

A property line agreement in written form must be based upon the premise of an unknown or disputed boundary line, similar to the requirement for acquiescence to take place or for a parol agreement. The case of Clapp v. Churchill, 130 P. 1061 states as follows:

"But the doctrine of an agreed boundary line and its binding affects upon the coterminous owners rests fundamentally upon the fact that there is, or is believed by all parties to be, an uncertainty as to the location of the true line. When that uncertainty exists, or is believed by them to exist, they may fix the boundary line, and that agreement will bind all the consenting parties."

It is important to note that a property line agreement is similar to a parol agreement in that title to property is not transferred. The effect of the agreement simply is to define, or locate the true line. The case of Clapp v. Churchill, supra, states:

"When such an agreement has been deliberately entered into, it is not the theory of the law that there has been a conveyance of any land from the one coterminous owner to the other, but it is simply that they have agreed between themselves as to the land which they respectively own under circumstances which estop either of them thereafter from denying it."

From this it is clear that a written agreement can be used to settle unknown or questionable boundary lines. Often times the true boundary lines between parcels of land are difficult to locate due to poor description of land. Sometimes adjoining landowners do not care exactly where record lines are, and the parties do not want to spend the money for a complex survey to figure out where the lines might be. Often, there is an existing barrier of some type, that is acceptable to the adjoiners as currently used, and is not in dispute. There are times that locating the record lines may actually start a dispute! It is in situations like these that property line agreements may economically, and peacefully resolve potentially lengthy and complicated boundary problems. If the parties are willing to accept a line on the ground as the true line, and sign an agreement to that effect, the property line agreement should be encouraged. There are some surveying authorities that suggest the property line agreement should be the first method employed. In other words, jump out of the truck with paper and pen, sign an agreement, and be done with the survey. This practice is certainly contrary to the surveying profession. A surveyor's duty is to locate lines, not be a mediator and ignore the record. In the event that a property line agreement is used, the surveyor will be required to accurately locate the agreed to line.

Caution is urged before the surveyor proceeds with a property line agreement. But, if the best solution is to utilize a

written agreement, then a "record of survey" should be prepared and recorded. The agreement should at least make reference to the record of survey by book and page. It would be best if the actual agreement were on the plat, and all affected parties signed it. In any event, the thing that needs to be accomplished is to see that the agreement/survey plat are filed or recorded in such a way that they are easily found by a common search of the records prior to subsequent boundary surveys, title searches and land transactions. "Record of surveys" are something every land surveyor is obligated to investigate before beginning any boundary survey, therefore easily discovered. Title companies may check the chain of title and not find a property line agreement by itself. Title insurance companies are generally responsible for investigating "records of surveys" also, since they are insuring the property for damages as a result of an instrument of record(unless excepted out). So even if there is an exception to the record of survey in the title policy, the title company must discover it, when duly recorded. The best way to assure discoverability is to get the agreement into the grantor-grantee system.

If a property line agreement is used, it should contain, as a minimum, the following items:

- 1). A statement that the true line is in dispute, unknown or uncertain.
- 2). Reference to a recorded "Record of Survey".
- 3). A description of the location of the agreed to line (signed by the land surveyor who prepared the description).
- 4). The date of the agreement.
- 5). The names of all parties involved.
- 6). The address of all parties involved.
- 7). The signatures of all parties involved.
- 8). A statement that the new line described is to hereafter be the established boundary line(s).
- 9). The witness and signature of a notary public.

As stated, all parties whose interests are affected by an agreement should agree to the newly defined boundaries. Lenders have financial interests (equitable title) in the property and without their approval there could be problems later on. Always get written agreement from the parties having legal title (record title or possible possessory title) and the parties having equitable title.