

## **Changing The Location Of A Boundary Line**

By Dale Alberstone, Esq.

There are two principal methods to change the location of a boundary line, namely: (1) by a lot line adjustment, and (2) by the doctrine of agreed boundaries.

### **Lot Line Adjustments**

A lot line adjustment generally takes place between two adjoining land owners who jointly wish to change the location of the boundary between their properties. There may be several reasons for their desire, such as to relocate the boundary so that it follows the contours of the property (for example, along a cliff or other drop-off) or so that it coincides with a long established partition wall which was mistakenly erected solely on one property, rather than on the boundary.

Each city or county has a process by which application may be made for governmental approval to modify the boundary location. In Los Angeles, if all goes well, a lot line adjustment can be accomplished within as little as four months.

While a lot line adjustment generally involves just two property owners, the Subdivision Map Act (SMA) allows for as many as four existing adjoining parcels to be processed pursuant to a lot line adjustment. It does so largely by exemption. The SMA requires a subdivider of real property to file a Subdivision Map approved by the governing local agency in conjunction with any division of improved or unimproved real property for the purpose of the present or future sale, lease or financing. However, where four or fewer existing adjoining parcels are involved, the SMA provides an exemption whereby the complicated and elaborate process involved under the SMA may be avoided.

In general, the parties will (or at least, should) engage a professional engineer (with substantial experience in lot line adjustments) to prepare and process the appropriate application.

If the adjustment is approved and properly completed, the city or other agency will issue a Certificate of Compliance which is then recorded with the county recorder. It is prudent for all parties to then obtain a policy of title insurance which insures the properties according to the new boundary.

A lot line adjustment is the most efficient, desirable and least acrimonious method by which to modify an existing boundary. It is also cost effective as very little legal time may be necessary. A competent engineer can process (and expedite) the application with little or no supervision by an attorney.

### **Doctrine Of Agreed Boundaries**

This method to change the boundary location is used where the parties are not in agreement with a proposed new boundary, as asserted by one of the adjoining owners. The drawbacks of this method are: (1) it requires litigation, (2) it is difficult to win, and (3) it will involve substantial legal expense.

The agreed-boundary doctrine constitutes an exception to the general rule that the location of a boundary is determined by the language in a deed, or at least as shown on a county map.

The doctrine typically arises where a fence, wall or other partition has been in existence for many years, if not decades. The barrier is always displaced from the true boundary, often by many yards and often over a very long length.

In order to prevail under the doctrine, the plaintiff must establish (1) that at the time the barrier was erected, there was uncertainty between the owners as to the location of the true boundary, (2) that there was an agreement between the coterminous owners fixing the location of the boundary, and (3) that the owners accepted and acquiesced in the line so fixed for a period of more than five years or under such circumstances that substantial loss would be caused by change of its position.

Courts have become increasingly reluctant to infer that uncertainty existed at the time the barrier was erected (even if it is a very old fence), unless at least one of the two parties to the original agreement is available to testify at trial. Typically, the barrier was erected so many years in the past that both parties are deceased. Under current law, the court will not indulge in a presumption that the mere existence of a long standing fence is sufficient to establish that the parties originally agreed that the barrier would mark the location of the boundary. The court's refusal to imply an agreement is particularly true where

governmental records, such as recorded maps and surveys, would have shown the exact location of the boundary at the time the barrier was erected.

The doctrine of agreed boundaries originally arose as a means to settle disputes over boundaries at a time when surveys were notoriously inaccurate and the monuments and landmarks they described often cannot be found in later years. Given the difficulties of fixing boundaries according to the old surveys, courts may properly recognize a boundary line which has served for a lengthy period of time as a practical boundary.

However, courts may also require specific evidence of uncertainty (rather than a mere assumption of uncertainty) because the precise placement of a fence may be influenced by a multitude of factors, only one of which is the location of a party's property line. Other considerations include the suitability of the terrain to accept the fence, the presence of nearby landscaping, the skill of the builder, and even the subsequent movement of the fence through disrepair, pressure exerted by livestock, or the loss of lateral and adjacent support.

Where no evidence shows that the prior owners of adjoining parcels agreed to resolve a boundary dispute and where legal records would have provided a reasonable basis for fixing the boundary, the agreed-boundary doctrine will not apply. Stated in a slightly different manner, when then existing legal records would have provided a basis for fixing the boundary, there is no justification for inferring, without additional evidence, that the prior owners were uncertain as to the location of the true boundary if they agreed to fix their common boundary at the location of a fence.

For example, in a case decided in 1919 (Staniford v. Trombly, 181, Cal. 372), the court held that because the fence had been built to control cattle, and not as an agreed boundary, the defendant's claim to ownership of the land based on the doctrine of agreed boundaries was without merit. In another case, where the parties testified that the fence located one foot from their common boundary had been erected to comply with the local ordinance and did not result from an agreement to fix an uncertain boundary, the agreed-boundary doctrine did not apply.

Thus, changing the location of a boundary pursuant to the doctrine of agreed boundaries is difficult to accomplish in today's judicial system. It should generally be considered where no other solution is available, such as the acquisition of a prescriptive easement. Prescriptive easements are much easier to acquire, but they will be the topic of a future article.

Attorneys who are reading this column might wish to review Government Code ' 66412(d) concerning lot line adjustments, and Bryant v. Blevins, 9 Cal. 4<sup>th</sup> 47, for an in-depth discussion of the doctrine of agreed boundaries.

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