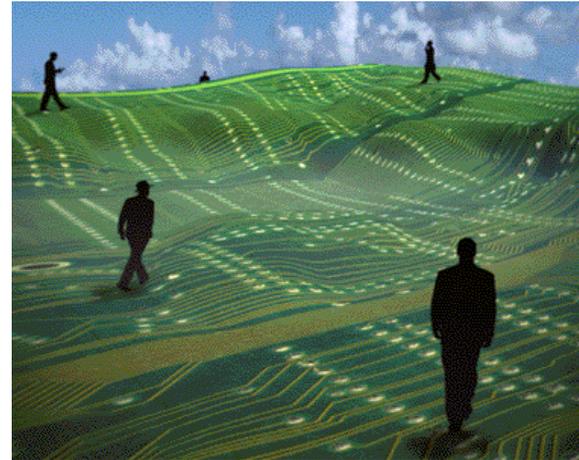
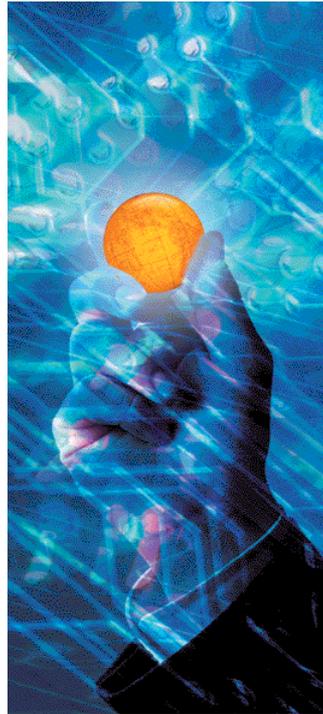


Encroachments: Exceptions, Tools and Endorsements

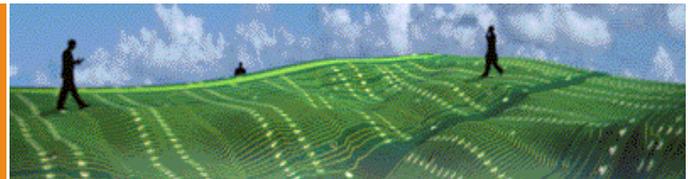
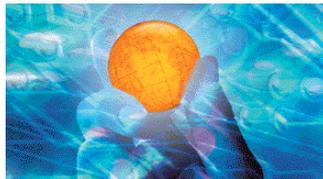
Dwight A. Bickel



Spokane, Washington – September 24, 2016
Lynnwood, Washington – October 15, 2016

Outline for Today's Discussion:

- **EVALUATING ENCROACHMENT RISKS**
- **REMOVING ENCROACHMENT RISKS**
- **TITLE POLICY COVERAGE AGAINST ENCROACHMENT RISKS**



TITLE POLICY COVERAGE AGAINST ENCROACHMENT RISKS

- All policy forms automatically give broad coverage against the risk of encroachments.

Owner's Covered Risk 2(c): Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.

TITLE POLICY COVERAGE AGAINST ENCROACHMENT RISKS

- **All policy forms automatically give broad coverage against the risk of encroachments.**

Homeowner's Covered Risk 1:

Someone else owns an interest in Your Title.

That applies to insure against the adverse possession claim of a neighbor that their encroachment onto the Insured property has matured into ownership:

Homeowner's Covered Risk 28: Your neighbor builds any structures after the Policy Date -- other than boundary walls or fences -- which encroach onto the Land.

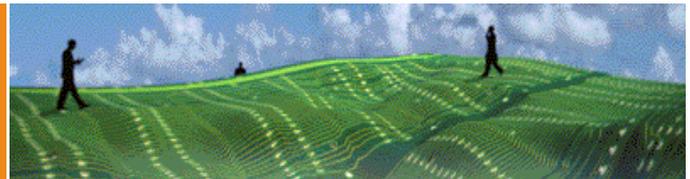
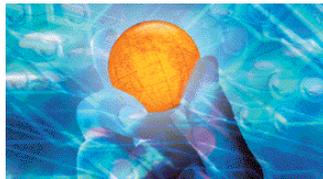
TITLE POLICY COVERAGE AGAINST ENCROACHMENT RISKS

- **All policy forms automatically give broad coverage against the risk of encroachments.**

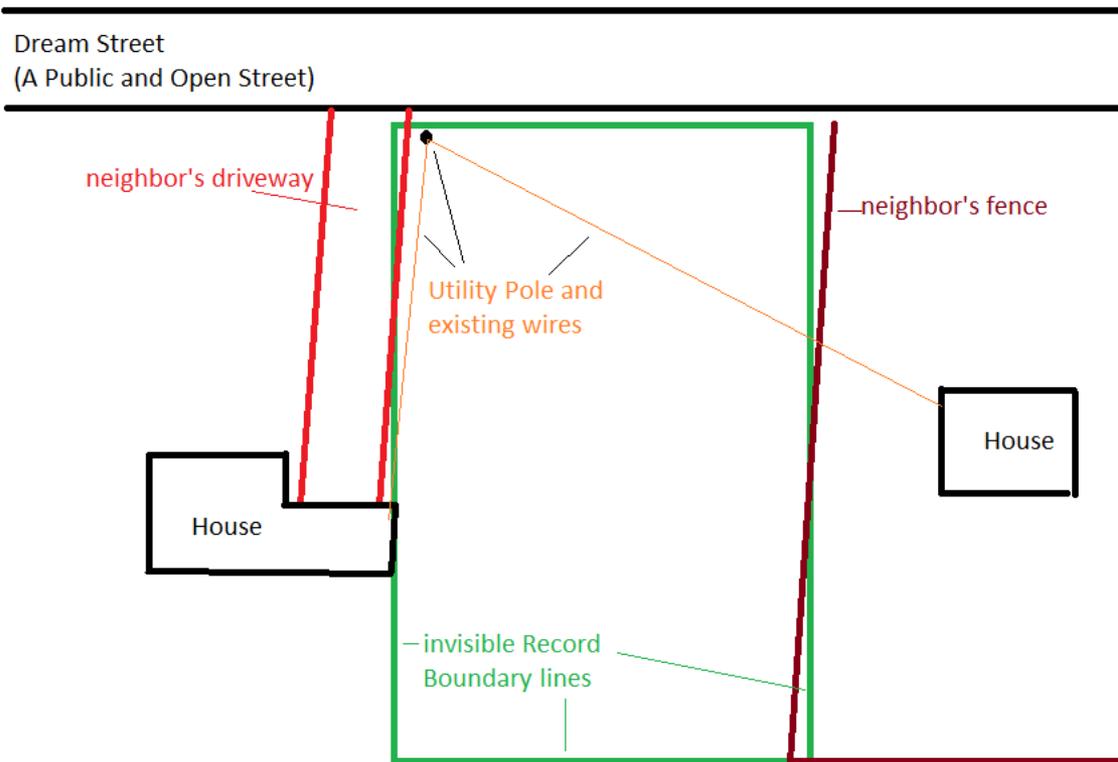
Homeowner's Covered Risk 21: You are forced to remove Your existing structures because they encroach onto Your neighbor's land. If the encroaching structures are boundary walls or fences, the amount of Your insurance for this Covered Risk is subject to Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

ANALYZING OFF-RECORD RIGHTS

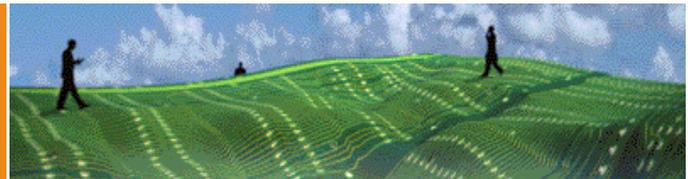
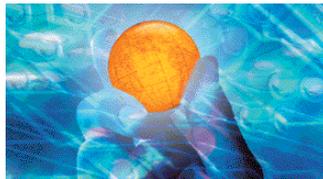
- **Inspect the Land**
- **Do You Need a Survey?**
- **Surveyors Cannot Determine Legal Boundaries**



ANALYZING OFF-RECORD RIGHTS

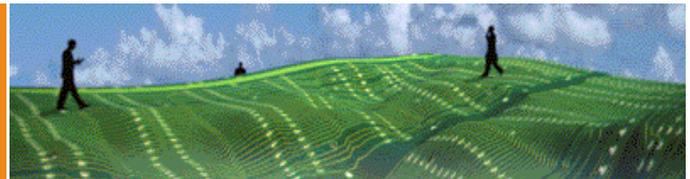
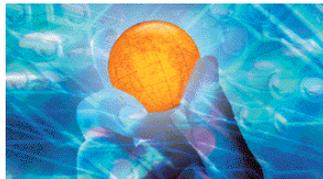


What would an accurate survey of the vacant lot reveal?

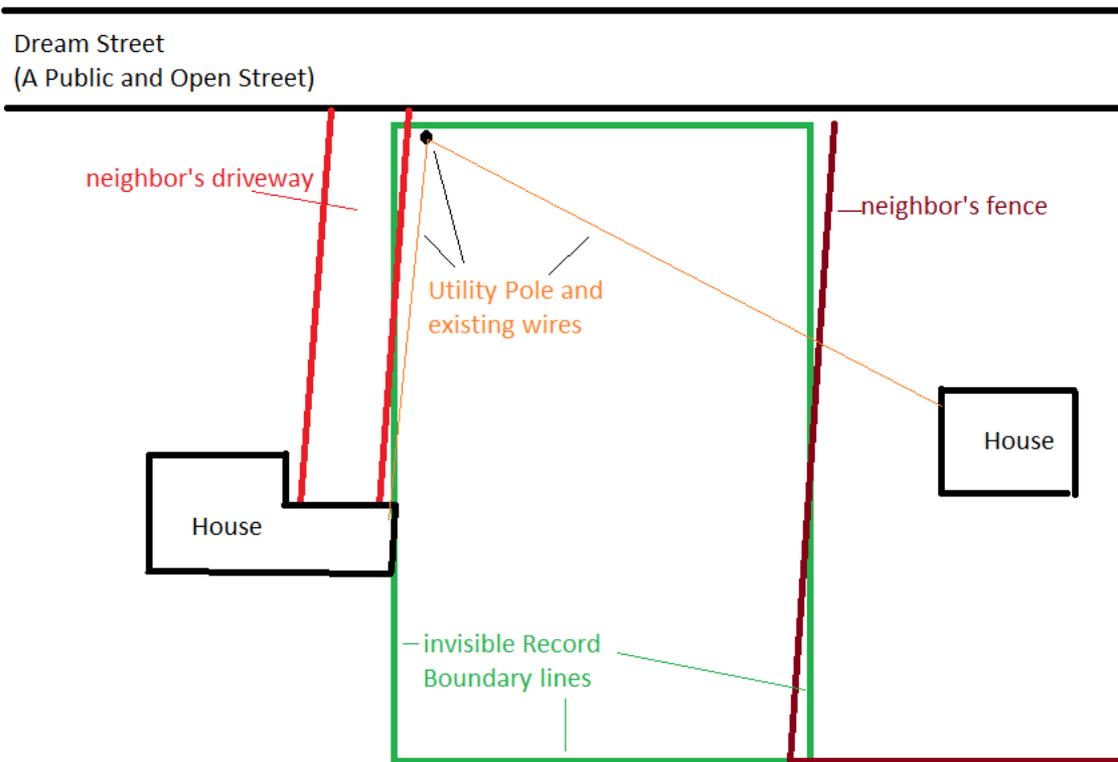


ANALYZING OFF-RECORD RIGHTS

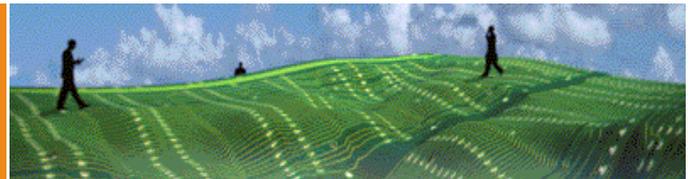
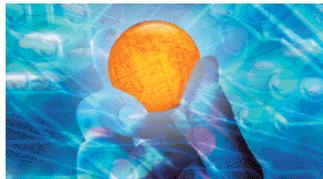
- **Identify Encroachments and Prescriptive Easements by Neighbor's onto the Land**
- **We may rely upon Washington Adverse Possession Law**
- **Title company requirements for insurance can be practical; even if not permanent legal solutions.**



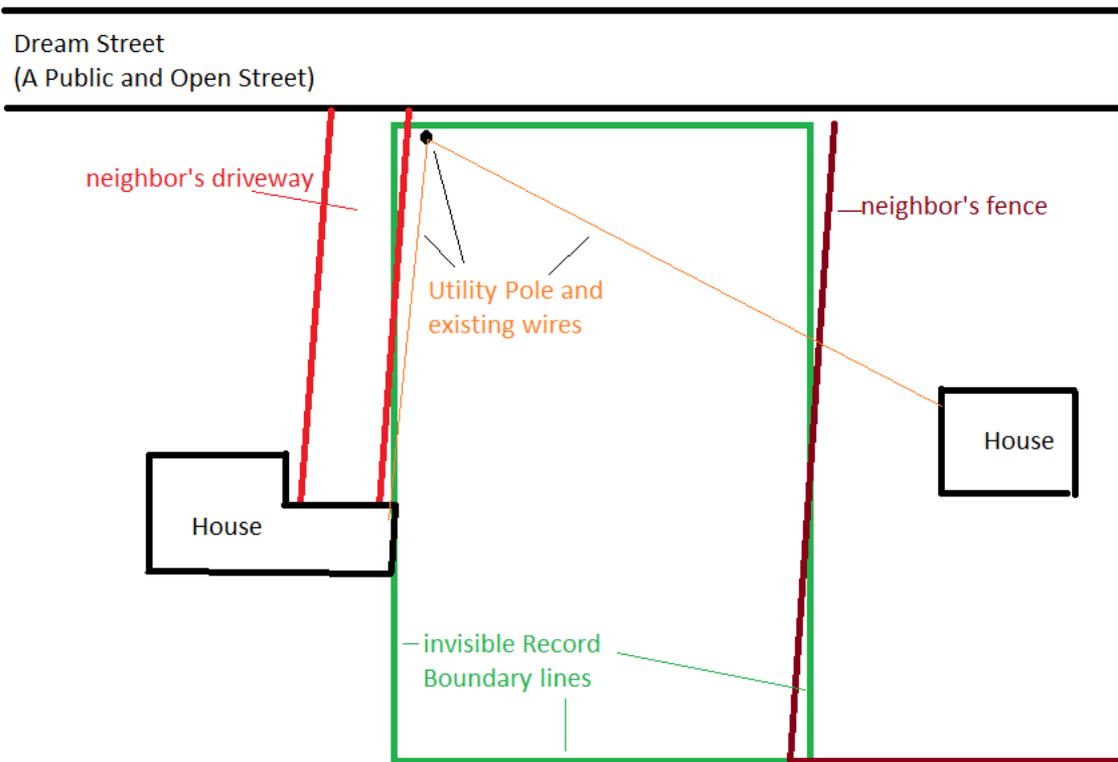
ANALYZING OFF-RECORD RIGHTS



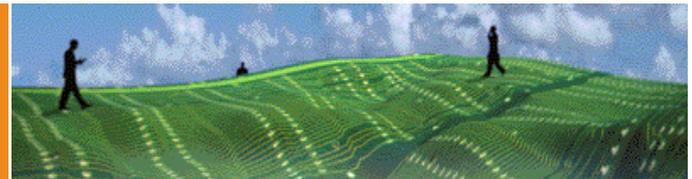
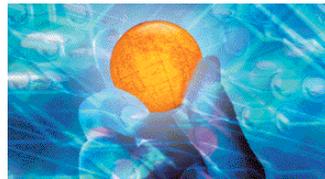
3 instances of Adverse Possession by Neighbors



ANALYZING OFF-RECORD RIGHTS

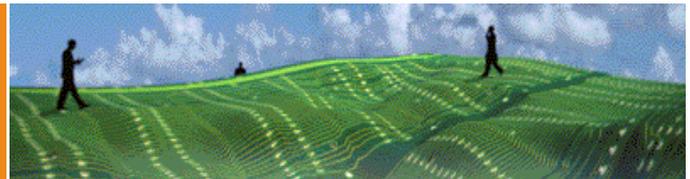
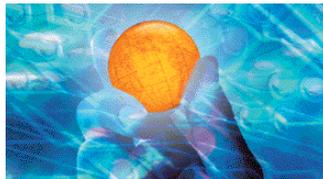


2 instances of Prescriptive Rights by Neighbors and Utilities

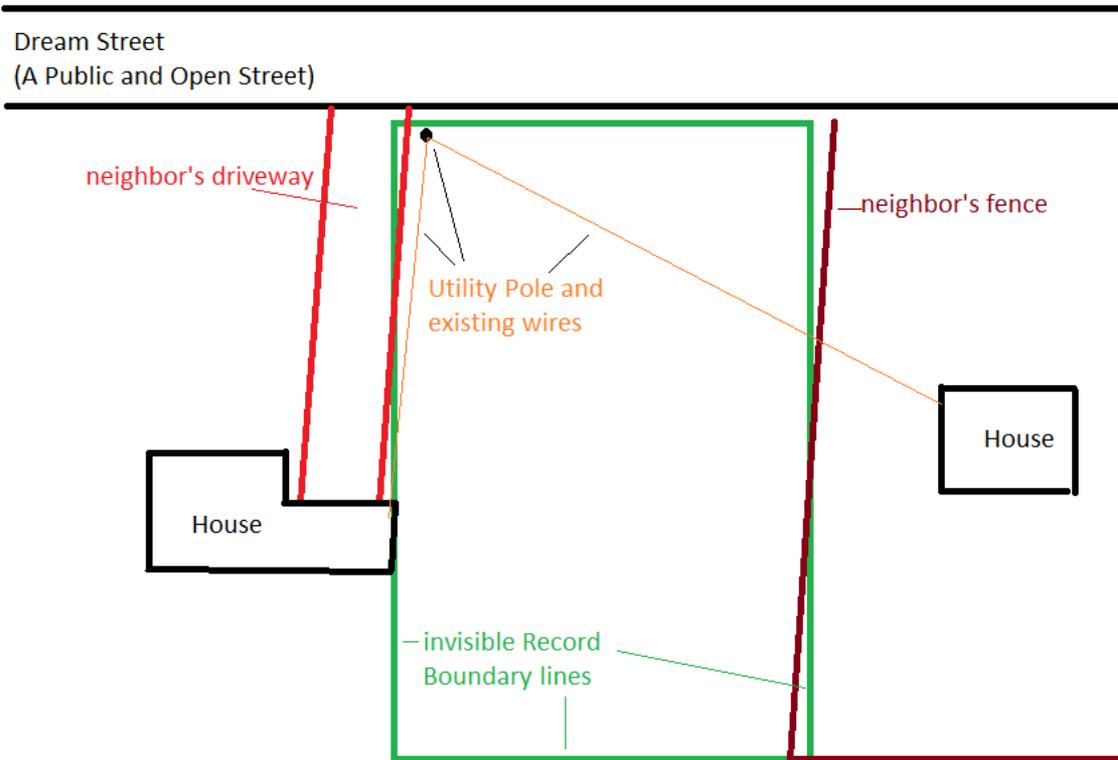


ANALYZING OFF-RECORD RIGHTS

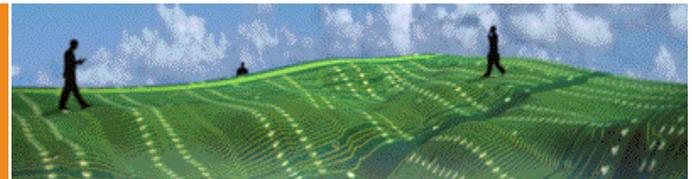
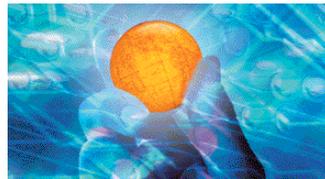
- **Identify Encroachments of the Insured Land onto the Neighbors' Land.**
- **Identify Prescriptive Easement Rights of the Insured Land onto the Neighbors' Land.**



ANALYZING OFF-RECORD RIGHTS

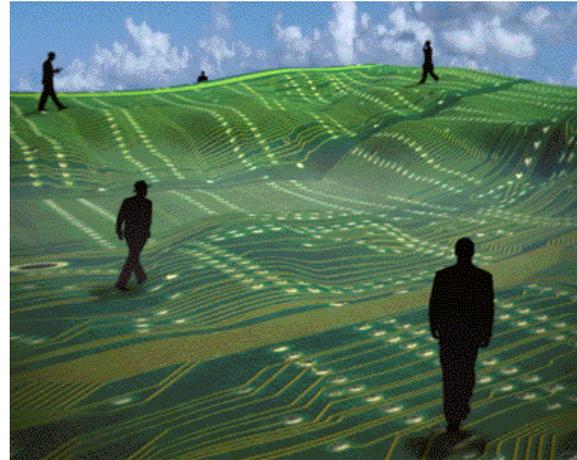
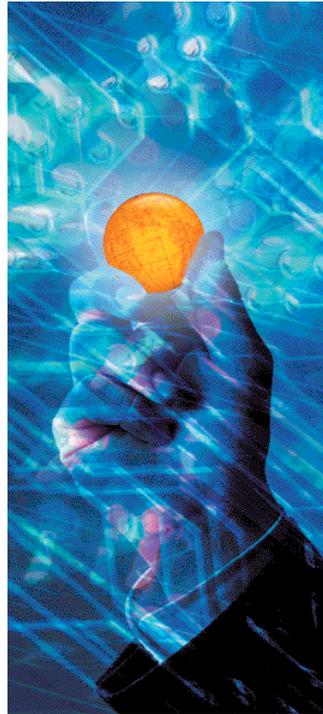


Instance of Adverse Possession onto Neighbor's Land?



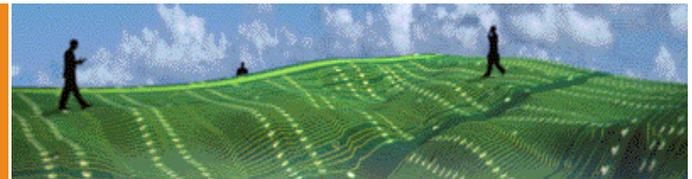
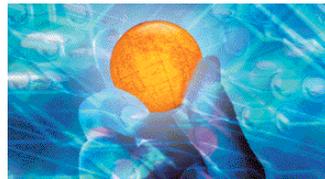
Any Questions?

The second section is about different ways to reduce or completely eliminate the risks associated with encroachments.



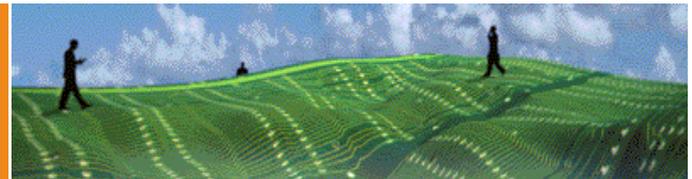
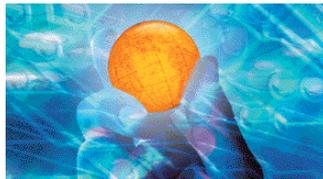
REMOVING ENCROACHMENT RISKS

- Solving the Problem; Removing the Risk
- Removing a Defect May Be Better Than Insuring Over the Risk
 - The Effect of Limited Amount of Insurance
 - The Effect of Conditions



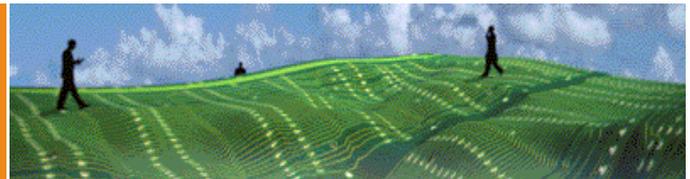
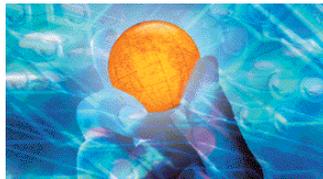
The Quick Solution

- An encroachment is an improvement that is upon the land of another **without permission**.
- Adverse possession is the use of another person's land **without permission**.
- Both title risks can be quickly solved by obtaining **agreement of both owners that the use of the other's land is with permission**.

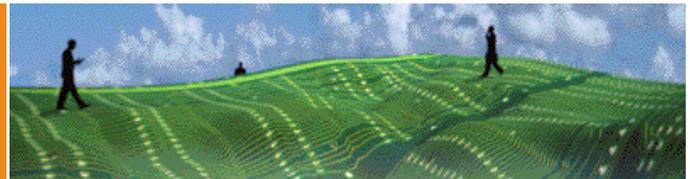
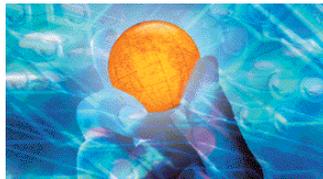
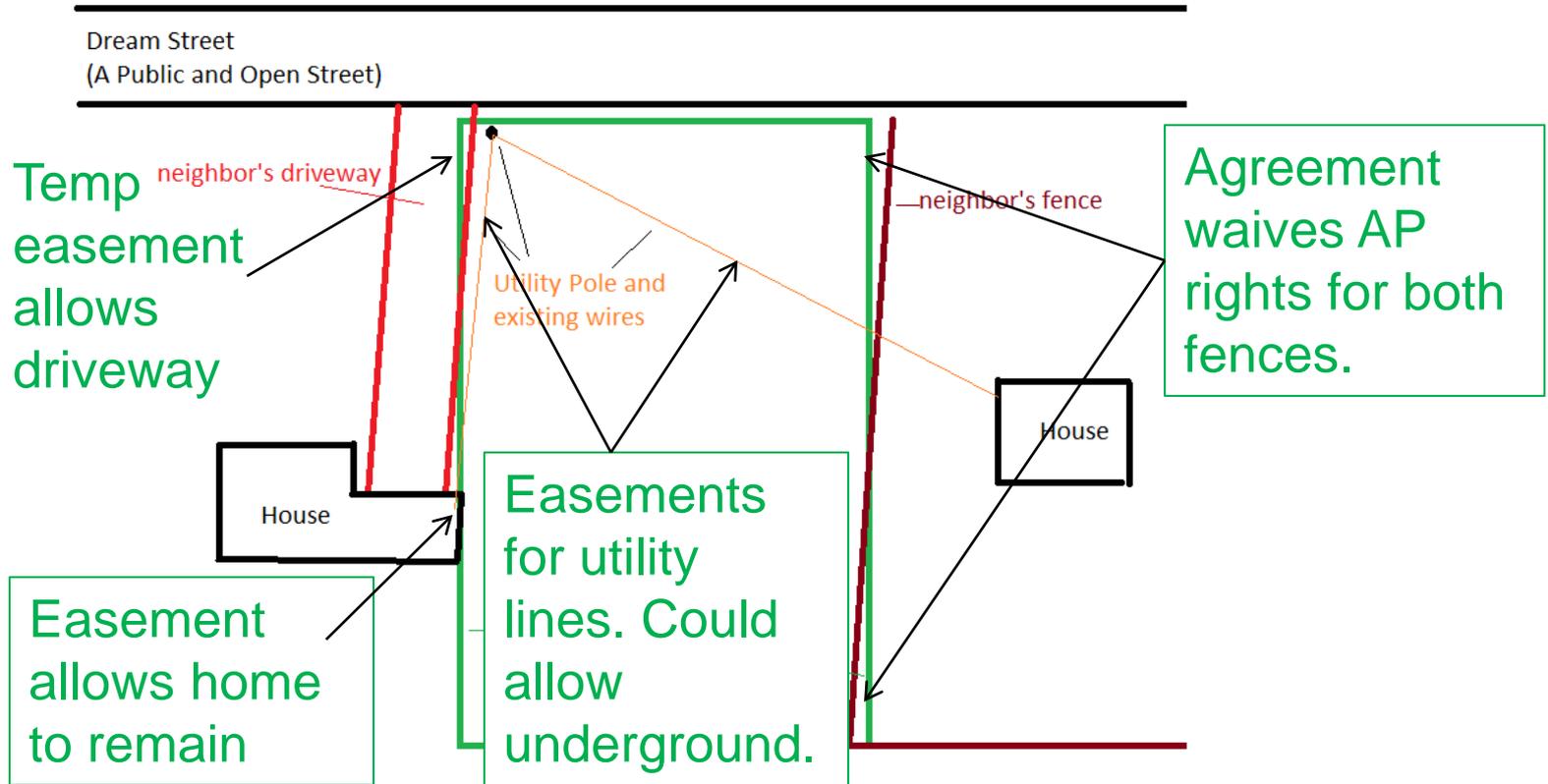


Alternative Methods of Permission

- Easements can be permanent, but temporary easements can be easier to agree upon.
- Permits solve an encroachment, but are not agreements that run with the land for the benefit of a next purchaser.
- A Lease can solve an encroachment or AP Claim by converting the use to limited time based upon payment.
- An agreement that the boundaries are according to the legal description solves an AP Claim quickly.
- An agreement to enter into a process for a future boundary line adjustment could include a temporary easement. Usually faster than negotiating a final easement and maintenance agreement.

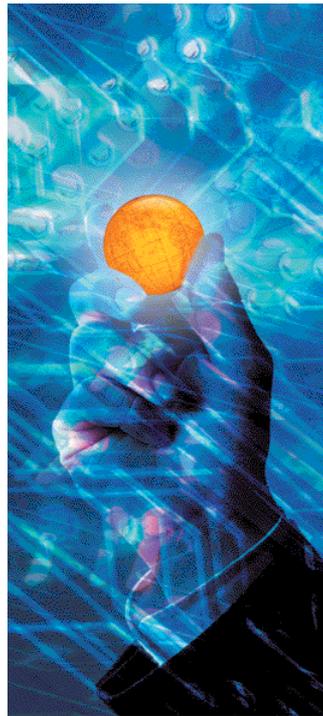


PERMISSION FOR ALL ADVERSE USES



Any Questions?

The third section is about different ways to provide limited title insurance coverage against the risks due to encroachments.



TITLE POLICY COVERAGE AGAINST ENCROACHMENT RISKS

- **Removing Encroachment or Survey Exceptions from Schedule B to Provide Coverage Against the Risk**
 - Almost never appropriate for an owner's policy
 - The risk for a loan policy is less due to reduced likelihood of foreclosure and if indebtedness is clearly covered by higher property value.

TITLE POLICY COVERAGE AGAINST ENCROACHMENT RISKS

- **Endorsements provide limited coverage against consequences of an encroachment.**

The ALTA 9 for a Loan Policy in par 4 a and b:

The Company insures against loss or damage sustained by reason of:

a. An encroachment of:

- i. an Improvement located on the Land, at Date of Policy, onto adjoining land or onto that portion of the Land subject to an easement; or
- ii. an Improvement located on adjoining land onto the Land at Date of Policy,

unless an exception in Schedule B of the policy identifies the encroachment otherwise insured against in Sections 4.a.i. or 4.a.ii.;

TITLE POLICY COVERAGE AGAINST ENCROACHMENT RISKS

- **Endorsements provide limited coverage against consequences of an encroachment.**

The ALTA 9 for a Loan Policy in par 4 a and b:

The Company insures against loss or damage sustained by reason of:

- b. A final court order or judgment requiring the removal from any land adjoining the Land of an encroachment identified in Schedule B

TITLE POLICY COVERAGE AGAINST ENCROACHMENT RISKS

- Endorsements provide limited coverage against consequences of an encroachment.

The ALTA 28.1 in par. 3 a, b, c and d: insures against loss or damage sustained by the Insured by reason of:

- a. An encroachment of any Improvement located on the Land onto adjoining land or onto that portion of the Land subject to an easement, unless an exception in Schedule B of the policy identifies the encroachment;
- b. An encroachment of any Improvement located on adjoining land onto the Land at Date of Policy, unless an exception in Schedule B of the policy identifies the encroachment;

TITLE POLICY COVERAGE AGAINST ENCROACHMENT RISKS

- **Endorsements provide limited coverage against consequences of an encroachment.**

The ALTA 28.1 in par. 3 a, b, c and d: insures against loss or damage sustained by the Insured by reason of:

c. Enforced removal of any Improvement located on the Land as a result of an encroachment by the Improvement onto any portion of the Land subject to any easement, in the event that the owners of the easement shall, for the purpose of exercising the right of use or maintenance of the easement, compel removal or relocation of the encroaching Improvement; or

d. Enforced removal of any Improvement located on the Land that encroaches onto adjoining land.

TITLE POLICY COVERAGE AGAINST ENCROACHMENT RISKS

- **Endorsements provide limited coverage against consequences of an encroachment.**

It is usually not appropriate to provide coverage against all encroachments described in our survey exception using the ALTA 34.

2. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. A final order or decree enforcing the Identified Risk in favor of an adverse party; or
 - b. The release of a prospective purchaser or lessee of the Title or lender on the Title from the obligation to purchase, lease, or lend as a result of the Identified Risk, but only if
 - i. there is a contractual condition requiring the delivery of marketable title, and
 - ii. neither the Company nor any other title insurance company is willing to insure over the Identified Risk with the same conditions as in this endorsement.
3. The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of the Title by reason of the Identified Risk insured against by Paragraph 2 of this endorsement, but only to the extent provided in the Conditions.

TITLE POLICY COVERAGE AGAINST ENCROACHMENT RISKS

- **Endorsements provide limited coverage against consequences of an encroachment.**

The ALTA 28.2 has the same insuring provisions as the 28 and 28.1. But the 28.2 lets us define the improvements that are covered:

For purposes of this endorsement only, “Improvement” means each improvement on the Land or adjoining land at Date of Policy, itemized below:

Example: All buildings, parking areas, sidewalks, or other fixtures, other than lawn, shrubbery or trees.

Example: The improvement described in paragraph [#] as encroaching onto the adjoining land.

TITLE POLICY COVERAGE AGAINST ENCROACHMENT RISKS

- **Endorsements provide limited coverage against consequences of an encroachment.**

The ALTA 28.2 has the following par 4 that allows us to remove the enforced removal coverage. Or, choose not to remove that coverage!

Sections 3.c. and 3.d. of this endorsement do not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from the following Exceptions, if any, listed in Schedule B: _____

By stating NONE here, we can give “affirmative coverage” against enforced removal for improvements other than buildings, where the other endorsements do not. It is a much safer way to provide coverage.

Any Questions?

