

the curt brown chronicles



Definition of Proportionate Measurement



One of the more popular topics Curt commented on and was consulted with on a frequent basis is that of proration. It is still a subject that is misunderstood and far too frequently, misapplied.

—Michael J. Pallamary, PS

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“A proportionate measurement is one that gives concordant relation between all parts of the line, i.e., the new values given to the several parts, as determined by the remeasurement, shall bear the same relation to the record lengths as the new measurement of the whole line bears to that record.” (Section 364, *Manual of Surveying Instructions*, Bureau of Land Management, 1947.)

In the above definition, “of the line” infers a line run by the same surveyor or a line resulting from the same map or plat or from simultaneous conveyances. When locating a lot within a subdivision and applying this principle of proration, proration does not extend beyond the boundaries of that subdivision.

Proration does not apply where senior rights exist.

If a person has conveyed part of his property to another, he cannot at a later date convey it to someone else. The first deed gets all that is coming to it and the seller owns all of the remainder. If a person owns a remainder, no excess or deficiency exists. A remainder does not have a definite size; it is more or less in character. A person may have more or less land than he expects, but, so long as he has a remainder, the

unexpected quantity of land, be it large or small, is all his. It is not divided among several owners.

The key to understanding when proration is applicable and when it is not are the words “time” and “creation.” If parcels are created in sequence with a lapse of time between them, senior rights exist and proration does not apply. For example, if Brown sells a parcel to Jones and at a later time sells another to Smith, Jones has senior rights over either Smith

hence are created in sequence. Lots in a subdivision map are all created at the same moment of time (when the map is filed or accepted) even though the lots are sold in sequence. Lots created simultaneously cannot have one lot with greater rights than another, hence senior rights do not exist because no lapse of time exists between creation of parcels.

Sometimes measurement index is mistaken for proration. If a survey is called for in a particular metes and bounds

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or Brown’s remainder. Smith is senior to Brown (the seller must deliver all that he has sold, hence the seller is junior to the buyer), but junior to Jones. Brown is junior to both Smith and Jones. Where such junior and senior deeds exist, any measurement that differs from the record measurement is applied to the particular property to which it is applicable, and this is usually determined by senior rights. It is not divided among all the properties.

But what about subdivision maps where lots are sold in sequence and proration is applied? The word “created” is the key to the difference. Metes and bounds descriptions are usually created with a lapse of time between each creation and

description and it is discovered that the original surveyor used a chain which was consistently long or short, in order to follow the footsteps of the original surveyor a consistently long or short chain is used. This is not an adjustment between several ownerships or lots, but is an adjustment that applies to one ownership. Strictly speaking this is not proration but is an application of the index-error principle. ■

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