

## Abstracting Landlocked Properties

We have seen a good bit of these lately. Truth be told, prior to becoming a title agent, I am not sure that I understood what to do when the property I was closing/abstracting was landlocked with access coming from an easement over the property of another. Read this article if you want to find out how to do it right.

Scenario: First thing's first. . .let's set up the scenario: The property you are searching was once part of a larger tract. At some point, the owner subdivided the tract into two or more smaller tracts and reserved an easement that travels across all of the tracts providing access to a public road. The result is a lot that abuts the public road and then a series of lots that are landlocked which do not abut the public road. This is usually accomplished in one of two ways: by a recorded easement in favor of the landlocked properties or by filing a subdivision map which depicts the new tracts and locates the site of the easement.

Implications for Title Insurance: As a basic matter, title insurance insures access for the property. That basic coverage is part of the jacket (which lists all the coverages and exclusions from coverage). In order to limit coverage, the binder must expressly indicate that access is not part of the coverage. In other words, the title insurer has to affirmatively block coverage. We will do that when we have reason to believe that access is related to something other than **direct access over a public road**. Why??? Because if access is blocked, the owner has a serious problem and a claim is likely to ensue.

What To Do: What you want to do is insure the easement tract to the property as part of the insured description. The result will be a legal description on the Title Policy that has two tracts: The lot itself and the easement tract. You will need to verify/find two things. First, you will need to determine that the easement was created properly. You will most likely have to search back to the time before the land was subdivided and determine how the easement was created. In other words, you will need to verify that the easement was created in a proper manner and by a proper person. As indicated above, most access easements are created by the filing of an instrument or a map. You will need to determine that at the time of the filing the creator of the easement actually owned the land over which the easement travels. (Called the servient tract). Since only owners of property can convey interests in their land, only the owner of the servient tract can convey access rights. Let's say S subdivides land and conveys the servient tract to B. S should create the access/easement rights before the Deed to B is filed. If the servient tract is deeded to B before the creation of the easement rights, then it will be B who must create the easement. If S conveys the easements rights – under these facts – the easement is invalid and your client (and the title insurer will have a huge problem.)

Secondly, you will need to perform an abstract of the servient tract. You will need to determine what exceptions apply to the servient tract. Are there deeds of trust against the property? Are taxes due? Have the easement rights been extinguished. These exceptions will be listed on the policy as exceptions to the Easement Tract. In our scenario above, let's say that S conveys property to B, B conveys a deed of trust on the servient tract and then conveys the easement rights to the owner of the dominant tract(s). Let's also say the deed of trust is subsequently foreclosed. What happens to the easement rights under those circumstances? They are gone! The foreclosure wiped them out! If you allow your client to purchase the property, it is going to be a big problem for the client. . .and for you.