

2013 WLTA Underwriting Seminar

September 7, 2013
Wenatchee, WA

George Peters



**ACCESS AND
EASEMENTS**

Wenatchee
Convention
Center
&
Coast Hotel

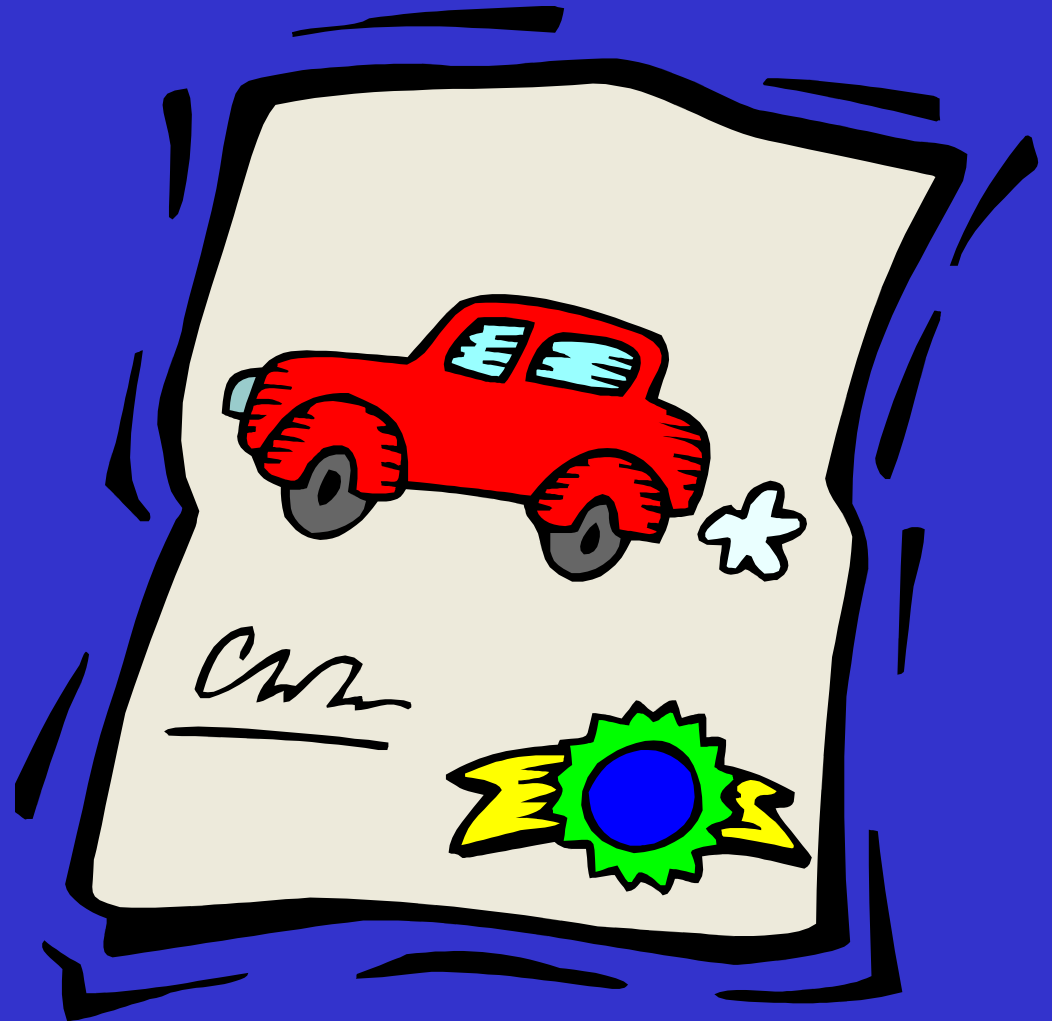
ACCESS

A stylized landscape illustration. At the top, the word "ACCESS" is written in large, bold, yellow, rounded letters with a black outline. Below the text, a grey road with a yellow center line and white side 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?

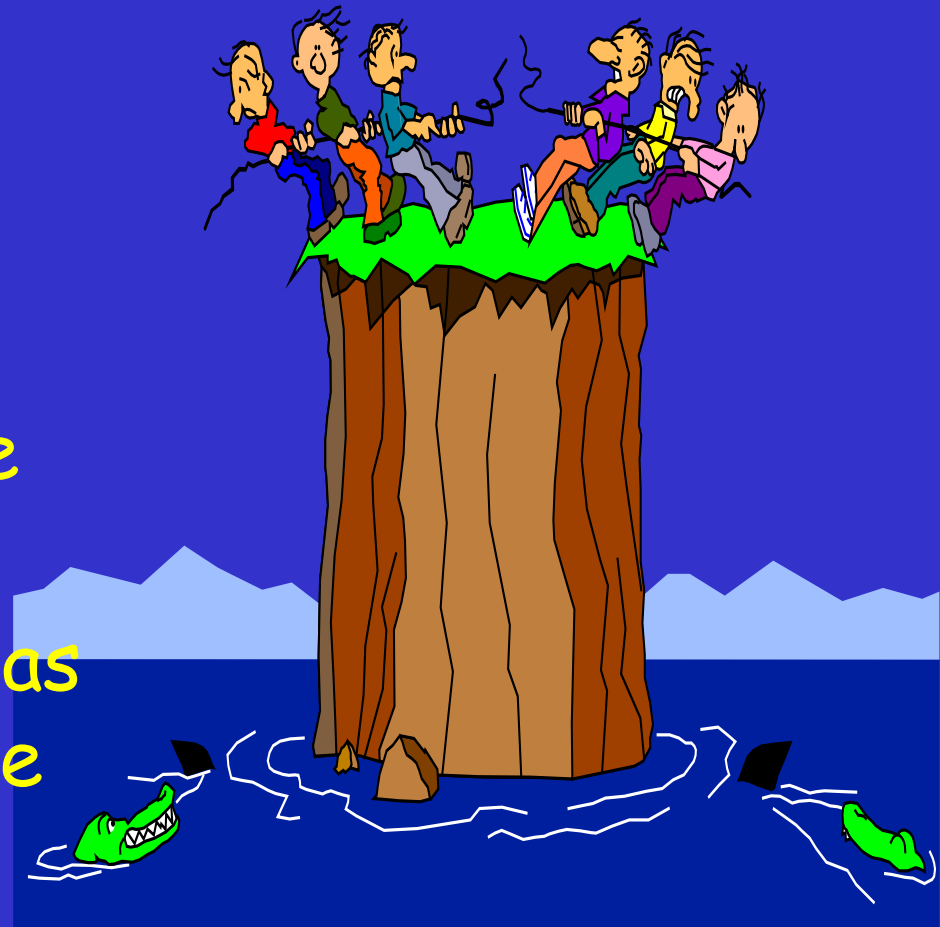
The policy insures
against loss due to ...

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
- ◆ usually animosity between neighbors
- ◆ leaves insurer at the mercy of neighbors
- ◆ can be as expensive as complete title failure

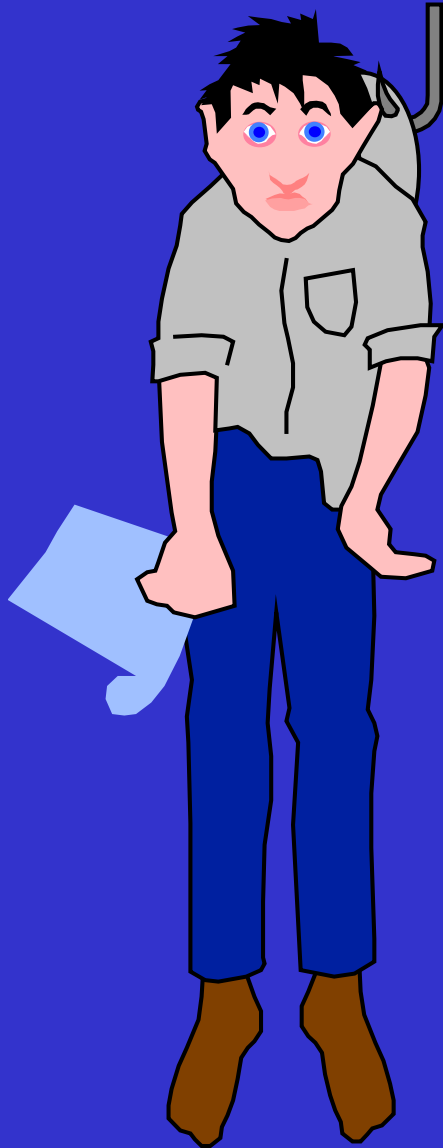




Insuring Access

- ◆ 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

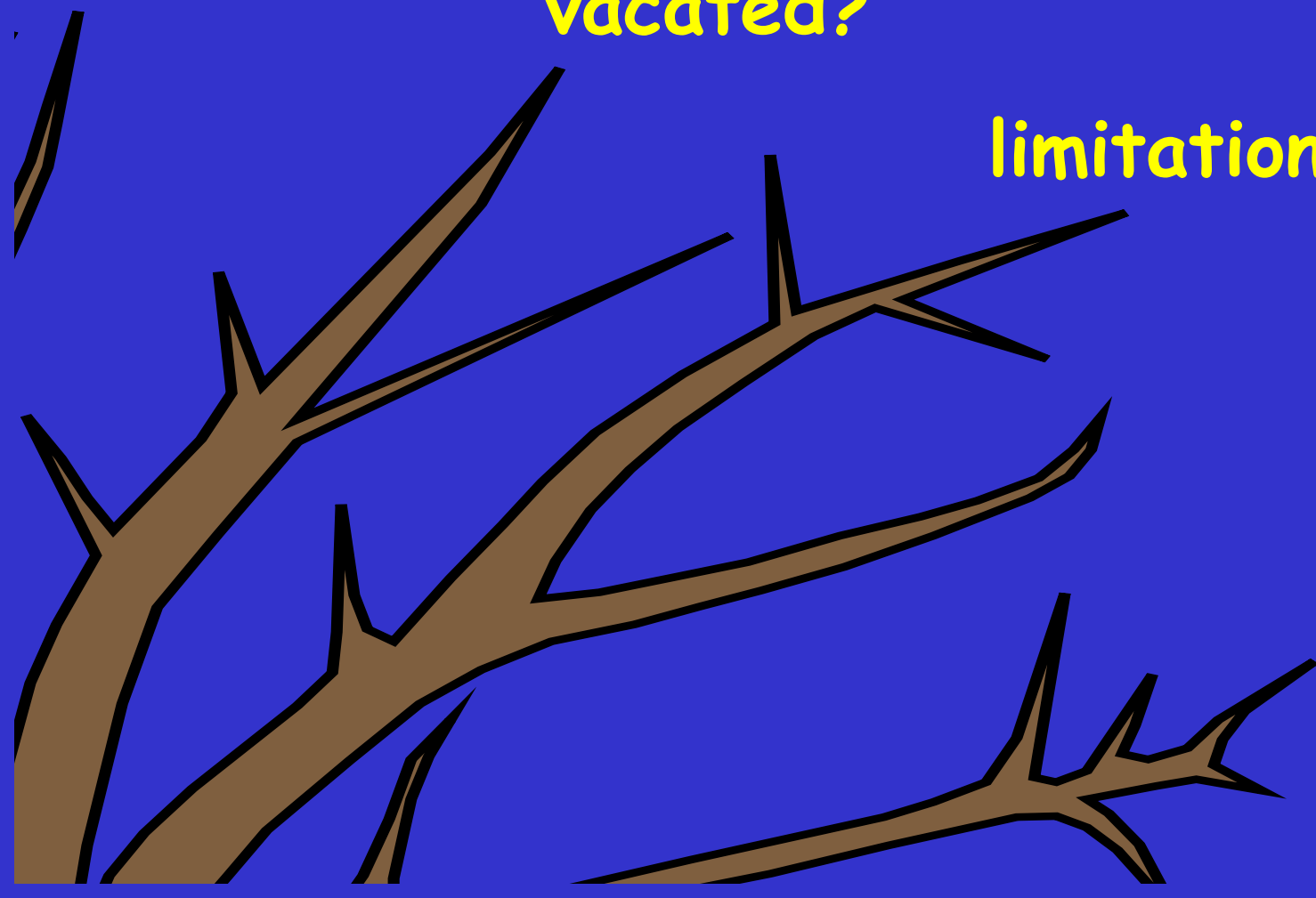


Public Roads

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



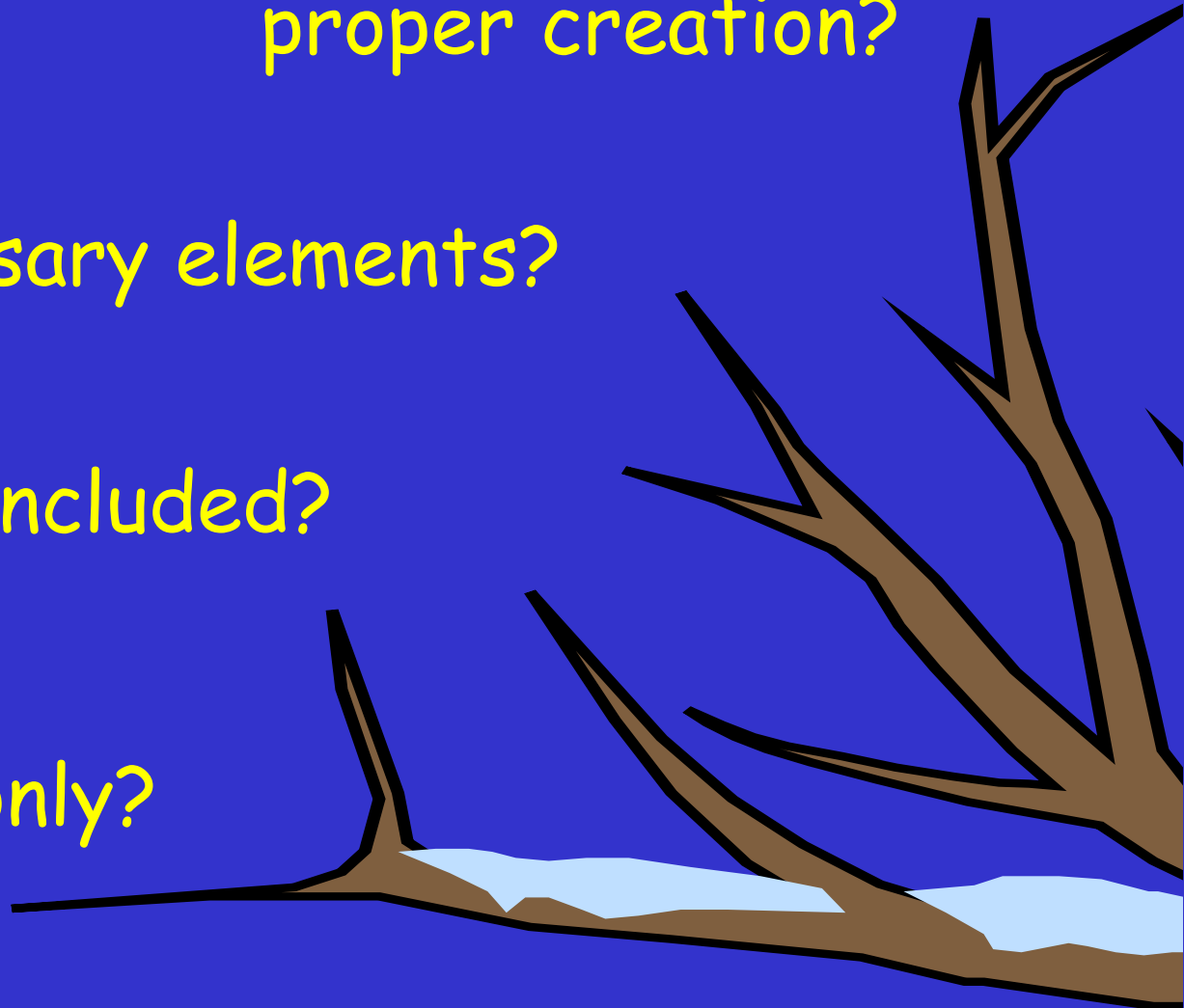
Easements

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.

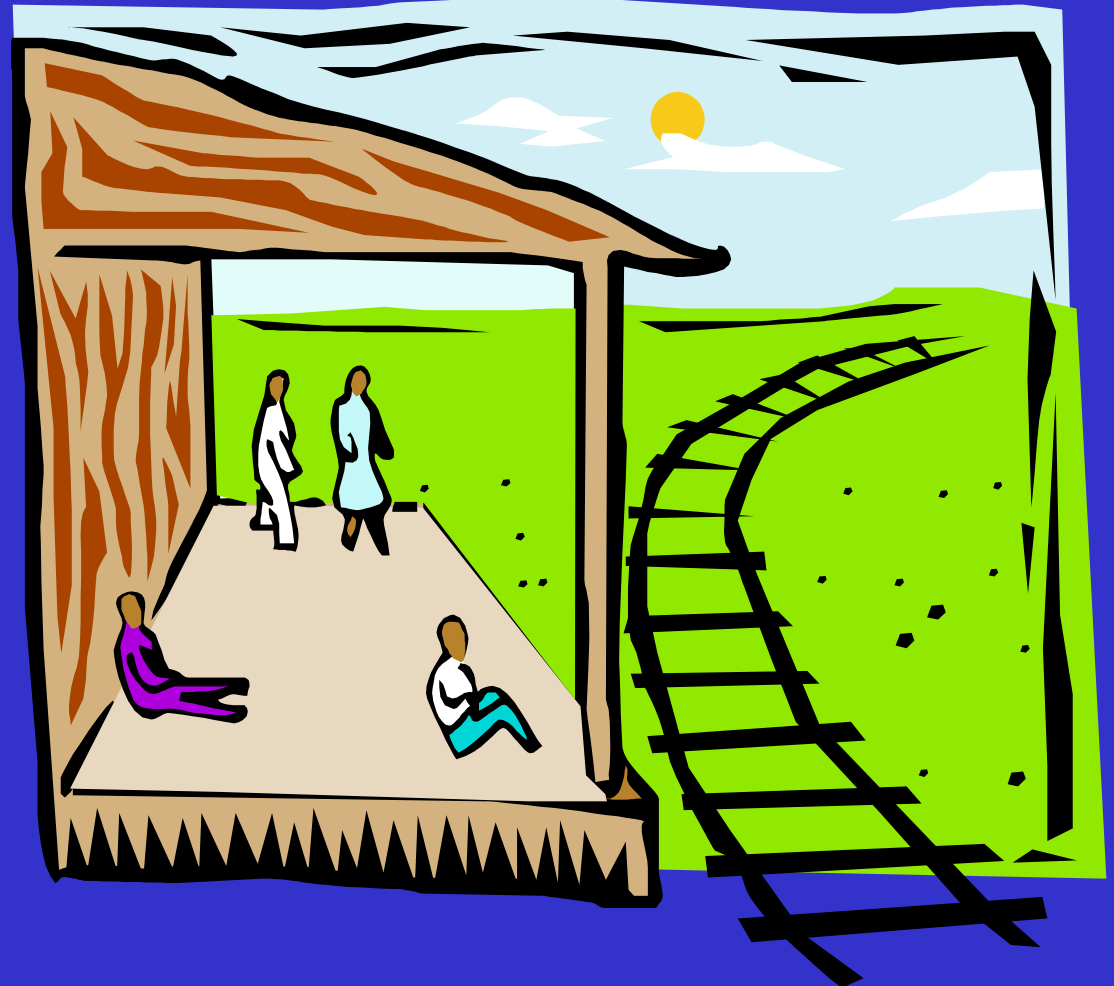


**OWNER WILL
MAINTAIN**

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



Is this an
easement?





Is this an easement?

Answer:

1. Yes
2. No
3. Can't be determined without a search and examination

This is a trick question!

The correct answer is

#2: NO.

Why?

What you see is a *road*.

What is on a map or on the ground is a *road*.

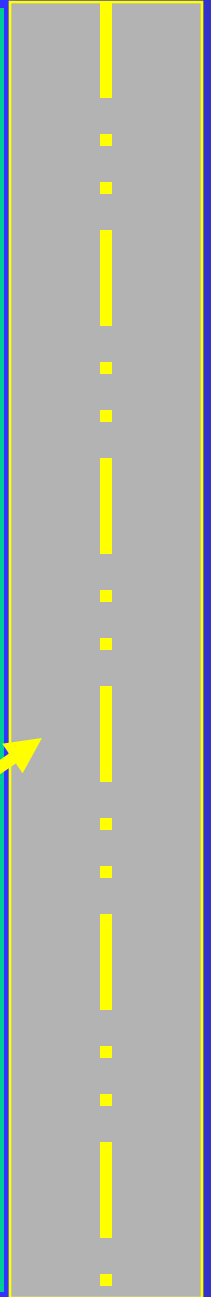
But, the *right to use* it is called an *easement*.

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

A

B

**PUBLIC
ROAD**



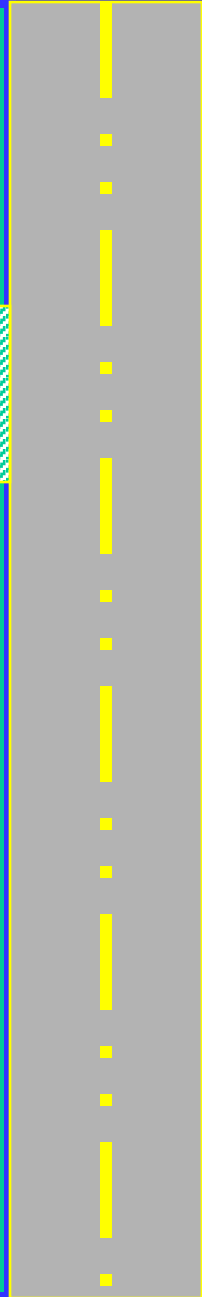
A

B

Easement

Dominant
Tenement
Parcel

Servient
Tenement
Parcel



A

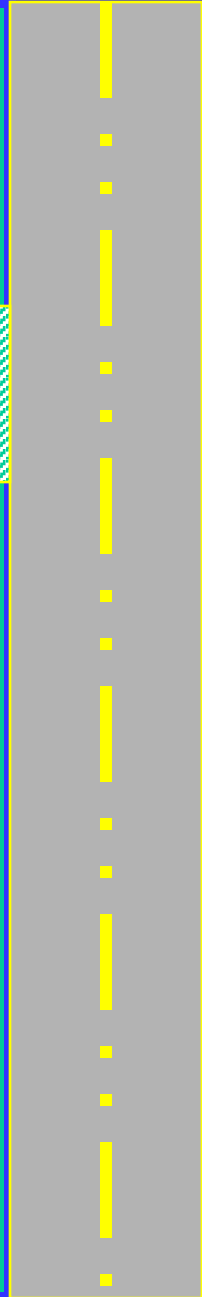
B

Easement

Appurtenant to
Parcel A

Dominant
Tenement
Parcel

Servient
Tenement
Parcel



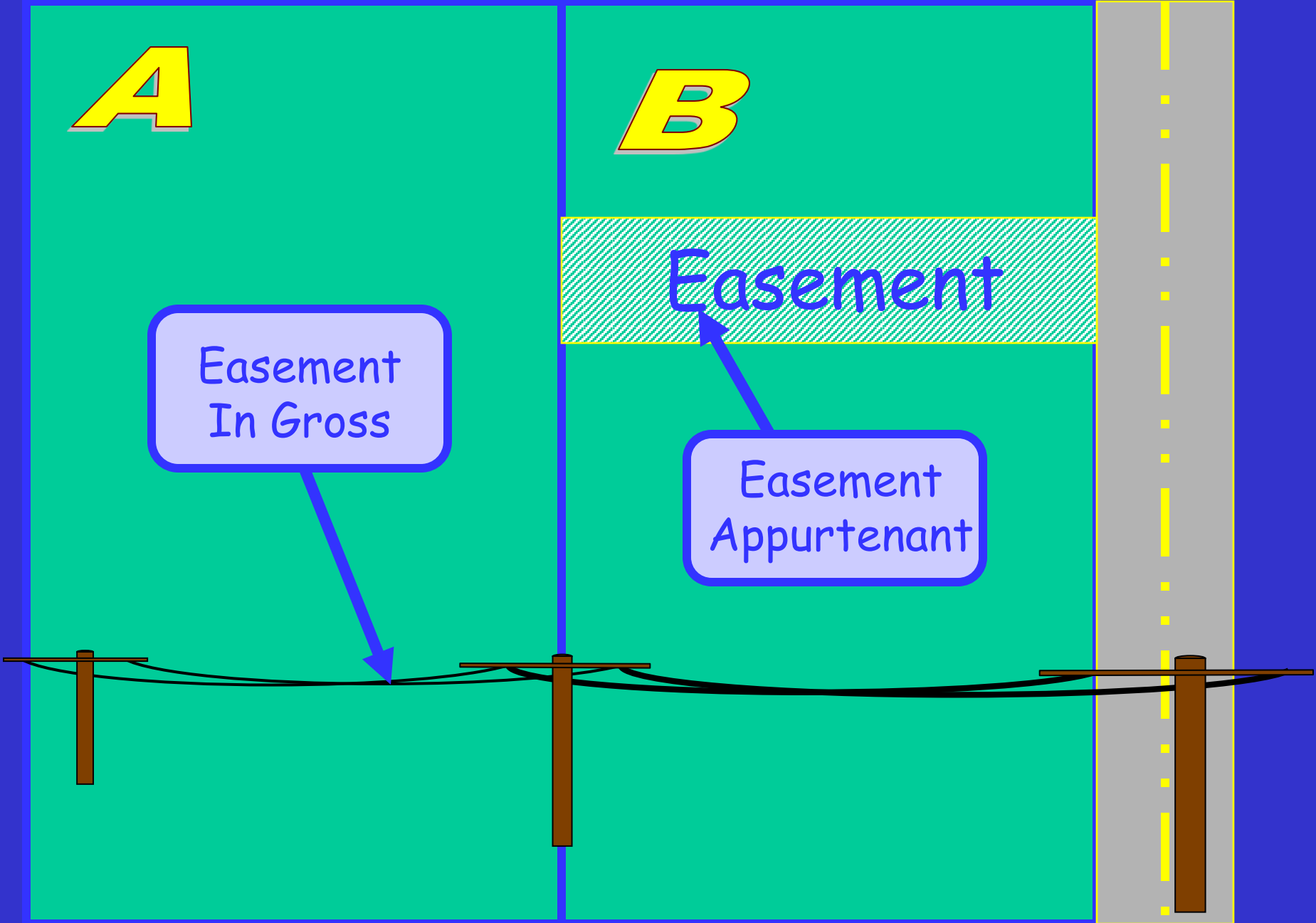
A

B

Easement
In Gross

Easement

Easement
Appurtenant



A

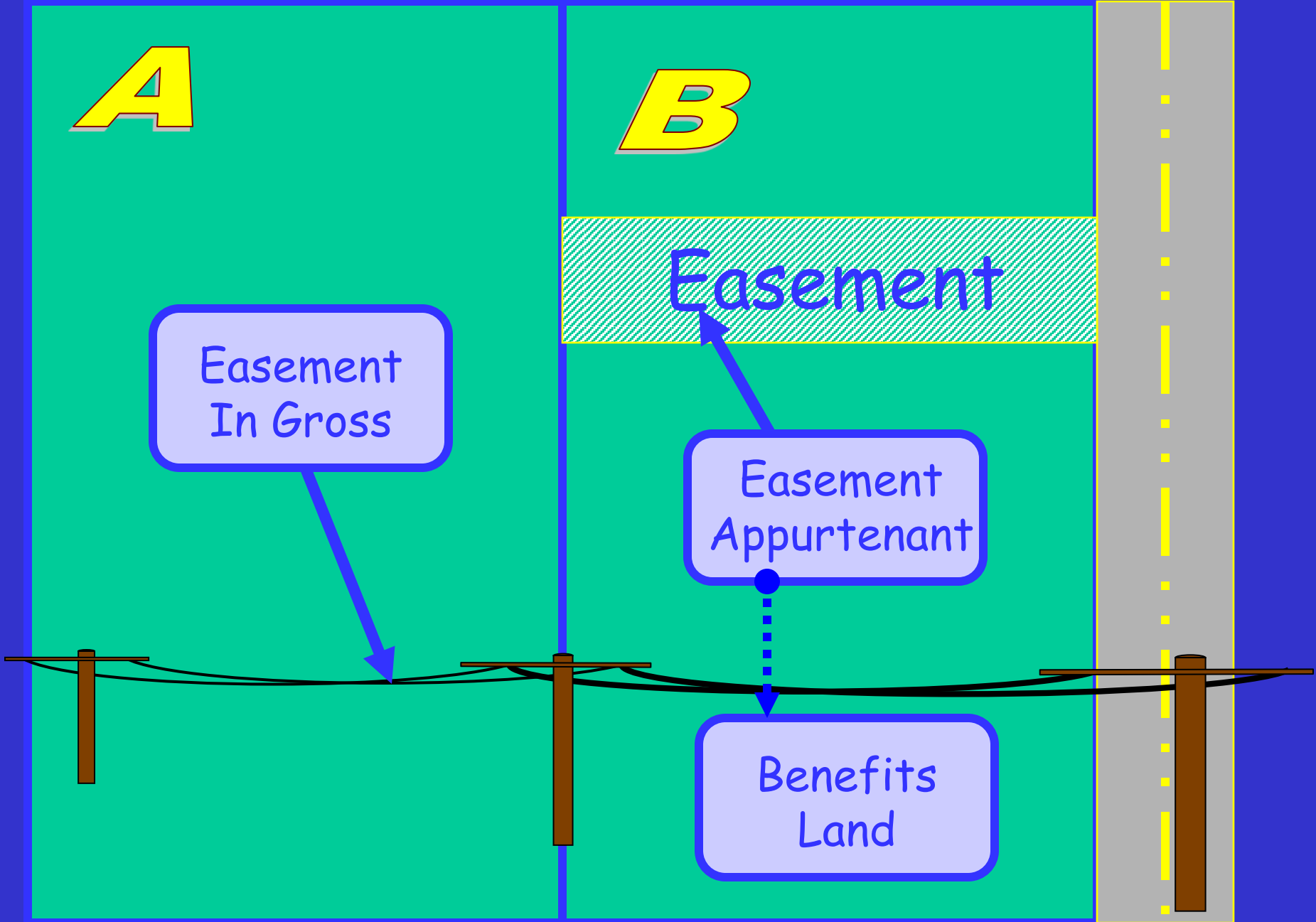
B

Easement
In Gross

Easement

Easement
Appurtenant

Benefits
Land



A

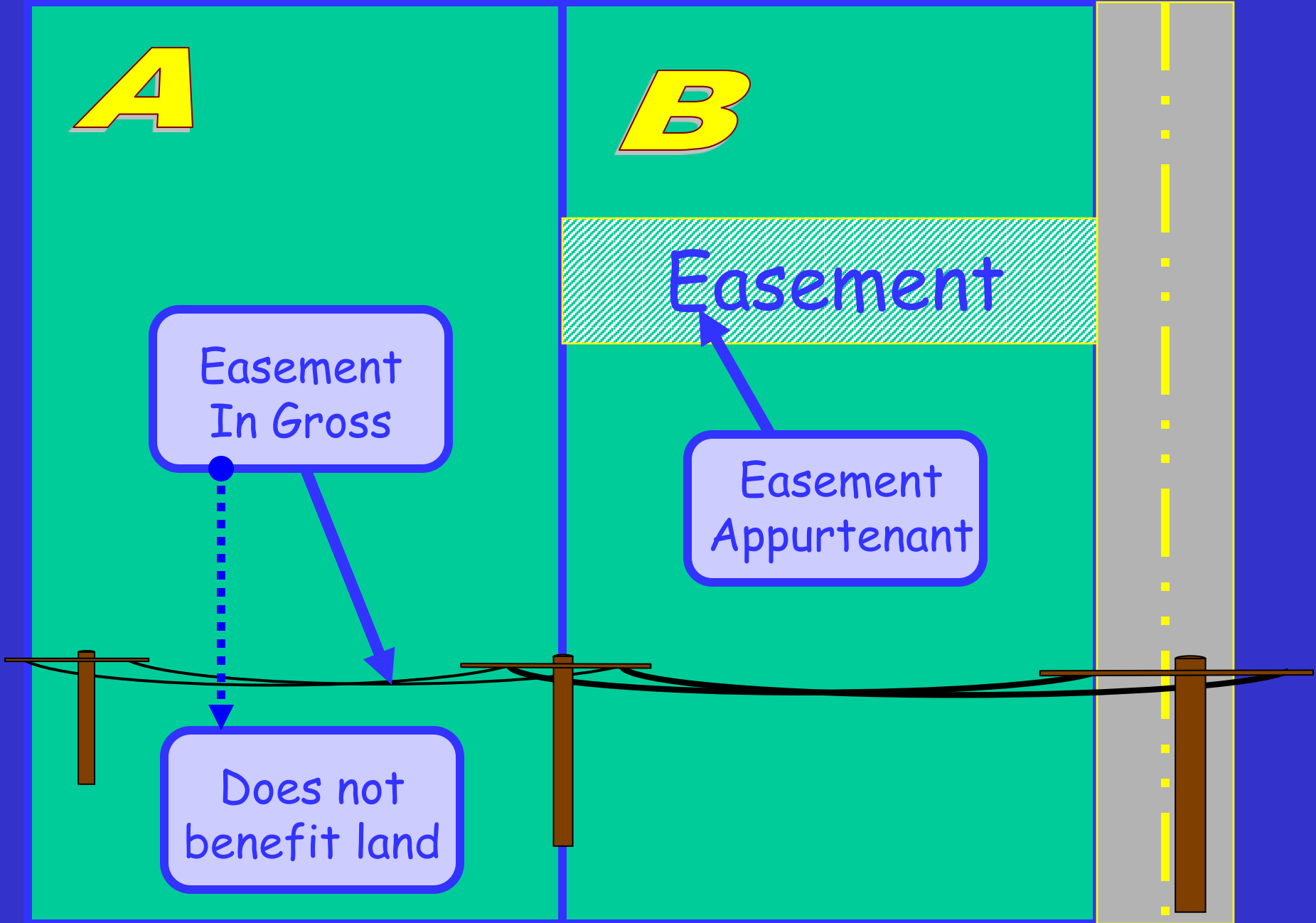
B

Easement
In Gross

Easement

Easement
Appurtenant

Does not
benefit land



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

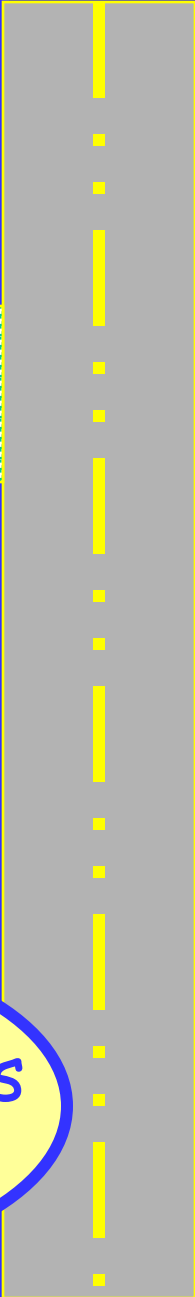
Easement 1

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

Servient Tenement owner ...

Easement 2

... can grant this easement ...



A

If it is
exclusive...

B

Easement

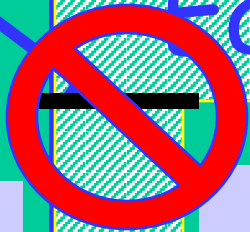
Owner of
Servient
Tenement
cannot
grant it to
others

A

B

... but cannot connect here

Easement 1

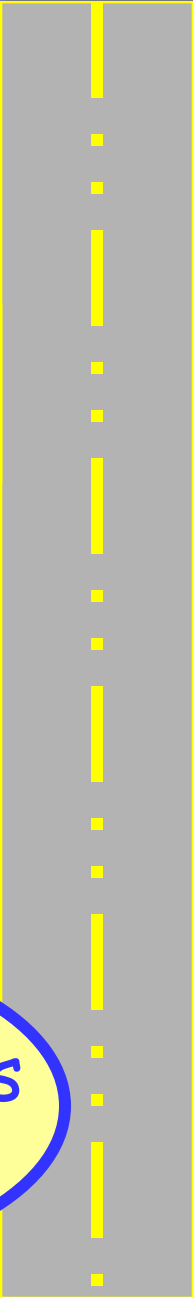


If:
Dominant
Tenement
Parcel has
exclusive use

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

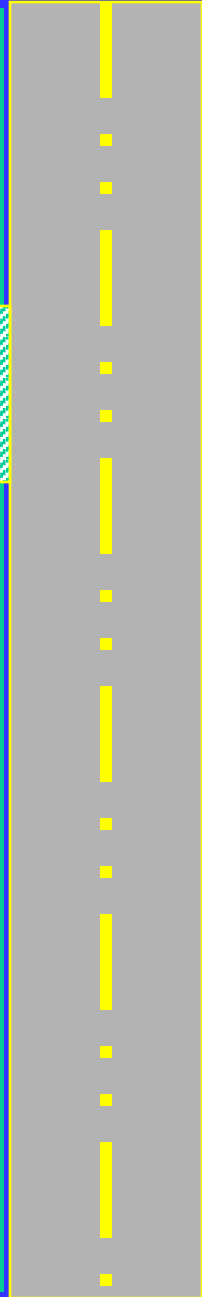
Dominant
Tenement
Parcel

B

Easement

Owned by
Jones

Servient
Tenement
Parcel



A

Owned by
Smith

The
easement is
good

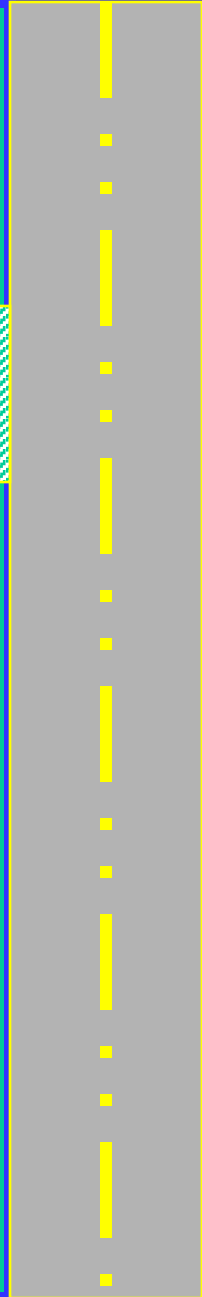
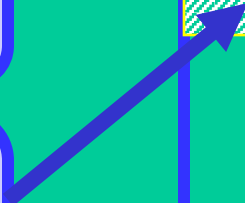
Dominant
Tenement
Parcel

B

Easement

Owned by
Jones

Servient
Tenement
Parcel



A

B

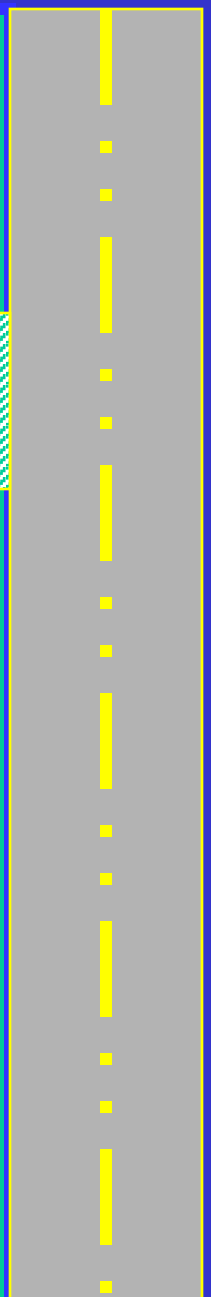
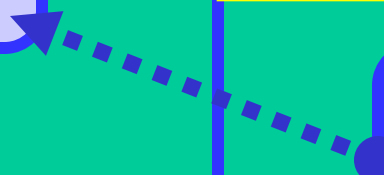
Owned by
Smith

Easement

Jones sells
to Smith

Dominant
Tenement
Parcel

Servient
Tenement
Parcel



A

Owned by
Smith

The
easement is
not good

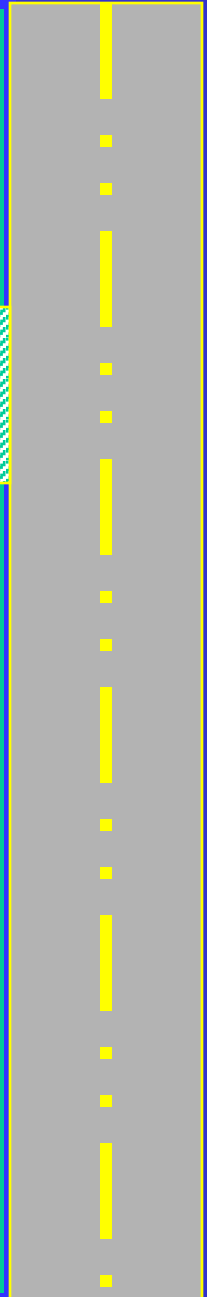
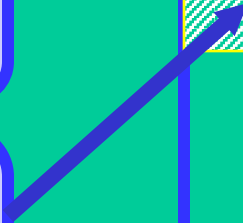
Dominant
Tenement
Parcel

B

~~Easement~~

Owned by
Smith

Servient
Tenement
Parcel



A

B

Owned by
Smith

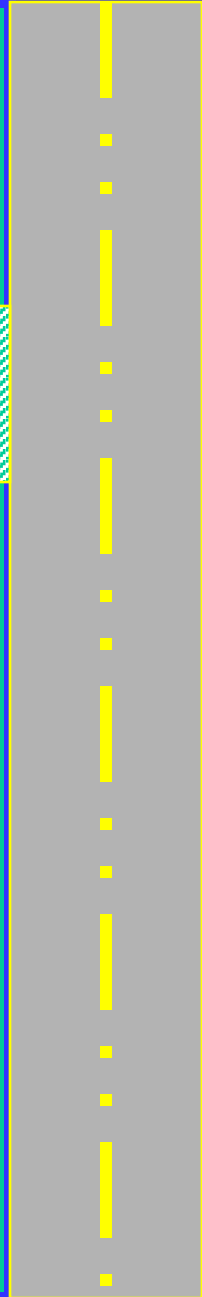
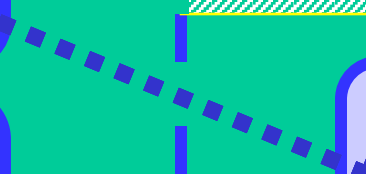
The
easement is
not good

Dominant
Tenement
Parcel

~~Easement~~

Owned by
Smith

Servient
Tenement
Parcel



WARNING

After Merger:

- ◆ The easement is not insurable as appurtenant to Parcel A, but
- ◆ The easement must still be shown as an encumbrance on Parcel B

Elements of an easement appurtenant

- ◆ In writing

What about prescriptive easements?

General Rule: if not established by court order, don't insure them

Elements of an easement appurtenant

- ◆ In writing
- ◆ Grantor and Grantee

- ◆ Did the grantor(s) own the 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?
- ◆ Notarized - just like a deed

Elements of an easement appurtenant

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

Of course it needs to
be recorded!
It is a "conveyance"

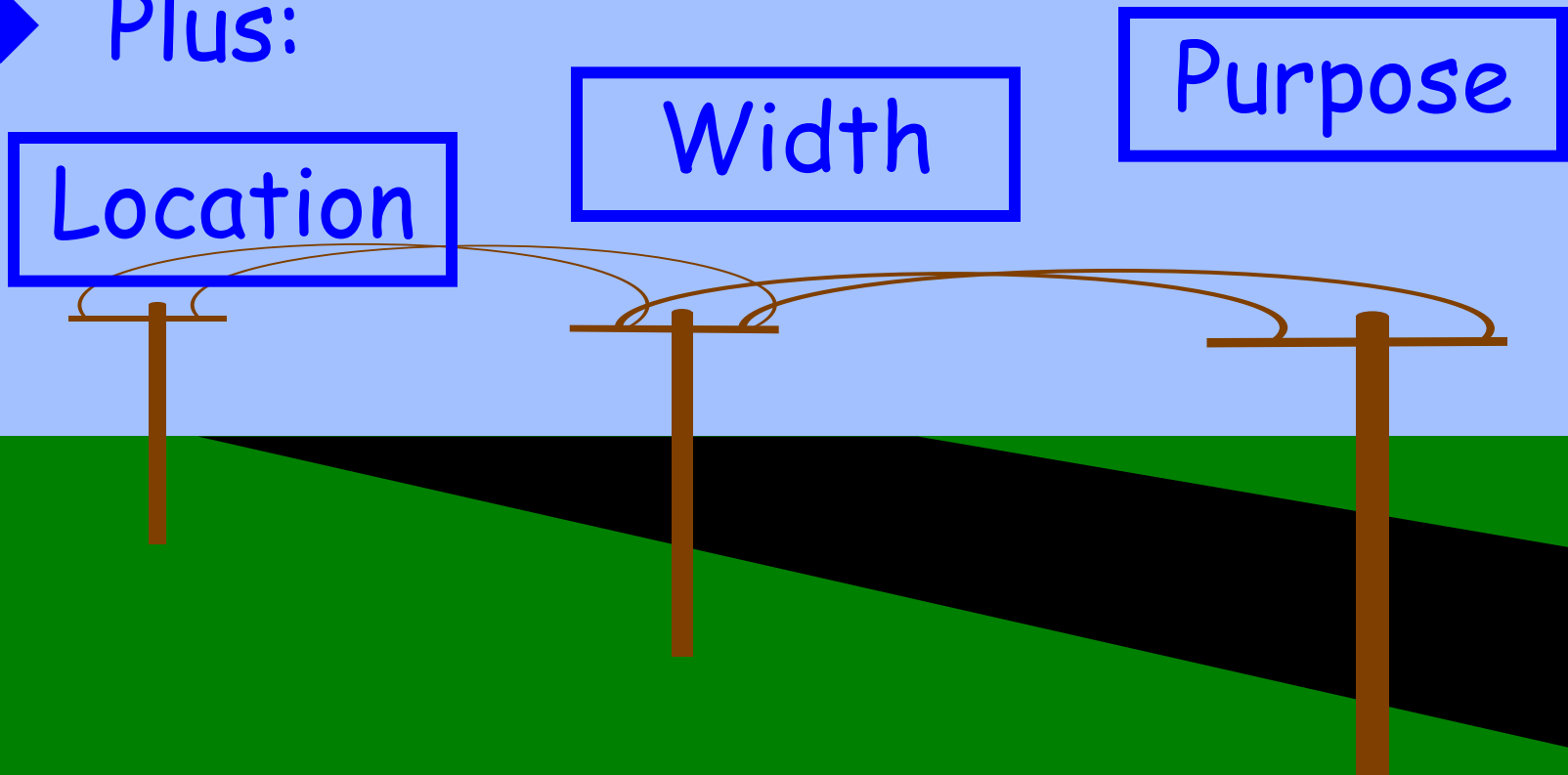
Elements of an easement appurtenant

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

Easement appurtenant

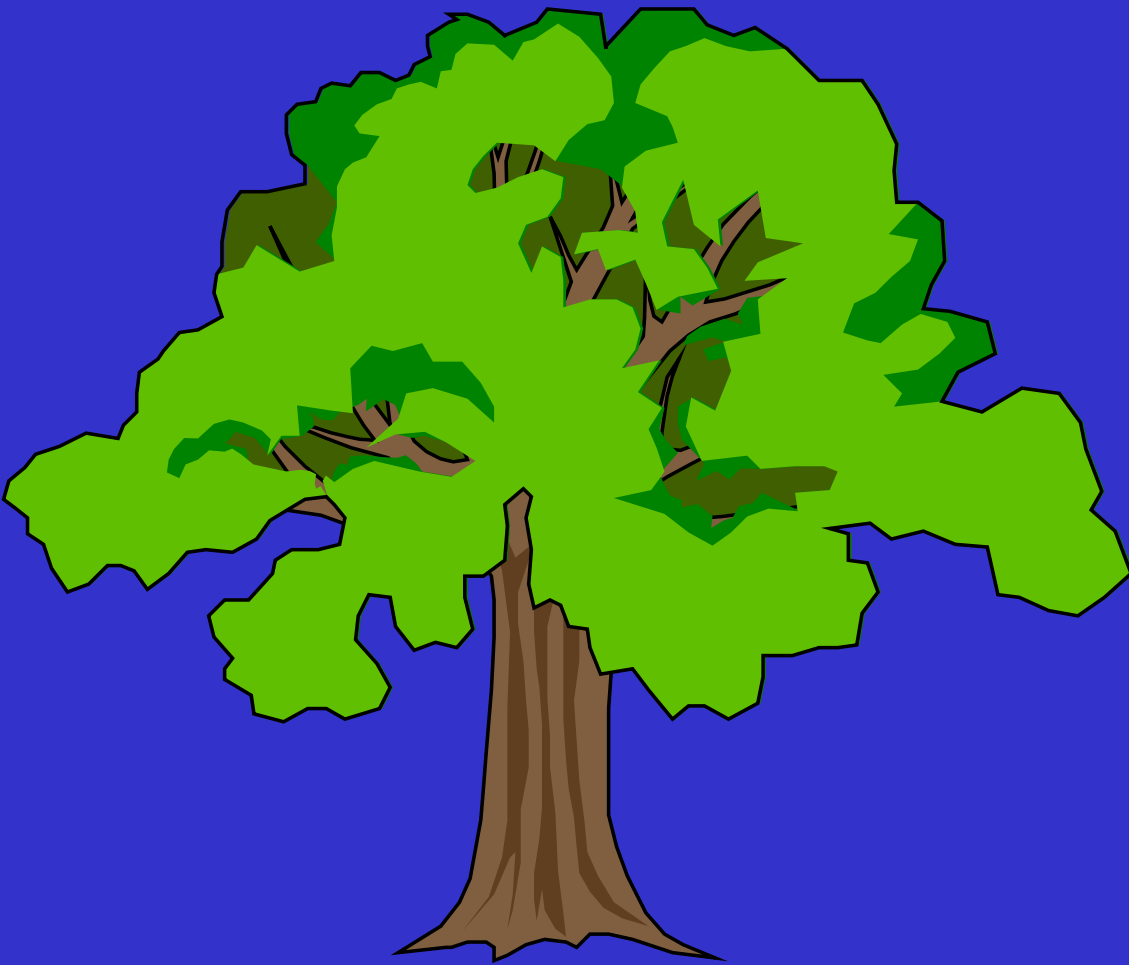
- ◆ Insured land on county line - easement over land in the next county
- ◆ Need title search in both counties
- ◆ Record in both counties

- ◆ It should describe the parcel benefited (dominant estate)
- ◆ And the legal description of the easement itself
- ◆ Plus:

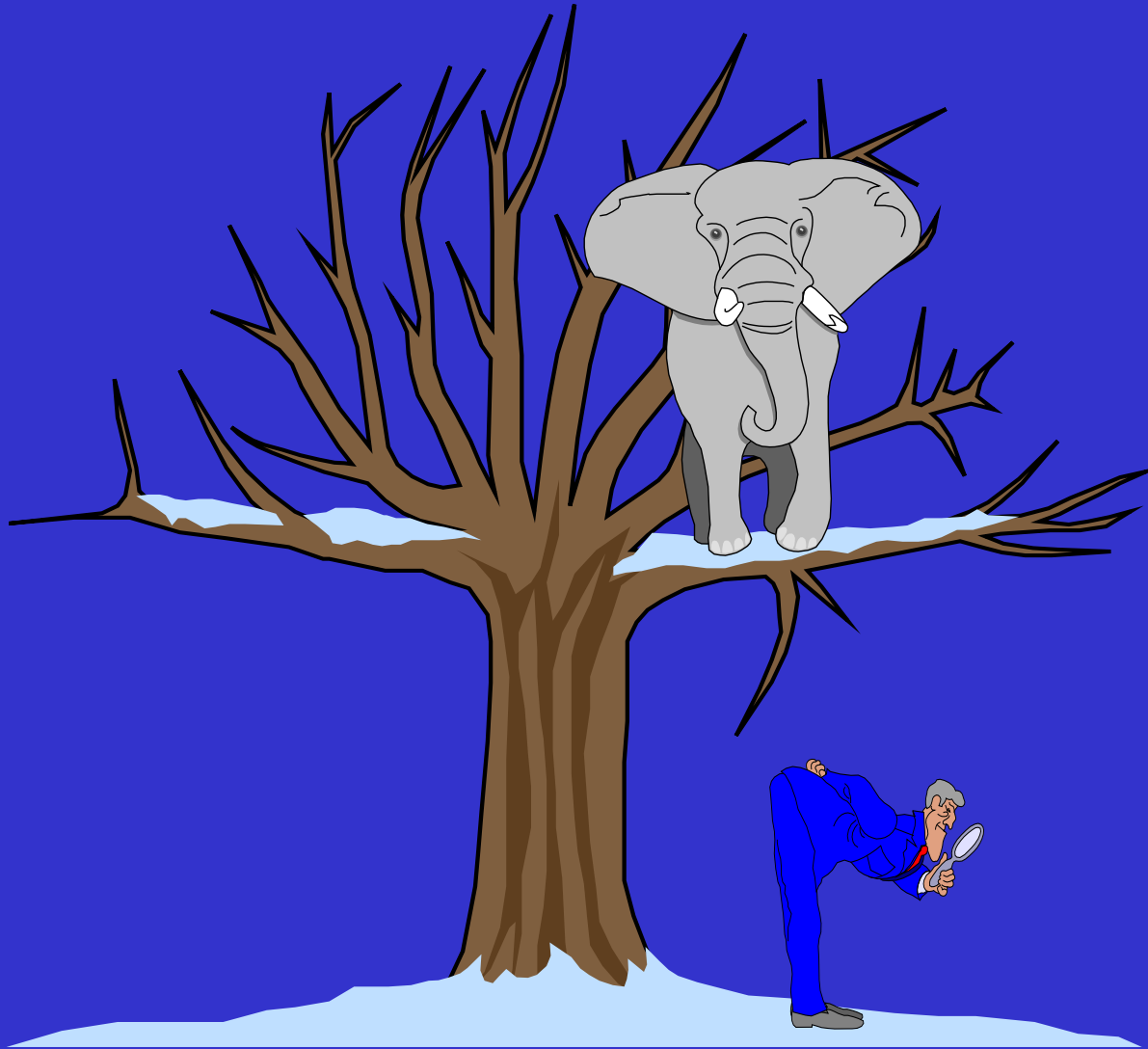


The following access issues are not part of a normal search and examination, and you are not being asked to change procedure

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
- ◆ future use (overburdening)
- ◆ customary access

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

