

Chapter 1 "History and Concept of Boundaries"

1.1 Introduction

This text will discuss the creation, identification, description and recovery of boundaries among humans.

Some boundaries are created in a random manner, whereas others are created according to a preconceived plan.

Three methods of creating boundaries:

1. Action - creating a line and points on the ground by physical acts and placing of actual monuments and the identification of points and line objects.
2. Writings - the written word becomes the method of creation when a person describes corners and/or lines in a deed and then conveys to these described lines, prior to the completion of a survey.
3. By Law - ancient common and modern statute law are relied on to create many modern boundaries.

1.2 The Significance of Boundaries

People take boundaries very seriously. Yet what they really are saying is, "I want the rights that I am entitled to in this property," or "I want those rights in that parcel of land." Boundaries do not determine rights in land, but boundaries identify the limits of any created or identified rights a person or a group of people may have.

1.3 Boundary References

Principle 1 Boundaries enjoy a long history in both mythology and Judaic-Christian history.

The Old English term "maere" translates to "a boundary." Such terms as Merebrook and Merebeck indicate a stream as a boundary. Once a boundary was established it must be marked to insure its certainty. Early surveyors used their religion as a way to insure that no one would disturb the line for fear of reprisal from the god(s). Corner markers were marked by "crosses." This practice was probably brought to America by the English Surveyors.

1.4 The God (or Goddess) of Boundaries: Terminus

1.5 Disputes and Boundaries

Principle 2 A surveyor creates land boundaries. These created lines, which are separate and distinct from property lines, are determined by legal principles and law.

During Colonial times it was required that adjoining land owners walk and inspect their common boundaries. The law also provided for a penalty for those who failed to comply.

More recently New England states required the inspection and renewal of bounds periodically. The still remains in many states today although it isn't carried out to the letter of the law. Credit must be given to the towns that still provide this service. With the advent of new technology, CAD, GIS, GPS, geographic coordinates can be attached to known corners to assist in the recovery and replacing of monuments.

1.6 The Role of the Surveyor in Boundaries

Principle 3 A closed boundary describes a claim of right to a property interest for which any person can make a claim of possession. These boundaries may be either macro or micro in nature.

The first belief any surveyor should have when entering the area of boundaries is that any boundary dispute can be resolved with the help of a knowledgeable expert. The only problem is that some disputes take longer to resolve than others. One individual stated that it required the death of the original parties to solve the boundary dispute. Some disputes may be prolonged for generations, even to a point that they become identified on maps and thus sealed in history.

Clients should expect surveyors to be expert measurers and collectors of data and evidence of boundaries. The work is not necessarily limited to land boundaries, but also boundaries below and above the ground. In the event of a dispute, the surveyors purpose becomes that of presenting these measurements and the evidence recovered to the court and jury fore their deliberation and consideration.

Juries interpret evidence and courts apply the proper laws of evidence; they apply meaning to and determine the intent of, legal documents that the land surveyor and attorney use to describe and locate land and boundaries of rights and interests which we describe generally as land ownership.

Measurements that create the boundaries, measurements that are used as evidence of boundaries and the words used to describe the boundaries are all important and become controlling elements for the surveyor.

1. A boundary between two individual estates could not exist without it being created. The created boundary can not only describe a parcel of land, but the interests within the parcel of land.
2. The created boundary must be relocated and identified at some time. The surveyor will be required to take the description and using the words locate it on the ground. This is where most disputes come from...no two individuals view evidence in the same light!

The surveyors responsibilities lie in the area of interpreting legal descriptions and placing them on the ground by conduction surveys to recover evidence of prior work or surveys. In addition to locating legal descriptions, surveyors may be called on to:

1. locate the limits of possession.
2. locate the limits of a the claim of ownership, either under color of title or not under the color of title.
3. locate improvements on property
4. locate and describe rights and interests in land.

1.7 What is Being Created or Located?

Principle 4 A person or land owner can legally convey only the quality and quantity of interest to which he or she has title.

The surveyor who creates a boundary does no more than create an invisible line. A boundary exist because the law allows it to exist.

Responsibility that is assumed is that of creating or identifying rights and interest in land. Rights and ownership are related and are often confused, but are not the same. The ownership of a land parcel carries with it responsibilities and liabilities, where as rights will be given a person, whether a land owner or not, certain legal rights that can be addressed in the courts.

In order to have a boundary created it must have terminus points, or corners. Each boundary line is controlled by its end points which may or may not be monumented. Whether they are monumented or not does not deter from the legal authority it holds.

1.8 Original Written Title

Native Americans have a belief that no one could own the land only the right to use it. To the White Man possession was paramount.

Title, as the surveyor recognizes it, may be considered as originating from several varied sources.

1. royal grants from a foreign power.
2. grants of original crown lands from one the other original states or from another state.
3. grants or patents from the US from land considered as the public domain
4. lands of the form of newly created lands.

1.9 Rights and Interests in Land

When a person owns a parcel of land they have the right to timber, water, minerals, possession and alike. Each right can be described, identified and conveyed.

There is a difference between rights, interest and title. The surveyor should know the difference. Whatever rights or interest one has in land today is controlled by the laws of the state on which the land exists. There are certain common law rights recognized with land:

1. The right to dispose of property
2. The right to have land free from interference
3. The right to support of property, both subjacent and laterally.
4. The right to control waters that flow through or touch on property
5. The right to any waters that flow or touch your property
6. The right to all the space above or below the surface boundary lines.

Fee Simple estate is the highest and greatest estate in land that one can obtain. For all practical purposes the person who owns a fee simple estate or fee absolute estate are the owners of the land.

Fee denotes that the land can be inherited or devised by a will. Simple denotes that it must be inherited by a specific individual Absolute denotes there are no conditions.

Life Estate is considered a freehold estate because it can be conveyed to a third party, yet the duration is measurable only by some life.

1.10 The Role of the Court

Surveyor's Responsibilities

Attorney's Responsibilities

Courts will ascertain the application of common law doctrines, such as adverse possession, estoppel and

agreement to boundaries where as juries will determine which of the two surveyors is to be trusted in testimony and how much weight should be given the facts. Surveyors will ascertain the interpretation of words in a description that is contained in a deed and the jury will determine which two are correct, where as the court and the judge will determine is the deed meets the requirements for legality and sufficiency.

1.11 Real and Personal Property

Principle 5 In most instances there is no federal laws of real property rights.

Principle 6 Real property rights are determined according to the laws in effect in the particular states where land is located.

Real Property is a fixed, immovable and permanent thing. Personal property is consumable, can be destroyed or moved at will. At times the distinction between the two is not clear.

1.12 Federal and State Survey Law

the GLO for federal lands

Common Law for most state surveys although some state have enacted statutes for control of state surveys.

1.13 What Constitutes Real Property

Principle 4 again!

Land is synonymous with real property. Generally visualized in two dimensions length and width...yet now we must consider depth, height and time.

1.14 Nature of Modern Estates

By law an estate is the interest one has in real or personal property. Four types of estates:

1. estates in fee...the most absolute interest one can have
2. defeasible fee simple estate...a future event must be met...a condition...fee may pass as long as no alcoholic beverages are sold on the premises.
3. life estate...limited to the life of the persons or persons holding it.
4. estate for years...usually a lease between two parties for a period of time conditioned on a payment.
5. estate at will...may be terminated at any time.

1.15 Taxes and Land

1.16 Easements and Licenses

Easements are a type of interest one has in the land of another.

Affirmative or positive easements permits the possessor to do something on the land. The land that benefits is called the Dominant estate and the land on which the easement is located is called the Serviant estate.

Negative easements are those in which the Dominant estate prevents the Serviant estate from doing something. Light, Air, Views

Appurtenant easement benefits the dominant estate or its holder and attaches to the parcel of land, not the holder. This type of easements passes with the land automatically whether mentioned or not!

An easement in gross is attached to an individual, not the parcel...railroad r/w, hunting fishing rights...use of something for life

Easements should be limited to use cited. They may be created by reference in a deed or will, by separated document, by implication, by necessity, and by prescription. Must meet the requirements for signature and recording as a deed. Characteristics of easements:

1. It is an interest in land and must be created by grant or agreement, expressed or implied.
2. The interest must be in the land of another.
3. The easement is non-possessory because the owner can not only prevent interference with his or her interest.
4. The privilege to use an easement must be capable of creation.

A License is a personal, revocable and usually unassignable permission or authority to do acts on the lands of another without possession of interest in the land. An oral agreement to pass over someone's property without documents is nothing more than an oral license. In any event if a description of land accompanies a license it should be prepared by a surveyor. Other wise this is just a contract between parties.

1.17 Servitudes, Restrictions, Covenants and Conditions

Servitudes are a limited right over another property

Covenant is an agreement between parties that restricts the use of a freehold property

1.18 Liens

Many businesses use liens to collect amounts due, and governmental entities use liens to perfect and collect taxes and assessments due on real and personal property.

1.19 Conclusions

Boundaries are created and until people erect physical elements on the invisible lines, they exist only by law. These lines describe rights of possession to real property. Land is a collection of property rights that are freely assignable and that can be divested one at a time. This is a very complex topic!

Principle 7 Once boundary lines are created, the lines may, by law or by the actions of land owners with vested rights, be changed.

Chapter 2 "How Boundaries are Created"

2.1 Introduction

In order to understand the legal fiction of boundaries, one must be able to make a distinction between corners, monuments, property lines and boundary lines.

2.2 Definitions

Corner is at the end of a boundary line, or at the change in direction of a line. Usually an interior corner will not control the location of an exterior corner.

Monument is a physical manifestation set at or near the corner. To be legal and controlling a corner does not need to be monumented.

Monuments can be classified as natural and artificial. The courts usually make a legal distinction between the two and hold the natural over the artificial when there is a conflict.

Boundary lines between parcels are created in several ways, yet until written documents or legal principles attach, property lines are nonexistent. Boundary lines remain fixed forever where as property lines may change by legal principles, ie riparian, adverse possession, estoppel, agreement.

Law recognizes a boundary line as being a legal entity and once it is created, so long as evidence of that line exists, the line is controlling. Common law and statutes allow us to modify these lines.

2.3 Classifications of Boundaries

Macro boundaries represent large boundaries of major impact...national, state, municipal, governmental, etc.

Micro Boundaries represent subdivisions within the macro boundaries.

These may also be classified as Rectangular (Public Lands) or Metes and Bounds

2.4 Methods of Boundary Creation

By Action...running lines on the ground

By Words...describing or platting divisions of land

By Law...statute law or common law

See examples of each on pages 33-35

2.5 Who May Create Boundaries?

Principle 1. A landowner may divide a parcel in any manner not inconsistent with the law. They may create but not describe. Must be done by a licensed land surveyor in the State of California.

Principle 2. Once a boundary or boundaries are created, no alterations or modifications are permitted in any manner by either the owner or surveyor, if property rights have been granted or distributed according to the boundaries created. Lot Line Adjustments.

Principle 3. The original surveyor creates boundaries. It is the retracing surveyor who ascertains or identifies boundaries from the original evidence. The survey fixes them on the ground and therefore creates them.

2.6 The Sanctity of the Original Survey

Principle 4. Once created and approved, the original boundaries created are legally without error and are the exact dimensions as indicated by the creating surveyor. Especially with the GLO and also in common law.

2.7 Original Lines Remain Fixed

Principle 5. No surveyor or court has the authority to alter or modify a boundary line once it is created. It can only be interpreted from the evidence of where that boundary is located. Retracing surveyors sometimes feel it necessary to "fix" errors found in the original survey...this cannot be done, because those errors do not exist once the lines are created.

2.8 Distinction Between Original Boundary Survey and Retracement Survey

Principle 6. A retracing surveyor relates previously created and approved evidence to a current survey, being mindful that the current survey is always subject to collateral attack by other surveyors.

Only the GLO and its representative can perform an original survey...all others perform retracements.

Classifications of Surveys by the GLO

- Original Surveys
- Resurveys
- Dependent
- Independent
- Retracements

2.9 Conclusions

To survey land is to ascertain the corners, boundaries and divisions, with distances and directions, and not necessarily to compute areas included in defined boundaries. Knowing these, any competent mathematician can ascertain areas.

Chapter 14 "Role of the Surveyor"

14.1 Introduction

When locating or relocating boundaries the surveyor must ask him or herself two questions:

1. How were the boundaries established or created in accordance with the statutes in force at the time?
2. How shall I recover them?

14.2 The Surveyor's Function

The theme throughout the text is that surveyors are expert measurers. This includes keeping up with the latest technology, but also using it properly. One must understand the old techniques on which the descriptions were based. Primarily, ones calculations and computations.

The surveyor today is being asked to write legal descriptions, interpret legal descriptions written by others, and evaluate maps, plats and many different varieties of evidence. No longer is the surveyor the person doing some fieldwork and preparing a map of the findings. The world is developing rapidly and parcel sizes are getting smaller and smaller and more expensive in the process.

14.3 Opinions of Fact and Applications of Law

Four things happen: the surveyors provide the data and facts, the attorneys present the facts to the court, the jury interprets the facts as presented, and the court evaluates and passes judgement.

The court interprets the law and applies the law. Land surveyors gather the facts of boundaries and professionally charged with the duty to perform responsibly. Only if asked by the court do the surveyors give their opinion.

Surveyors create, recover and interpret evidence of boundaries...attorneys argue evidence of boundaries.

14.4 Establishment of Boundaries

All state and federal gov't's have identified procedures for locating boundaries. Some are statutory others are precedent on earlier court decisions. States can only interpret the evidence as to the most probable location of a predetermined boundary.

All states have adopted or devised methods for establishing land or property boundaries. The court may use the local agency surveyor to direct the location of a disputed boundary. This is done by statute law and is usually the last resort.

The court would do the following:

1. Apply for the survey and deposit money for the cost.
2. Notify the parties involved and adjoining
3. Perform the survey in accordance to the law

4. Obtain necessary approval by the statutory officers or the court
5. Provide an opportunity for appeal with in a limited time frame.

14.5 Establishment in Louisiana
For your own info...not required

14.6 Authority of a Surveyor

See the LS Act for definition of surveying practice

14.7 Basis of Boundary Survey

Principle 1

Understand the scope of work to be performed.

Principle 2

14.8 How much research?

Principle 3

Major causes for disagreement among surveyors:

Failure to locate and identify sufficient documents from which sufficient information can be gleaned about an area to be surveyed.

Insufficient and/or inadequate filed search of information including corners and monuments called for.

Faulty or incorrect interpretation of all types of evidence.

14.9 Ownership

Principle 4

Locate on the ground that which is described by words and report any discrepancies.

14.10 Encroachments

Principle 5

14.11 Searching for Monuments

Principle 6

The principle that called for monuments in land conveyances control the location of a parcel and the lines is solid in US law. Due diligence! Search until the surveyor proves beyond a reasonable doubt that the monument is no longer there.

Reliance of a retracing surveyor on a previous surveyor's work does not relieve the retracing surveyor from liability in the event the previous surveyors work is in error.

14.12 Possession Marking Original Survey Lines

Principle 7

Possession may be the best evidence when locating original boundaries lines.

14.13 Evidence

Principle 8

14.14 Setting Monuments

Principle 9

Some surveyors believe you should "tag" all untagged monuments if you accept their position.

14.15 Plats

Principle 10

See LS Act Requirements for Record of Survey

14.16 Liability

Don't rely on the work of others unless you have researched and checked to determine the correctness of the work

Principles 11, 12 and 13

14.17 Final thoughts...

It may be much more difficult to rectify an original or old boundary than create new ones...no "book learnin'" takes the place of experience in boundary surveying.

1. Courts cannot establish boundaries where they wish, regardless of the evidence and testimony. There must be some foundation in evidence for a court to locate a boundary.
2. Any legal establishment of a boundary will only control those persons named as parties.
3. Boundaries may be altered by unwritten means.
4. A retracement that is conducted for a client should be predicated on law; the law that created the original lines and the law providing for the retracement of lines.
5. If all surveyors were to interpret boundary evidence in the same manner, there would be no conflicts of location.

Original surveys create boundaries, and as such, the law holds that they are without error and are unassailable, even by the courts.

A retracement of an original boundary is predicated on the evidence recovered and is always subject to collateral attack by others, even though the attackers have never conducted their own retracement.