

Boundaries & Estoppel  
by  
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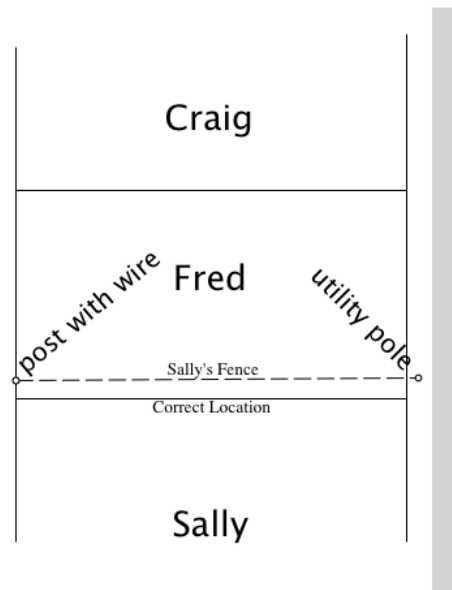
Surveyors should be familiar with the doctrine of estoppel. The doctrine of estoppel may locate the ownership boundary in a location that differs from the record boundary.

Estoppel is a doctrine that puts into practice the ancient equity: “One who seeks equity must come with clean hands.” Put in other words, a person cannot expect favorable relief in the courtroom when they have caused their own problem.

Estoppel arises when one individual misleads another individual; causing reasonable and foreseeable reliance by the misled individual; so the misled individual makes expenditures or takes action contrary to what a reasonable person would do, would the truth be known; and the misled individual will be injured or damaged to their detriment if the court acted in favor of the person who misled the other. The misleading actions may occur by declarations, acts, omissions, words, actions, conduct, or admissions.

Estoppel has a wide reach in all civil litigation including the litigation of boundaries. A scenario where estoppel could fix the location of a boundary in a location that differs from the record boundary would be the following:

Sally plans to build a beautiful wood fence on her common boundary with Fred. (Fred is a friendly neighbor but too inquisitive.) When the fence material is delivered, Fred, the neighbor, ever curious about neighborhood activities, comes over to find out from Sally what she is going to build. Sally explains she is going to build a fence on their common boundary but has to wait to begin construction until she can hire a surveyor to locate the boundary. After hearing the reason for the delay, Fred announces there is no need for a surveyor, he can show Sally exactly



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where their common boundary is located. Fred assures Sally that he asked the realtor about the boundaries before buying his property and the realtor showed Fred the boundary location when he purchased his property.

In the front of the property at the road, Fred shows Sally a utility pole and says this pole marks their front corner. In the rear of their lots, Fred shows Sally a post with old wire fence hanging on it. Fred assures Sally that these objects mark the corners to their common boundary. Furthermore, he even got a copy of the tax map one day and checked the distances between these objects and other corners. He compared the distances on the tax map and his pedometer and they matched.

Sally is very grateful to Fred and builds the fence on a straight line between the objects Fred has shown Sally. Three years later, Fred becomes embroiled in a boundary dispute with his other neighbor, Craig. Fred obtains a survey. The surveyor informs Fred that Craig is correct in his assertion. The surveyor also informs Fred that Sally's fence resides four feet on his property. Fred demands that Sally move the fence to the correct boundary location.

As seen from the previous scenario, Fred misled Sally by his assertions to Sally regarding the common corner locations. Sally reacted to Fred's assertions in a manner that was both expected and reasonable given Sally's discussion with Fred and Fred's positive assertions. Sally spent considerable money putting the fence where Fred had indicated the common boundary was located. She would not have done so had she known the true location. Now Sally faces the prospect of considerable expense if Fred could force her to move the fence to the correct boundary location. Sally has a good claim that the fence should now be recognized as the common ownership boundary based on the doctrine of estoppel. (In this scenario, the court could also demand that Fred pay for the relocation of the fence if he does not want to lose the use of his property cut off by the fence.)

A surveyor who is not familiar with the doctrine of estoppel may have advised the client that since the fence had only existed for three years, the removal of the fence could be required by the court. (The surveyor assumed a more lengthy time period is necessary to meet the requirements of adverse possession in order to fix a boundary in a different location than the location fixed by the records.)

Familiarity with the doctrine of estoppel should cause a surveyor to be timid when making pronouncements regarding the effect of an encroachment on the boundary location even if the improvement has only a short history. As the scenario reveals, elements of estoppel are often proven with information that is not ordinarily gathered by surveyors or even available to surveyors during the course of providing surveying services.

The surveyor would be wise to focus on locating the record boundary and recognize that occupation boundaries may often become the ownership boundary under

certain doctrines. Surveyors that opt to extend their services to not only locate the record boundary but decide where the ownership boundary (extent of title) is located must also extend their services to gather information and make decisions that surveyors are not ordinarily trained to handle.

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