

2016 WLTA Education Seminar  
Saturday, Sept 24, 2016 – Spokane Convention Center  
Saturday, Oct 15, 2016 – Lynnwood Convention Center

# Evaluating Risk – How Reasonable Title Minds Can Differ

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Conservative v. Liberal Underwriting

What does that mean?

Risk Elimination

vs.

Evaluation



# Risk Mitigation in decision Making

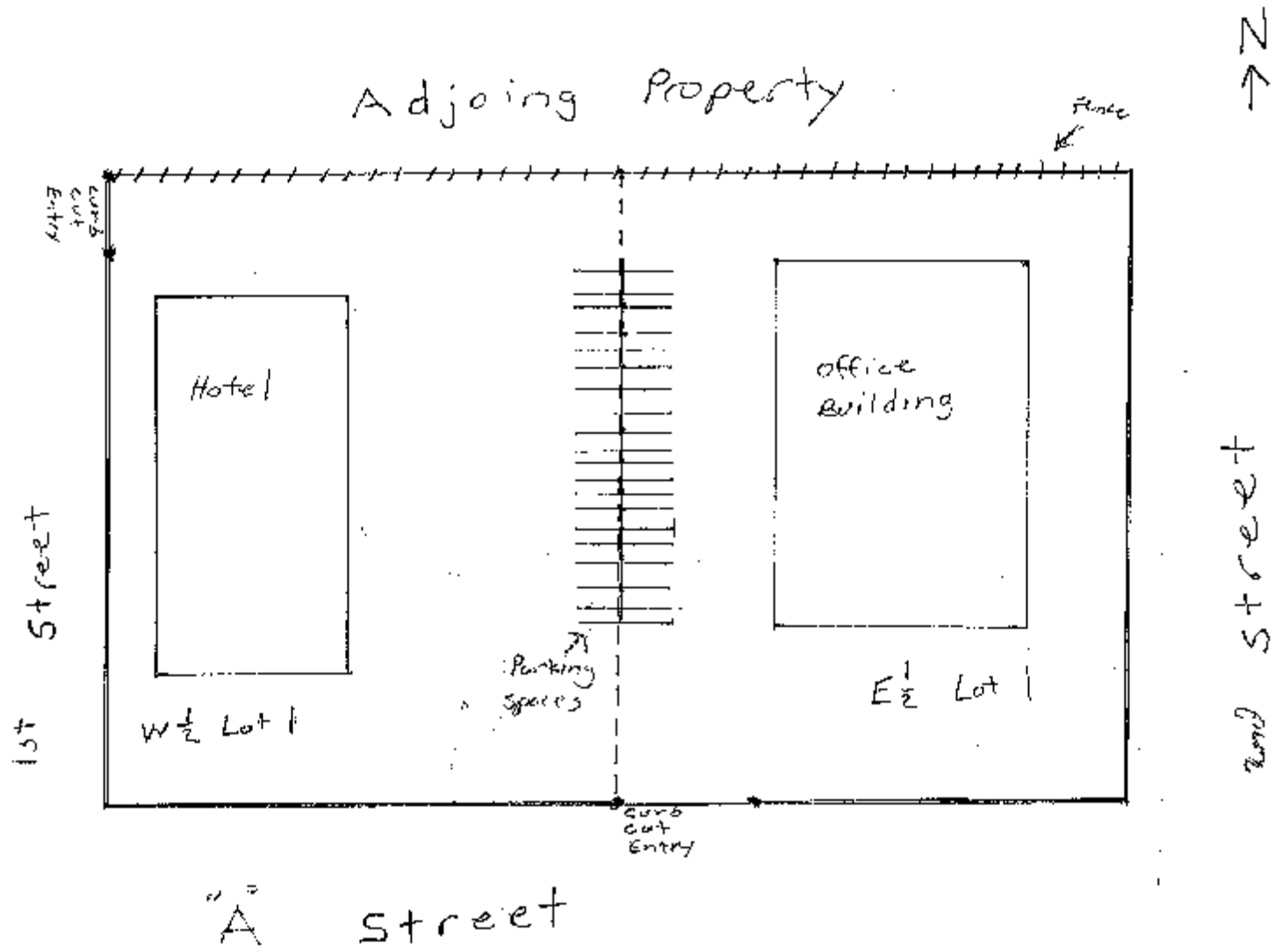
- Company's underwriting guidelines
- Indemnities
- ALTA Affidavits
- Past Experience with property and area
- Can exposure be quantified (Can the issue be solved with money?)
- Will risk expire by time
- Lenders v. Owner's policy

# External/Internal Considerations

- Business Relationships
- Business Decisions
- Is another title company willing to insure



What is the Title Officer/Underwriter's role in the business relationship context





# Facts

- Fact 1: Lot 1 owned by one owner
- Fact 2: Owner "X" builds hotel on west half of lot one and office building on east half of lot one.
- Fact 3: Primary access for hotel is located on east half of lot one
- Fact 4: Parking spaces utilized by the hotel straddle center line of lot;
- Fact 5: Owner "X" sells east half of lot to "Y" subject to an a right of first purchase should Y sell property in future.



# Facts

- Fact 6: The day after deed records, X records an easement that was executed prior to deed being recorded granting himself an easement over the east half of lot one for access and parking.
- Fact 7: Y operates office building and then subsequently sells to "Z" a few years later but the right of first purchase is not addressed.
- Fact 8: A dispute arises between X and Z over X's right to purchase which is eventually settled with Z maintaining ownership of the property.

# Facts

- Fact 9: Approximately 16 years after selling the East half of lot, X enters into agreement to sell West half.
- Fact 10: As part of the transaction, incoming buyer wants the easement for access and parking insured.

**What to do, what to do, what to do?**

# Questions to ask, factors to consider

- Was the easement validly created? Probably not
  - What legal authority on this issue
- Easement recorded in anticipation of sale – no legal authority
- Legal doctrines to save invalid express easement: Implied easement (access possibly, parking not so sure), Prescriptive easement (are the elements satisfied?)
- Length of use without incident
- Planned future use for both dominant and servient parcels – will improvements be renovated, what are county zoning and planning requirements for renovation
- Past history between owners of dominant and servient estate
- Is this before morning coffee or after morning coffee decision?



The background is a solid blue gradient that transitions from a lighter blue at the top to a darker blue at the bottom. On the left side, there is a bright sun flare that creates a white and yellow glow, with rays of light extending across the sky. The overall effect is a serene, ocean-like atmosphere.

Any ways to mitigate or is it a roll of the dice?



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