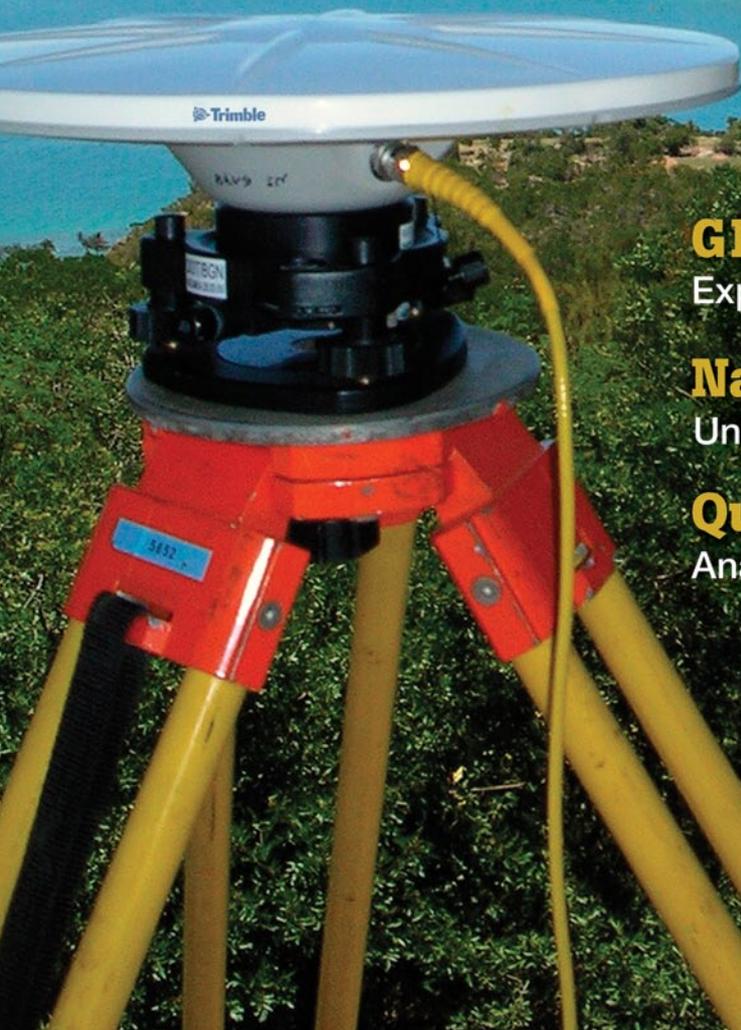


THE American Surveyor

A FOOT IN THE PAST... AN EYE TO THE FUTURE

May 2006

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Part 2: Senior Rights: Here Today, Gone Tomorrow

Editor's note: Part 1 of this article appeared in the Sept/Oct 2005 issue.

The first time a party conveys a portion of his or her land a senior (prior) right is created in favor of the grantee. This right insures the grantee and the grantee's successors that they will always get whatever size parcel the first deed says that they will get, regardless of the dimensions of the parent parcel. The grantor becomes junior and retains the remainder. (An exception to the grantee becoming senior occurs when the deed from "A" to "B" reads "All of Lot 13 Excepting therefrom the Westerly 60.00 feet". "A", the grantor, is senior and is assured of a 60.00-foot parcel.

Parcels of land created from a parent parcel by a common grantor are commonly known as *sequential conveyances*. Senior (prior) rights are determined by examining the deeds of all the parcels created from the parent parcel with respect to the date that they were initially executed, the earliest getting its full measure, the latter getting what is left. Prior to surveying a parcel created sequentially, the surveyor must survey and plot the parent parcel. Then he or she creates a *deed mosaic* by plotting

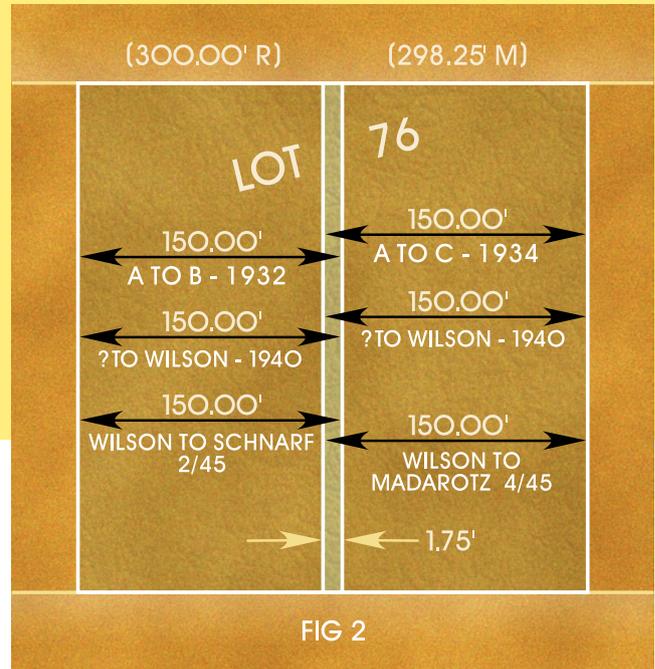
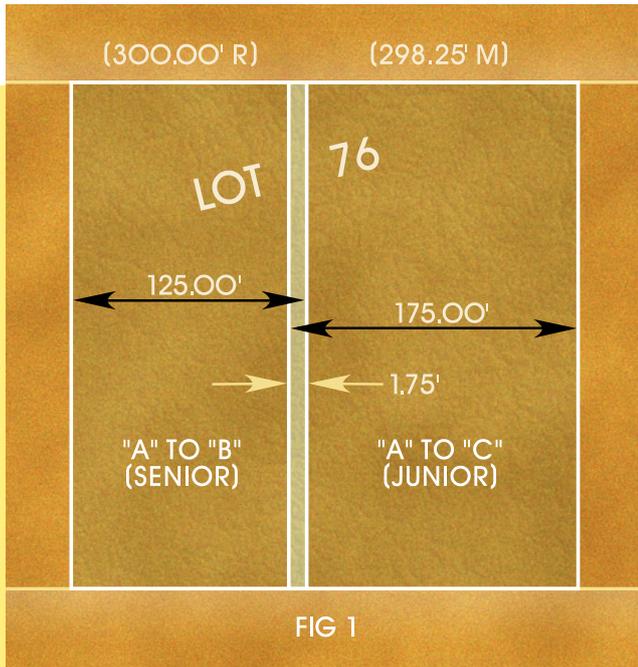
all the parcels created in the parent parcel in chronological order. Once the mosaic is completed and all the gaps and overlaps are discovered, the boundaries of the subject parcel can be resolved on paper. Values are assigned to the parcel corners and the field crew is sent back to monument them.

What if a parcel was conveyed first, becoming the senior parcel? Could something occur to change the senior status of that parcel making it a junior parcel?

Before examining the possibility of such an occurrence, let's examine the following excerpt from *The Law of Real Properties and Boundaries* (Karayan, 1982):

"Grantees of valid deeds protect their interest by recordation. The effect of recordation is that the world has constructive notice of everything contained therein. Recording an otherwise invalid deed does not validate it. Three types of statutes have been adopted; (Check your current state statutes to see which one applies) they differ in how they deal with situations where there is more than one grant of the same property (to different grantees) from a common source (chain) of title. The three types are:

>> By Paul A. Cuomo, LS



- 1) *Pure Race* - grantor conveys to "A"; then conveys to "B"; conveyee (grantee) who records first is given priority over other (even prior) unrecorded conveyees and held to be the owner. (If "B" records first his deed would be valid, even if he had notice of the prior conveyance).
- 2) *Race notice* - grantor conveys to "A", then sells to "B" (for real value) when "A's" deed is yet unrecorded; subsequent bona fide purchaser who takes without notice and records first is held to be the owner. ("B's" prior knowledge of "A's" deed would invalidate his claim, even if "B" records his deed first.)
- 3) *Pure notice* - grantor conveys to "A", then sells (for real value) to "B" when "A's" deed is yet unrecorded; subsequent bona fide purchaser who takes without notice is held to be the owner. (Under a notice statute the last conveyee (grantee) from a

common grantor, without notice of any prior conveyances, would have senior title).

Black defines "notice", in part, as "Information; the result of observation, whether by the senses or the mind; knowledge of the existence of a fact or state of affairs; the means of knowledge". Notice of a prior deed can be *constructive* (recording a deed) or *actual*, such as being told or observing improvements to the property. Improving, enclosing, cultivating or landscaping property has the same effect as recording relative to the notice statute.

Now, suppose that "A" grants the "west 125.00 feet of Lot 76" to "B", and "B" does not record. A few months later

"A" conveys the "east 175.00 feet of Lot 76" to "C", and "C" records. "C" has a survey, which discloses that the lot measures only 298.25 feet east to west. Are there not two deeds conveying the 1.75 foot area of overlap? "B" claims the overlap on the premise that his deed is earlier. Who owns the overlap?

Situation 1 "C" knows about "B's" deed

Pure Race State: "C" would own the overlap. "Conveyee who records first is given priority over other (even prior) unrecorded conveyees and held to be the owner. A portion of "B's" parcel would lose its senior status.

Race Notice and Pure Notice States: "B" would own the overlap and



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maintain senior status. “C” did not take without notice.

Situation 2 “C” has no notice of “B’s” deed

Pure Race State: “C” would own the overlap. “*Conveyee who records first is given priority over other (even prior) unrecorded conveyees and held to be the owner.*” “B’s” parcel would lose its senior status.

Race Notice and Pure Notice States: “C” would own the overlap. “C” had no notice, constructive or actual, of “B’s” deed.

These situations are hard to visualize in today’s world. It is unusual that any conveyance would be made without an escrow, title insurance and recordation. However, as surveyors, we can be called on to analyze and survey deeds that were written long ago.

That being said, let’s explore another way that a senior right might change.

Suppose that “A” grants the “West 150.00 feet of Lot 76” to “B” in 1932 and the “East 150.00 feet of Lot 76” to “C” in 1934. Both deeds are properly recorded. The parcels are conveyed a few more times to others over the next 15 years, all deeds properly recorded. The area has not developed and the parcels in question remain *vacant and un-improved*. In 1940, an investor, Wilson, purchases both parcels in question from their respective owners. Ownership has merged and Wilson now owns all of Lot 76. (Lot 76 may still be considered as containing two parcels in the eyes of the local governing body, the assessor and title company).

Wilson holds the parcels for 5 years and then conveys the “East 150.00 feet of Lot 76” to Schnarf in February of 1945 and the “West 150.00 feet of Lot 76” to Madaratz in April of the same year. Schnarf wants to subdivide and has a survey, which discloses that Lot 76 measures only 298.25 feet in an east-west direction. The surveyor astutely researches the title chain and uncovers the 1932 deed to “B” and declares that the west 150.00 feet is senior to the east 150.00 feet and prepares a plat showing that Schnarf’s parcel as the junior parcel and measuring only 148.25 feet.

I disagree!

My contention is that Schnarf (“East 150.00 feet”) is now the senior parcel, not Madaratz. *Ownership* of the “West 150.00 feet” and the “East 150.00 feet” merged when Wilson acquired

both parcels and there was no longer a junior-senior relationship. Wilson owned *all of Lot 76*, there is no prior right to protect. Schnarf’s parcel is the first conveyance from Wilson, the common grantor, and is therefore senior to Madaratz.

Before all the “what ifs” start, consider the following from my attorney friend, Harry D. Gerrity:

“Bar examiners state a set of facts in a question. To pass, applicants must base their answer on that bare set of facts. Applicants who answered the question assuming facts not in the question failed. Applicants of course could tell the bar examiner that their answer would be different if certain facts were added and then give the answer if those facts were added.”

The bare facts, as stated, are:

- 1) From 1932 to 1945 there were no acts of any type made relative to the two parcels created, *i.e.*: Building permits, occupation or any type of improvements.
- 2) Taxes were paid based on the parcels being 150.00 feet.
- 3) Wilson became the owner of all of Lot 76.
- 4) Wilson, using the same descriptions that were used when he took title, conveyed the parcels.

In summation, in the two situations stated above, senior rights may have been lost resulting from a Race – Race Notice statute being invoked or as the result of the ownership of two parcels merging. As of the date of this writing I am not aware of any case law that supports my positions. They are merely conjecture on my part and offered here as food for thought.

In Part 3 of this series I will discuss how I determined whether a strip of land created by the phrase *excepting and reserving* – two words with different meanings – was a grant of an easement or a fee parcel. *A*

Paul A. Cuomo is President and owner of both Pacific Land Seminars, Inc., and Paul Cuomo Press, Inc. Licensed in California since 1973, he was a surveyor for the CA Division of Highways from 1958-1980, and was employed as Deputy Surveyor of Orange County from 1980-1993. He currently serves as a boundary consultant, instructor, and expert witness, and has authored and co-authored numerous surveying publications.