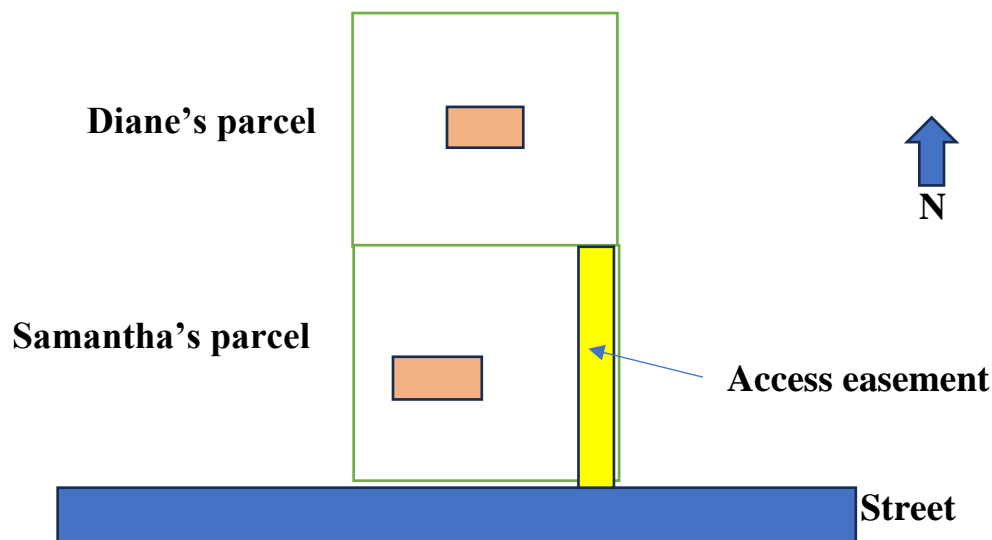


**Simulation Exercise (Document Preparation):
The Wheeler Sisters—Conveyance of
A Residential Easement***



This lawyering problem involves a conveyance of an express easement. The problem involves partition of a piece of land into two parcels, one of which is landlocked.

(1) *Background.* The Wheeler Sisters inherited, as tenants in common, a parcel of land that is 200 feet wide and 400 feet deep, fronting on a public street and surrounded on the other three sides by land owned by others. They are currently in court petitioning for a partition of the parcel, such that Samantha Wheeler will own the front parcel, 200 by 200 feet, and Diane Wheeler will own the back parcel, also 200 by 200 feet. (You will not be drafting any of the partition documents.) Diane will need a driveway easement to access her property, which otherwise will be landlocked. Assume that you represent Diane, that you will draft her easement, and that it will be recorded at the same time that the land is partitioned.

(2) *Legal Description.* The co-tenancy parcel is legally described as “Lot 67, Block 5, Section A, Shady Acres Subdivision, a subdivision of the City of New Bradenton, Manero County, State of West York.” Samantha’s street-fronting property will be the southern half of the lot; Diane’s lot is the northern half, the landlocked portion. The sisters have agreed that the access (or driveway) easement will cover a strip of land ten feet wide along the eastern boundary of Samantha’s property, uniting Diane’s lot with the public street.

(3) *The Easement.* You should draft a document conveying the easement. Use the warranty deed form that is reproduced in your casebook, adapting it to your needs,

* From CRUMP, CAUDILL & HRICIK, *PROPERTY: CASES, DOCUMENTS, AND LAWYERING STRATEGIES* (Carolina Press, 4th ed. 2020).

perhaps changing the title to “Easement.” This is the same deed form that is used to convey a fee simple, but instead of merely including the co-tenancy property description (which would convey a fee simple interest), your property description will begin with the words “An easement” Then, adapt the description of the lot that is set forth above. You will need to include the lot, block, section, county, and state in your easement description. Draft the easement so that it covers ingress and egress—note that an easement can be permanently fixed or provide for modification by the easement holder. The easement should also provide for Diane’s utility connections (Should you simply use a generic reference to “utilities,” or should they be described as “electricity, gas, and water,” or similar language? Does “utilities” include cable television or other data, or whatever connections may exist in the future?)

QUESTIONS TO CONSIDER:

1. If the property is not in a residential neighborhood with covenants, conditions and restrictions, might the sisters also want a residential-only restriction?
2. Aesthetics may also be important—a *paved* driveway? *Underground* utilities?
3. If neither sister knows exactly where she intends to build on the property, or what the future may bring, could you draft a resolution of this issue that can be inserted in the easement? Some use language like “location of the easement may be relocated in the discretion of either the servient estate or the dominant estate holder, provided that the other estate holder is not materially inconvenienced.” (You should know that such language does not prevent future disputes about “materiality.”) Does this language turn a conveyance into a contract requiring both grantor and grantee as signatories? Perhaps not, if the grantor is seen as reserving a right to herself in the easement grant.
4. Is a general warranty deed form appropriate, rather than a limited or special warranty deed form? It seems odd for Samantha to warrant title to a property interest that derives from both Samantha and Diane?
5. Will the sisters have to get subdivision approval from the city in which they live?