

Practical Location
By
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Practical location is an equitable doctrine allowing parties-in-interest (e.g., adjoining neighbors) to fix the location of their common boundary in a location that may differ from the location where a surveyor would place the common boundary.

Equity jurisdiction permits courts to recognize a boundary location where certain elements exist. Equity has long recognized that a line of peaceful possession or occupation, in certain circumstances, established without fraud or deceit should not be disturbed.

The first element generally required for practical location is that the record boundary be vague or unknown. Some states require that this boundary be vague after examination by a competent surveyor. The remaining states only require that the boundary be vague or unknown to the parties-in-interest. The purpose for this element is to prevent parties 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.

The second element is that the parties-in-interest by their acts fix the boundary by definite monumentation. While corner monuments are sufficient, also acceptable are fences, walls, building lines, etc. This element is to insure the boundary location does not continue to migrate and be a source of dispute. It also provides actual notice of where the parties-in-interest have fixed the location of the common boundary. The parties-in-interest can not claim to have been misled as to the location they have fixed.

The third element required for practical location is that the parties-in-interests' conduct and actions (or in some cases lack thereof) show recognition that the boundary so located by the parties-in-interest is recognized and accepted by the parties-in-interest as their boundary.

Finally, most courts have further required that there be either: 1) recognition for some length of time (usually the statute of limitations) or 2) some loss would be suffered by a reliant party if the deed boundary were upheld or 3) the practical

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location falls within the realm of possibility for the location of the deed boundary (though maybe not the location chosen by a competent surveyor). Without this last element, most courts would be reluctant to change the location of the record boundary fixed by a surveyor since there is no compelling reason to adopt a location other than the record location.

Consider the following example where practical location may be recognized:

John and Jim are adjoining lot owners. One summer day while both are doing yard work they begin discussing where their common boundary is located. Neither is sure. After drinking a couple of beers they decide that the best and least expensive way to determine their common boundary is to split the frontage (after all, they believe, they have the same size lots). John goes to get his plastic tape and Jim goes to get some old metal posts he has. Together they split the front and back distance and place the metal posts in the ground to mark their corners. For the next ten years they each respect the metal posts they set. Jim builds a new garage based on the metal posts marking his boundary. John passes away and his daughter obtains the property upon John's death. She has the property surveyed and discovers the metal posts are three feet on her (deceased father's) property. She demands Jim respect the surveyor's monuments rather than the metal posts. Jim's garage would be in violation of the set back distance required by municipal zoning if the surveyor's opinion is determined to be the correct location of the common boundary.

In the example, the surveyor hired by the daughter should locate the record boundaries based on a complete and comprehensive evaluation of the evidence within the framework of the rules of construction. It is not the duty of the surveyor to determine if a location by practical location has been fixed by the parties-in-interest. However, the surveyor would have been wise to inform the daughter that the metal posts established by her father and Jim may now be the ownership boundary based on the doctrine of practical location or equity. Of course, it would be up to Jim to prove each of the elements of practical location in order to have the metal posts recognized as the location of the common corner.

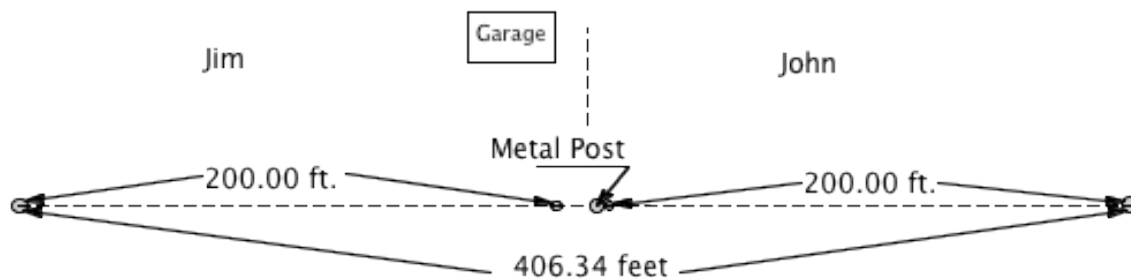
The daughter's surveyor may want to consider wording such as the following in a letter or report to the daughter:

I have established the location of your common corner based on the best available evidence with due consideration to the rules of construction established by the court through precedence (*stare decisis*). My opinion conflicts with metal posts that appear to have existed in its location for some time and have been recognized as a monument to the corner. I do not know the history of the metal posts or how long the posts have existed. Under certain circumstances a court would recognize these posts as the corners even though it is not cited as a monument to your deed or is located where your deed description would place the common corner. Much like a person

that makes a mistake on their taxes ten years ago, the court is often reluctant to unsettle what has appeared to have been an innocent mistake in the past. Seeking the counsel of an attorney will give you a better explanation of the law and your chances of success should a dispute ensue.

The doctrine of practical location can be useful foundation for the surveyor's opinion in the situation where the location made by the parties would reasonably coincide within the realm of possibilities for the location of the record boundary.

Consider the previous example and assume that Jim's deed called for a frontage of "200 feet more or less" and John's deed called for a frontage of "200 feet more or less" and the situation the surveyor discovered was the following:



As the diagram shows, the metal post falls within the realm of possibilities given the vague deed description (though not an equal allotment of the excess). While the post may not be where a surveyor would place the common corner, the post does fall within the realm of possible locations fixed by the deed description. As such, the courts would tend to favor the position of the post as the deed corner simply because the parties-in-interest have historically done so.

In this situation the contents of the letter or report may state the following:

I have determined your common corner is the location fixed by an existing metal post. There are three factors that support this decision. First, the metal post has existed for some time without apparent dispute or disagreement as to its location. Second, predecessors in title have appeared to recognize the post as marking the location of the common corner. Finally, there is reasonable compliance between the position of the post and with the deed description given the loose and imperfect description (e.g., "200 feet more or less"). Under the circumstances, the courts often presume that the post location is a practical and reasonable location monumenting the common corner location intended by the original grantor.

Practical location is similar to the equitable doctrine of acquiescence. 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.

Some commentators equate practical location to a boundary by unwritten agreement. The difference between practical location and agreement is subtle and not always clear (some courts do equate the two doctrines). For an agreement the law requires an offer, acceptance, and consideration. In other words, an agreement requires a bargain fairly reached where each party derives some real or imagined benefit from their bargain. These elements are not required for a boundary by practical location. As a consequence, an unwritten agreement is appropriate where the parties are placing the boundary in a location different from what they know or perceive to be a location fixed by their respective deeds.