

Chapter 3 The Ownership, Transfer and Description of Real Property

3.1 Concepts of Land Ownership and Land Descriptions

The concept of ownership, transfer and description of real property is complex and not subject to simple categorization, definition, or understanding. The principles are not absolute. The gov't can regulate, tax and limit the use of land through zoning. On the other hand, the courts can determine title and quality and validity of descriptions conveying interests in land.

Conflicts can occur in both interests and in descriptions. Conflicts in ownership occur when two or more parties have a claim to the same title or interest, or when one has title and the other possesses it. Ambiguous land descriptions also produce conflicts amongst owners and adjoiningers.

3.2 Overview of Boundaries

Macro boundaries

- International
- States
- Counties
- Parishes
- Cantons

Micro boundaries

- Townships
- Sections
- Individual lots

Boundaries a surveyor could encounter

- Federally created parcels-GLO
- State Created parcels
- Metes and Bounds

3.3 Public and Private Lands

Distinctions should be made between public and private lands. The type of property becomes important when title is obtained, transferred and how rights are applied.

Initially public lands meant public domain...however it is now thought of as all land maintained by the gov't. Any federal land that is transferred to private ownership does so by an instrument called a patent. It is a form of a quit claim by the gov't to the private citizen.

Conversely, private land is considered all the land that is not maintained by the gov't or which has been transferred out of gov't control. It also means any property owned by a corporation, lands owned by other gov'ts, and local agencies.

Title is the basis of legal possession.

3.4 Sources of Title

Title is the means or authority by which one justifies legal possession to property; it is not ownership but evidence of ownership. Title can be obtained in many ways...see the list of 15 different ways to obtain title on page 45 of text.

Principle 1

3.5 Voluntary Transfer of Real Property

Voluntary title must be in written form and assumed to convey fee title unless otherwise stated.

3.6 Chain of Title

Compilation of all owners of a parcel from conception to present throughout the years. Grantor – Grantee indexes. By recording the document you have given constructive notice of your intentions. How far back should a surveyor research title?

3.7 Torrens Title System

Registers the owner of title, similar to car registration. Used in California until 1958 then switched over to our present system...no one maintained the Torrens System so it "died on the vine!"

No prescriptive rights or Adverse Possession claims in Torrens System. The State must guaranty the right of ownership. That could have some costs associated with it if there is a claim.

3.8 Unwritten Rights or Title to Land

Types of unwritten rights or title to land are prolonged occupancy, agreement, doctrines, recognized acts, behavior, and actions of adjoining. Surveyors are not involved with the validity of determining unwritten rights. They are however charged with the duty to show possession –vs- record.

3.9 Methods of Voluntary Transfer of Title

Voluntary means, involuntary means and inheritance may transfer title to parcels.

Involuntary transfers can result from foreclosures, escheat, adverse rights, estoppel, liens and bankruptcy.

Statute of Frauds requires transfers to be in writing.

Common Methods of Voluntarily transferring title: grant deed, quit claim deed, warranty deed, easement deeds and will.

3.10 Deed or Description

Do not confuse the deed with the description. The deed is the instrument of transfer or conveyance. The description is one part of the instrument.

Grantor/grantee

Date

Intentions

Description

Compensation

Properly executed.

3.11 Title or Lien

A lien is a charge, security or encumbrance on the property to secure a debt.

Perfect title is composed of two parts: Equitable title and legal title

Equitable title is granted for the money...deeds of trust...security of actual owner.

3.12 Deed of Trust

Three parties involved: the first party (Grantor) deeds the title to a second party (Bank) who holds the title until the third party (Grantee) performs their duties to receive the title.

3.13 Mortgage

A written interest in land created to secure the performance of a duty or payment.

3.14 Escrows

Grants while in possession of a third party

3.15 Title Assurance and Title Insurance

Title insurance is to real property what life insurance is to a person. For a fee a guarantee of title, of location, or against all risks, including survey, can be obtained. Fees charged with the extent of the risk.

Does not include losses due to defect at the time of the policy.

Easements and liens not of public record

Facts, Rights interest and claims not of public record

Mining Claims, reservations in patents water rights or title to water whether of record or not.

Acts of gov't agencies

Items outside of period of search.

Principle 2

3.16 Abstractors

Chain of Title for a specified period of time 40 years is common. Responsible for the accuracy of the research not the legality of it.

3.17 Attorneys Opinion

Limited to liability to mistakes in judgement regarding items appearing in record.

3.18 General Land Descriptions

Who is most qualified to write legal descriptions?

3.19 What is a Description?

Principle 3

Principle 4

3.20 Measurements

The surveyor should think only in the units of measure that created the boundaries of that parcel

The units of measurement in which the original boundaries were created become controlling units in the retracement of these boundaries.

Principle 5

See the list of units of measure on page 55 of text.

Principle 6

3.21 Magnetic Directions

Principle 7

3.22 Reference Datums

A reference datum can be defined as any position or element from which others are determined. All measurements must have a reference datum.

3.23 Elements of Legal Descriptions

Caption or Preamble

Body

Augmenting Clauses

3.24 Types of Legal Descriptions

PLSS

Metes and Bounds

Parts or Portions

Lot and Block

Strip or Centerline

Aliquot parts refer to PLSS. A section is the largest aliquot part of the PLSS.

3.25 Conclusions

Understanding legal descriptions, units of measurements, and techniques at the time the parcel was created is paramount to the retracing surveyor using today's technology and techniques.

Chapter 4 Boundaries, Law and Presumptions

4.1 Introduction

In the US we recognize five basic laws: Constitutional, Statute, Common, Case and Administrative

4.2 Constitutional Law & the Surveyor

To avoid liability, the surveyor normally stakes out the deed as written, prepares a report informing the client of the conditions, and advises the client to see an attorney. While it is the obligation of the surveyor to inform the client of existing conditions, it is not their function to give the client that which should be obtained by legal action.

4.3 Jurisdiction

Jurisdiction is the right and power of the court to adjudicate concerning the subject matter in a case. Surveyors should be familiar with the jurisdiction of the courts before they appear.

4.4 Federal Jurisdiction

Disputed federal land or land owned by the fed's, is always heard by the federal court. Once it passes into private ownership, state laws prevail and disputes are settled at the state level.

Lands purchased by the Fed's = State Courts

Actions between parties in different states heard by Fed Court under state law of parcel's state.

Corporations incorporated in more than one state = Fed court under state law of disputed parcel.

4.5 Federal Gov't, Agency, or Officer as a Party

Actions against the federal gov't must first exhaust all administrative appeals before the fed court will hear the case.

4.6 Sovereign Immunity

Federal Cases generally will be heard without a jury and only the judge renders the decision.
No Adverse Possession of Federal Land.

4.7 The US as a Defendant

In most cases, any litigation between an individual and the gov't can be initiated only as to the boundary disputes and title not to the questions of property rights.

4.8 Disposing of Federal Lands

Congress directs how a federal agency gives up control of its land and also the conditions by which it may be sold.

4.9 Color of Title Act

Color of Title Act of 1928 provides for the sale of public domain land by the Secty of the Interior when it is shown that:

See five items on page 67 of text.

4.10 Public Law 120

4.11 Small Tracts Act

Method of acquiring title from the gov't. Requires an error in the survey and must be determined if the conveyance is in the best interest of the public.

4.12 Research Laws

Do not deal in areas reserved for Attorneys.

Surveyors should know how to research court findings.

California's Jurisprudence – where common law cases can be found.

4.13 Court Reports

In disputes over private land boundaries the cases are tried in superior courts or other competent courts. A case may be appealed to an appellate court based on the evidence heard in the lower court.

4.14 Legal Research

Consult California Jurisprudence 2nd. Under subject of boundaries. Research Jones vs. Brown, 68 Cal. App. 2nd 123. This means Volume 68 of the second series of California Appellate reports at page 123. They may also have 488 P. 2nd 213. Which means volume 488 of the second series of the Pacific Reporter on page 213.

4.15 Judicial Notice

The court may take judicial notice of those things that are common knowledge.

Principle 1

4.16 Evidence

Principle 2

Principle 3

Find the evidence regardless of costs.

4.17 Presumptions

Principle 4

Presumptions at law are conclusions that the law expressly directs to be deduced from certain established facts; to avoid liability, those who rely on presumptions must eliminate contrary possibilities.

Presumption is a statement of fact or law that can be considered true without further proof.

Conclusive presumption

Rebuttable Presumption

Inferences

4.18 Common Presumptions

See the list of 20 on page 74 and 75 of text.

4.19 Survey Systems Present in the US

We have metes and bounds and GLO systems in the US

Principle 5

The seven types of metes and bounds descriptions are:

- True Metes and Bounds
- Metes and Bounds
- Strip
- True Bounds
- Divisional
- Proportional parts
- Linear
- Area

Principle 6