

Easements: Basics



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Definition: Easement

- An easement is a right to use land belonging to another.

Use Rights

- Individual rights can be severed from the full bundle of property rights.
 - We commonly see use rights such as:
 - Mineral Rights
 - Timber Rights
 - Hunting Rights
 - Development Rights
 - Easements
- held by a entity other than the primary owner.

Severed Rights:

- Once a Right is granted, that right takes on the nature of an Estate:
- An Estate in land is the degree, nature or extent of interest which a person has in it.
- The title to a Right must meet all the Legal requirements associated with Real Estate.



Easement versus Profits a`Prendre

- Profits a`Prendre is the right to take the fruits of another's land.
- “The distinguishing feature between an easement and a profit a`Prendre is that the easement gives its owner only a right to use the land of another (or prevent use in certain ways) with no right to remove some specified product of the soil from the land.”
- Webster’s Real Estate Law in North Carolina (fifth Edition), §15-36.

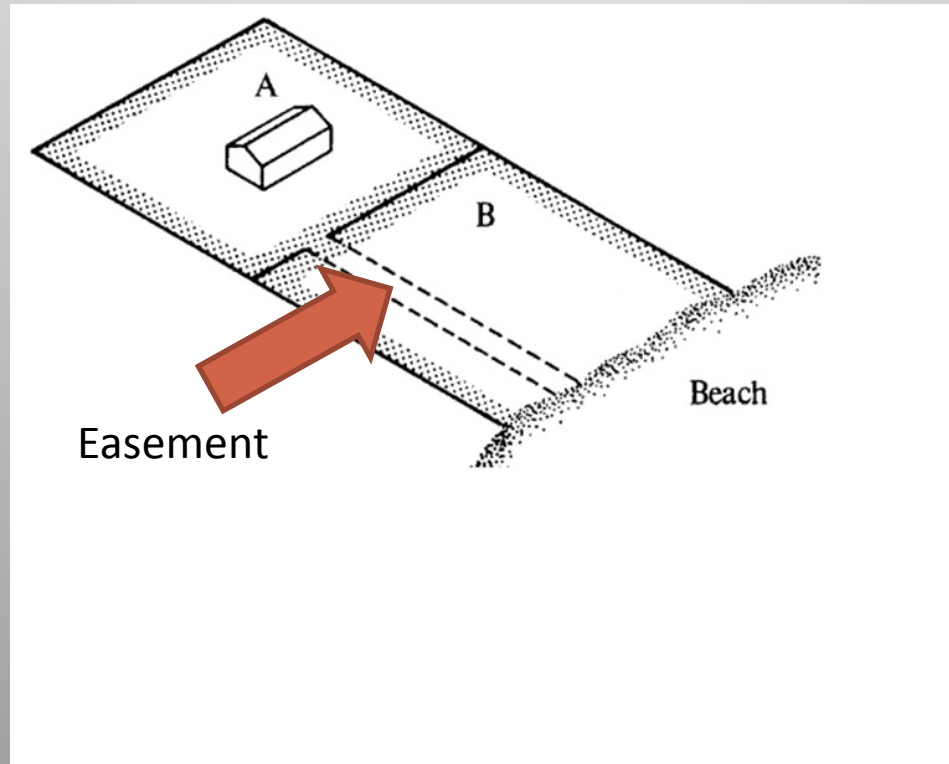
Basic Easement Types

- **Easement of Appurtenants**
or
- **Easement in gross**

An easement appurtenant

- 1. burdens one parcel of land while benefiting another parcel.
- 2. The parcel subject to the easement is the servient tract;
- 3. The parcel benefited is the dominant tract.
- 4. The Easement attaches to and passes with the dominant tract as an interest in real property.

Example – Easement Appurtenant



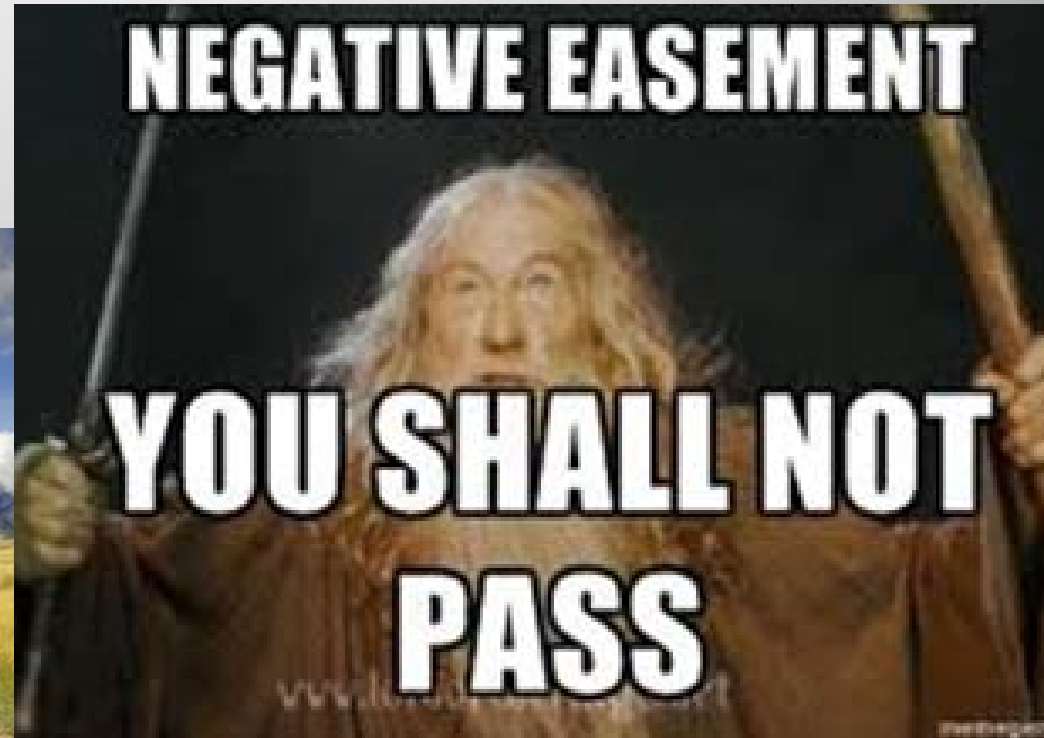
Easement in gross

- 1. Is a right to use land belonging to another.
- 2. Is not for the benefit of another tract of land.
- 3. It terminates with the death of the individual who possesses the right.
- 4. Is not assignable.

Example – Easement in Gross



**An Easement may be characterized as
affirmative or negative**



Affirmative Easements

- empower the holder to go on the land subject to the easement for the purpose defined in the easement document.
- - Examples are:
 - 1. Utility Easements
 - 2. Road Easements
 - 3. Sidewalk Easements
 - 4. Drainage Easements

Negative Easements

- empower the holder to restrict the use of the land subject to the easement, but The holder of the easement has no right to use the subject land.
 - Example:
 - Conservation Easement
 - May restrict building
 - May restrict land clearing
 - May restrict cutting of timber

Methods of acquiring an Easement

- **Easement by Grant**
- **Easement by Reservation**
- **Easement by Plat Dedication**
- **Easement by Prescription**

Easement by Grant

- The owner of the servient tract executes a document similar to a deed or will and gives the easement rights to another person.

Easement by Reservation

- A landowner who sells one tract and retains another reserves an easement in the conveyed tract by language in the deed to that tract.

Easement by Dedication

- An Easement by Dedication is a specialized form of easement by Grant. A landowner grants certain rights to the public in the land, typically in the form of street right-of-way normally by plat reference.

Dedication

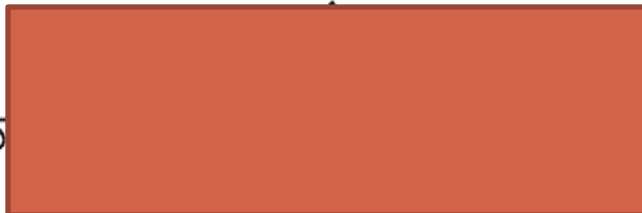
- Dedication is a form of transfer whereby an individual grants to the public, rights of use in his land.
- A plat is but a description when referred to in a deed. On its own it does not conform to the formal rules of conveyance.
- However the calling for a plat in a deed embodies every thing on the plat in the description.

The inclusion of an Offer of Dedication made by certification on the face of the plat defines the intent of the owner..

CERTIFICATE OF OWNERSHIP AND DEDICATION

I HEREBY CERTIFY THAT I AM THE OWNER OF THE PROPERTY SHOWN AND DESCRIBED HEREON, WHICH IS LOCATED IN THE SUBDIVISION JURISDICTION OF THE TOWN OF SHALLOTTE AND THAT I HEREBY ADOPT THIS PLAT OF SUBDIVISION WITH MY FEES CONSENT, ESTABLISH MINIMUM BUILDING SETBACK LINES, AND DEDICATE ALL STREETS, ALLEYS, WALKS, PARKS, OPEN SPACE, AND OTHER SITES AND EASEMENTS TO PUBLIC OR PRIVATE USE AS NOTED. FURTHERMORE, I HEREBY DEDICATE ALL SANITARY SEWER, STORMWATER SEWER, AND WATER LINES, AND APPURTENANCES, TO THE TOWN OF SHALLOTTE.

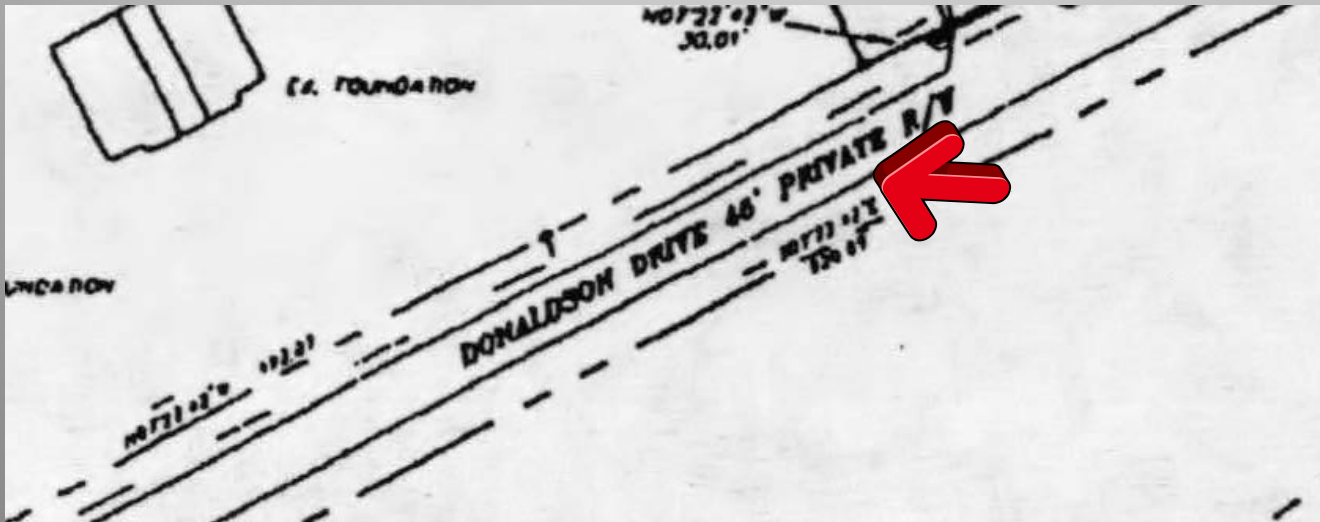
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Intent

- While the certificate makes the intent of the owner clear, the labeling of streets as public or private as required in GS 136-102.6(d) has the same effect.



- Before an easement by dedication is created, the landowner must make an offer of dedication and a public agency must accept the offer.
- Many offers of dedication today are made expressly by showing dedicated streets on a subdivision plat and that plat being used as a description in a document of title.

Easement by Prescription

- A right to use another's property which is not inconsistent with the owner's rights and the use must be:
 - Adverse,
 - Hostile
 - Open
 - Notorious,
 - Continuous and
 - Uninterrupted

for the Statutory period (twenty years in North Carolina)

An Unwritten Right

- Acquisition of rights or property by **prescriptions** is an **unwritten acquisition of ownership through uses and possession once all statutory requirements** have been met **however title does not transfer until:**
- a court of law has affirmed or denied the validity of that contention and
- That court decision recorded in the office of the Clerk of Court in the county where the land lies becomes the muniment (record of title).

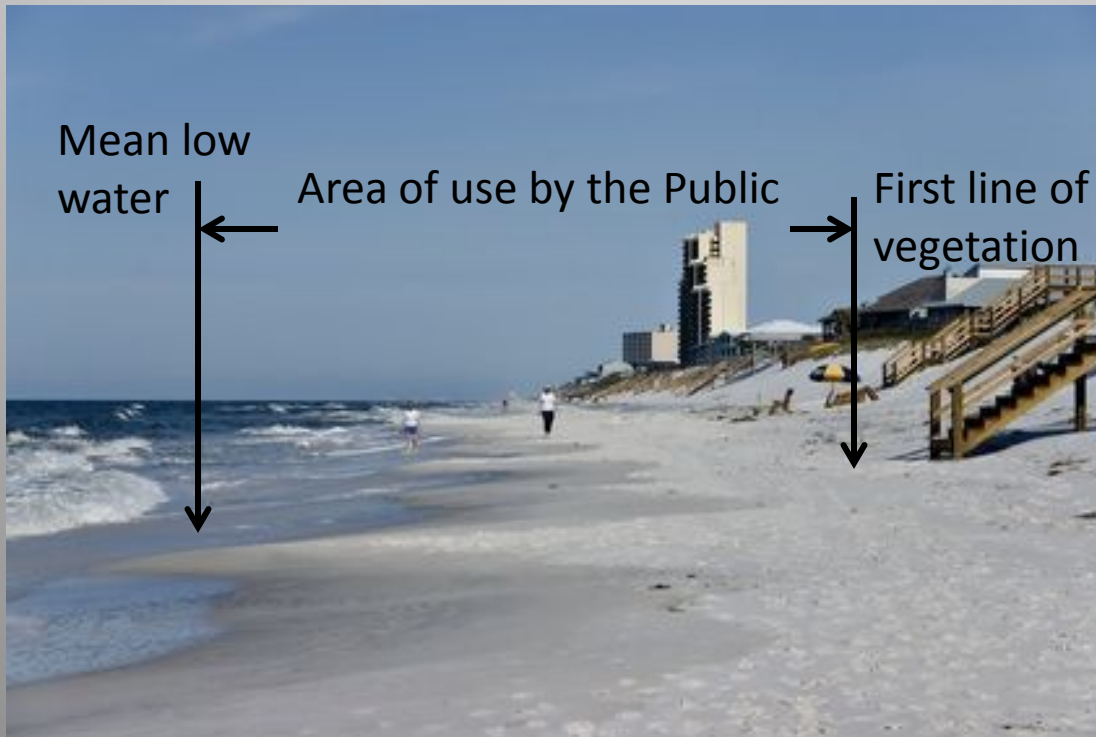
Examples of Easement by Prescription

An easement can be acquired through extended use and maintenance without permission of the owner. The easement limits are defined by the limits of use. The surveyor should never declare that an easement exists by prescription. Show the area of use and let the courts do their job.



North Carolina Ocean Front Beaches

- All North Carolina Beaches have an easement by prescription from mean low water to the first line of vegetation



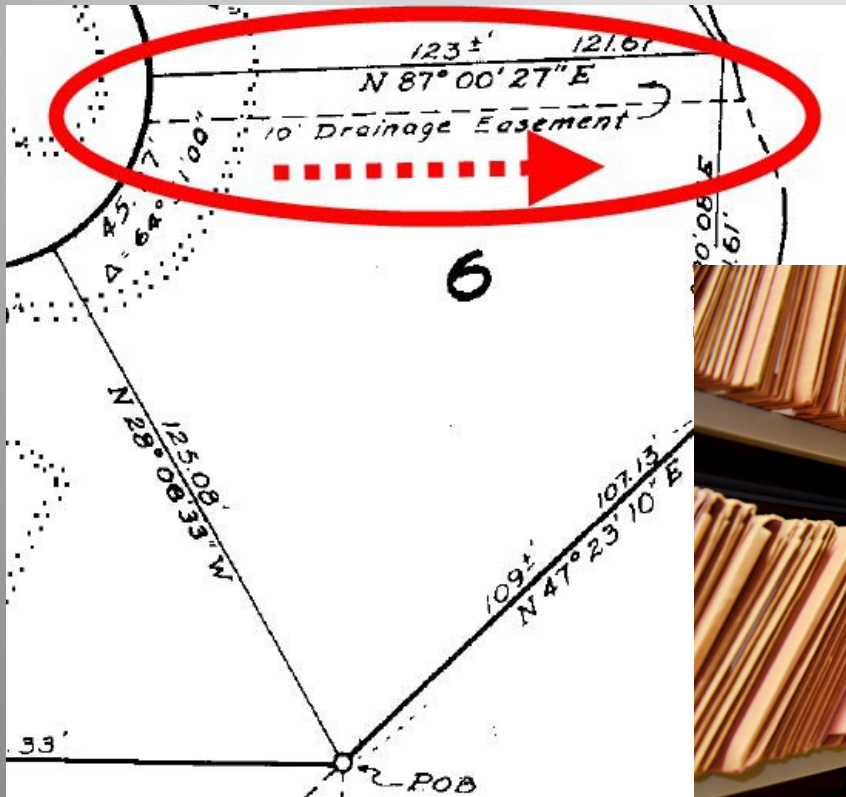
Lands Adjoining Coastal Waters.

§ 77-20. Seaward boundary of coastal lands.

- (d) The public having made frequent, uninterrupted, and unobstructed use of the full width and breadth of the ocean beaches of this State from time immemorial, this section shall not be construed to impair the right of the people to the customary free use and enjoyment of the ocean beaches,

Lets look at Easement Documents

- Recorded Plat or Recorded Document





Definition: Muniment of title

- Documentary evidence of title.
- The instruments of writing and written evidences which the owner of land, possessions, or inheritances has, by which he is enabled to defend the title of his estate.

(Black's Law Dictionary, fifth edition)

Is an Easement Document a Muniment?

- A easement document that transfers or grants rights is a muniment with the same statutory requirements as a deed or any other muniment.

An Unreferenced Plat is not a Muniment.

- A recorded plat by its self does not transfer rights or ownership.
- Once said plat is referenced as a description in a recorded instrument of title (such as a deed),
- all of the elements of the plat have the same effect as if they were call out in the deed itself.

What about platted easements?

- A recorded map or plat alone does not constitute constructive notice,
 - the only use authorized by the legislature of a survey plat recorded in the County Register of Deeds is in GS 47-30(g)
- In ordinary words GS 47-30(g) means, a plat is authorized to be used as a description by reference.

A Plat referenced in a deed

- not only refers to the meets and bounds of the lot as depicted on the plat
- but
- embodies all of the other information on the plat such as roads, utility easements, opens space, and so on.
- Every thing on the plat is considered part of the description unless there is an exclusion statement in the **muniment**.

- It is the Act of the Grantor expressing his intent by calling for the plat in a muniment that makes said plat legally significant and expresses the intent of the grantor.

Let's take a look at NC Law that governs Rights and Title.



Summery of basic statutes.

- An Instrument affecting real property must be in writing. (§ 22-2)
- The holder in legal or equitable title:
 - Can transfer all or part of the property,
 - Can transfer some rights, (§ 39-6.4)
 - Can restrict or modify use. (§ 22-2)
- Only the rights of those executing the document with proper notarization are affected. (§47-14(d))
- The instrument must be register in the Register of Deeds office in the county where the property is located. (§47-18(a))

§ 47-27. Deeds of easements:

- All persons, firms, or corporations now owning or hereafter acquiring any deed or agreement for rights-of-way and easements of any character whatsoever shall record **such deeds and agreements in the office of the register of deeds of the county where the land affected is situated.**

§ 47-27. Deeds of easements (continued)

- No deed, agreement for **right-of-way, or easement** of any character **shall be valid** as against any **creditor or purchaser for a valuable consideration** but from the registration thereof within the **county where the land affected thereby lies.** (added in 1947)

What happens if the deed of easement is not recorded in the Register of Deeds office?

- A deed of easement is a contract between the grantor and the grantee.
- The contract is valid between the two parties with out being recorded.
- However if it is not recorded in the county where the land lies **creditors or purchaser for a valuable consideration** are unaffected by the unrecorded deed.

And

- If a transfer of the Grantor's property is made and said transfer does not include an exception for the easement, said easement has no standing per §47-18.

Example:

- NC DOT did not record all easements between 1943 and 1959 under the assumption that they were a public records depository and therefore were not required to file in the Register of Deeds.

- In 1959 the general assembly modified GS 47-27 “From and after July 1, 1959 the provisions of this section shall apply to require the State Highway Commission to record as herein provided any deeds of easement, or any other agreements granting or conveying an interest in land” ...

*Dept. of Transportation v. Humphries, 347
NC 649 (232PA97) 03/06/1998*

- “In enacting the 1959 amendment, it appears that the General Assembly merely sought to clarify the process by which DOT was required to record easements. In the present case, we hold that N.C.G.S. § 47-27 applied to DOT prior to the 1959 amendment.”

Let's talk about the Easement Muniment.



Here is what the court said!

- WITTSOON et al. v. DOWLING et al. (No. 445.)

(Supreme Court of North Carolina. May 12, 1920.)

1. Dedication - Platting and selling lots with reference to plat constitutes "dedication" of streets.

When owner of suburban or other property has it platted, showing lots, parks, streets, alleys, etc., and sells off lots or any of them in reference to plat, as between parties, action constitutes a dedication of streets, etc., for public use, though not presently opened or accepted or used by the public.

2. Dedication —Is never complete as to general public until acceptance.

In so far as the general public are concerned, and without reference to claims and equities of individual purchaser of lots with reference to plat made by seller, a dedication of streets and alleys shown thereon is never complete until acceptance.

- Where lots are **sold and conveyed by reference** to a map or plat which represents a division of a tract of land into streets, lots, parks, and playgrounds,
 - a purchaser of a lot or lots acquires the right to have the streets . . . kept open for his reasonable use, and this right is not subject to revocation except by agreement.

- It is said that such streets . . . are *dedicated* to the use of lot owners in the development.
 - In a strict sense it is not a dedication, for a dedication must be made to the public and not to a part of the public.
- It is a right in the nature of an easement appurtenant.

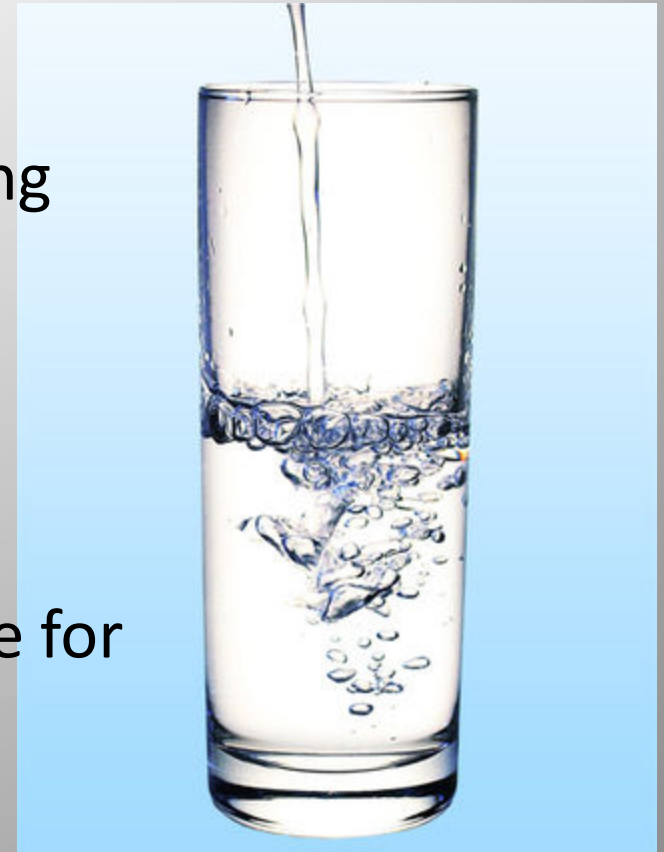
- Whether it be called an easement or a dedication, the right of the lot owners to the use of the streets . . . may not be extinguished, altered or diminished except by agreement or estoppel.
- This is true because the existence of the right was an inducement to and a part of the consideration for the purchase of the lots.
- Thus, a street . . . may not be reduced in size or put to any use which conflicts with the purpose for which it was dedicated.

Cleveland Realty Co. v. Hobbs, 261 N.C. 414, 421, 135 S.E.2d 30, 35-36 (1964)
(internal citations omitted).

- Once a deed is given referencing the plat, the grantee of said deed then becomes the beneficiary.
- In the offering of dedication to the public for an easement depicted on a plat, the grantee of the deed referring to the plat is the beneficiary of the easement until there is a public acceptance.
- The grantee retains a nonexclusive private easement that coexists with the public easement.

Once a map is referenced in a deed and it contains a offering to the public:

- Said action constitutes the offering of dedication.
- We are only half way there!
- There must also be an acceptance for the public to acquire rights.
- Just as in a deed the offering requires acceptance by the Grantee.



Acceptance!

- Acceptance of the offer of dedication can be made formally by adoption of a resolution,
or
- it can be by other than formal means, such as by exercising control over the streets offered for dedication and maintaining them.



The Public Custodian does not have to accept the offer of dedication.

- **The approval of a plat shall not be deemed to constitute or effect the acceptance by the city or public of the dedication of any street or other ground, public utility line, or other public facility shown on the plat.**
- **§ 160A-374.(city/town)**
§ 153A-333. (County)

If a plat has an offer of dedication to the public,

- that offer is considered made at the time that the **first deed is recorded** making reference to said plat.
- An offer of dedication is just that, an offer and **until that offer is accepted** by the appropriate public authority it is but a *revocable offer* and **neither burdens nor benefits the public.**
Owens v. Elliott, 258 N.C. 314, 128 SE 2d 583 (1962)

NC GS 39-6.4. Creation of easements, restrictions and conditions.

- (a) The holder of legal or equitable title of an interest in real property may create, grant, reserve, or declare valid easements, restrictions, or conditions of record burdening or benefiting the same interest in real property.

Merger of Dominant and Servient tracts into Single Ownership

- Since an easement is a privilege enjoyed in the land of another, when there is a coming together of the dominant and servient tract into one ownership, the easement is permanently extinguished.

Tower Development Partners v. Zell,
120 N.C. App. 136, 461 S.E.2d 17
(1995),

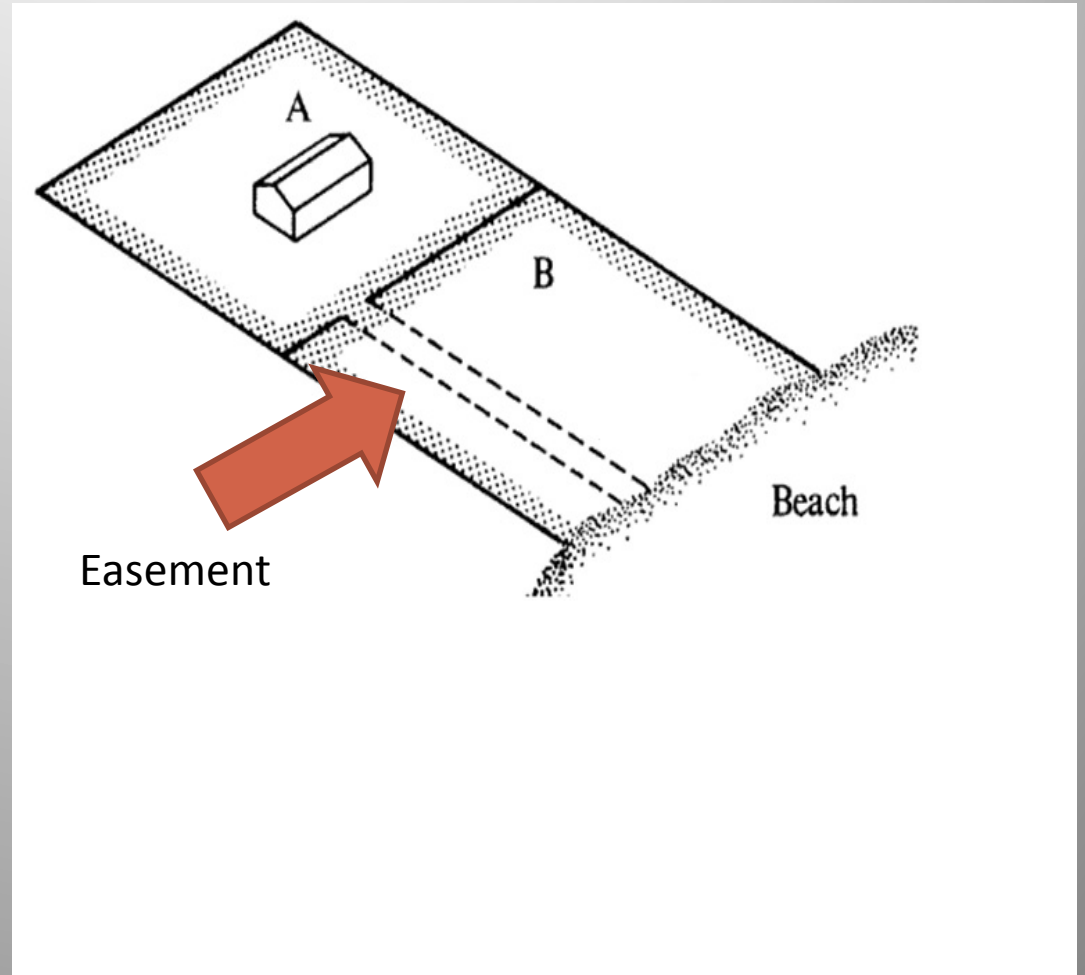
- the Court of Appeals held that an owner could not create an easement burdening one of said owner's tracts for the benefit of another of the owner's tracts.
- G.S. 39-6.4(b) preserves the doctrine of subsequent merger.
- Restrictions and Conditions are generally preserved because they are treated as negative easements.

NC GS 39-6.4. Creation of easements, restrictions and conditions.

- (b) Subsection (a) of this section shall not affect the application of the doctrine of merger after the severance and subsequent reunification of title to all the benefited or burdened real property of interests therein.

Doctrine of Merger

- The Owner of lot A buys lot B what happened to easement?
- Owner of lots A & B Sells lot B with no reservations what happens?



Doctrine of Merger effecting a Deed of Trust.

- For easement to be discharged through merger, there must be no intermediate estates of other parties in property that would interfere with owner's unlimited right and power to make any and every possible use of the land. [Trust Co. v. Watkins, 215 N.C. 292, 297, 1 S.E.2d 853, 857 \(1939\);](#)
- Estate of trustee in deed of trust is a determinable fee.

- an outstanding deed of trust, conveying the dominant estate and that estate's appurtenant easement over the servient estate, creates such an intermediate estate as will defeat the application of the doctrine of merger when the legal owner of the servient estate acquires the equitable interest in the dominant estate and its appurtenant easement.
- [HERITAGE COMMUNITIES OF NORTH CAROLINA, INC. v. POWERS, INC. and Jon S. Harder. No. 8015SC310. Dec. 2, 1980.](#)

You cannot give an easement to yourself.

- An easement shown on a plat does not exist until there is someone besides the grantor to receive the easement.
- An easement is the assignment of a right, there must be someone to accept the right other than the grantor.
- The term **Quasi-Easement** refers to things that look like easements but have no beneficiary.

Questions?



Disclaimer!

- The intent of this document is to provide a guide to understanding easements in North Carolina; it is not to be used as legal advice. For legal advice please seek the council of an attorney.