Analyzing Easement Laws and Cases in the States East of the Mississippi River

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This article analyzes the laws of easements in the 26 states that lie east of the Mississippi River, including the various methods for their creation, their nature, and scope. In researching and writing this article, the authors limited their research to appellate cases in each of these 26 states using a Westlaw search dating back to 1874.

An easement is an interest in land in the possession of another which (a) entitles the owner of such interest to a limited use or enjoyment of the land in which the interest exists; (b) entitles . . . protection . . . against third persons from interference in such use or enjoyment; (c) is not subject to the will of the possessor of the land; . . . and (e) is capable of creation by conveyance.

Restatement (First) of Property § 450.

These 26 states have uniform rules regarding many of the methods for the creation of easements. All states recognize the creation of easements by express grant, prescription, implication from prior use, and from necessity. These states diverge from one another in their treatment of some of the requirements for each of these methods of creation. In addition, some states recognize more methods for creating easements. The following discussion reviews and highlights the areas of similarity and dissimilarity among these 26 states in their treatment of the laws of easements.

Easements Appurtenant and In Gross

Easement Appurtenant

In all states east of the Mississippi River, easements are ordinarily divided into two broad categories: easements appurtenant and easements in gross. An easement appurtenant is created for the beneficial use of a particular parcel of real property, which is referred to as the "dominant estate" or the

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"dominant tenement." Correspondingly, the real property that is burdened by the easement is commonly referred to as the "servient estate" or "servient tenement." See, e.g., *Newman v. Michel*, 688 S.E.2d 610, 617 (W. Va. 2009).

The dominant and servient estates usually are adjacent to and physically abut one another, but in a majority of jurisdictions, this is not a requirement. See, e.g., *Gojmerac v. Mahn,* 640 N.W.2d 178, 184 (Wis. Ct. App. 2011) (noting that "[a]lthough dominant and servient estates are often adjacent to one another, the majority rule is that an easement may be appurtenant to noncontiguous property if both estates are clearly defined and if it was the parties' intent that the easement be appurtenant"). However, in some jurisdictions an easement cannot be appurtenant unless the dominant and servient estates were "contiguous at some point." James W. Ely Jr. & Jon W. Bruce, *The Law of Easements and Licenses in Land* § 2:6. In South Carolina, an easement appurtenant must have "one terminus on the land or the party claiming [the easement]." See *Windham v. Riddle,* 672 S.E.2d 578, 583 (S.C. 2009); *Sandy Island Corp. v. Ragsdale*, 143 S.E.2d 803, 806 (S.C. 1965).

An easement appurtenant does not exist independently from the dominant estate to which it belongs or the servient estate it burdens. Thus, an easement appurtenant passes with the land and is transferred, through general appurtenance clauses in a deed, *Koepp v. Holland*, 688 F. Supp. 2d 65, 88 (N.D.N.Y. 2010), or automatically to future owners of the dominant and servient estates even if it is not specifically mentioned in the instrument of transfer, Restatement (Third) of Property: Servitudes § 1.5. A typical appurtenance clause in a deed reads as follows:

Together with all right title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; together with the appurtenances and all the state and rights of the party of the first part in and to said premises; to have and to hold the premises herein granted unto the party of the second part, the heirs or successors and assigns of the second party of the second part forever.

As a result, all who succeed in title to the benefited property become entitled to the benefit of the easement. Likewise, any owner who succeeds to title to the burdened property is subject to the terms of the easement.

Easement in Gross

The easement in gross is "personal to the holder" and is not connected to, or for the benefit of, a dominant estate. See, e.g., *Consolidation Coal Co. v. Mutchman,* 565 N.E.2d 1074, 1084 (Ind. Ct. App. 1990). An easement in gross benefits its holder whether or not the holder owns or possesses the land. Typical examples of this type of easement include rights to fish or hunt on somebody else's land. Thus, where an easement in gross exists, there is a servient estate, but not a dominant estate. Courts in some jurisdictions east of the Mississippi River tend to disfavor easements in gross, and often articulate that if not contrary to the clear intent of the parties, an easement

should be presumed appurtenant rather than in gross. E.g., *Koepp*, 688 F. Supp. 2d at 6 88.

The traditional view is that all easements in gross are unassignable and non-inheritable. Ely & Bruce, supra, § 9:4. Ever since the leading case of *Miller v. Lutheran Conference & Camp Ass'n,* 200 A. 646 (Pa. 1938), however, the modern American view is that commercial easements in gross are freely alienable as a matter of law while non-commercial easements in gross are not. E.g., *Champaign Nat'l Bank v. Illinois Power Co.,* 465 N.E.2d 1016, 1021 (Ill. App. Ct. 1984) ("The weight of modern authority supports the position that commercial easements in gross are alienable, especially when the easements are for utility purposes"). Commercial easements include those that facilitate commercial activities such as pipelines and utilities. See *Banach v. Home Gas Co.*, 211 N.Y.S.2d 443, 445 (N.Y. App. Div. 1961) (stating "[w]e know of no case in this jurisdiction which has held that easements authorizing the construction of telephone lines, electric lines or gas lines are inalienable"). They may also include easements for boating, fishing, and swimming when used for a business purpose. *Miller,* 200 A. at 650.

Indiana and Virginia have gone even further, enacting legislation allowing for the transferability of easements in gross, regardless of whether the easement is commercial in nature. An Indiana statute provides that a commercial easement in gross may be "alienated, inherited, or assigned in whole or in part," unless the instrument that created the easement provides otherwise, and that a noncommercial easement in gross may be "alienated, inherited, or assigned in whole or in part" if the instrument that created the easement so states. Ind. Code Ann. §§ 32-23-2-2, 32-23-2-4(b). Similarly, a Virginia statute declares: "Any interest in or claim to real estate, including easements in gross, may be disposed of by deed or will." Va. Code Ann. § 55-6. This broad language encompasses both commercial and noncommercial easements.

Methods of Creation

Express Grant

The most common and perhaps best method of creating an easement is by express grant or reservation. In all states east of the Mississippi River, one can make and expressly convey an easement by deed or separate contract. E.g., *Helms v. Tully*, 398 So. 2d 253, 255 (Ala. 1981). Because easements are interests in real property, they come within the purview of the statute of frauds. E.g., *Carter v. Stringfellow,* 306 So. 2d 273, 275 (Ala. 1975). Thus, at a minimum, to successfully create an easement by express grant or reservation, the instrument creating the easement must be in writing and signed by the creator of the easement. E.g., *Loid v. Kell,* 844 S.W.2d 428, 429–30 (Ky. Ct. App. 1992). In addition, the instrument must identify the servient estate and reflect the grantor's intent to create an easement. *Allen v. Duvall,* 316 S.E.2d 267, 270 (N.C. 1984) ("[t]here must be language in the deed sufficient to serve as a pointer or a guide to the ascertainment of the location of the land"); *Am. Quick Sign, Inc. v Reinhardt*, 899 So. 2d 461, 465 (Fla. Dist. Ct. App. 2005) (noting "[t]here are no magical words that one must divine in order to create an express easement. All that is necessary are words showing the intention of the parties to create an easement on a sufficiently identifiable estate").

Reservation to Third Parties

Although all states east of the Mississippi permit a grantor to reserve an easement for the grantor in the parcel conveyed, only a handful of jurisdictions allow for a reservation of an easement to a person who is not a party to the transaction. These states are: Connecticut, Indiana, Kentucky, New Jersey, Ohio, and Wisconsin. *See, e.g., Bolan v. Avalon Farms Prop. Owners Ass'n, Inc.*, 735 A.2d 798, 803-04 (Conn. 1999); *Nelson v. Parker*, 687 N.E.2d 187, 189 (Ind.1997); *Townsend v Cable*, 378 S.W.2d 806, 808 (Ky. Ct. App. 1964); *Hollosy v. Gershkowitz*, 98 N.E.2d 314, 315 (Ohio Ct. App. 1950); *Borough of Wildwood Crest v. Smith*, 509 A.2d 252, 260-61 (N.J. Super. Ct.), cert. denied, 526 A.2d 139 (N.J.1986); *In re Parcel of Land v. Darnell*, 477 N.W.2d 333 (Wis. Ct. App. 1991). Alabama, Michigan, and Mississippi treat a reservation in favor of a third party as an exception retained by the grantor, rather than allowing the grantee to take the parcel free and clear of the easement. *Jackson v. Snodgrass,* 37 So. 246 (Ala. 1904); *Mott v. Stanlake*, 234 N.W.2d 667, 668-69 (Mich. Ct. App. 1975); *Cook v. Farley,* 15 So. 2d 352, 355-56 (Miss. 1943). In other words, the conveyed property remains burdened by the easement for the benefit of the grantor's land.

The remaining jurisdictions, however, still abide by the common law rule, which states that the intended easement is invalid if a single instrument is used to reserve the easement to one person and, simultaneously, to convey the burdened estate to another. 2 American Law of Property § 8.29; 4 *Powell on Real Property* § 34.04(5). Instead, the grantee takes the estate free of the easement, despite the clear contrary intent of the parties. In these states, to effectuate the transfer of an easement to a third party and avoid the common-law prohibition, two conveyances must be used: the first conveys the easement to the intended beneficiary and the second subsequently transfers the servient estate to the intended transferee.

Continued adherence to the common

law rule has been criticized because it frustrates the intent of the parties, traps the poorly represented, and has little modern utility. *Nelson*, 687 N.E.2d at 189; see also Restatement (Third) of Property: Servitudes § 2.6, Reporter's Note. Indeed, in jettisoning the common law rule, the Kentucky Court of Appeals declared: "We have no hesitancy in abandoning this archaic and technical rule. It is entirely inconsistent with the basic principle followed in the construction of deeds, which is to determine the intention of the grantor as gathered from the four corners of the instrument." *Townsend,* 378 S.W.2d at 808. Nevertheless, the common law rule remains the law in a majority of jurisdictions east of the Mississippi River. Some jurisdictions have explicitly retained the rule to provide stability in the law affecting land titles, e.g., *Estate of Thompson v. Wade,* 69 N.Y.2d 570, 574 (N.Y. 1987) (stability and adherence to precedent are more important than a correct rule of law in this field), while in others, the law still exists because courts have simply not yet addressed its merits. See, e.g., *Carbone v. Vigliotti,* 610 A.2d 565 (Conn. 1992).

Easements Arising by Operation of Law

There are several situations in which courts will find an easement to exist even if the grantor has not expressly created it. These easements arise from a judicial inference of presumed intent based upon the nature of the transaction. In other words, courts will look at the circumstances surrounding the conveyance to determine that the parties had intended to create an easement but simply forgot to do so.

Easement Implied from Prior Use.

All of the jurisdictions east of the Mississippi River recognize easements created by implication from prior use. E.g., *Tortoise Island Communities, Inc. v. Moorings Ass'n, Inc.*, 489 So. 2d 22 (Fla. 1986). This type of easement arises when an owner has been using part of his land to benefit another part of his land in some way that was apparent and continuous, and then transfers one of those parts of land to somebody else. See, e.g., *Bluffs Owners Ass'n, Inc. v. Adams*, 897 So. 2d 375, 379 (Ala. Civ. App. 2004).

In most states east of the Mississippi River (although the specifics vary by jurisdiction), creation of this type of easement requires evidence that (1) both the dominant and burdened parcels were once commonly owned and part of an undivided tract and then the parcels were subsequently severed; (2) the claimed easement had apparent and continuous prior use so as to show it was intended to be permanent; and (3) at the time of severance, the easement was reasonably necessary for the use and normal enjoyment of the dominant estate. Restatement (Third) of Property: Servitudes § 2.12 (stating that easements implied from prior use arise when, "[u]nless a contrary intent is expressed or implied, the circumstance that prior to a conveyance severing the ownership of land into two or more parts, a use was made of one part for the benefit of another, implies that a servitude was created to continue the prior use if, at the time of the severance, the parties had reasonable grounds to expect that the conveyance would not terminate the right to continue the prior use").

Restatement (Third) of Property § 2.12, cmt. a. describes the rationale behind the doctrine of easements implied from prior use as follows:

> *Ownership of land is often split into smaller parcels after roads, utility lines, wells, and other facilities have been installed that benefit all or several parts of the original parcel. If the transaction splitting the ownership is properly handled, the conveyances will spell out the rights of each of the new parcels to use these facilities. However, transactions are not always properly handled, and all too often, a conveyance severing the ownership is silent on the question whether the new parcel is entitled to continued use of the other parcel for access, utilities, and the like.*

In *Boyd v. Bellsouth Telephone Telegraph Co.*, 633 S.E.2d 136, 139 (S.C. 2006), the South Carolina Supreme Court considered whether an easement implied from prior use was created for the right to access a driveway that was once part of an undivided parcel. There, the property in question was once held by a common owner, Bellsouth, and during the time of common ownership, Bellsouth used a driveway and rear entrance on the property for deliveries. Bellsouth subsequently sold half of the tract to the city of Denmark, which later sold it to Boyd. When Bellsouth attempted to stop Boyd from using the driveway, the court concluded that there was a genuine issue of material fact as to whether Boyd had acquired an easement in the driveway. The court reasoned that an easement from prior use could be implied because a common owner once held the property, and that common owner continually used the common driveway during the time of common ownership. Further, the driveway was reasonably necessary for the enjoyment of the Boyd property because the evidence showed that the driveway had been used to deliver large items to the basement of the building and the front entrance was too narrow for those deliveries. In addition, building an alternate entrance would be too costly and impractical. Thus, when the evidence was viewed in the light most favorable to Boyd, the court concluded that summary judgment in favor of Bellsouth was inappropriate.

Unique Formulations. In Connecticut, it does not appear that unity of ownership is a prerequisite to

easement by implication from prior use. Instead, the court considers "(1) the intention of the parties; and (2) whether the easement is 'reasonably necessary for the use and normal enjoyment of the dominant estate.'" *Wheeler v. Beachcroft, LLC,* 129 A.3d 677, 688 (Conn. 2016). In South Carolina, besides requiring a claimant to prove the elements listed above, a claimant must demonstrate that the grantor indicated intent to continue the prior use after the severance of the parcels; thus, the claimant must prove:

> (1) unity of title; (2) severance of title; (3) the prior use was in existence at the time of unity of title; (4) the prior use was not merely temporary or casual; (5) the prior use was apparent or known to the parties; (6) the prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without the prior use; and (7) the common grantor indicated an intent to continue the prior use after severance of title.

Boyd, 633 S.E.2d at 139. With the exception of the seventh element, these elements are essentially the same as in other states albeit teased out a bit more.

Degree of Necessity Required. States also differ in the degree of necessity required for easements implied from prior use. In most states, the use must be "reasonably necessary," which as one Kentucky Court explained, means that the use must be "more than merely convenient to the dominant owner, but less than the total inability to enjoy the property absent its use." *Cole v. Gilvin,* 59 S.W.3d 468, 476–77 (Ky. Ct. App. 2001). Accordingly, even in situations when it would technically be possible to construct an alternate right of way, but would be unreasonably expensive, courts have granted easements by implication from prior use. See, e.g., *Sanders v. Dias*, 947 A.2d 1026, 1032–33 (2008) (finding "reasonable necessary" test met when "it would cost more than $22,000 to construct a driveway" plus "blasting would have to be done"). A similar approach is taken by many other states east of the Mississippi River. See, e.g., *Cobb v. Daugherty*, 693 S.E.2d 800, 813–14 (2010).

Conversely, Wisconsin and Florida require strict necessity (or its equivalent absolute necessity). Because these easements are based upon the parties' presumed intent, these states believe that such intent should only be inferred in compelling circumstances, such as a completely landlocked property. The Wisconsin Supreme Court explained the necessity requirement in *Bullis v. Schmidt*, 93 N.W.2d 476, 480 (Wis. 1958), that the easement's necessity is "so clear and absolute that without the easement the grantee cannot enjoy the use of the property granted to him for the purposes to which similar property is customarily devoted." Likewise, in Florida, an absolute-necessity test is applied to easements arising by implication from prior use. *Tortoise Island Communities, Inc. v. Moorings Ass'n, Inc.*, 489 So. 2d 22 (Fla. 1986).

Regardless of the degree of necessity required, the focus of the necessity is generally at the time the two parcels are severed, not when the easement is claimed. As a consequence, to successfully claim an easement by implication from prior use, a claimant must bring proof of necessity with respect to the past use of the property. In instances when severance occurred many years prior, this can result in difficult issues of proof. See Kimberly H. Bryant & R Clay Larkin, *Understanding Unconventional Easements and Rights of Entry,* 33 Energy & Min. L. Inst. 15, § 15.03 (2012), available at http://www.emlf.org/clientuploads/directory/whitepaper/bryant_larkin_12_excerpt.pdf. Unlike an easement by necessity (discussed infra), however, there is no requirement that continuing necessity be demonstrated.

Conveying vs. Reserving an Easement. Maryland, New York, Ohio, Rhode Island, and Vermont adopt a hybrid approach in the degree of necessity required. For implied grants, a reasonable-necessity standard is used, but a strict necessity standard is employed for implied easements created in favor of the grantor. See, e.g., *Slear v. Jankiewicz,* 54 A.2d 137, 139 (Md. 1947); *Abbott v. Herring,* 469 N.Y.S.2d 268, 270 (N.Y. App. Div. 1983), aff'd, 468 N.E.2d 680 (1984); *Trattar v. Rausch,* 95 N.E.2d 685, 690 (Ohio 1950); *Wellington Condo. Ass'n v. Wellington Cove Condo. Ass'n*, 68 A.3d 594, 601 (R.I. 2013); *Wheeler v. Taylor,* 39 A.2d 190, 192 (Vt. 1944). The theory underlying this approach is that the grantor should not benefit from the doctrine of implied easements because the grantor was in the best position to expressly reserve the easement in the deed used to transfer the property. Ely & Bruce, supra, § 4:22. A fourth approach, adopted by the state of Georgia, does not recognize implied easements in favor of the grantor at all, under any circumstances. See, e.g., *Dobbs v. Dobbs*, 515 S.E.2d 384, 386 (Ga. 1999).

Easements of Necessity.

Another method of creation all states have in common is the easement by necessity. The authors could not locate a case in Georgia that recognizes a common law easement of necessity. Georgia, however, has codified the creation of an easement for landowners in landlocked settings in Ga. Code Ann. §§ 44-9-40.

An easement by necessity can be created if it is absolutely necessary to cross somebody's land for a legitimate purpose. A party seeking to establish easements of necessity must demonstrate: (1) a prior common ownership of the dominant and servient

tenements; (2) transfer of one of the parcels; and (3) strict necessity for an easement at the time of severance. The most typical scenario giving rise to easements of necessity is when the severance of two parcels renders one of the parcels landlocked. To illustrate, imagine Owner A, who has a large tract of land completely surrounded by forest and mountains except for one road on the southern side that leads to a public road. Owner A then splits the large parcel in two and conveys the northerly portion to Grantee. Most likely, a court will determine that Grantee is entitled to an easement by necessity through Owner A's property, as Grantee has no other available means of accessing the public road.

Most states east of the Mississippi River require a party to demonstrate strict necessity to successfully claim an easement of necessity. E.g., *Pencader Assocs., Inc. v. Glasgow Trust,* 446 A.2d 1097, 1100 (Del. 1982) (absolute necessity); *Carroll v. Meredith,* 59 S.W.3d 484, 492 (Ky. Ct. App. 2001) ("Kentucky case law has consistently applied the 'strict' necessity standard for an easement or way of necessity."); *Morrell v. Rice,* 622 A.2d 1156, 1158–59 (Me. 1993) (strict necessity); *Leach v. Anderl,* 526 A.2d 1096, 1100–11 (N.J. Super. Ct. App. Div. 1987) (absolute necessity); *Simone v. Heidelberg*, 877 N.E.2d 1288, 1291 (N.Y. 2007) ("absolutely necessary"); *Tiller v. Hinton,* 482 N.E.2d 946, 950 (Ohio 1985) (strict necessity). This means there must not be "any alternative means of access to [the] property," *Gacki v. Bartels,* 859 N.E.2d 1178, 1186 (Ill. App. Ct. 2006), from a public road to the property, "however inconvenient" or expensive it may be. *Carroll v. Meredith,* 59 S.W.3d 484, 491 (Ky. Ct. App. 2001). A party claiming an easement of necessity must prove that necessity exists at the time the claim is made. See, e.g., *Minogue v. Monette*, 551 N.Y.S.2d 427, 428 (N.Y. App. Div. 1990) ("An easement by necessity, however, rests not on a preexisting use, but on the need for the way for the beneficial use of the property after conveyance.").

In Connecticut, New Hampshire, North Carolina, and Rhode Island, however, courts require only reasonable necessity even for easements of necessity. See, e.g., *Hollywyle Ass'n, Inc. v. Hollister*, 324 A.2d 247, 252 (Conn. 1973); *Burke v. Pierro,* 986 A.2d 538, 544 (N.H. 2009); *Wiggins v. Short,* 469 S.E.2d 571, 578 (N.C. Ct. App. 1996); *Hilley v. Lawrence*, 972 A.2d 643, 653 (R.I. 2009).

In Kentucky, Vermont, Maine, and Pennsylvania, courts have held that the easement of necessity will be recognized to prevent land from being rendered unusable. This theory helps explain why an easement by necessity requires a showing of continuing necessity. If the law creates an easement to prevent the land from being rendered unusable, it follows that the land must be presently unusable.

States with Unique Features. Several states east of the Mississippi River have taken unique approaches to easements of necessity that deserve mention. In Mississippi, besides showing severance of title and necessity, a party must also demonstrate that it has unsuccessfully attempted to secure a private easement across all other surrounding property by contract or deed. *Ward v. Trimac Investments, LLC,* 78 So. 3d 341, 344 (Miss. Ct. App. 2011). Florida has codified the common-law easement of necessity concept and limits the easement of necessity to rights of ingress and egress, as opposed to an easement for utility services or parking rights. Fla. Stat. Ann. §§ 704.01(1), 704.03. Maine does not recognize easements of necessity in favor of grantors, that is, when the grantor forgets to reserve in a conveyance an easement in a landlocked parcel. *Northland Realty, LLC v. Crawford,* 953 A.2d 359, 363–64 (Me. 2008) (declining to imply easement by necessity based "solely on the fact that the grantor created and retained a landlocked parcel").

Statutory Rights of Way. As an alternative to the easement by necessity, nine states east of the Mississippi River—Alabama, Florida, Georgia, Mississippi, New York, North Carolina, Pennsylvania, Tennessee, and Indiana—have enacted legislation with the goal of providing relief for owners of landlocked parcels of property. Ala. Code 1975 § 18-3-13; Fla. Stat. Ann. § 704.01(2); Ga. Code Ann. §§ 44-9-40; Miss. Code Ann. § 65-7-201; N.Y. High. Law §§ 300–314; N.C. Gen. Stat. § 136-69; Pa. Stat. Ann. tit. 36, § 2731; Tenn. Code Ann. § 54-14-101; Ind. Code Ann. § 32-23-3-1.

These statutes allow the condemnation of a private right of way over neighboring lands and can be useful to those property owners who are landlocked but fail to establish the requisite elements of a common-law easement of necessity. Suppose, for example, a property owner cannot prove that the landlocked condition resulted from a severance of a tract that had been in prior common ownership, as required for an easement by necessity. The owner of the landlocked parcel can use the statute to obtain the easement but must compensate the owner of the servient estate. Also notable is that states east of the Mississippi River agree that a property owner cannot obtain a statutory way of necessity when a common-law easement of necessity is available.

Degree of Necessity Required. There is a difference of opinion among the states east of the Mississippi River that have enacted right of way legislation regarding the degree of necessity required under their respective

statutory schemes. Only reasonable necessity is required in a majority of the jurisdictions (as opposed to the strict necessity standard required under the common-law easement of necessity). See, e.g., *Loveless v. Joelex Corp., Inc*., 590 So. 2d 228, 229 (Ala. 1991) (holding that the statutory standard that "there is no reasonably adequate means of access" is satisfied because highway department regulations prohibited access to adjacent interstate highway); Hensley v. Henry, 541 S.E.2d 398, 401 (Ga. Ct. App. 2000) (holding that "OCGA § 44-9-40 (b) requires the condemner to show that he has no reasonable means of access to his property") ; *Quinn v. Holly*, 146 So. 2d 357, 359 (Miss. 1962) ("reasonably necessary and practical"). The Florida statutory-way-of-necessity scheme employs a "no practicable route of ingress or egress" standard, Fla. Stat. Ann. § 704.01(2), and defines "practicable" as "without the use of bridge, ferry, turnpike road, embankment, or substantial fill." Id. § 704.03. In Pennsylvania, however, a claimant must establish strict necessity to obtain a statutory right of way. *Graff v. Scanlan,* 673 A.2d 1028, 1031 (Pa. Commw. Ct. 1996) ("[O]ur courts from early in the history of the Act have construed it as requiring the 'strictest necessity'").

Some states explicitly limit their necessity statutes to certain types of landlocked properties. Indiana's statute, for instance, applies only to property landlocked as a result of straightening of a stream, construction of a ditch, or erection of a dam by the state or the United States" Ind. Code Ann. § 32-5-3-1. Florida's statute is limited to land "which is being used or desired to be used for a dwelling or dwellings or for agricultural or for timber raising or cutting or stockraising purposes." Fla. Stat. Ann. § 704.01(2).

An additional idiosyncrasy found among the various statutes is a limit of the width of the easement over the servient estate. Alabama's statute limits the width to 30 feet, Ala. Code 1975 § 18-3-1, Georgia's statute limits easements to 20 feet, Ga. Code Ann. § 44-9-40(a), and in Tennessee the width is generally limited to 25 feet, but is limited to 15 feet for counties with metropolitan governments. Tenn. Code Ann. § 54-14-101(a)(1). Florida's statute articulates general guidelines for determining the proper portion of the servient estate over which the easement should run. Fla. Stat. Ann. § 704.01(2) ("nearest practical route" to "public or private road").

Prescriptive Easements. Another form of easement recognized uniformly across all 26 states east of the Mississippi River is the prescriptive easement. E.g., *Androkites v. White,* 10 A.3d 677, 681 (Me. 2010). Obtaining an easement by prescription is closely analogous to acquiring title to land by adverse possession. The fundamental difference between the two is that a prescriptive easement is for the use of, not the ownership of, the land. Generally, to establish an easement by prescription, a claimant must demonstrate the use in question was (1) adverse, (2) exclusive, (3) open and notorious, and (4) continuous and uninterrupted for the requisite time period of prescription. This time period varies by jurisdiction, and for the jurisdictions east of the Mississippi River, the range is anywhere from 7 to 21 years. (See table on page 000 for requisite time period in all 26 states.)

Statutory Enactments. A number of jurisdictions have enacted legislation limiting the acquisition of prescriptive easements in certain instances. A Kentucky statute, for example, bars prescriptive easements "based on use solely for recreational purposes." Ky. Rev. Stat. § 411.190(8). A Pennsylvania statute prohibits prescriptive easements over unenclosed woodlands. Pa. Stat. Ann. tit. 68, § 411. Rhode Island has enacted a statute that provides: "No right of footway, except claimed in connection with a right to pass with carriages, shall be acquired by prescription or adverse use for any length of time." R.I. Gen. Laws § 34-7-4. In interpreting this statute, the Rhode Island Supreme Court explained that even "long continued use by footpassers" over a right of way cannot establish an easement by prescription. *Rhode Island Mobile Sportfishermen, Inc. v. Nope's Island Conservation Ass'n, Inc*., 59 A.3d 112, 121 (R.I. 2013). Instead, "actual, open, notorious, hostile and continuous" vehicular use is required. Id. Another Rhode Island statute bars claims of prescription (and adverse possession) over land held by nonprofits for the purpose of conservation. R.I. Gen. Laws § 34-7-9.

Easements by Estoppel. Estoppel arises "when a party, by conduct, intentionally or unintentionally, leads another to change his position to his detriment in reliance on that conduct." *Sussex Food Servs., Inc. v. Mears*, No. 1403, 1992 WL 187627, at *3 (Del. Ch. July 23, 1992). The most basic and straightforward method for the creation of easements based on an estoppel theory typically arises in one of the following two situations: (1) when a landowner represents that an easement exists when it does not, and (2) when a landowner allows another party to make improvements on the landowner's property in the mistaken belief that the party holds an easement. Ely & Bruce, supra, § 6:1; see, e.g., *Klobucar v. Stancik*, 485 N.E.2d 1334, 1336 (Ill. App. Ct. 1985) (stating that a court of equity may impose an easement by estoppel "as a remedy on behalf of one who, in reliance upon the representations of an adjoining landowner concerning a purported easement, has taken an

action concerning his land which would not have been taken absent those representations").

The authors found an example of the first situation in the case of *I.R.T. Property Co. v. Sheehan,* 581 So. 2d 591 (Fla. Dist. Ct. App. 1991), which involved parking rights to certain commercial property. When Sheehan acquired a portion of a shopping center from his former partners in the shopping center, the deed contained no express provisions granting access or parking rights in the remainder of the shopping center retained by the former partners. There was testimony at trial, however, the parties to the transaction understood that parking rights would be included in the deal. In fact, for close to 15 years, Sheehan's customers had used the parking spaces, until a new purchaser of the shopping center, I.R.T Properties Co., erected barriers preventing access to the parking spots. Although the court recognized the doctrine of estoppel in the context of easements, the court held that estoppel was inapplicable in this case. The court reasoned that because there was no concrete evidence I.R.T or any of its agents made any representations to Sheehan concerning access and parking rights, Sheehan failed to prove he relied on any of the defendant's statements to his detriment.

An example of the second situation is demonstrated in *Pinkston v. Hartley*, 511 So. 2d 168 (Ala. 1987). There, the owner of the servient estate had given the dominant estate owner permission to replace sewer lines that ran across the servient estate. The parties disputed whether the new lines were to be "exactly where the old lines were" or merely "in the proximity of the old lines." Nonetheless, the court held that the servient landowner was estopped from having the new sewer lines removed because he had agreed to have the sewer lines on his property and, despite ample opportunity to observe how the pipes had been laid, did not complain about their location. Accordingly, the court held that an easement by estoppel was appropriate.

Maine and Rhode Island are two exceptions to the rule. Courts in Maine have recognized only a limited version of easement by estoppel that arises by implication from plats or maps (discussed infra). *Sprague Corp. v. Sprague,* 855 F. Supp. 423, 433 (D. Me. 1994) (noting that "Maine courts have recognized only a limited theory of easements by estoppel which arise by implication when a grantor conveys land that is described as being bounded by a street or road. Under this theory, grantees that purchased land, in reliance upon a reasonable belief that they were entitled to use the easements shown on the grantor's plan, will be found to possess an easement by estoppel"). Rhode Island does not recognize easements by estoppel at all. See *Sachem Passage Ass'n, Inc. v. Keough,* No. W.C. 03-312, 2005 WL 2436224, at *9 (R.I. Super. Ct. Sept. 29, 2005) (stating that the "Rhode Island Supreme Court has had opportunities to adopt the easement by estoppel theory, and has failed to do so").

In Kentucky an easement by estoppel is limited in use because it does not run with the land to bind subsequent purchasers of the property. This means that as opposed to typical easements, subsequent owners of the land are not obligated to allow whoever owns the easement obtained by estoppel to continue to use the property. Kentucky courts have held that an easement by estoppel is personal and invoked against a particular person who caused the detrimental reliance. Unless similar circumstances exist against the subsequent purchaser, the easement is extinguished. *Loid v. Kell,* 844 S.W.2d 428, 430 (Ky. Ct. App. 1992).

Easements by Reference to Plats and Maps. With the possible exception of Indiana, all states east of the Mississippi River recognize an easement created by reference to a plat or map. E.g., *Lindsay v. Annapolis Roads Prop. Owners Ass'n*, 64 A.3d 916, 926 (Md. 2013). Indiana has not explicitly rejected this method of creation outright; rather, the authors have not been able to locate any case law in Indiana adopting this doctrine.

This easement arises when a developer conveys lots in a subdivision and the deed references a plat or map indicating common open areas within the subdivision. Each purchaser obtains an easement in these open and public areas delineated in the plat or map, such as streets and alleys. These easements are based on the principle of estoppel because prospective purchasers are induced to purchase lots in reliance on the grantor's representations regarding the open public areas referenced in the plat. See, e.g., Easton v. Appler, 548 So. 2d 691, 694 (Fla. Dist. Ct. App. 1989). Based on this reasoning, courts sometimes find an appropriate plat reference even when the deed makes no reference to the plat. These cases usually arise when the developer exposes the prospective purchasers to the plat by simply showing them a copy. In Massachusetts and Rhode Island, however, courts have refused to recognize a plat reference made outside the deed. See, e.g., *Leuci v. Sterman*, 138 N.E. 399, 400 (Mass. 1923); *Pyper v. Whitman*, 80 A. 6, 7 (R.I. 1911).

There are three divergent views regarding the extent of the scope of an easement created by reference to a plat or map. The first approach, which is referred to as the "broad view," is that the private right of way extends to all streets, alleys, parks, or other open areas delineated in the plat. A second view holds that the extent of the private right of way is limited to those streets

and alleys that the lot owner could reasonably believe would materially benefit the lot owner. In other words, the deprivation of the use of the road, alley, or common area would decrease the value of the lot. This view is commonly referred to as the "intermediate view" or the "beneficial rule." A third even more restrictive approach holds that such private right of way is limited to the abutting streets and those areas necessary to give the grantee access to a public highway. This view is commonly referred to as the "necessary view." *Conveyance of Lot with Reference to Map or Plat as Giving Purchaser Rights in Indicated Streets, Alleys, or Areas Not Abutting His Lot,* 7 A.L.R.2d 607, 613–16, 650–65.

A majority of jurisdictions east of the Mississippi River adhere to the broad view. These states include Alabama, Delaware, Florida, Georgia, Illinois, Kentucky, Maine, Michigan, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, West Virginia, Wisconsin, Vermont, and South Carolina. See, e.g., *Davis v. Foreman*, 717 S.E.2d 295 (Ga. Ct. App. 2011); *Gravison v. Fisher,* 134 A.3d 857 (Me. 2016).

Commentators have noted that it is difficult to divide the remaining states into distinct groups, as courts often blur the lines between the intermediate view and the necessary view, and in other instances there is internal dichotomy within jurisdictions. Ely & Bruce, supra, § 4:34; 7 A.L.R.2d 607, 613–16, 650–51. As an example of this dichotomy, compare the Virginia cases of *Dotson v. Harman*, 350 S.E.2d 642, 644–645 (Va. 1986) ("[P]urchasers . . . acquire vested easements, appurtenant to their lots, in all streets and alleys designated on the plat, whether or not their lots abut such streets."), with *Lindsay v. James,* 51 S.E.2d 326, 331(Va. 1949) ("[P]urchasers . . . are presumed to be interested in all streets and alleys shown on the plat on which their lots are located; . . . but this is a presumption of fact and may be rebutted by showing that the easement in the way in question is not necessary to the enjoyment and value of said lots."). That said, Maryland is one state that consistently and clearly articulates the necessary view, and that limits the scope of an easement reference by plat or map to the areas that are either abutting streets or are necessary for access to a public highway. See, e.g., *Boucher v. Boyer,* 484 A.2d 630, 638 (Md. 1984).

Irrevocable Licenses. Alabama, Florida, Georgia, Indiana, Illinois, Kentucky, New York, Ohio, and Pennsylvania have recognized easements in the form of irrevocable licenses. As a general rule, a license to make use of a landowner's property may be revocable at the will of the grantor. Courts have held, however, that "a license may become irrevocable when the licensee has expended money or labor in reasonable reliance on the continued existence of the privilege." Ely & Bruce, supra, § 11:9. As with other situations in which reasonable detrimental reliance is present, this doctrine is based on estoppel, because it would be inequitable to revoke the license when the licensee has relied on the permitted use.

Many courts have held that an irrevocable license for all intents and purposes is an easement and has the same legal effect as an easement, because the licensee now has an unwaivable interest in the use of the grantors' property. See, e.g., *Closson Lumber Co., v. Wiseman*, 507 N.E.2d 974, 976 (Ind. 1987) (stating that "[e] vents occurring subsequent to the granting of a license may, in effect, change a license otherwise revocable at law into an easement enforced in equity"); see also 4 Powell, *Powell on Real Property* § 34.24 (declaring that a "irrevocable relationship should no longer be called a license, but rather an easement"). Georgia has codified this rule in Ga. Code Ann. § 44-9-4 and provides that "[a] parol license is not revocable when the licensee has acted pursuant thereto and in so doing has incurred expense; in such a case, it becomes an easement running with the land." Ga. Code Ann. § 44-9-4.

In *Dailey's Chevrolet, Inc. v. Worster Realties, Inc.*, 458 A.2d 956, 960 (Pa. Super. Ct. 1983), the Pennsylvania Superior Court found an irrevocable license for rights of egress and ingress when a licensee improved the roadway and constructed buildings on adjacent lands in reliance on the landowner's consent to use the road. Similarly, an Illinois appellate court ruled that an oral license to use a roadway became irrevocable because the licensee spent money to improve the roadway, expended substantial sums developing the dominant estate, and had no other access to the property. *Wilder v. Finnegan*, 642 N.E.2d 496, 500–501 (Ill. App. Ct. 1994).

Conclusion

The authors found it intriguing that even knowing that many American property laws were inherited from the English common law, the law of easements, in most respects, has been adopted uniformly across these 26 states. This similarity occurred despite these laws resulting from these states' right of self-government and legislatures of all political parties, and having been developed before these states entered the Union. Of course, each state's rules must be studied and applied carefully on a case-by-case basis, because, as every dirt lawyer knows, there are few greater battles in life than the fight over land rights.

[1] Restatement (first) Property §450 (1944).
2See e.g., Yaali, Ltd. v. Barnes & Noble, Inc., S.E.2d 116, 117–118 (Ga. 1998); Il Giardino, LLC v. Belle Haven Land Co., 254 Conn. 502, 512 (2000); Tubbs v. E & E Flood Farms, L.P., 13 A.3d 759, 769 (Del. Ch. 2011). Koplin v. Hinsdale Hosp., 564 N.E.2d 1347, 1354 (Ill. App. 2d Dist. 1990); Wentworth v. Sebra, 2003 ME 97, 829 A.2d 520, 524 (Me. 2003); Consolidation Coal Co. v. Mutchman, 565 N.E.2d 1074, 1084 (Ind. Ct. App. 1990); Arcidi v. Town of Rye, 846 A.2d 535, 540 (N.H. 2004); Pevear v. Hunt, 924 S.W.2d 114, 116 (Tenn. Ct. App. 1996); Barrett v. Kunz, A.2d 1278, 1280 (Vt. 1992); Newman v. Michel, 688 S.E.2d 610, 617 (W. Va. 2009); Heydon v. MediaOne, 739 N.W.2d 373, 377 (Mich. 2007); Tupper v. Dorchester County, 487 S.E.2d 187, 191 (S. C. 1997); Southern Furniture Co. of Conover, Inc. v. Department of Transp., 516 S.E.2d 383, 387–388 (N.C. Ct. App. 1999); Mead v. Ginn, 159 S.W.3d 314, 320 (Ky. 2004); Palm Beach County v. Cove Club Investors Ltd, 734 So.2d 379, 388 nn. 13 (Fla. 1999); Callaway v. Forest Park Highlands Co. of Baltimore City, 77 A. 141, 144 (Md. Ct. App. 1910); Weber v. Dockray, 64 A.2d 631, 632 (N.J. Super. 1949); Loch Sheldrake Associates v. Evans, 118 N.E.2d 444, 447 (N.Y. 1954).
3 See sources listed supra note 2.
4 See e.g., Gojmurac v. Mahn, 640 N.W.2d 178, 184 (Wis. Ct. App. 2011)(noting that "[a]lthough dominant and servient estates are often adjacent to one another, the majority rule is that an easement may be appurtenant to noncontiguous property if both estates are clearly defined and if it was the parties' intent that the easement be appurtenant").
[1] See e.g., Tarason v. Wesson Realty, LLC, 2012 ME 47, (Me. 2012); Arcidi v. Town of Rye, 150 N.H. 694, (2004); Windham v. Riddle, 381 S.C. 192, 201–202, 672 S.E. 2d 578, 583 (2009); Sandy Island Corp. v. Ragsdale, 246 S.C. 414, 421, 143 S.E.2d 803, 806 (1965); see also James W. Ely Jr. & Jon W. Bruce, The Law of Easements and Licenses in Land §2.6; see generally, Eric M. Larsson, May Easement or Right of Way Be Appurtenant Where Servient Tenement Is Not Adjacent to Dominant, 15 A.L.R.7th Art. 1, May 6, 2016.
5 Restatement(third) of Property: Servitudes § 1.5. A typical appurtenance clause in a deed reads as follows: "Together with all right title and interest, if any, of the party of the first party in and to any streets roads abutting the above described premises to the center lines thereof; Together with the appurtenance and all the state and rights of the party of the first part in and to said premises; To have and to hold the premises herein granted unto the party of the second part, the heirs or successors and assigns of the second party of the second part forever."
6 See e.g., Consolidation Coal Co. v. Mutchman, 565 N.E.2d 1074, 1084 (Ind. Ct. App. 1990);
7 Koepp v. Holland, 688 F. Supp. 2d 65, 88 (N.D. N.Y. 2010) (applying New York law); Tubbs v. E & E Flood Farms, L.P., 13 A.3d 759, 768 (Del. Ch. 2011); Merriam v. First Nat. Bank of Akron, Ohio, 587 So. 2d 584, 586–587 (Fla. Dist. Ct. App. 1st Dist. 1991); Yaali, Ltd. v. Barnes & Noble, Inc., 506 S.E.2d 116, 119 (Ga. 1998); Larry Mayes Sales, Inc. v. HSI, LLC, 744 N.E.2d 970, 973 (Ind. Ct. App. 2001) ("When an easement can be fairly construed to be appurtenant to the land, it will not be presumed to be in gross."); Meade v. Ginn, 159 S.W.3d 314, 320-321 (Ky. 2004); ALC Development Corp. v. Walker, 787 A.2d 770, 775 (Me. 2002); McLaughlin v. Board of Selectmen of Amherst, 646 N.E.2d 418, 423 (Mass. Ct. App. 1995); Walbridge v. Carroll, 875 N.E.2d 144 (Oh. Ct. App. 6th Dist. Wood County 2007); McAusland v. Carrier, 880 A.2d 861, 864 n.5 (R.I. 2005); Lynn v. Turpin, 215 S.W.2d 794, 795 (Tenn. 1948); Rowe v. Lavanway, 904 A.2d 78, 83 (Vt. 2006); Corbett v. Ruben, 290 S.E.2d 847, 849 (Va. 1982); Newman v. Michel, 688 S.E.2d 610, 617 (W. Va. 2009).
8 Ely & Bruce, supra note 5 at §2.2.
9 Miller v. Lutheran Conference & Camp Ass'n, 200 A. 646, (Pa. 1938).
10 Champaign Nat. Bank v. Illinois Power Co., 465 N.E.2d 1016, 1021 (4th Dist. 1984) ("The weight of modern authority supports the position that commercial easements in gross are alienable, especially when the easements are for utility purposes."); Mumaugh v. Diamond Lake Area Cable TV Co., 456 N.W.2d 425, 430 (Mich. Ct. App. 1990); Hoffman v. Capitol Cablevision System, Inc., 52 A.D.2d 313, 317 (3d Dep't 1976).
11 See e.g., Banach v. Home Gas Co., 12 A.D.2d 373, 375, 211 N.Y.S.2d 443, 445 (3d Dep't 1961) (stating "we know of no case in this jurisdiction which has held that easements authorizing the construction of telephone lines, electric lines or gas lines are inalienable").
12 Miller, 200 A. at 650.
13 Ind. Code Ann. § 32-5-2-1 (b), (c).
14 Va. Code Ann. § 55-6.
15 E.g., Helms v. Tully, 398 So.2d 253, 255 (Ala. 1981); Martin Drive Corp. v. Thorsen, 66 Conn. App. 766, 773 (2001). Judge v. Rago, 570 A.2d 253, 256 (Del. 1990); Am. Quick Sign, Inc. v Reinhardt, 899 So 2d 461, 464-65 (Fla. Dist. Ct. App 2005); Barton v Gammell, S.E.2d 445, 447 (Ga. Ct. App. 1977); Coomer v. Chicago and N. W. Transp. Co., 414 N.E.2d 865, 869 (Ill. App. Ct. 1980); William C. Haak Trust v. Wilusz, 949 N.E.2d 833, 835 (Ind.Ct.App.2011); Grinestaff v Grinestaff, 318 SW2d 881, 884 (Ky. 1958); Crispin v Town of Scarborough, 736 A.2d 241, 250 (Me. 1999). Miller v Kirkpatrick, 833 A.2d 536, 544 (2003); Haugh v. Simms, 64 Mass. App. Ct. 781, 784-786 (2005); Heydon v MediaOne, 739 N.W.2d 373, 377 (Mich. Ct. App. 2007); Lanier v Booth, 50 Miss 410, 413 (1874); Gulf, M. & O.R. Co. v Tallahatchie Drainage Dist. of Union County, 67 So. 2d 528, 533 (Miss. 1953); Soukup v Brooks, 977 A.2d 551, 555 (2009); Leasehold Estates, Inc. v Fulbro Holding Co., 136 A.2d 423, 433 (NJ Super. Ct. App. Div. 1957); Willow Tex, Inc. v. Dimacopoulos, 68 N.Y.2d 963, 965(N.Y. 1986); Edwards v Hill, 703 S.E.2d 452, 455 (N.C. Ct. App. 2010); Esteph v Grumm, 887 N.E.2d 1248, 1252 (OH Ct. App. 2008); Kapp v Norfolk S. Ry Co., 350 F. Supp. 2d 597, 607 (MD Pa. 2004); Kinder v Westcott, 107 A.3d 321, 325 (R.I. 2015); Frierson v. Watson, 636 S.E.2d 872, 875 (S.C. Ct. App. 2006). Cellco Partnership v Shelby County, 172 S.W.3d 574, 588 (Tenn. Ct. App. 2005); Scanlan v Hopkins, 270 A.2d 352, 355 (Vt. 1970); Bunn v Offutt, 222 S.E.2d 522, 525 (Va. 1976); Highway Properties v Dollar Sav. Bank, 431 S.E. 2d 95, 98 (W. Va. 1993); estate of McCormick v Schubring, 672 N.W. 2d 63, 66 (2003).
16 E.g., Carter v. Stringfellow, So. 2d 273, 275 (Ala. 1975); Judge, 570 A.2d at 256; Dupont v. Whiteside, 721 So. 2d 1259, 1263 (Fla. Dist. Ct. App. 5th Dist. 1998); Barton v. Gammell, 143 Ga. App. 291, 293, 238 S.E.2d 445, 447 (1977);
17 Selvia v. Reitmeyer, 156 Ind. App. 203, 208, 295 N.E.2d 869, 873 (1973); Loid v. Kell, 844 S.W.2d 428, 429–430 (Ky. Ct. App. 1992); Silverleib v. Hebshie, 596 N.E.2d 401, 402 (1992).
18 Edwards v. Hill, 208 NC App 178, 182, 703 SE2d 452, 455 (N.C. Ct. App. 2010) ("There must be language in the deed sufficient to serve as a pointer or a guide to the ascertainment of the location of the land"); Am. Quick Sign, Inc. v Reinhardt, 899 So 2d 461, 464-65 (Fla. Dist. Ct. App. 2005)(noting "[t]here are no magical words that one must divine in order to create an express easement. All that is necessary are words showing the intention of the parties to create an easement on a sufficiently identifiable estate").
19 Bolan v. Avalon Farms Property Owners Ass'n, Inc., 250 Conn. 135, 144 (1999). Nelson v. Parker, 687 N.E.2d 187, 189 (Ind.1997). Townsend v Cable, 378 S.W.2d 806, 808 (Ky. 1964). Mott v. Stanlake, 63 Mich.App. 440 (1975); Hollosy v. Gershkowitz, 88 Ohio App. 198, 98 N.E.2d 314 (1950); Borough of Wildwood Crest v. Smith, 509 A.2d 252 (N.J. Super. Ct. 1986), certification denied 526 A.2d 139 (N.J.1986); In re Parcel of Land v. Darnell, 477 N.W.2d 333 (Wis.Ct.App.1991).
20 Mott v. Stanlake, 234 N.W.2d 667, 668 (Mich. Ct. App.1975); Jackson v. Snodgrass, 140 Ala. 365, 37 So. 246 (1904); Cook v. Farley, 195 Miss. 638, 15 So.2d 352 (1943).
212 American Law of Property § 8.29; 4 Powell on Real Property § 34.04(5).
22 Nelson v. Parker, 687 N.E.2d 187, 189 (Ind. Ct. App. 1997); see also Reporters Note to §2.6 of Restatement (third) of Property: Servitudes.
23 Townsend v Cable, 378 S.W.2d 806, 808 (Ky. 1964).
24 Estate of Thompson v. Wade, 69 N.Y.2d 570, 574 (N.Y. 1987) (stability and adherence to precedent are more important than a correct rule of law in this field); Dade County v. Little, 115 So.2d 19 (Fla.Dist.Ct.App.1959); Town of Manchester v. Augusta Country Club, 477 A.2d 1124 (Me.1984); Ellison v. Fellows, 121 N.H. 978, 437 A.2d 278 (1981).
25 See e.g., Carbone v. Vigliotti, 610 A.2d 565 (Conn.1992).
26 Miller v. Harris, 945 So.2d 1072 (2006); de Castro v. Durrel , 259 Ga. App. 194, 198 (2008); Brown v. Houston Ventures, LLC, 2003 WL 136181 (Del. Ch. Jan. 2, 2003); Sanders v. Dias, 108 Conn App. 283, 294 (2008); Tortois Island Communities, Inc. v. Moorings Ass'n, Inc., 489 So.2d 22 (Fla. 1986); Whitt v. Ferris, 569 N.E. 2d 230, 233 (Ind. Ct. App. 1992); Indiana Regional Recycling, Inc. v Belmont Indus., Inc., 957 N.E.2d 1279, 1283 (Ind. Ct. App. 2011); Grinestaff v. Grinestaff, 318 SW2d 881, 884 (Ky. 1958); Cellco Partnership v Shelby County, 172 SW3d 574, 588 (Tenn. Ct. App. 2005); Granite Properties Ltd. Partnership v Manns, 512 N.E.2d 1230, 1236 (Ill. 1987);
Bowers v Andrews, 557 A2d 606, 608 (Me. 1989); Town of Bedford v. Cerasuolo, 818 N.E.2d 561, 566 (Mass. App. Ct. 2004); Four S Realty Co. v. Dynko, 210 A.D.2d 622 (3d Dept. 1994); Engels v. Siderides, 164 A. 397, 397 (N.J. 1933); Dept. of Nat. Resources v. Lecureux, 242695, 2004 WL 895895, at *3 (Mich. Ct. App. Apr. 27, 2004);
Hutcheson v. Sumrall, 72 So. 2d 225, 227 (Miss. 1954) ; Lynn v Wentworth By The Sea Master Assn., 2015-0333, 2016 WL 3035995, at *4 (N.H. May 27, 2016); Cash v. Craver, 302 S.E.2d 819, 821 (N.C. Ct .App .1983);
Cadwallader v. Scovanner, 896 N.E.2d 748, 755 (OH. Ct. App. 2008); Myrick v Mack, 2015 WL 7573028, at *4 (Pa. Super. Ct. Feb. 9, 2015); Wiesel v. Smira, 142 A. 148, 149 (R. I. 1928); Boyd v Bellsouth Tel. Tel. Co., Inc., 633 SE2d 136, 139 (S.C. 2006); Fones v. Fagan, 196 S.E.2d 916, 918 (Va.1973); JPMorgan Chase Bank, N.A. v . ByPass Plaza 1989 L.P., 11-1530, 2013 WL 3185148, at *2 (W. Va. June 24, 2013); Stoesser v. Shore Drive Partnership, 172 Wis.2d 660 (1993).
27 See e.g, Bluffs Owners Ass'n, Inc. v. Adams, 897 So.2d 375, 379 (Ala. Civ. App. 2004).
28 Restatement (third) or Property: Servitudes § 2.12 (Stating that easements implied from prior use arise where "[u]nless a contrary intent is expressed or implied, the circumstance that prior to a conveyance severing the ownership of land into two or more parts, a use was made of one part for the benefit of another, implies that a servitude was created to continue the prior use if, at the time of the severance, the parties had reasonable grounds to expect that the conveyance would not terminate the right to continue the prior use").
29 The Restatement(third) of Property § 2.12 describes the rationale behind the doctrine of easements implied from prior use as follows: "Ownership of land is often split into smaller parcels after roads, utility lines, wells, and other facilities have been installed that benefit all or several parts of the original parcel. If the transaction splitting the ownership is properly handled, the conveyances will spell out the rights of each of the new parcels to use these facilities. However, transactions are not always properly handled, and all too often, a conveyance severing the ownership is silent on the question whether the new parcel is entitled to continued use of the other parcel for access, utilities, and the like."
30 Boyd v Bellsouth Tel. Tel. Co., Inc., 633 SE2d 136, 139 (S.C. 2006).
31 Id. at 142.
32Wheeler v. Beachcroft, LLC, 320 Conn. 146, 162 (2016).
33 Boyd v Bellsouth Tel. Tel. Co., Inc., 633 SE2d 136, 139 (S.C. 2006) (The South Carolina Supreme Court lists seven elements that a claimant must prove in order to create an easement from prior use: "(1) unity of title; (2) severance of title; (3) the prior use was in existence at the time of unity of title; (4) the prior use was not merely temporary or casual; (5) the prior use was apparent or known to the parties; (6) the prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without the prior use; and (7) the common grantor indicated an intent to continue the prior use after severance of title." Id. With the exception of the seventh element, these elements are essentially the same as in other states albeit teased out a bit more.
34 Cole v. Gilvin, 59 S.W.3d 468, 476–477 (Ky. Ct. App. 2001).
35 See e.g., Sanders v. Dias, 108 Conn. App. 283, 294–295, 947 A.2d 1026, 1032–1033 (2008) (finding "reasonable necessary" test met where "it would cost more than $22,000 to construct a driveway" plus "blasting would have to be done").
36 See e.g., Hysell v. Kimmel, 834 N.E.2d 1111, 1114-1115 (Ind. Ct. App. 2005); Cheever v. Graves, 32 Mass. App. Ct. 601, 608–609, 592 N.E.2d 758, 763 (1992); Cobb v. Daugherty, 225 W. Va. 435, 448–449, 693 S.E.2d 800, 813–814 (2010).
37 Bullis v. Schmidt, 93 N.W.2d 476, 480 (Wis. 1958).
38 Tortois Island Communities, Inc. v. Moorings Ass'n, Inc., 489 So.2d 22, 22 (Fla. 1986).
39 See Kimberly H. Bryant & R Clay Larkin, 33 ENERGY & MIN. L. INST. 15 at § 15.03 (2012).
40 Slear v. Jankiewicz, 189 Md. 18, 23–24, 54 A.2d 137, 139 (1947); Abbott v. Herring, 97 A.D.2d 870, 871 (3d Dep't 1983), order aff'd, 468 N.E.2d 680 (1984); Trattar v. Rausch, 95 N.E.2d 685, 690 (Oh. 1950); Wellington Condominium Ass'n v. Wellington Cove Condominium Ass'n, 68 A.3d 594, 601–603 (R.I. 2013); Wheeler v. Taylor, 39 A.2d 190, 192 (Vt. 1944).
41 Ely & Bruce, supra note 5 at §4.22.
42 See e.g., Dobbs v. Dobbs, 270 Ga. 887 (1999)("In Georgia, there is no implied reservation of an easement by a grantor of land").
43 Helms v. Tullis, 398 So. 2d 253 (Ala. 1981); Hollywyle Ass'n, Inc. v. Hollister, 164 Conn. 389, 399 (1973); Pencader Associates, Inc. v. Glasgow Trust, 446 A.2d 1097, 1100 (Del. 1982); Reyes v. Perez, 284 So.2d. 493 (Fla. 4th DCA 1973); Cadwallader v Scovanner, 896 N.E.2d 748, 758(Oh. App. 2008); William C. Haak Trust v. Wilusx, 949 N.E.2d 833 (Ind. Ct. App. 2011); Gacki v. Bartels, 859 N.E.2d 1178, 1185–1186 (Ill. App. 2d Dist. 2006); Carroll v. Meredith, 59 S.W.3d 484, 491 (Ky. Ct. App. 2001); Stansbury v. MDR Development, L.L.C., 889 A.2d 403, 411 (Md. 2006); Town of Bedford v Cerasuolo, 818 N.E.2d 561, 565 (Mass. App. Ct. 2004); Charles A. Murray Trust v. Futrell, 840 N.W.2d 775, 781–782 (Mich. App. 2013); Harkness v. Butterworth Hunting Club, Inc., 58 So. 3d 703, 706 (Miss. Ct. App. 2011); Bradley v. Patterson, 435 A.2d 129, 131 (N.H. 198); Leach v. Anderl, 526 A.2d 1096, 1099 (N.J. Super. Ct. App. Div. 1987); Faviola, LLC v. Patel, 114 A.D.3d 823, 824–825 (2d Dep't 2014); Morrell v. Rice, 622 A.2d 1156, 1158–1159 (Me. 1993); CDC Pineville, LLC v. UDRT of North Carolina, LLC, 174 N.C. App. 644, 651–652, 622 S.E.2d 512, 518 (2005); Phillippi v. Knotter, 748 A.2d 757, 760 (Pa. 2000); Ondis v. City of Woonsocket ex rel. Treasurer Touzin, 934 A.2d 799, 805

(R.I. 2007); Kennedy v. Bedenbaugh, 352 S.C. 56, 60, 572 S.E.2d 452, 454 (2002); Cellco Partnership v. Shelby County, 172 S.W.3d 574, 592 (Tenn. Ct. App. 2005); Traders, Inc. v. Bartholomew, 459 A.2d 974 (Vt. 1983); Carstensen v. Chrisland Corp., 247 Va. 433, 438, 442 S.E.2d 660, 663 (1994); Cobb v. Daugherty, 225 W. Va. 435, 443, 693 S.E.2d 800, 808 (2010); Schwab v. Timmins, 224 Wis.2d 27 (1999). These author could not locate a case in Georgia that recognizes a common law easement of necessity. However, Georgia has codified the creation of an easement for landowners in landlocked settings in GA. CODE ANN. §§44-9-40.

44 Pencader Associates, Inc. v. Glasgow Trust, 446 A.2d 1097, 1100 (Del. 1982) (absolute necessity); William C. Haak Trust v. Wilusz, 949 N.E.2d 833, 836 (Ind. Ct. App. 2011) Carroll v. Meredith, 59 S.W.3d 484, 492 (Ky. Ct. App. 2001) ("Kentucky case law has consistently applied the 'strict' necessity standard for an easement or way of necessity."); Morrell v. Rice, 622 A.2d 1156, 1158–1159 (Me. 1993) (strict necessity); Leach v. Anderl, 218 N.J. Super. 18, 26–27, 526 A.2d 1096, 1100–1111 (App. Div. 1987) (absolute necessity); Simone v. Heidelberg, 9 N.Y.3d 877 N.E.2d 1288, 1290–1291 (N.Y. 2007) ("absolutely necessary"); Tiller v. Hinton, 482 N.E.2d 946, 950 (Oh. 1985) (strict necessity); Phillippi v. Knotter, 748 A.2d 757, 760 (Pa. 2000) Cobb v. Daugherty, 693 S.E.2d 800, 808–811 (W. Va. 2010).

45 Gacki v. Bartels, 369 Ill. App.3d 284, 292 (Ill. App. Ct. 2006).

46 Carrol v. Meredith, 59 S.W.3d 484, 491 (Ky. Ct. App. 2001).

47 See e.g., Minogue v. Monette, 158 A.D.2d 843, 844 (1990) ("An easement by necessity does not rest on a preexisting use but the need for a right of way for the beneficial use of the property after conveyance").

48 Hollywyle Ass'n, Inc. v. Hollister, 164 Conn. 389, 399, 324 A.2d 247, 252 (1973) ; Burke v. Pierro, 159 N.H. 504, 511, 986 A.2d 538, 544 (2009); Wiggins v. Short, 122 N.C. App. 322, 331, 469 S.E.2d 571, 578 (1996); Hilley v. Lawrence, 972 A.2d 643, 653 (R.I. 2009).

49 Ward v Trimac Investments, LLC, 78 So 3d 341, 344 (Miss Ct App 2011)("To show necessity, our law requires both a showing that the property has no access to the public road and that the party seeking the private road has attempted to secure a right of way by contract or grant").

50 Fla. Stat. Ann. § 704.01(1), § 704.03.

51 Northland Realty, LLC v. Crawford, 2008 ME 92, 953 A.2d 359, 363–364 (Me. 2008).

52 Ala. Code 1975 §§18-3-1–18-3-3; Fla Stat. Ann. §§704.01(2), 704.03–704.04; Ga. Code Ann. §§44-9-40–44-9-53; Miss. Code Ann. §65-7-201; NY High. Law §§300–314; NC Gen. Stat § 136-69; Pa. Stat. Ann. tit. 36 §§ 2731-2738; Tenn. Code Ann. § 54-14-101–54-14-118; Ind. Code Ann. § 32-5-3-1.

53 See e.g., Loveless v. Joelex Corp., Inc., 590 So. 2d 228, 229 (Ala. 1991) (finding standard that "there is no reasonably adequate means of access" satisfied because Highway Department regulations prohibited access to adjacent interstate highway); Kellett v. Salter, 244 Ga. 601, 602, 261 S.E.2d 597, 599 (1979); Blount v. Chambers, 257 Ga. App. 663, 663–665, 572 S.E.2d 32, 33–34 (2002) (concluding that "no reasonable means of access" standard requires access be "absolutely indispensable"); Quinn v. Holly, 244 Miss. 808, 813, 146 So. 2d 357, 359 (1962); The Florida statutory-way-of-necessity scheme employs a "no practicable route of ingress or egress" standard (Fla. Stat. Ann. § 704.01(2)) and defines "practicable" as "without the use of bridge, ferry, turnpike road, embankment, or substantial fill."

54 Graff v. Scanlan, 673 A.2d 1028, 1031 (Pa. Commw. Ct. 1996) ("[O]ur courts from early in the history of the Act have construed it as requiring the 'strictest necessity'").

55 Ind. Code Ann. § 32-5-3-1.

56 Fla. Stat. Ann. § 704.01(2).

57 Ala. Code 1975 §18-3-1

58 Ga Code Ann. §44-9-40 (a).

59 Tenn. Code Ann. § 54-14-101(a)(1).

60 Fla. Stat. Ann. § 704.01(2) ("nearest practical route" to "public or private road").

61 Bull v. Salsman, 435 So. 2d 27, 29 (Ala. 1983); Judge v. Rago 570 A.2d 253 (1990); Downing v. Bird, 100 So. 2d 57 (Fla. 1958); Keng v. Franklin, 267 Ga. 472, 472 (1997); Nationwide Fin., LP v. Pobuda, 21 N.E.3d 381, 390, reh denied (Nov. 24, 2014); Wilfong v. Cessna Corp.,838 N.E.2d 403 (Ind. 2005); Biddix v. McConnell, 911 So. 2d 468, 475 (Miss. 2005)315 Main Street Poughkeepsie, LLC v. Wa 319 Main, LLC, 62 A.D.3d 690, 691 (2d Dept. 2009); Newell Rod and Gun Club, Inc. v. Bauer, 597 A.2d 667, 669 (Pa. Super. 1991); In re Town Highway No.20 of Town of Georgia, 834 A.2d 17, 24 (Vt. 2003); Columbia Gas Transmission Corp. v. Consol of Ky., Inc. 15 S.W.3d 727 (Ky. 2000); Androkites v. White, 10 A.3d 677, 681 (Me. 2010); Banks v. Pusey, 904 A.2d 448, 454 (Md. 2006); Ryan v Stavros, 263, 203 N.E.2d 85, 93 (Mass. 1964); Plymouth Canton Community Crier, Inc. v Prose, 619 N.W.2d 725, 727 (Mich. Ct. App. 2000); Kruvant et al. v. 12-22 Woodland Avenue Corporation et al., 350 A.2d 102(N.J. Super. ; Dickinson v. Pake, 201 S.E.2d 897, 900 (N.C. 1974); Sandford v. Town of Wolfeboro, 740 A.2d 1019, 1022 (N.H. 1999); Odell v. Steggal, 703 S.E.2d 561, 579 (W. Va. 2010); County of Langlade v. Kaster, 202 Wis. 2d 449 (Wis. App. 1996).

62 Ky. Rev. Stat. § 411.190(8) (2015).

63 Pa. Stat. Ann. tit. 68 ¶411 (Purdon 1994).

64 R. I. Gen. Laws § 34-7-4 (2012).

65 Rhode Island Mobile Sportfishermen, Inc. v. Nope's Island Conservation Ass'n, Inc., 59 A.3d 112, 121–123 (R.I. 2013).

66 Id.

67 R. I. Gen. Laws § 34-7-9 (2012).

68 Sussex Food Services, Inc. v Mears, CIV. A. 1403, 1992 WL 187627, at *3 [Del Ch July 23, 1992].

69 Ely & Bruce, supra note 5 at § 6.1.; see e.g., Klobucar v. Stancik, 485 N.E.2d 1334 (Ill. App. 1985) (a court of equity may impose an easement by estoppel as a remedy on behalf of a party who, in reliance upon the conduct of the adjoining landowner concerning the purported easement, has taken an action concerning his land which would not have been taken absent that conduct).

70I.R.T. Property Co. v. Sheehan, 581 So.2d 591 (Fla. Dist. Ct. App. 2d Dist. 1991).

71 Pinkston v. Hartley, 511 So 2d 168 (Ala 1987).

72 Pinkston v. Hartley, 511 So 2d 168 (Ala 1987); Mellon v. Century Cable Management Corp., 247 Conn. 790, 794–797, 725 A.2d 943, 945–947 (1999); Hionis v. Shipp, 2005 WL 1490455, at *4 (Del. Ch. June 16, 2005), affd, 903 A2d 323 (Del. 2006); I.R.T. Property Co. v. Sheehan, 581 So. 2d 591, 593 (Fla. Dist. Ct. App. 2d Dist. 1991); Bibb County v. Georgia Power Co., 525 S.E.2d 136, 141 (Ga. Ct. App. 1999); Curt Bullock Builders, Inc. v. H.S.S. Development, Inc., 586 N.E.2d 1284, 1289 (Ill. App. 4th Dist. 1992); Kwolek v Swickard, 944 N.E.2d 564, 576 (Ind. Ct. App. 2011); Jones v. Sparks, 297 S.W.3d 73, 77 (Ky. Ct. App. 2009); Olive Branch Masonic Temple Ass'n v City of Dearborn, 263765, 2006 WL 397995, at *3 (Mich. Ct. App. Feb. 21, 2006]; Post v. McHugh, 920 N.E.2d 898, 901 (Mass. App. Ct. 2010); Olde Severna Park Improvement Ass'n, Inc. v Barry, 982 A2d 905, 917 (Md. Ct. Spec. App. 2009); Gulf Park Water Co., Inc. v First Ocean Springs Dev. Co., 530 So 2d 1325, 1332 (Miss 1988); Hertel v Universal Grace Church, 2005-0053, 2006 WL 8418196, at *2 (N.H. Apr. 17, 2006); Mahony v. Danis, 469 A. 2d 31 (N.J. 1983); Van Schaack v. Torsoe, 161 A.D.2d 701, 703 (2d Dep't 1990); Huberth v. Holly, 120 N.C. App. 348, 462 S.E.2d 239, 242 (1995); McCormick v. Camp Pocono Ridge, Inc. II, 781 F. Supp. 328, 334 (M.D. Pa. 1991); Roubanes v. Brown, 2012 WL 1550007 (Ohio Ct. App. 5th Dist. Holmes County 2012); Boyd v. Bellsouth Telephone Telegraph Co., Inc., 369 S.C. 410, 422, 633 S.E.2d 136, 142 (2006); Cellco Partnership v Shelby County, 172 S.W.3d 574, 588 (Tenn. Ct. App. 2005); Tallarico v. Brett, 400 A.2d 959, 964 (Vt. 1979); Mulford v. Walnut Hill Farm Group, LLC, 712 S.E.2d 468, 476 (Va. 2011); Shrewsbury v. Humphrey, 395 S.E.2d 535, 538 (W. Va. 1990); Frank C. Schilling Co. v. Detry, 233 N.W. 635, 639 (Wis. 1930). Kwolek v Swickard, 944 NE2d 564, 576 (Ind Ct App 2011); Post v McHugh, 76 Mass App Ct 200, 202, 920 NE2d 898, 901 (Mass App Ct 2010) ; Hertel v Universal Grace Church, 2005-0053, 2006 WL 8418196, at *2 (NH Apr. 17, 2006); Frank C. Schilling Co. v Detry, 203 Wis 109, 233 NW 635, 639 (1930).

73 Sprague Corp. v. Sprague, 855 F. Supp. 423, 433 (United States District Court, D. Maine.1994) (noting that "Maine courts have recognized only a limited theory of easements by estoppel which arise by implication when a grantor conveys land that is described as being bounded by a street or road. Under this theory, grantees who purchased land, in reliance upon a reasonable belief that they were entitled to use the easements shown on the grantor's plan, will be found to possess an easement by estoppel").

74 Sachem Passage Ass'n, Inc. v. Keough, 2005 WL 2436224, at *9 [R.I Super. Sept. 29, 2005].

75 Loid v. Kell, 844 S.W.2d 428, 430 (Ky. Ct. App. 1992).

76 That is not to say that Indiana has explicitly rejected this method of creation outright, rather, these author's have not been able to locate any case law in Indiana that has adopted this doctrine. Examples of cases in the twenty five other states that have recognized this method of creation are: Cure v. Musgrove, 747 So. 2d 346, 347 (Ala. Civ. App. 1999); Stankiewicz v. Miami Beach Ass'n, Inc., 169, 464 A.2d 26, 28 (Conn. 1983) Judge v. Rago, 570 A.2d 253, 256 (Del. 1990); Easton v. Appler, 548 So. 2d 691, 694 (Fla. Dist. Ct. App. 3d Dist. 1989); Northpark Associates No. 2, Ltd. v. Homart Development Co., 414 S.E.2d 214, 215–216 (Ga. 1992); Reiman v. Kale, 403 N.E.2d 1275, 1278 (Ill. App. 2d Dist. 1980); Murch v. Nash, 2004 ME 139, 861 A.2d 645, 649-651 (Me. 2004); Rindone v. Corey Community Church, 55 N.W.2d 844, 846 (Mich. 1952); Lindsay v. Annapolis Roads Property Owners Ass'n, 64 A.3d 916, 926 (Md. 2013); Reagan v. Brissey, 446 Mass. 452, 458-461, 844 N.E.2d 672, 676-679 (2006); Simcox v. Hunt, 874 So. 2d 1010, 1018 (Miss. Ct. App. 2004); Schickli v Keeling, 307 Ky 210, 215, 210 SW2d 780, 782 [1948]; Gagnon v. Moreau, 107 N.H. 507, 509, 225 A.2d 924, 926 (1967); Bubis v. Kassin, 323 N.J. Super. 601, 609–610, 733 A.2d 1232, 1236–1237 (App. Div. 1999); Iovine v. Caldwell, 256 A.D.2d 974, 977, 682 N.Y.S.2d 288, 290 (3d Dep't 1998); Gregory v. Floyd, 112 N.C. App. 470, 473–475, 435 S.E.2d 808, 810–811 (1993); Beechler v. Winkel, 59 Ohio App. 2d 65, 72, 13 Ohio Op. 3d 131, 392 N.E.2d 889, 894 (6th Dist. Erie County 1978); Potis v. Coon, 344 Pa. Super. 443, 448–449, 496 A.2d 1188, 1191–1192 (1985); Newport Realty, Inc. v. Lynch, 878 A.2d 1021, 1032–1033 (R.I. 2005); Inlet Harbour v. South Carolina Dept. of Parks, Recreation and Tourism, 377 S.C. 86, 92, 659 S.E.2d 151, 154 (2008); Bunns v. Walkem Development Co., 53 Tenn. App. 680, 694, 385 S.W.2d 917, 923 (1964); Noble v. Kalanges, 179 Vt. 1, 6–10, 886 A.2d 767, 769, 772-774 (2005); Bauer Enterprises, Inc. v. City of Elkins, 173 W. Va. 438, 317 S.E.2d 798, 800 (1984); Schimmels v. Noordover, 709 N.W.2d 466, 469–470 (Wis. Ct. App. 2005).

77 See e.g., Easton v. Appler, 548 So. 2d 691, 694 (Fla. Dist. Ct. App. 3d Dist. 1989); Murch v. Nash, 2004 ME 139, 861 A.2d 645, 649-651 (Me. 2004); Callahan v. Ganneston Park Development Corp., 245 A.2d 274, 278 (Me. 1968); Gagnon v. Moreau, 107 N.H. 507, 509, 225 A.2d 924, 926 (1967); Beechler v. Winkel, 59 Ohio App. 2d 65, 72, 13 Ohio Op. 3d 131, 392 N.E.2d 889, 894 (6th Dist. Erie County 1978); Schimmels v. Noordover, 288 Wis. 2d 790, 796–798, 2006 WI App 7, 709 N.W.2d 466, 469-470 (Ct. App. 2005).

78 See e.g., Leuci v. Sterman, 244 Mass. 236, 238, 138 N.E. 399, 400, 28 A.L.R. 853 (1923); Pyper v. Whitman, 32 R.I. 510, 513, 80 A. 6, 7 (1911).

79 Conveyance of Lot With Reference to Map or Plat as Giving Purchaser Rights in Indicated Streets, Alleys, or Areas Not Abutting His Lot, A.L.R.2d 607, 613-616, 650-65;

80 These states include: Alabama, Delaware, Florida, Georgia, Illinois, Kentucky, Maine, Michigan, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, West Virginia, Wisconsin, Vermont, and South Carolina. See e.g., Davis v. Foreman, 311 Ga. App. 775, 717 S.E.2d 295 (2011). Gravison v. Fisher, 2016 ME 35, 134 A.3d 857 (Me. 2016). Boylan v. Borough of Point Pleasant Beach, 410 N.J. Super. 564, 983 A.2d 1122 (App. Div. 2009). Smith v. County of Durham, 714 S.E.2d 849 (N.C. Ct. App. 2011). Bitting v. Gray, 897 A.2d 25 (R.I. 2006). Murrells Inlet Corp. v. Ward, 378 S.C. 225, 662 S.E.2d 452 (Ct. App. 2008) Chapman v. Catron, 220 W. Va. 393, 647 S.E.2d 829 (2007). Reinhardt ex rel. Rogers v. Chalfant (1920) 12 Del Ch 214, 110 A 663, Stanfield v. Brewton, 228 Ga. 92, 94–95, 184 S.E.2d 352, 354 (1971) Potis v. Coon, 344 Pa. Super. 443, 451, 496 A.2d 1188, 1193 (1985) Clearwater Realty Co. v. Bouchard, 146 Vt. 359, 363, 505 A.2d 1189, 1192 (1985).

81Ely & Bruce, supra note 5 at §4:34; Conveyance of Lot With Reference to Map or Plat As Giving Purchaser Rights in Indicated Streets, Alleys, or Areas Not Abutting His Lot, A.L.R.2d 607. 613-616, 650-651. As an example of this dichotomy, compare the Virginia cases of Dotson v. Harman, S.E.2d 642, 644–645 (Va. 1986) ("[P]urchasers … acquire vested easements, appurtenant to their lots, in all streets and alleys designated on the plat, whether or not their lots abut such streets.") with Lindsay v. James, 51 S.E.2d 326, 331(Va. 1949) ("[P]urchasers … are presumed to be interested in all streets and alleys shown on the plat on which their lots are located; … but this is a presumption of fact and may be rebutted by showing that the easement in the way in question is not necessary to the enjoyment and value of said lots.").

82 See e.g., Boucher v. Boyer, 301 Md. 679, 694, 484 A.2d 630, 638 (1984).

83 See e.g., Closson Lumber Co., Inc. v. Wiseman, 507 N.E.2d 974, 976 (Ind. 1987) ("Events occurring subsequent to the granting of a license may, in effect, change a license otherwise revocable at law into an easement enforced in equity."); see also 4 Powell, Powell on Real Property § 34.24 (declaring that "irrevocable relationship should no longer be called a license, but rather an easement").

84 Ga. Code Ann. § 44-9-4.

85 Dailey's Chevrolet, Inc. v. Worster Realties, Inc., 458 A.2d 956, 960 (Pa. Sup. 1983).

86 Wilder v. Finnegan, 642 N.E.2d 496, 500–501 (Ill. App. 5th Dist. 1994).