

Acquiescence

by

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Acquiescence, similar to the doctrines of estoppel and practical location, is an equitable doctrine that will fix the location of a common boundary in a location that may differ from the location where a surveyor would place the common boundary based on the rules of construction.

The doctrine of acquiescence is known in some jurisdiction as a consentable boundary. Some states have equated it to a boundary by implied agreement. The motivation for a court recognizing a boundary different from the record is to let boundaries that appear to have been settled to be settled. A person that sleeps on their rights should not be allowed to demand with passion what they have for so long ignored with indifference.

The doctrine of acquiescence generally requires three conditions exist. First, the record boundary must be vague or unknown. The purpose for this element is to prevent persons from usurping the legal requirement that parties alter the location of their record boundaries by written instrument. By requiring the boundaries be vague or unknown, the legal fiction is created that the parties-in-interest have not altered the location of their deed boundaries. Rather, the parties-in-interest have fixed a definite location for the boundaries described in their respective deeds. This fiction survives even though a surveyor would place the boundary with some confidence in a different location than where the boundary location has been historically recognized.

A second condition requires one party act by fixing the boundary in a location by definite monumentation or occupation that appears and is accepted as marking the boundary. The boundary so fixed by the one party cannot be based on fraud or deceit. In other words, the party in placing the monuments or barriers must have reasonably believed the objects are placed on the common boundary.

The third condition requires that the non-acting party recognize the barriers or monuments as marking the boundary. Recognition is sufficient if the individual does not contest the location.

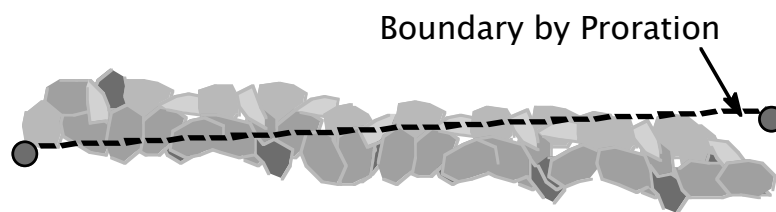
The fourth and final condition is that the three conditions exist for some length of time that a reasonable person would have been expected to object or act had they disagreed. A long length of time is not crucial if the location of the record boundary is otherwise vague or difficult to locate and the location of the monuments or barrier is reasonable to the location of the record boundary.

The following situation may be give rise to a boundary by acquiescence:

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Bill and Jane live next to each other in an old subdivision. Bill does his best to locate the common boundary he shares with Jane in order to build a rock wall. He makes measurements and sets stakes, eventually building the rock wall along a line between the stakes. Jane watches Bill make the measurements to locate the boundary and observes Bill construct the wall. For many years thereafter, Jane and Bill respect the wall as marking the common boundary. Twelve years later, Jane needs a survey of her property in order to build a garage. In performing the survey for Jane, the surveyor gathers considerable site and record information. Most of the original monuments have disappeared. The surveyor prorates the distances between found monuments that are located several hundred feet away with the following results shown in the diagram:



In the above situation, the court would be reluctant to adopt the boundary established by prorated distances over the location of the stone wall that has been accepted as the boundary for some length of time. The wall is located within reason to the record boundary. It has been accepted as the boundary for over 12 years. The upheaval and disruption in the neighborhood that would result with adopting lines that differ from the long standing occupation flies in the face of equity.

It is reasonable for a surveyor to adopt an occupation line as the boundary where the record boundary location is vague, difficult to fix, or a reasonable location of the record boundary is on or near the occupation line. Justice Cooley remarked on this very situation in the late 19th century using these words.

Occupation, especially if long continued, often affords very satisfactory evidence of the original boundary when no other is attainable; and the surveyor should inquire when it originated, how, and why the lines were then located as they were, and whether a claim of title has always accompanied the possession, and give all the facts due force as evidence. Unfortunately, it is known that surveyors sometimes, in supposed obedience to the state statute, 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. It is often the case when one or more corners are found to be extinct, all parties concerned have acquiesced in lines which were traced by the guidance of some other corner or landmark, which may or may not have been trustworthy; but to bring these lines into discredit when the people concerned do not question them not only breeds trouble in the neighborhood, but it must often subject the surveyor himself to annoyance and perhaps discredit, since in a legal controversy the law as well as common sense must declare that a supposed boundary long acquiesced in is better evidence of where the real line should be than any survey made after the original monuments have disappeared. Thomas M. Cooley, Chief Justice, Supreme Court of Michigan, 1864-1885 in *The Judicial Functions Of Surveyors*

Where the surveyor is convinced the location established for the record boundary is different from the markers or barriers acquiesced to by neighbors, the surveyor should report both locations to the client. In reporting both locations, the surveyor would be wise to inform the client that the acquiesced boundary may in fact be determined to be the ownership boundary based on the doctrine of acquiescence.

The surveyor may want to consider wording such as the following in a letter or report to the client when accepting monuments or barriers by the doctrine of acquiescence:

I have established your common boundary to coincide with a stone wall that exists between you and your neighbor. While the stone wall does not coincide with the measurements that were proportioned between existing monuments found beyond your common boundary, it is my opinion that the small difference between the measurements prorated and the measurements made to the wall is insufficient to overcome the equity that courts often find compelling when recognizing occupation lines that were allowed to exist for some time. The courts are often persuaded to leave things settled when it was believed by the parties to have been settled some time ago. You are, of course, at liberty to reject my opinion and advocate that your boundary be the prorated line. Your neighbor may do so as well. In each case, I will be willing to explain both the proration method I used and my belief that the stone wall is ultimately the monument to the common boundary.

Where the surveyor has come to the conclusion that the location of the record boundary is different from monuments or boundaries that were believed to be the boundary, the following example may be used to illustrate the surveyor's opinion as communicated to the client:

I have determined the common boundary to be a line fixed between two monuments. The line was established by dividing the excess distance measured between the two nearby monuments in proportion to the distances shown on the original subdivision plan between the two monuments. It is not unusual to discover that the actual distance measuring in the field is different from the distance shown on the plan, especially given the age of the original survey. The current surveying technology and education of the surveyor far exceed those of the earlier surveyors.

My opinion places the common boundary in a location different from the wall that exists near this boundary. Although the method I have used to reestablish the common boundary was established by the court as a rule of construction, I feel compelled to warn you that the same court will often adopt occupation lines such as the wall to be the ownership boundary contrary to the record measurements. While I am confident in the methods I have employed in fixing your boundary I would be foolish to predetermine where a court would place the boundary if asked to choose between the boundary I have established and the existing stone wall. I believe you would be wise to consult with legal counsel before taking any action in regard to moving the wall or asking the neighbor to do so.

Acquiescence is similar to the equitable doctrine of practical location. The major difference is that practical location requires the parties-in-interest all participate, while acquiescence requires only one party act while the other parties-in-interest acquiesce to the acts of the one party.