

Party & Retaining Wall Easements

Survey + Spatial NZ, 4 August 2021

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Property – Resource Management - Unit Titles



▶ *Where do I begin?*

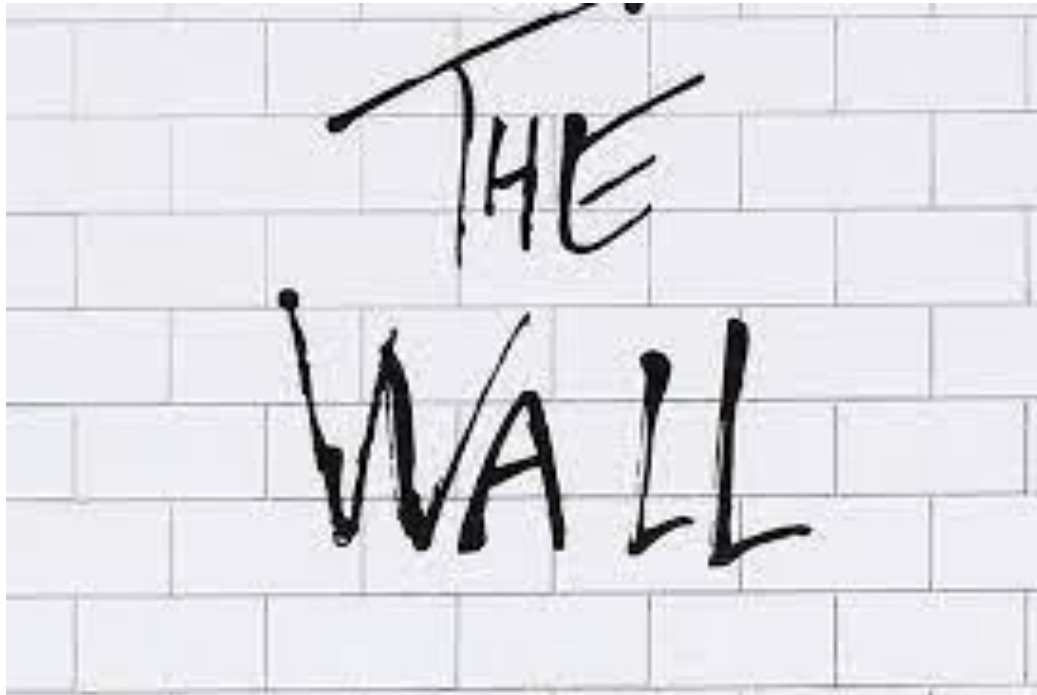
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1. I posted on my Harmon Enterprises **business page timeline**.

2. The post appears in my **personal News Feed**.

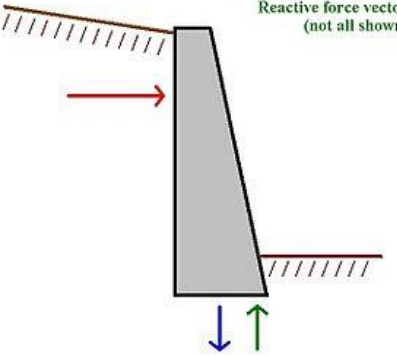
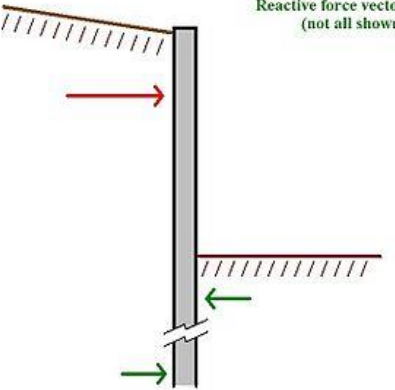
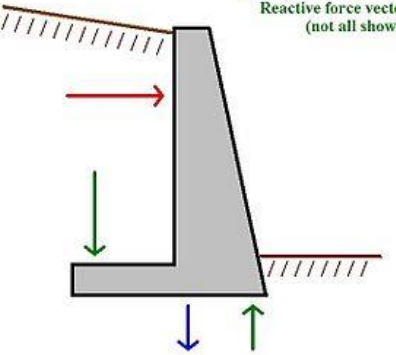
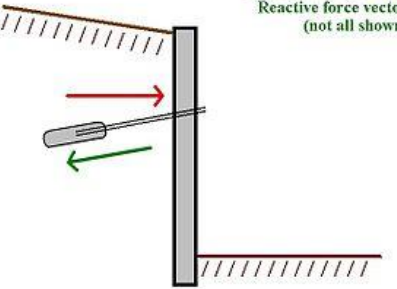
The News Feed (also known as the "home page" of Facebook) is what you see when you first log into Facebook. I see the post from my business page in the News Feed because I "like" my business page.



3. The post is **NOT** appearing on my **personal profile's timeline**. My profile is totally separate from my Harmon Enterprises business page. My profile is the "administrator" of my business page. Any posts I make on my business page are not appearing on my profile, even though it appears in my News Feed.

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Simplified explanation of typical retaining walls

<p>Gravity wall</p>  <p>Earth pressure vector Gravity vector (of wall) Reactive force vector (not all shown)</p>	<p>Piling wall</p>  <p>Earth pressure vector Gravity vector (of wall) Reactive force vector (not all shown)</p>	<p>Cantilever wall</p>  <p>Earth pressure vector Gravity vector (of wall) Reactive force vector (not all shown)</p>	<p>Anchored wall</p>  <p>Earth pressure vector Gravity vector (of wall) Reactive force vector (not all shown)</p>
<p>Standard wall type that holds the earth mainly through its own weight. Can pivot and topple relatively easily, as the internal leverage of the earth pressure is very high.</p>	<p>Using long piles, this wall is fixed by soil on both sides of its lower length. If the piles themselves can resist the bending forces, this wall can take high loads.</p>	<p>The cantilever wall (which may also extend in the other direction) uses the same earth pressure trying to topple it to stabilize itself with a second lever arm.</p>	<p>This wall keeps itself from toppling by having cables driven into the soil or rock, fixed by expanding anchors (can be combined with other types of walls).</p>

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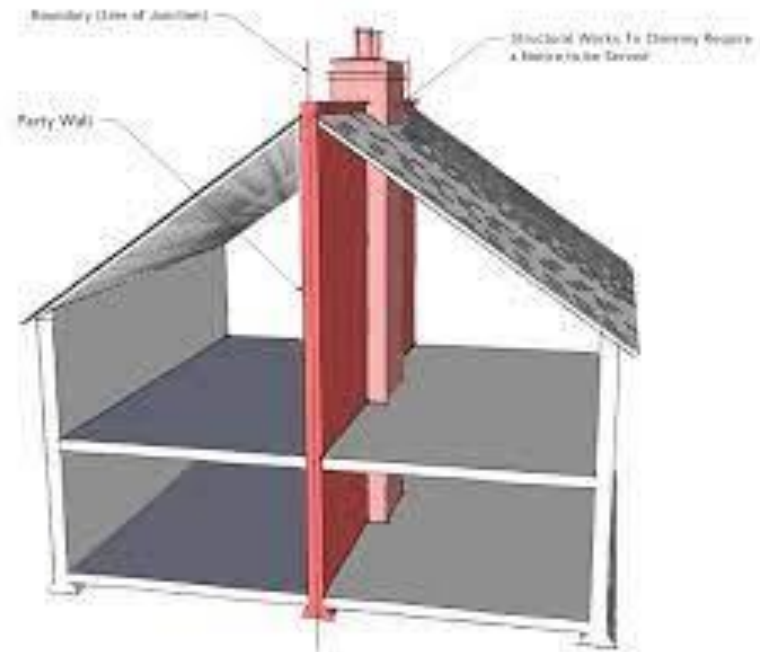
Retaining Wall



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Party Wall



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Outline

- ▶ Definitions
- ▶ Building Act issues
- ▶ Subdivision issues
- ▶ Easements vs covenants
- ▶ Tenure
- ▶ Zero lot boundaries
- ▶ Other issues

Party Wall

► Legal definitions:

wall means a wall (other than a wall constructed wholly of wood) which, with respect to any line forming the boundary of land vested in fee in a public authority or any line forming the boundary between sectional subdivisions of such land, stands, or is intended to be erected so as to stand,—

- (a) so that the middle line of such wall coincides with such boundary line; or
- (b) so that any part of such wall stands on one side of such boundary line and another part of such wall on the other side of such boundary line; or
- (c) so that the outer line of such wall coincides with such boundary line, if the wall is so constructed as to provide support for a wall erected or which may be erected immediately adjacent to but on the other side of such line:

Party Wall

- ▶ Legal definitions:

- ▶ **party wall** means a wall which has been erected or is proposed to be erected in accordance with an agreement in writing of persons having any estate or interest in the lands separated by the boundary line.

Public Authorities (Party Wall) Empowering Act 1919

Retaining Wall

- ▶ Legal definitions:
- ▶ ***Building Act 2004, Schedule 1 (exempted works)***

20 Retaining walls

Building work in connection with a retaining wall that—

- (a) retains not more than 1.5 metres depth of ground; and
- (b) does not support any surcharge or any load additional to the load of that ground (for example, the load of vehicles).

Outline



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Issue

- ▶ Retaining wall built as part of civil works
- ▶ Council identifies retaining wall as a 'building' (over 1.5m in height)
- ▶ The 'building' crosses more than one (underlying) title

Issue

► Building Act 2004, section 75

75 Construction of building on 2 or more allotments

(1) This section applies if—

(a) an **application** for a project information memorandum or **for a building consent** relates to the construction of a building **on land** that is comprised, or partly **comprised, of 2 or more allotments** of 1 or more existing subdivisions (whether comprised in the same record of title or not); and

(b) those allotments are held by the owner in fee simple.

(2) The **territorial authority must issue a certificate** that states that, as a condition of the grant of a building consent for the building work to which the application relates, 1 or more of **those allotments** specified by the territorial authority (the specified allotments) **must not be transferred or leased except in conjunction with any specified other** or others of those allotments.

Issue

- ▶ Building Act 2004, section 75
- ▶ Where a building crosses more than 1 lot, TA must issue a certificate requiring lots to be held together
- ▶ Implication is that subdivided lots can't be sold separately

Solution

► Building Act 2004, section 76

76 Exemption from section 75

(1) Section 75 does not apply if—

- (a) the owner proposes to construct a building with party walls that will be on the boundaries of the allotments referred to in that section; or

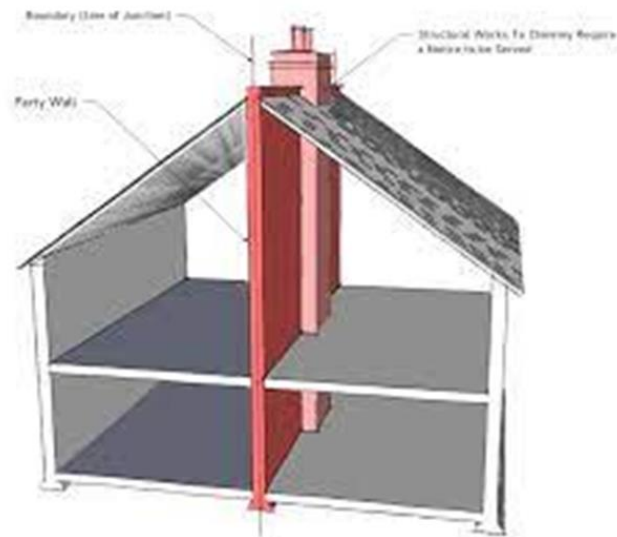
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Solution

- ▶ Building Act 2004, section 76
 - ▶ You can avoid the requirement for lots to be held together by creating a party wall easement
 - ▶ (Other solution – removal of section 75 cert under section 83, based on demolition, adjusted boundaries, or changed circumstances)

Solution

- ▶ Building Act 2004, section 76
- ▶ You can avoid the requirement for lots to be held together by creating a party wall easement



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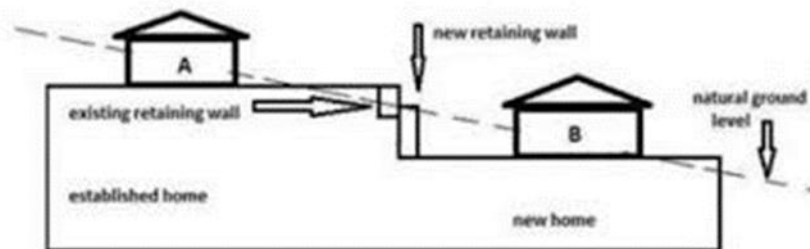
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Party Wall / Retaining Wall

- ▶ Easement or Covenant?
 - ▶ An easement is a right to use someone else's land
 - ▶ A covenant is an obligation to use (or not use) your own land in a particular way

Party Wall / Retaining Wall

- ▶ Easement or Covenant?
 - ▶ An easement is a right to use someone else's land
 - ▶ ***Eg, right to have the benefit of a retaining wall***
- ▶ A covenant is an obligation to use (or not use) your own land in a particular way
 - ▶ ***Eg, not to disturb retaining wall***





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Party Wall / Retaining Wall

- ▶ Traditionally, easements have had an 'area', while land covenants have been over the whole of the land
- ▶ Therefore, a need for surveyor to create parcel for easement (but not for a covenant)
- ▶ May depend on whether covenant is over whole land or over a part/piece of the land

Party Wall / Retaining Wall

- ▶ Easement or covenant is 'non-primary parcel' under Cadastral Survey Rules 2021
- ▶ Rules 93, 94, 95 – new and existing easements, and covenants
- ▶ My reading: you will likely need a parcel identifier whether an easement or covenant is used

Party Wall / Retaining Wall

- ▶ My view – easement is better

Party Wall / Retaining Wall

Schedule of Proposed Easements			
Purpose	Shown	Servient Tenement	Dominant Tenement
Right of Way (Pedestrian Access)	E, F, G & H	Lot 201 DP 526636	Lots 1-20 DP 526636
Retaining Wall	M	Lot 14 DP 526636	Lot 21 DP 526636
	N	Lot 16 DP 526636	Lot 23 DP 526636
	O	Lot 21 DP 526636	Lot 14 DP 526636
	P	Lot 23 DP 526636	Lot 16 DP 526636
Security	Q	Lot 1 DP 526636	Lot 201 DP 526636

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UNDER LAND TRANSFER ACT 2017

FREEHOLD

Record type



[Signature]
Registrar-General
of Land

Identifier

WN1234567

Record of Title reference

Land Registration District

Wellington

Land District

Date Issued

15 November 2018

Date of issue of title

Prior References

NA106A/123

Prior title reference

Estate

Fee Simple

Area

4096 square metres more or less

Legal Description

Lots 1-4 Deposited Plan 123456

Details of land in title

Registered Owners

Joe Bloggs

Current owner

Interests

List of current registered interests

Subject to a right to convey water (in gross) over part marked A on DP 1234756 in favour of DEF Limited created by Transfer 185497

Subject to a right to drain water over part marked F on DP 123456 created by Easement Instrument S777483.7 - 2.6.2011 at 1:58pm

- ▶ <http://www.millwater.co.nz/downloads/Bonair%204D%20restrictive%20covenants%20P2s4D.pdf>

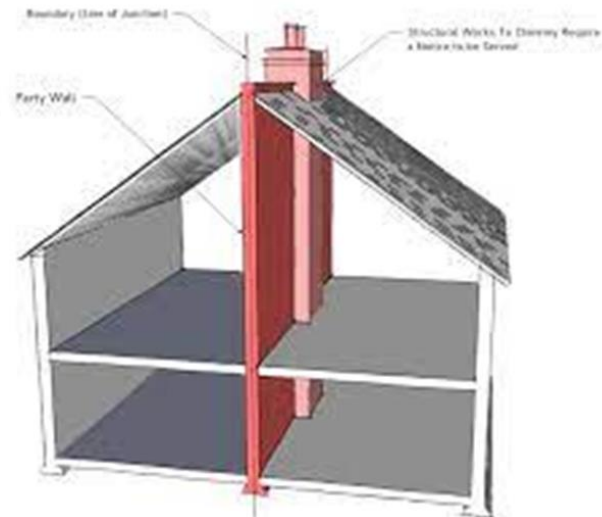
- ▶ Example of 'right of support' easement

- ▶ Key terms

- ▶ Definition of party wall
- ▶ Right to benefit from wall
- ▶ Obligation to pay for maintenance and repair
- ▶ Obligation not to damage
- ▶ Right to demand share of costs (unless caused by that owner)
- ▶ Dispute resolution?

► Issues

- No implied terms for party wall easement
- Depends on individual instrument for terms
- Template vs customised
- Localised impacts vs scale?



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- ▶ Issues

- ▶ No implied terms for party wall easement
- ▶ Depends on individual instrument for terms (ie, legal drafting)
- ▶ Template vs customised
- ▶ Localised impacts vs scale?
- ▶ *Legal drafting / Crystal ball gazing*



► Issues

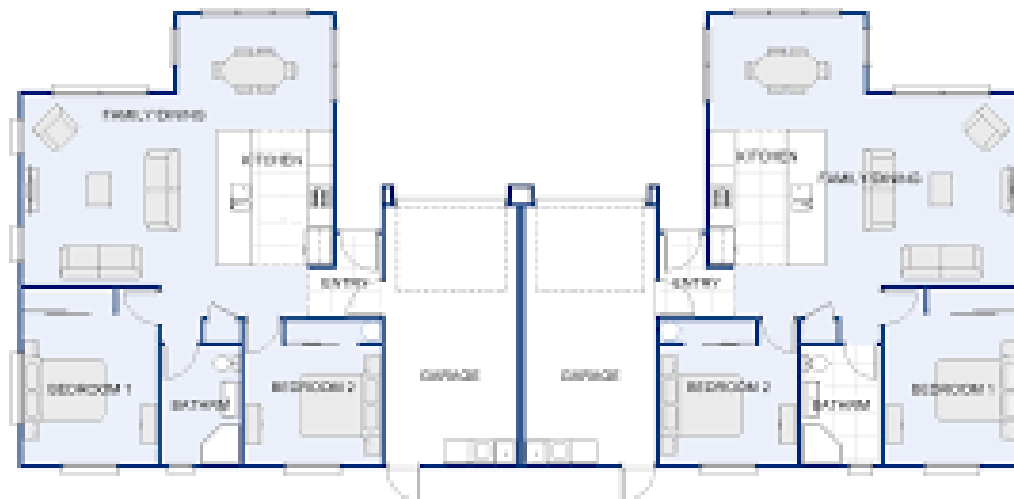
- *Legal drafting /
Crystal ball
gazing*



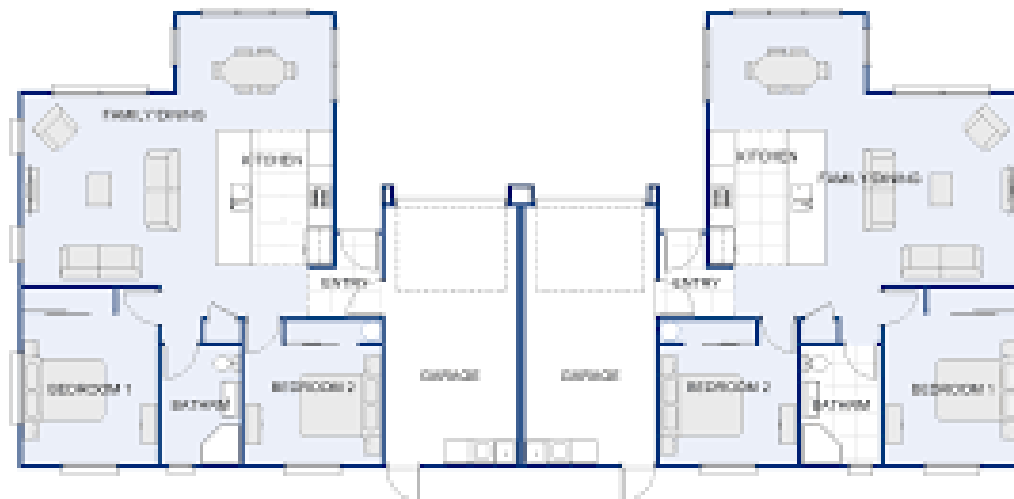
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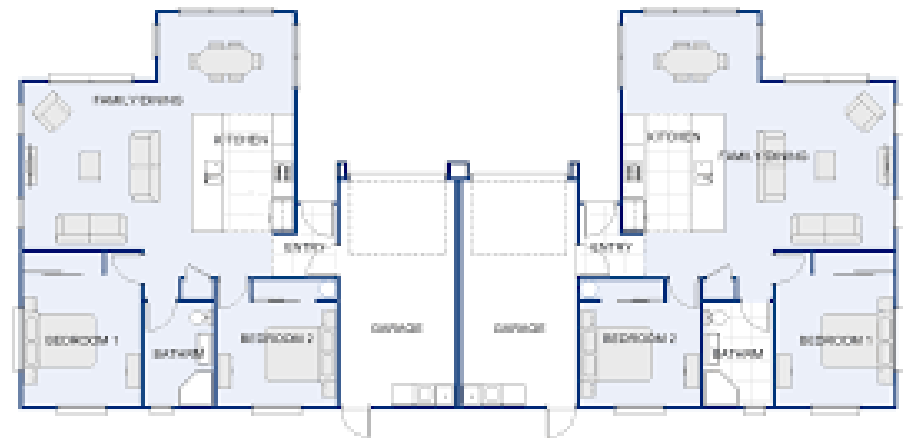
► Duplex unit titles



► Duplex with party wall



► Spot the difference?

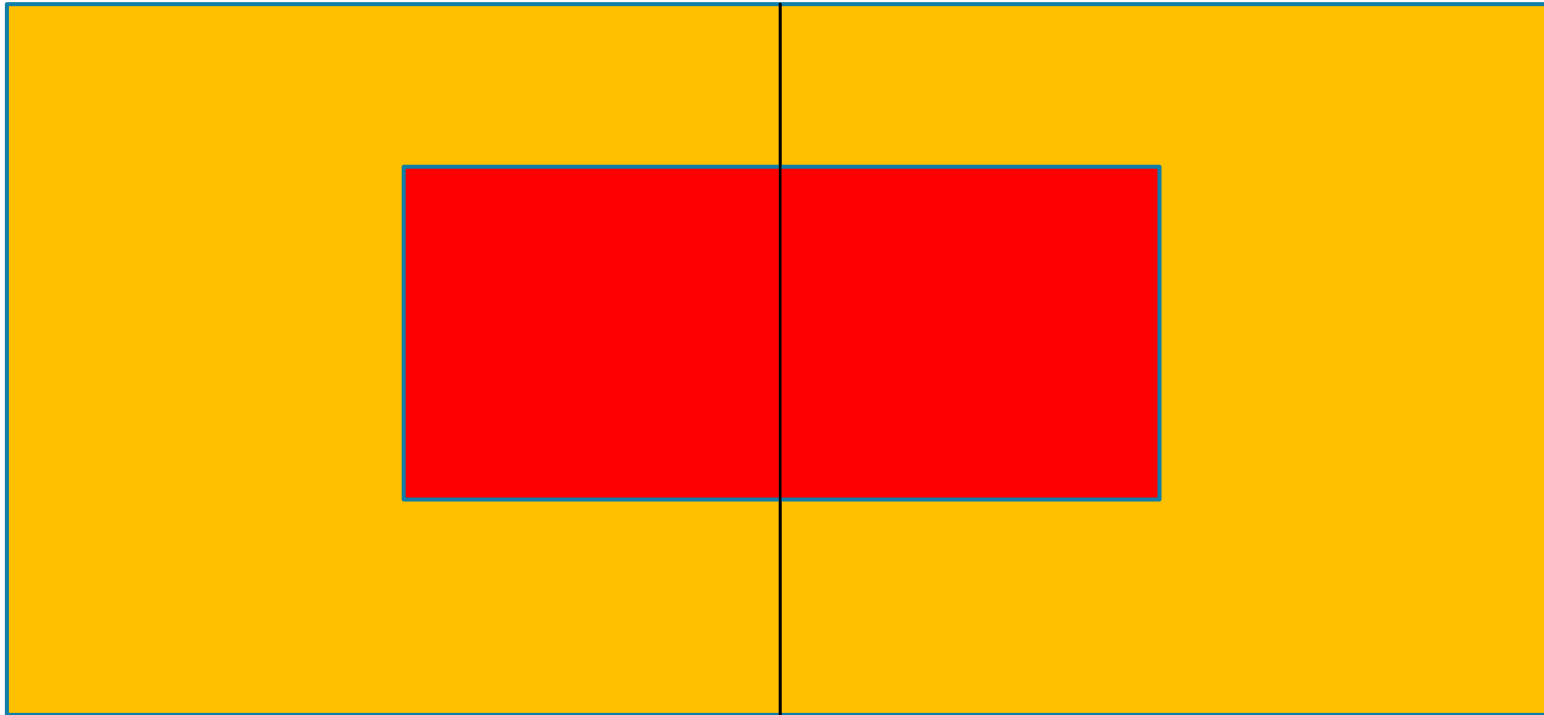


► Spot the difference?

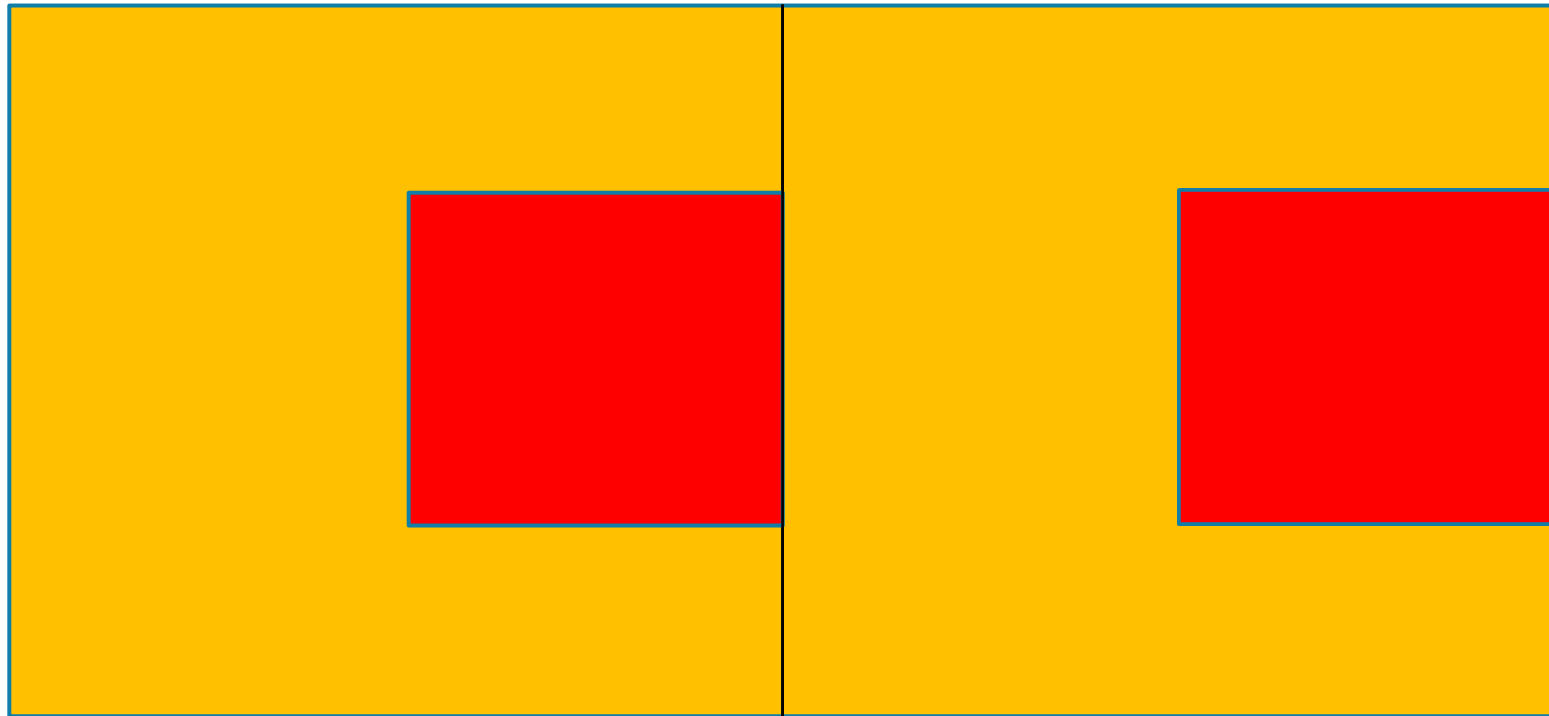


- [illegible]

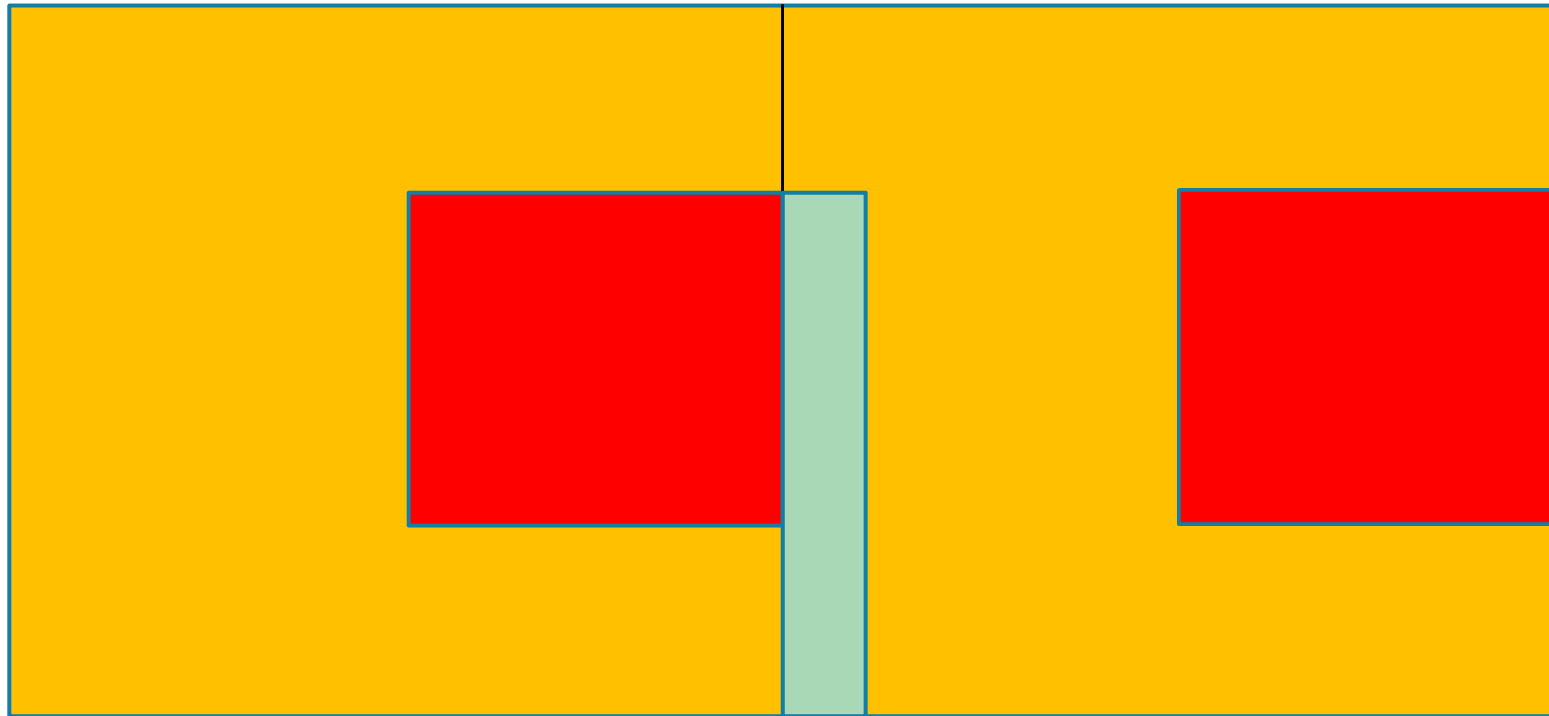
► Zero lot boundaries



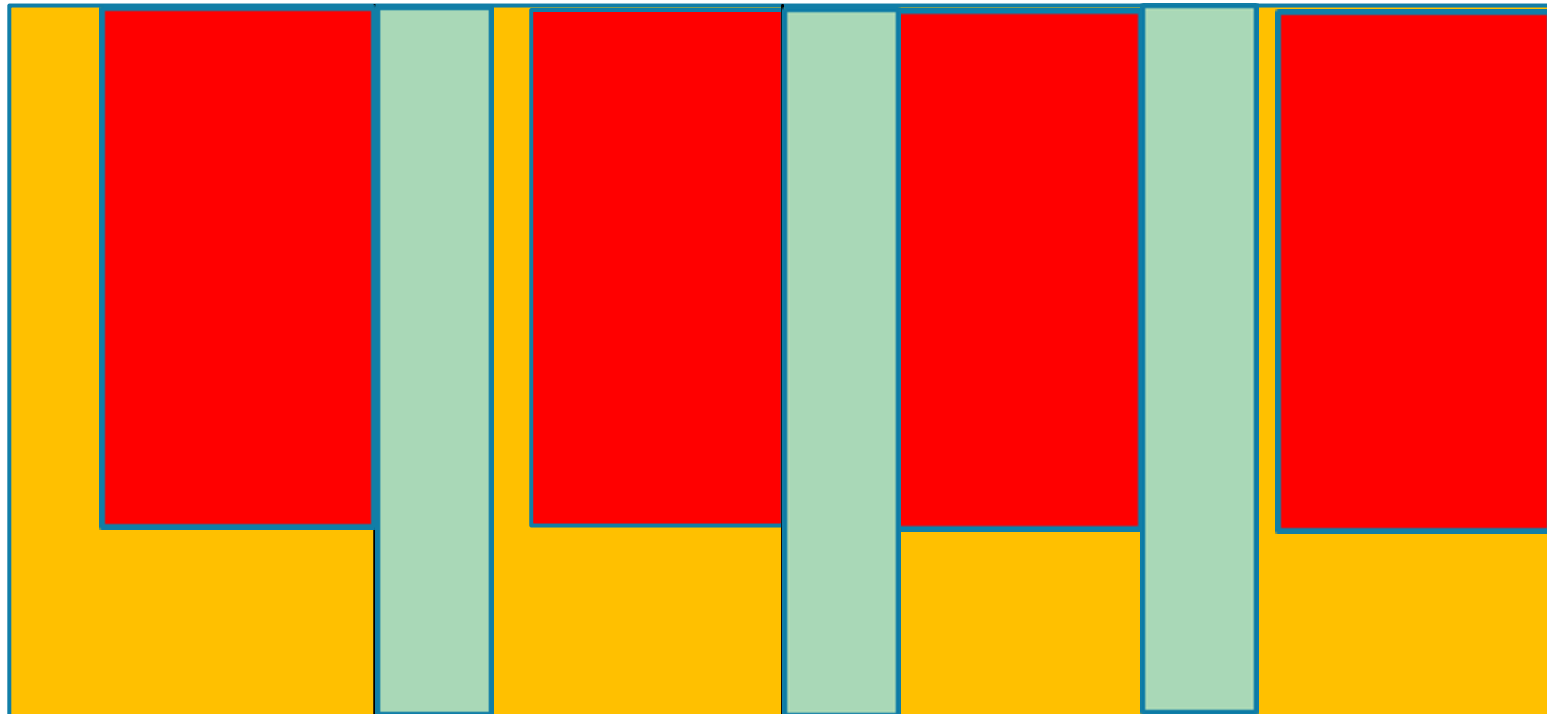
► Zero lot boundaries



► Zero lot boundaries



► Zero lot boundaries



Issues

- ▶ Fee simple – rights determined by easements (and some common law)
- ▶ Cross lease – rights determined by lease
- ▶ Unit titles – rights determined by UTA

Issues

- ▶ Unit Titles Act 2010, s 73:

73 Incidental rights

- (1) **The common property and each unit on a unit plan has appurtenant to it the following rights** over the land to the extent necessary for the reasonable use and enjoyment of the common property or unit:
 - (a) **rights of support**, shelter, and protection ...
 - (b) rights for the passage or provision of water, sewerage, drainage, gas, electricity, oil, garbage, air, all telecommunications and electronic services, and all other services of any nature.

▶ *Problems tenure and easements can't solve*



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Questions?

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