



Reconnaissance

The Surveyor's Roles & Responsibilities

Ensuring the American Dream, Part 2

In Part One, I explained an initiative by a number of noted professional surveyors from across the country promoting the idea that surveyors should take an active role in the resolution and prevention of boundary disputes. In this column we will explore that idea in more detail.

There are at least two important issues that we need to study. The first is to understand how surveyors unwittingly and unintentionally encourage unrest and even litigation between neighbors. We will discuss that issue in this column. The second is to show surveyors that there are things they can lawfully do to help avoid the first; we will delve into that in my next column.

In addressing the first issue, I repeat the assertion made last time: the average land owner believes that surveyors have the responsibility and authority to determine ownership. We surveyors know this is not true, but we must recognize that clients think it is true! Thus, when we set corners based purely on written title, clients *believe* we have told them *what they own*.

I am not convinced that we surveyors need to clarify with clients what our authority regarding ownership actually is—at least at the front end—but we *must* recognize what they think because that should inform the decisions we make in the course of performing the survey. For example, if our work indicates that the corner will fall 5 feet over the neighbor's fence, I believe we should suspend our work right then. Why? Because it should be patently obvious that 'something' is wrong. That 'something' is generally one of four things.

The first is that we are simply in the wrong place because we did not find all of the

appropriate evidence. In that case, we need to redouble our efforts to look for more and better evidence, and reanalyze our solution. If, however, we *still* end up with what appears to be a contrary boundary location, we should consider the next three scenarios.

The second possibility is that we are in the wrong place because—lacking good, solid, conclusive evidence—we concocted a purely mathematical solution based on our interpretation of the evidence. This is what some call mathematical “deed-staking.” Such solutions are inevitably the result of one or more relatively arbitrary decisions. That's fine; it's what we surveyors do: form an opinion based on our interpretation of what we often know is imperfect and incomplete evidence. But when that interpretation and opinion results in a solution that is going to disturb what may be established rights, we should rethink the wisdom of continuing with it. Cooley addressed this, saying,

[I]t is known that surveyors sometimes ... disregard all evidences of occupation and claim of title, and plunge whole neighborhoods into quarrels and litigation by assuming to establish corners at points with which the previous occupation cannot harmonize.

The third possibility when a line or corner falls contrary to a line of possession or occupation (usually, but not always, a fence) is that one of the doctrines of unwritten title may have acted to move ownership from the written title line over to the fence. Adverse possession, acquiescence (called by a different name in some states), parol agreement, estoppel or practical location can

operate to move an ownership line based on the actions of one or both of the owners.

Of course, surveyors do not have the legal authority to make boundary determinations based on unwritten rights, but they need to be well-versed enough in each of the doctrines to recognize the possibility—particularly when the respective owners have been peaceably occupying to the line of occupation. In this situation, as with the others, the surveyor has to consider alternatives to simply setting the corners, which will likely set the neighbors on the painful and expensive path to litigation. As Cooley said,

[The surveyor] would do mischief if he were to attempt to establish monuments which he knew would tend to disturb settled rights...

The last possibility—one that is not entirely unrelated to the third—is that the fence does not, in the surveyor's opinion, seem to fit the criteria for one of the doctrines of unwritten title, yet the owners are happy with it.

So, based on one of those scenarios, we have temporarily suspended our work. What alternatives should we now investigate? And what can we do without violating our state's standards of practice or practicing law? Quite a lot ... as we will find out next time. ■

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