

REAL [ESTATE] LOVE: COMMON REAL ESTATE
ISSUES ENCOUNTERED BY LOCAL GOVERNMENTS

JULY 15, 2023


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Overview


- Fee Ownership vs Easements vs Right-of-Way
- Dedicatory Language
- Effect of Vacating Right-of-Way
- Title Issues—Practical Considerations
- Grantee’s Acceptance of Transfers under Section 49.292, RSMo.
- Notarial Acknowledgements for Real Estate Transactions



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A Primer on Fee Simple, Easements, and Rights-of-Way

- What is fee simple ownership?
 - Fee simple ownership is real property held without limit of time.
- What is an Easement?
 - An Easement is an interest in land—a non-possessory interest in the land of another.
- What is Right-of-Way?
 - Right-of-Way might be an easement or it might be fee simple ownership.
 - It depends on how the Right-of-Way was conveyed/dedicated to the City.



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Fee Simple

- When does a City acquire Fee Simple interest in property?
 - Conveyance without limitation as to time.
 - Typically accomplished via Deed.
 - Warranty Deed vs. Quit Claim Deed
 - A Warranty Deed provides certain "warrants" as to the state of title.
 - A Quit Claim Deed is a mere transfer of whatever ownership interest, if any, the Grantor has the right to transfer.



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Easements 101

- What is included in an Easement's purpose?
 - Road Easement
 - Authorizes vehicular traffic
 - What about pedestrian traffic?
 - Placement of utilities?
 - Temporary Construction Easement
 - Authorizes the holder of the Easement to access a specified area for construction purposes.
 - Might not include authorization for future maintenance.
 - Utility Easement
 - Likely includes electric, sanitary sewer, water, and gas.
 - What about fiber?



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Acquiring Right-of-Way


- Means of acquiring right-of-way:
 - City can acquire the fee simple interest in right-of-way.
 - City can acquire right-of-way as an easement.
 - Right-of-way can be condemned or dedicated.



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Dedication


- Dedication can be accomplished in two ways:
 - Statutory dedication
 - Common law dedication
- If a dedication of property for public use is by a private party for a specific or defined purpose, neither the legislature nor a municipality has any power to authorize the use of the property for any purpose other than the one designated. *Kirkwood v. City of St. Louis*, 351 S.W.2d 781, 784 (Mo.1961).



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Dedication of Land vs Dedication of Improvements


- To establish a statutory dedication by plat, Section 445.070.2, RSMo., provides that:
 - “Such maps or **plats of such cities**, towns, villages and additions made, acknowledged, certified and recorded, **shall be a sufficient conveyance to vest the fee of such parcels of land as are therein named, described or intended for public uses in such city**, town or village, when incorporated, in trust and for the uses therein named, expressed or intended, and for no other use or purpose.” (emphasis added).
- While that section speaks in terms of “the fee of such parcels of land,” the governmental entity **does not obtain a fee simple title**, but rather, a dedication, and its acceptance amounts to a conveyance in trust for the uses named. *Sally v. City of Rolla*, 884 S.W.2d 380, 381-382 (Mo. App. S.D. 1994).



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Dedication of Land vs Dedication of Improvements

- What happens if private easements or roads already exist and the users of the easements want to dedicate the easements?
 - Easements can be dedicated to the City by a Deed of Dedication.
 - The Deed of Dedication describes the easements being dedicated to the City.
- “[T]he fee [simple title]... remains in those who owned the land at the time of its dedication to public use, and in their successors in title; and if ever the [property] were vacated and their public use abandoned, the original owners, or their grantees, will thereafter hold the same freed from the burden of the former use.” *Wilby v. Lieurance*, 619 S.W.2d 866, 871 (Mo. App. S.D. 1981).



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Dedicatory Language on a Plat

➤ Dedicatory language on the Plat

- Use actual conveyance language for dedicating the streets to the City.
- Dedicate utility easements for the construction, operation, and maintenance of sanitary sewers, gas lines, water lines, storm sewers, electric power lines, cable television lines, telecommunication lines, and equipment related thereto, and for drainage purposes.
- List the City and ALL utility companies and their successors and assigns.



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Dedicatory Language on the Plat

Owner's Certification

The undersigned owner of land described on this plat and in the Surveyor's Certification set forth hereon (sometimes referred to herein collectively as "Grantor"), has caused said tract of land to be subdivided as shown on this plat, which subdivision shall hereafter be known as: "_____"

and Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration paid by the City of _____, Missouri (sometimes referred to herein as "Grantee"), the receipt and sufficiency of which are hereby acknowledged, do by these presents, as their interests may appear, BARGAIN AND SELL, CONVEY AND CONFIRM unto Grantee, [insert names of streets] (the "Streets and Roadways").

TO HAVE AND TO HOLD the Streets and Roadways, together with all rights, easements and appurtenances to the same belonging unto the Grantee, and to Grantee's successors and assigns forever. Grantor hereby covenants that Grantor and Grantor's successors and assigns shall and will WARRANT AND DEFEND the title to the Streets and Roadways unto Grantee and to Grantee's successors and assigns forever, against the lawful claims of all persons claiming by, through, or under the Grantor, but none other, excepting, however: (i) all general taxes and assessments, including sewer assessments (if any) for the calendar year 202_ and thereafter, (ii) special taxes and assessments (if any) due and payable after the date hereof, (iii) any zoning law or ordinances affecting the Streets and Roadways, and (iv) all building lines, easements, covenants and restrictions, rights of way, and use and occupancy restrictions of record, if any, and all matters that would be disclosed by an accurate survey and inspection of the Streets and Roadways, including, but not limited to, boundary line disputes, overlaps and encroachments.



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Dedicatory Language on the Plat etd.

The undersigned do hereby dedicate the easements shown as drainage, sewer, and/or utility easements on this plat for the purpose of permitting the construction, operation, and maintenance of sanitary sewers, gas lines, water lines, storm sewers, electric power lines, cable television lines, telecommunication lines, and equipment related thereto, and for drainage purposes. Said easements are hereby dedicated to the City of _____, Missouri, its successors and assigns, Union Electric Company, d/b/a AMERENUE, AT&T Corp., Falcon Telecable, a California Limited Partnership, d/b/a Charter Communications, and Spire Inc., and their successors and assigns, for the purpose of installing, operating, and maintaining such utilities and related equipment.

The City of _____, Missouri, Union Electric Company, d/b/a AMERENUE, AT&T Corp., Falcon Telecable, a California Limited Partnership, d/b/a Charter Communications, and Spire Inc. are hereby further granted the right to survey, stake, construct, reconstruct, place, keep, operate, maintain, inspect, control, add to and relocate at will, at any time, and from time to time, in, on, upon, along, over, through and across, the herein described easements, sanitary sewers, gas lines, water lines, storm sewers, electric power lines, cable television lines, and telecommunication lines, including any and all equipment and other appurtenances normally associated therewith.

This conveyance and dedication shall take effect upon its execution by Grantor and its approval and acceptance by the Board of Aldermen of the City of _____, Missouri.

All provisions of the dedication, including the benefits and burdens, are deemed to be covenants running with the land and are binding upon and inure to the benefit of the parties named herein, and their respective successors and assigns.



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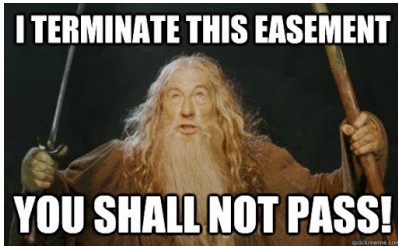
Expanded Use of Easements

- Section 523.283.1, RSMo.—“Easements or right-of-way interests acquired after August 28, 2006, by a private utility company, public utility, rural electric cooperative, **municipally owned utility**, pipeline, or railroad, by either formal condemnation proceedings or by negotiations in lieu of condemnation proceedings, **are fixed and determined by the particular use for which the property was acquired as described in either the instrument of conveyance or in the condemnation petition. Expanded use of the property** beyond that which is described in the instrument of conveyance or the condemnation petition **shall require either an additional condemnation proceeding in order to acquire the additional rights or by new negotiations for the expanded use of the property** and appropriate consideration and damages to the current owner of the property for the expanded use.”
- “Expanded use” includes “a different type of use or a use presenting an unreasonably burdensome impact on the property, the landowner, or the activities being conducted on the property by the landowner.”



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Vacating Right-of-Way



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Vacating Right-of-Way

- Pursuant to Sections 88.637 and 88.673, RSMo., the City Council in a 3rd Class City, and the Board of Aldermen in a 4th Class City, have the power to vacate the public use of a public street. This should be done by ordinance.
- However, under Section 89.380, RSMo., a street cannot be vacated until the Planning & Zoning Commission approves the street vacation.
 - Section 89.380, RSMo. “The acceptance, widening, **removal**, extension, relocation, narrowing, **vacation**, abandonment, change of use, acquisition of land for, sale or lease **of any street or other public facility** is subject to [approval by the Planning & Zoning Commission], and the failure to approve may be [overruled by the governing body]. The failure of the commission to act within sixty days after the date of official submission to it shall be deemed approval.”



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Vacating Right-of-Way

- “It is a well recognized rule in the State of Missouri that when streets and alleys are vacated by the public authority the title and interest in the streets and alleys revert to adjoining property owners.” *Marks v. Bettendorf's, Inc.*, 337 S.W.2d 585, 593 (Mo. App. 1960)
- “The conveyance of the property owner's lot abutting upon a street or alley will carry the fee simple title in the street and alley subject to the public uses contained in the instrument of dedication. On vacation of the street or alley the title reverts to the abutting owners free of the public easement.” *Marks v. Bettendorf's, Inc.*, 337 S.W.2d 585, 593-94 (Mo. App. 1960)



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Vacating Right-of-Way

- Vacating Right-of-Way is **not** the same as conveying property.
- In a vacation, the City is not granting any property interest.
- Instead, the City is merely abandoning and releasing its property interest(s).
- If a resident asks for conveyance of vacated Right-of-Way, the answer is “no”, **UNLESS** the City acquired the Right-of-Way in fee.
 - In that circumstance, the City can vacate its Right-of-Way interest **AND** convey its fee simple ownership.



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Title Issues—Practical and Legal Considerations Businesses

- Confirming property ownership
 - Good: Type the address into the County Assessor's Database.
 - Unfortunately, this is not always accurate, especially if there are fractional ownership interests.
 - **Best:** Obtain a letter report from a title company.
 - The title company will review the public records and confirm who owns the property.



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Title Issues—Practical and Legal Considerations Businesses

- Should a City get title insurance?
- What are the “standard exceptions” to title insurance?
- How does a City resolve exceptions to title insurance shown on Schedule B-II?
- Should a City ask for title insurance endorsements?



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Title Issues—Practical and Legal Considerations Businesses

- **Common Title Insurance Endorsements**
- ALTA 9 Series - Restrictions, Encroachments, Minerals - “Comprehensive”
 - Coverage for Encroachments
 - Violations of Covenants, Conditions & Restrictions
 - Damages for mineral production
- ALTA 25 - Survey coverage
 - “Same as Survey”
 - The property being purchased is the same property shown on the survey
- ALTA 19 – Contiguity
 - If two or more parcels are being insured, this endorsement provides insurance against a claim that there are gaps in the property being conveyed.



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Grantee's Acceptance of Real Estate Donation

- What happens if property is conveyed to the City without its knowledge?



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Grantee's Acceptance of Real Estate Donation

➤ **Section 49.292, RSMo.**

➤1. Notwithstanding any other law to the contrary, the county commission of any county may reject the transfer of title of real property to the county by donation or dedication if the commission determines that such rejection is in the public interest of the county.

➤2. **No transfer of title of real property to the county commission or any other political subdivision by donation or dedication authorized to be recorded in the office of the recorder of deeds shall be valid unless it has been proved or acknowledged. The preparer of the document relating to subsection 1 of this section shall not submit a document to the recorder of deeds for recording unless the acceptance thereof of the grantee named in the document has been proved or acknowledged.** No water or sewer line easement shall be construed as a transfer of title of real property under this subsection.

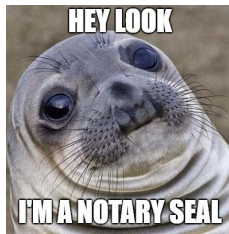


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Proper Use of Notary Acknowledgements

➤In 2020, the Missouri General Assembly revised the standard notarial signature blocks.

➤Since 2020, the formerly approved notarial signature blocks are still widely used.



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Proper Use of Notary Acknowledgements

➤Section 442.210, RSMo., contains notarial acknowledgements which “**may be used** in the case of conveyances or other written instruments affecting real estate.” There are forms for:

- Natural persons acting in their own right;
- Natural persons acting by attorney; and
- Corporations or joint stock associations

➤“We quickly recognize that the language of **Section 442.210** (including the forms of acknowledgment which ‘may be used in written instruments affecting real estate’) **is permissive and not mandatory**, and we heartily endorse the salutary principle, which has found application in a variety of circumstances, that **substantial compliance with statutory provisions pertaining to acknowledgments will suffice**. But, although the law requires nothing more than such substantial compliance, it is satisfied with nothing less.” *Hatcher v. Hall*, 292 S.W.2d 619, 622 (Mo. App. 1956).



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Proper Use of Notary Acknowledgements

➤Section 486.750, RSMo.—Passed in 2020

- Used for the "signature or mark of any person acknowledging on his or her own behalf or as a partner, corporate officer, attorney in fact, or in any other representative capacity."
- On this day of, 20... before me, the undersigned notary, personally appeared (name of document signer), (personally known to me)(proved to me through identification documents, which were)(proved to me on the oath or affirmation of, who is personally known to me and stated to me that (he)(she) personally knows the document signer and is unaffected by the document.) (proved to me on the oath or affirmation of and whose identities have been proven to me through identification documents and who have stated to me that they personally know the document signer and are unaffected by the document.) to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)(she) signed it voluntarily for its stated purpose(.)
 (as partner for, a partnership.)
 (as for, a corporation.)
 (as attorney in fact for, the principal.)
 (asfor, (a)(the).....)



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Questions



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THANK YOU!!

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