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840.15 EASEMENT BY PLAT.

The (state number) issue reads:

"Does the [plaintiff] [defendant] have an easement [on] [over] [across] [under] the land of the [defendant] [plaintiff] as shown on the plat recorded in Book (*state book number*) Page (*state page number*) of the (*state county*) Registry?"

(An easement is a right to make (a) specific use(s) of land owned by another.<sup>1</sup> One who has an easement does not own the land but has only the right to use the land for the purpose(s) of the easement.<sup>2</sup> The owner of land burdened by an easement continues to have all of the rights of a landowner which are not inconsistent with the easement.<sup>3</sup>)

In this case, the (*party attempting to prove the easement by plat*) claims the right to an easement arising from (*describe recording*) in Book (*state book number*) Page (*state page number*). An easement created in such manner is called an easement by plat.<sup>4</sup>

On this issue the burden of proof is on the (*party attempting to prove the easement by plat*). This means that the (*party attempting to prove the easement by plat*) must prove, by the greater weight of the evidence, two things:

First, that [developer] [one or more previous owners in the chain of title] had the intent to share use of the land in certain specific respects with owners of other property shown on the plat.<sup>5</sup> Such intention may be shown by deed, by words, or by acts.<sup>6</sup> The evidence in support of the intent of a [developer] [and] [or] [one or more previous owners in the chain of title] to create an easement by plat should be clear and unmistakable in purpose and decisive in character to have that effect.<sup>7</sup>

Second, that a deed in the (*party attempting to prove the easement by plat*)’s chain of title must include reference to the recorded plat claimed to have given rise to the easement<sup>8</sup> and the easement areas must be sufficiently identified on the recorded plat.<sup>9</sup>

Finally, as to the (*state number*) issue on which the (*party attempting to prove the easement by plat*) has the burden of proof, if you find by the greater weight of the evidence that the [developer] [one or more previous owners in the chain of title] had the intent to share use of the land in certain specific respects with owners of other property shown on the plat, such intention shown by clear and unmistakable evidence to that effect, and that the recorded plat claimed to have been an expression of that intent was referenced by sufficient identification in a deed within the (*party attempting to prove the easement by plat*)’s chain of title, then it would be your duty to answer this issue “Yes” in favor of the (*party attempting to prove the easement by plat*).

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the (*party refuting easement by plat*).

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1. *Builders Supplies Co. of Goldsboro, N.C. v. Gainey*, 282 N.C. 261, 266, 192 S.E.2d 449, 453 (1972).

2. *Thomas v. Morris*, 190 N.C. 244, 244, 249–50, 129 S.E. 623, 626 (1925).

3. *North Asheboro-Central Falls Sanitary Dist. v. Canoy*, 252 N.C. 749, 753, 114 S.E.2d 577, 581 (1960); see also *Nantahala Power & Light Co. v. Carringer*, 220 N.C. 57, 57, 16 S.E.2d 453, 454 (1941); *Duke Power Co. v. Rogers*, 271 N.C. 318, 320, 156 S.E.2d 244, 246 (1967).

4. *Cleveland Realty Co. v. Hobbs*, 261 N.C. 414, 421, 135 S.E.2d 30, 35–36 (1964) (noting North Carolina’s recognition of appurtenant easements by use of a plat map); see also *Cape Homeowners Ass’n, Inc. v. S. Destiny, LLC*, 284 N.C. App. 237, 248, 876 S.E.2d 568, 575 (2022); *Home Realty Co. & Insurance Agency v. Red Fox Country Club Owners Ass’n*, 274 N.C. App. 258, 277–78, 852 S.E.2d 413, 426–27 (2020); *Sauls v. Barbour*, 273 N.C. App. 325, 333, 848 S.E.2d 292, 299 (2020); *Friends of Crooked Creek, L.L.C. v. C.C. Partners, Inc.*, 254 N.C. App. 384, 392, 802 S.E.2d 908, 914 (2017); *Shear v. Stevens Bldg. Co.*, 107 N.C. App. 154, 162, 418 S.E.2d 841, 846 (1992).

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5. *Friends of Crooked Creek, L.L.C. v. C.C. Partners, Inc.*, 254 N.C. App. 384, 392, 802 S.E.2d 908, 914 (2017); *Harry v. Crescent Res., Inc.*, 136 N.C. App. 71, 81, 523 S.E.2d 118, 124 (1999).

6. See *Kraft v. Town of Mt. Olive*, 183 N.C. App. 415, 418, 645 S.E.2d 132, 135 (2007).

7. See *Hovey v. Sand Dollar Shores Homeowner's Ass'n, Inc.*, 276 N.C. App. 281, 287, 857 S.E.2d 358, 363 (2021).

8. *Friends of Crooked Creek, L.L.C. v. C.C. Partners, Inc.*, 254 N.C. App. 384, 393, 802 S.E.2d 908, 914 (2017).

9. *Cape Homeowners Ass'n, Inc. v. S. Destiny, LLC*, 284 N.C. App. 237, 248, 876 S.E.2d 568, 575 (2022).