

FeedBack

Boundary Agreements

Regarding Joel Leininger's article "Boundaries by Acquiescence," [Oct. 2008], there is one sure-fire method that surveyors can use to permanently fix any boundary that may have been established by acquiescence or that is otherwise ambiguous, provided the adjoining landowners are willing to go along. It is a written boundary agreement. In the years I surveyed, when we encountered a situation in which the evidence for the location of a boundary was vague, ambiguous, nonexistent, or there were overlapping descriptions, we did not hesitate to explain the matter to the adjoining landowners, show them the evidence, and suggest they agree on a boundary. In about 95% of the situations they readily agreed on a line, we monumented it, and

thankful for the principles of boundary establishment by acquiescence and adverse possession. It makes it easier to obtain boundary agreements. In many situations adjoining landowners have mutually recognized an old fence or other possession line as far back as anyone can remember. It is usually easy to get them to agree to that as the boundary.

Some surveyors contend I am practicing law by drawing up boundary agreements. There are no judicial decisions on the matter, but I've discussed it with attorneys. They have been unanimous that boundary agreements are within the scope of surveying and have added that they encourage surveyors to get boundary agreements because it makes their work easier. By now probably a couple of hundred of our plats with boundary

which direction the scales of justice will tip. In that instance, you have done her no favors.

By the way, in a boundary dispute, always try to persuade your client and the attorney to try the case before the court without a jury. I learned early in my career that the outcome of many boundary trials depends more on extraneous factors—the likability of the client, or the surveyor, or the attorney, for example—than on evidence and law.

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Via the Internet

One Good Deed Deserves Another

In response to "Relatively Speaking," by Joel Leininger [Nov. 2008], I have done numerous surveys for relatives in the past. One was for an uncle who wanted to purchase 14 acres from my dad to help pay bills while undergoing cancer treatment. I researched the land owned by my parents, as well as land belonging to another aunt and uncle who lived west of my parents, and my own (I live east of my parents). After doing all the boundary research I found that somewhere in the past, the deeds all began about 100 feet east of where everything was currently occupied. I also discovered that my parents' 14-acre tract (the west line being a sixteenth section line) was being occupied at some obscure angle. The northwest corner of the farm checked out just fine, but the fence line ran southwesterly. This west line was supposed to also be the west line of my aunt and uncle's property. To say the least, the true sixteenth line ran through my parent's barn and through my aunt and uncle's shed, with their house completely on a neighbor's farm. My parents' property extended across the front of my property into the middle of what I had thought was my front yard.

It became very apparent that there was really no survey work done in the past when this was all farmland. The previous owners had done their own measuring as they gave parcels to their children and cut the farm up from their own house. Through the years these tracts were sold off.

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drew up a simple boundary agreement that they signed. The agreement was witnessed and notarized. We usually put the agreement directly on the plat. We made sure the plat with the agreement was recorded in the courthouse and indexed under each party's name so that later surveyors would find it. In the roughly 5% of the situations in which the adjoining landowners would not agree, we simply showed the conditions on the plat as we found them and put a note about the ambiguities.

In one area where I used to work, for the majority of parcels of land, there were no monuments on the ground and the recorded plats were so poor that they were practically useless for determining boundaries. The only things that could be relied on were possession lines. For probably a third of the surveys we did in that area we obtained boundary agreements for one or more of the lines. For some tracts we had to get boundary agreements all the way around. As a surveyor, I am

agreements on them have appeared on record in several counties. No attorney has ever raised the least objection.

Farris Cadle, LS

Via the Internet

The Likability Factor

Joel Leininger pointed out some of the practical problems of surveying for relatives. As an attorney who practiced boundary disputes almost exclusively during my career, I have one to add.

Assume you have performed a retracement for your sister and your conclusions coincide exactly with her conviction as to where the true line is. The neighbor's surveyor reached a conflicting position. Now, try to convince yourself that a jury will believe you were completely objective when you ran the line and that you *really, truly* believe with all your heart and soul that she owns that sliver of land in dispute. On a close call, a jury could easily let the relationship become the factor that decides

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My parents, aunt and uncle, and myself were now left with a headache to straighten out. I personally talked with the adjacent farmer and showed him drawings as to what had happened. He told me that what he farmed was what he had bought and he didn't want any of my parents' or aunt and uncle's property. I asked if he would be willing to have my parents sign deeds over to him and his wife for all the property that they owned, then have him turn around and sign deeds describing exactly what my parents, aunt and uncle, and I owned to help us straighten out this mess. He said he was willing to do so, as long as his fence line along the land belonging to my parents and aunt and uncle wouldn't change and it wouldn't cost him anything.

In short, this is what we did. We all signed over our property to him, and in turn, he signed deeds over so that everyone had title to what we had been using all these years.

This is a good circumstance where I wouldn't have wanted anyone else to survey this one out. Everyone was happy they had me to rely upon to help straighten out the mess. In the years since, I purchased the 14 acres from my uncle to add to my tract. My dad and uncle on the other side of my parents have since passed away, but they left knowing their property was secured for their children.

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Via the Internet

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