



## More on Proration

### The Surveyor And The Law

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**P**roration is applied whenever the intent of the original owner indicates that he created several parcels simultaneously with equal rights and there is no one parcel designated to receive a remainder.

Simultaneous descriptions are as follows:

1. Wills and gifts wherein none of the heirs or benefactors are designated to receive a remainder.
2. Lots in subdivisions wherein a map is filed with a governing body and no lots are sold prior to filing the map or prior to staking.
3. Lots in any subdivision wherein it is impossible to distinguish an intent to give senior rights to buyers in sequence.
4. Court proceedings in partition wherein each litigant is given a proportionate share of the whole, and no one is designated to receive the remainder.
5. Metes and bounds descriptions that are created simultaneously, and no one is designated to receive a remainder.

To illustrate when proration is applied, the following hypothetical situations are used.

Mr. Smith decides that he is going to sell several parcels of land in accordance with the wishes of the buyers. The first buyer takes the east 60 feet; the second buyer takes the west 50 feet; the third buyer takes the 80 feet immediately west of the first buyer, and the fourth buyer takes the remainder. With the fourth sale Mr. Smith files a map (under old laws any map was

filed by presentation of filing fees, and in some areas this is still done) showing all four of the parcels with lot numbers. In this case, there has been a *creation of parcels in sequence*; hence, proration does not apply and senior rights exist in spite of the fact that there is a filed map.

Again, Mr. Smith decides to sell off parcels of land, has a plat prepared, proceeds to sell parcels in accordance with

construed to be a proportional part of a whole. Even if the seller intended each lot to be a proportional part of a map, the buyer could not be held to the secret intentions of the seller; the intentions must be in writing.

Again Mr. Smith decides that he will sell several parcels, has a map prepared, files the map with a governing agency, and sells lots by lot and block numbers. Proration applies since a person buying one lot is

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the plat, and gives each buyer a copy of the plat. In most states this procedure is now illegal (plats must be filed with a governing body), but in the past this was commonly done. In this instance proration applies, since each lot was created prior to the sale of any one lot and since the map was a consideration of each sale.

Again, Mr. Smith decides to sell off parcels of land and has a plat prepared. He then conveys each parcel by a metes and bounds description without any reference to the plat, although the parcels agree in size and shape with the plat. Proration does not apply since the buyers have no knowledge of the map nor is the map mentioned as a consideration of the deed. Each parcel has a described perimeter that cannot be

buying a proportionate part of a block and there is no way of distinguishing a senior intent or a remainder.

Mr. Smith decides to give each of his three friends one-third of his land. He has metes and bounds descriptions prepared (perimeter descriptions) that gives each an equal amount. He presents all three deeds at substantially the same time. If a deficiency or surplus is discovered, each is entitled to a share, since the intent was to create three parcels of equal size. Proration applies. ■

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