# PROTECT YOUR B UNDARIES.ca

Understand Land™ Seminar Series for Real Estate Professionals Seminar # 5

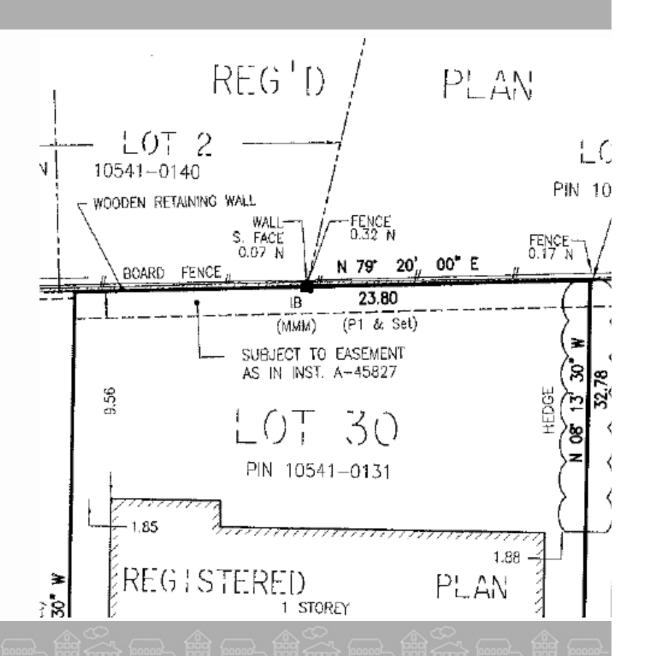
"Easements and Right-of-Ways"

Chris Kamarianakis Executive Director, Protect Your Boundaries Inc.

# Today's Program

- ✓ What is an easement?
- ✓ Types of easement?
- Where and how are they documented?
- ✓ Is there an easement on my property?
- When easements affect your real estate deal.
- ✓ Why do you care?
- Best practices.

What is an Easement?



# Definition: Easement

"An easement is a right to use the property of another."

- Non-possessory grant of rights to use another's land.
- Part of the bundle of rights that is Title.
- Granted by deed or contract.
- Remain on title in perpetuity except when granted for an explicit period.



































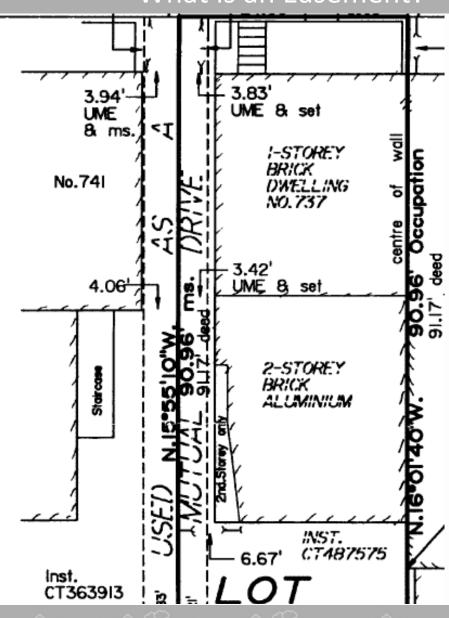
# Parties in an Easement

### **Dominant Tenement**

- The land/person who benefits from the right.
- E.g. Your neighbour's land has access rights over your land. His land is the dominant tenement of this easement.

### Servient Tenement

- The land/person who is giving up the right.
- E.g. Your neighbour has a right to cross your land to get to his. Your land is the *servient tenement* of this easement.



## Who Owns the Easement?

# **Appurtenant Easement**

- Benefits adjoining/other lands.
- E.g. Right-of-way, maintenance, construction, right-to-light, air rights.
- Consent to sell property not required.

# **Gross Easement**

- Benefits another individual/corporation.
- E.g. Utility easements, Rogers & Bell.
- Can be transferred without notice to land owner.



























# What is an Easement?

# **Easement Categories**

### **Affirmative Easement**

- Allows holder to do something on another's land.
- E.g. Use driveway to access back yard.
- Most common type of easement.

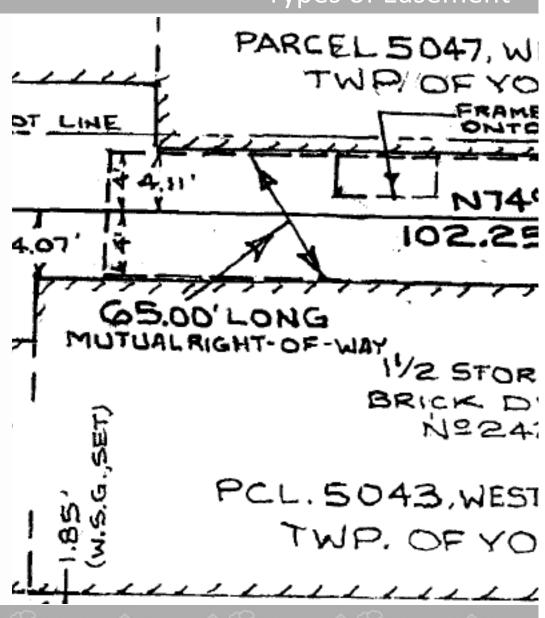
# **Negative Easement**

- Prevents something from happening on a person's land.
- E.g. Prevent building a tall structure that blocks another building's view. Also limiting distance easements.



# Types of Easement

- Right-of-Way
- Utility
- Support
- Maintenance & Repair
- Easements described in Condominium Declarations.
- Construction
- Conservation
- Right to light
- Time-limited access
- Air rights



## Most Common Easements in Toronto

# Right-of-Way Easement

- ROW is a type of easement.
- Allows owner of one property to travel through/across another's property.
- Most common: road or path through.
- In Toronto: laneways, shared/mutual driveways.
- Cannot be blocked or obstructed.

# **Utility Easement**

- Utility is a type of easement.
- Allows a utility corporation to access a property to maintain equipment/ assets.
- Most common: surface, underground, overhead wires.
- Can be sold without property owner's consent.
- Beware the unregistered utility easement.

# **Easement Documentation**

- Property Deed
- Parcel Register

How do you know there's an Easement on a Property? Shown on a Survey Plan and in the Legal Description

E.G.: PCL 22-1 SEC 65M2693; LT 22 PL 65M2693; **S/T LT547200**; MARKHAM

All reference the unique "instrument" (document) that created the easement.

Your Key Easement Documents are:

- Parcel Register
- Easement Instruments
- Survey Plan (The Coles Notes of easements!)

# **Easement Documentation**

# Parcel Register (known as a PIN)

RECENTLY:



PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 1 OF 1 PREPARED FOR 9535515 ON 2015/06/24 AT 20:09:00

PIN CREATION DATE:

2003/05/26

REGISTRY OFFICE #66

21244-0069 (LT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

PROPERTY DESCRIPTION: PT LT 6 E/S STRACHAN AV PL ORDNANCE RESERVE TORONTO; PT FARRS LT BLK 1 ORDNANCE RESERVE (AKA LT 1 BLK 0 MILITARY RESERVE) TORONTO AS IN CA540583 EXCEPT THE EASEMENT THEREIN; CITY OF TORONTO

PROPERTY REMARKS: ESTATE/OUALIFIER:

FIRST CONVERSION FROM BOOK

FEE SIMPLE LT CONVERSION QUALIFIED

LORUSSO, TERESA LORUSSO, ANNE MARIE JTEN

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AT3829826	2015/03/11	CHARGE		LORUSSO, TERESA LORUSSO, ANNE MARIE	EQUITY FINANCIAL TRUST COMPANY	с



# **Easement Documentation**

# Easement Instrument/Deed

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### Identifying an Easement in the Legal Description

S/T: Subject to (an easement)

T/W: Together with (an easement)

ROW: Right of Way (easement)



PARCEL REGISTER

LAND REGISTRY

OFFICE #43

\* CERTIFIED IN ACCORDANCE WITH THE L

PROPERTY DESCRIPTION:

PT LT 4, PL BR17 AS IN RO1154162; S/T & T/W RO1154162; BRAMPTON

PROPERTY REMARKS:

ESTATE/QUALIFIER:

FEE SIMPLE LT CONVERSION QUALIFIED RECENTLY:

RE-ENTRY FROM 14066-0292

Why do I care?







































# Easements in the Real Estate Transaction

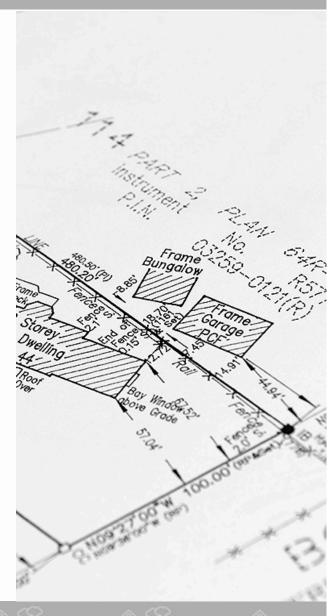
### Unknown or Undisclosed Easements

- ✓ Seller and/or Buyer are unaware of easement.
- ✓ Seller is aware but does not disclose.

### What Goes Wrong?

- √ Have to keep driveway clear can't park
- ✓ Can't build the pool/deck/patio.
- ✓ Can't use the land as originally anticipated.
- Buyer can sue seller/agent for misrepresentation.
- Title insurance claim.
- Dissatisfied buyer and seller.

Result: Increased probability of blowback on Realtors.



## Realtor Best Practices

### What to Watch For...

Is the land being used as per the documentation?

- √ Shared driveways
  - ✓ Look for permanent structures on the shared driveway (A/C units, lean-to sheds, fences)
  - ✓ Check the survey to see if they are on the ROW.
  - Don't assume the boundary is centred between the houses, or that the ROW is the same distance either side of the boundary.
- ✓ Laneways
  - ✓ Is access free and clear? Has anyone built obstructions?
- ✓ Utility Easements on title
  - ✓ Has the pool/deck/patio/shed been built on it?
  - ✓ Do you see any evidence of telco/utility easements.



# How to Protect Yourself and Your Client

### **Selling Side**

- ✓ Look for easements on Plan & Legal Description.
- ✓ Provide the Survey Plan, Parcel Register and Instrument documents in the selling package.
- ✓ Disclose any issues/anomalies.

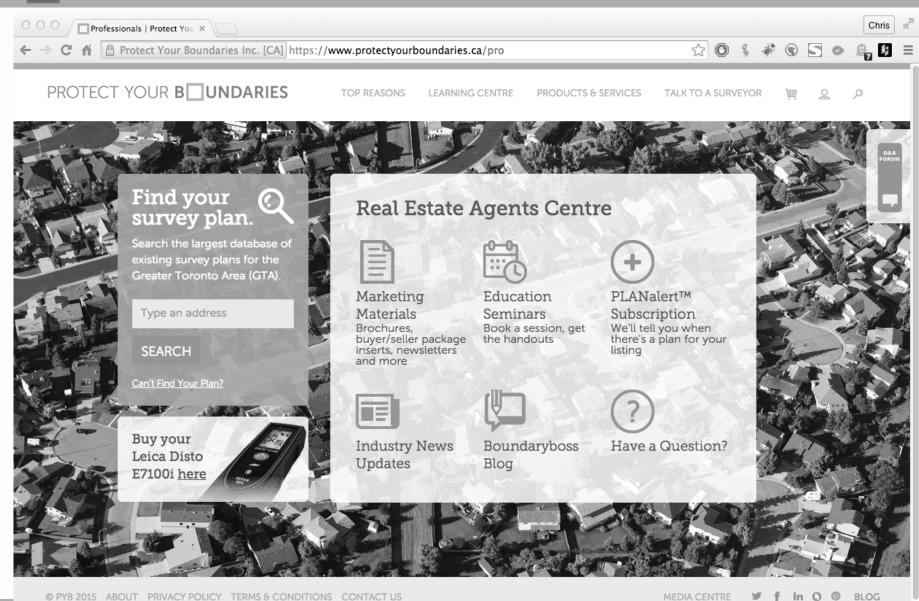
### **Buying Side**

- ✓ Look for easements on Plan & Legal Description.
- ✓ Look for evidence of easements, registered or unregistered, on the ground.
- ✓ Insert a condition on the offer "on satisfactory boundary inspection".
- Acquire the Survey Plan, Parcel Register and Instrument document.
- ✓ Discuss with surveyor if you suspect issues.



Result: Decreased likelihood of buyer's remorse and trailing liability.

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Thank You!