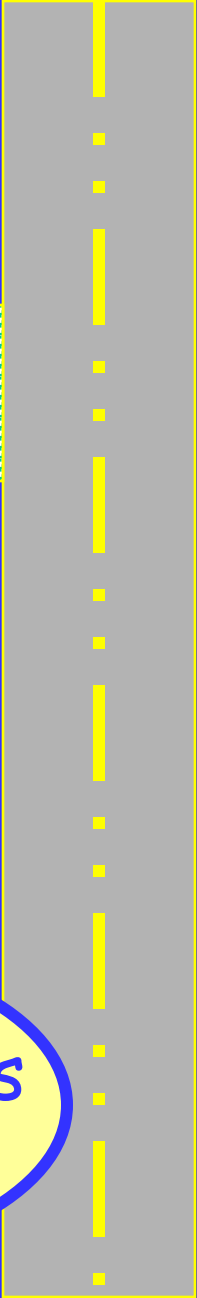


If:
Dominant
Tenement
Parcel has
exclusive use

Servient
Tenement
owner ...

Easement 2

... can grant this
easement ...



Merger

Merger occurs when both the dominant and servient tenement properties are owned by the same entity

A

Owned by
Smith

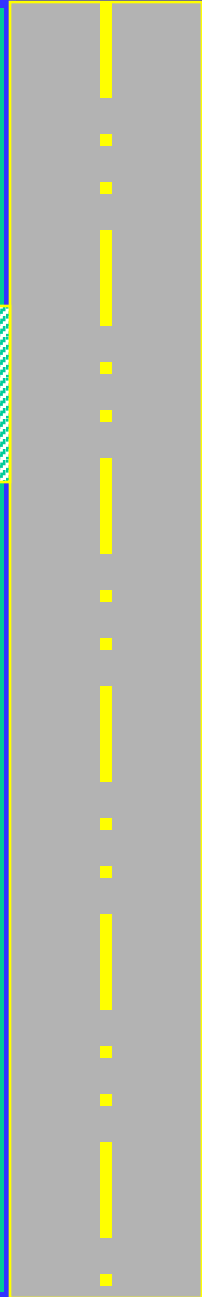
Dominant
Tenement
Parcel

B

Easement

Owned by
Jones

Servient
Tenement
Parcel



A

Owned by
Smith

This easement is
valid when created

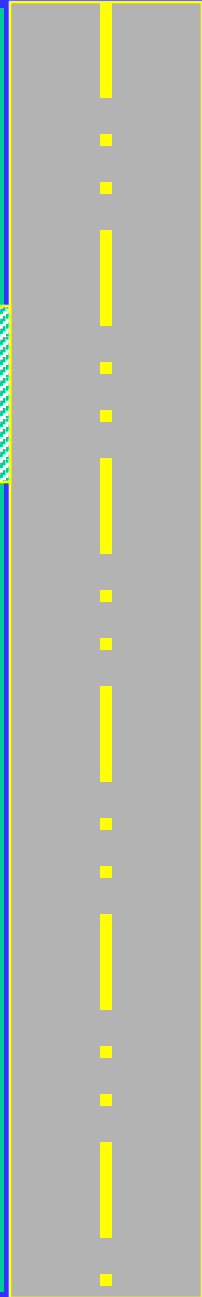
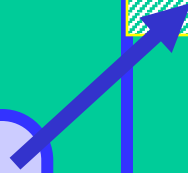
Dominant
Tenement
Parcel

B

Easement

Owned by
Jones

Servient
Tenement
Parcel



A

B

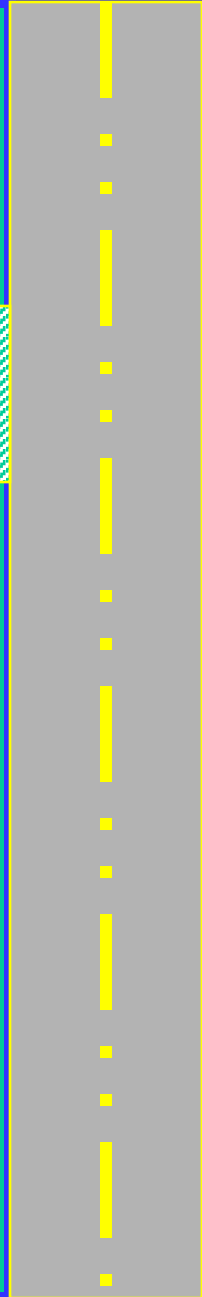
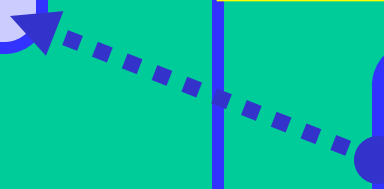
Owned by
Smith

Easement

Jones sells
to Smith

Dominant
Tenement
Parcel

Servient
Tenement
Parcel



A

Owned by
Smith

The easement
becomes merged with
the ownership

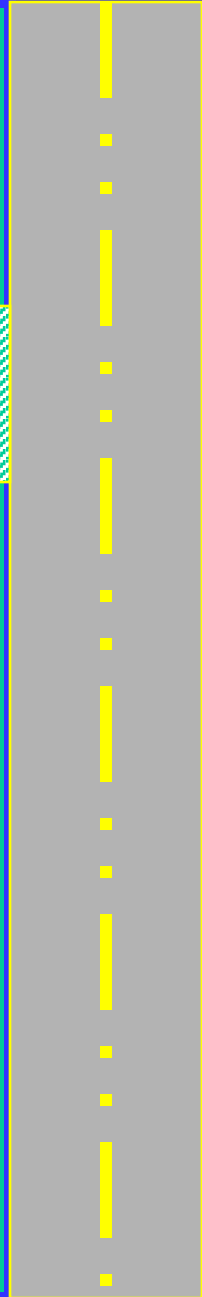
Dominant
Tenement
Parcel

B

~~Easement~~

Owned by
Smith

Servient
Tenement
Parcel



WARNING: After Merger:

- ◆ The easement is not insurable as appurtenant to Parcel A
- ◆ Even after resale, the easement is not insurable unless recreated
- ◆ The easement must still be shown as an encumbrance on Parcel B

Elements of an easement appurtenant

- ◆ In writing

Prescriptive Easements?

- General Rule: if not established by court order, don't insure them
- However, sometimes we can accept a clear prescriptive easement for basic access coverage
- Prescriptive easements are limited to the exact prior use!

Elements of an easement appurtenant

- ◆ In writing
- ◆ Grantor and Grantee

- ◆ Did the grantor(s) own the burdened property?
- ◆ Did *all* who had an interest sign the easement?

Elements of an easement appurtenant

- ◆ In writing
- ◆ Grantor and Grantee
- ◆ Words of conveyance

Examples:

- ◆ "subject to..."
- ◆ "together with..."
- ◆ Reservation
- ◆ Shown on survey
(maybe)

Elements of an easement appurtenant

- ◆ In writing
- ◆ Grantor and Grantee
- ◆ Words of conveyance
- ◆ Signed and acknowledged

- ◆ Signed by all parties
- ◆ Mutual easements?
- ◆ A notary
acknowledgement
just like a deed

Elements of an easement appurtenant

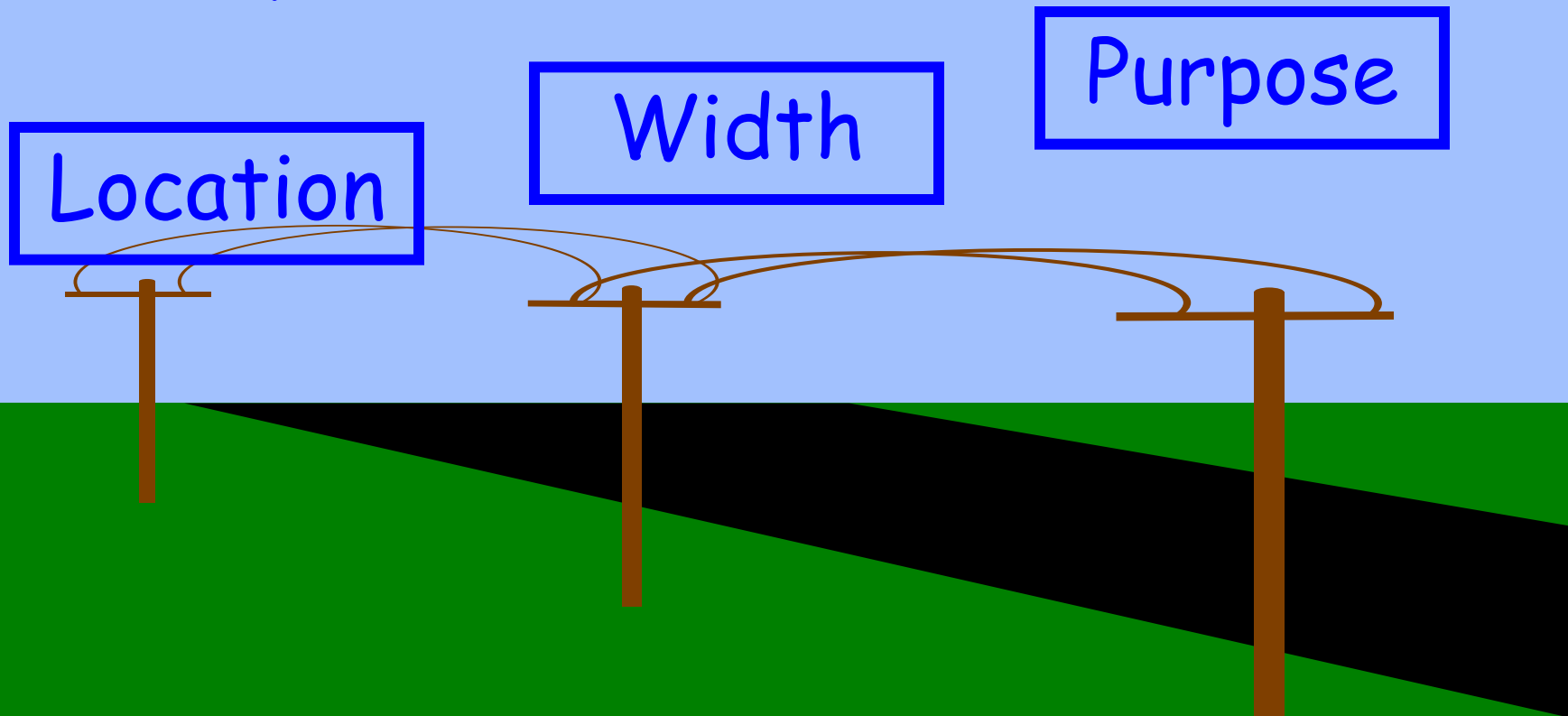
- ◆ In writing
- ◆ Grantor and Grantee
- ◆ Words of conveyance
- ◆ Signed and acknowledged
- ◆ Recorded

An easement would be invalid against a later purchaser or lender unless recorded.

Elements of an easement appurtenant

- ◆ In writing
- ◆ Grantor and Grantee
- ◆ Words of conveyance
- ◆ Signed and acknowledged
- ◆ Recorded
- ◆ Legal descriptions

- ◆ It must describe the burdened parcel
- ◆ It should describe the benefited parcel (often presumed by grantee)
- ◆ And the description of the easement itself:



Easement appurtenant

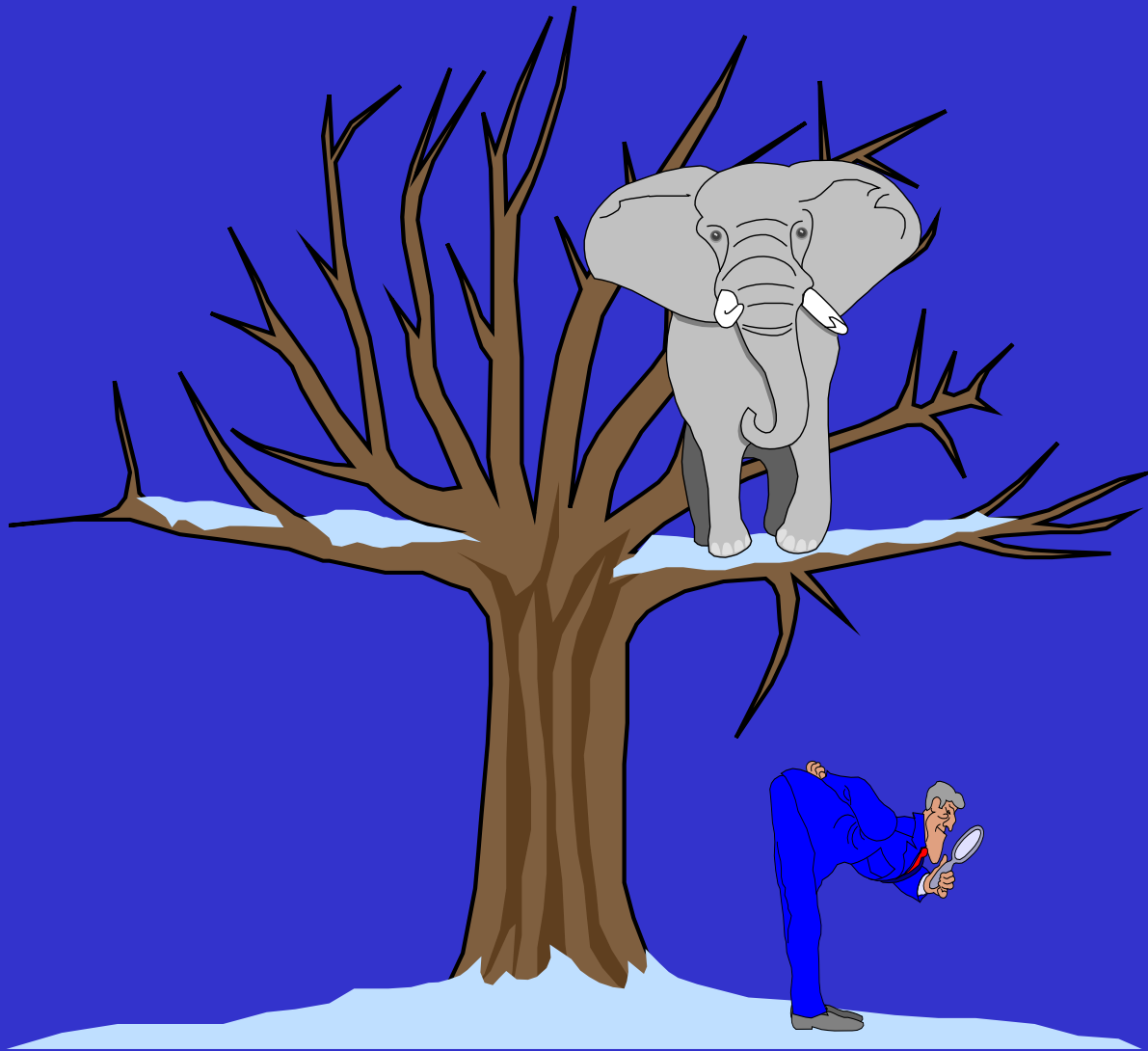
- ◆ Insured land on county line - easement over land in the next county
- ◆ Need title search in both counties
- ◆ Record in both counties

The following access issues are not part of a normal search and examination, and you are not being asked to change procedure

however...



...if something is disclosed,
pay attention



“Non-covered” matters which have been the subject of claims

- ◆ type of access: pedestrian v. vehicular
- ◆ physical condition of access way
- ◆ abandonment of easement
- ◆ New increased use (overburdening)
- ◆ customary access

This is not
the end of
the road -
just a few
signposts to
help us get
to our
destination

