Boundary Line Agreements and Adjustments -- Unraveling the Tangle

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Where do you survey?

- States of the Western Federation of Professional Surveyors:
  - 1. Alaska.
  - 3. California.
  - 5. Hawaii.
  - 6. Idaho.
  - 9. New Mexico.
  - 10. Oregon.
  - 11. Utah.

- Other States.
I am not your attorney

This presentation is not intended to provide legal advice. Seek legal advice from an attorney familiar with the facts of your particular case, and licensed in your state.
Road Map

1. What Does a Boundary Agreement Look Like?
2. When need Approval of Land Use Authority?
3. What Assistance can Land Surveyor Provide?
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What Does a Boundary Agreement Look Like?
Terminology

• Boundary Line Agreement.
  • Utah Code sec. 57-1-45.
  • 10-9a-524.
  • 17-27a-523.

• Parcel Boundary Adjustment.
  • 10-9a-103(39) & (57)(c)(vi). 10-9a-523.
  • 17-27a-103(40) & (60)(c)(vii). 17-27a-522.

• Lot Line Adjustment.
  • 10-9a-103(33).
  • 17-27a-103(35).

Utah Statutes

• Municipal Land Use, Development, and Management Act (M-LUDMA).
  • Title 10 Chapter 9a.

• County Land Use, Development, and Management Act (C-LUDMA).
  • Title 17 Chapter 27a.
Boundary Line Agreement.

Notice of Approval of Lot Line Adjustment, then Quit Claim Deed.
Comparing Statutes

**Boundary Line Agreement.**
Utah Code section 57-1-45(1):

If properly executed and acknowledged as required under this chapter, an agreement between property owners designating the boundary line between their properties, when recorded in the office of the recorder of the county in which the property is located, shall act as a quitclaim deed and convey all of each party's right, title, interest, and estate in property outside the agreed boundary line that had been the subject of the boundary dispute that led to the boundary line agreement.

**Lot Line Adjustment.**
Utah Code section 10-9a-103(33):

“Lot line adjustment” means the relocation of line in a subdivision.
Requirements for Boundary Line Agreement

• Dispute.
• Sufficient description.
• Words of conveyance?
• Parties: competent & all the owners
• Executed, acknowledged & recorded.
Legal Descriptions

Boundary Line Agreements

• single line.
• objects on ground

Lot Line Adjustments

• OLD: Lot in subdivision.
• NEW: Metes & Bounds
What does Boundary Line Agreement Look Like? Can Be Oral (verbal, parol). Elements:

(1) **agreement** [explicit]

(2) settling boundary which **uncertain** or **in dispute** [subjective]

(3) **injury would occur** if the boundary not upheld [spend money to assert ownership, build fence]

(4) to bind **successors, demarcation of a boundary line** so reasonable person would be on notice [what left on ground].

Bahr v. Imus, Utah Supreme Court (2011), par. 41.
If oral agreement, then all finished?

• Seek to **memorialize** (& place in record) the prior oral agreement. Be clear that the oral agreement already exists.

• What if landowners won’t sign?

  Surveyor can document oral agreement in **narrative** of survey.
Just Exchange Deeds?

Reciprocal Deeds

Implies an adjustment?

Boundary Line Agreement

Single document better defines intent.
When prepare a Plat?

A Picture is Worth 1,000 Words
2

When need Approval of Land Use Authority?
Need to resolve dispute.

But roadblock of planning approval.
Collision of Ideas.
Both icebergs involve more than meets the eye.
Land Use Controls
A world of their own

- Nuisance
- Zoning
- Private Controls
- Eminent Domain
- Building Codes
- Subdivision Control
- Environmental
Planning interferes with settling disputes?

When seeking **agreement**: You are already going that direction, so take out my trash on your way.

Plan ahead now, so enhance value later.
Planners: Ruin foundation or Create foundation?

Settlement already precarious, then external pressure.

Avoid a poor foundation for your most important asset
If boundary uncertain AND inside subdivision, then use BLA or LLA?

• 10-9a-103(33): “Lot line adjustment” means the relocation of line in a subdivision.

• 10-9a-608(5)(a): The owners of parcels described by a plat may exchange title to portions if the exchange of title is approved by the land use authority.
  - If approved, then per (5)(c): (i) a notice of approval shall be recorded, signed by each other and by land use authority, and which describes the original parcels and the new parcels. (ii) a document of conveyance shall be recorded.
PBA: Different from BLA?

Salt Lake County Recorder has document types for Boundary Line Agreement, and Lot Line Adjustment, but not Parcel Boundary Adjustment.

**Boundary Line Agreement,**

*Utah Code section 57-1-45(1)*

- If properly executed and acknowledged as required under this chapter, an agreement between property owners designating the boundary line between their properties, when recorded in the office of the recorder of the county in which the property is located, shall act as a quitclaim deed and convey all of each party’s right, title, interest, and estate in property outside the agreed boundary line that had been the subject of the boundary dispute that led to the boundary line agreement.

**Parcel Boundary Adjustment,**

*Utah Code section 10-9a-103(39)*

- “Parcel boundary adjustment” means a recorded agreement between owners of adjoining properties adjusting their mutual boundary if: (a) no additional parcel is created; and (b) each property identified in the agreement is unsubdivided land, including a remainder of subdivided land.

- 10-9a-523: A property owner may execute a parcel boundary adjustment by boundary line agreement.
## How choose which?

<table>
<thead>
<tr>
<th>When outside of subdivision.</th>
<th>When line is uncertain or disputed (Ascertaining location).</th>
<th>When line is not uncertain and not disputed (Moving location).</th>
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<tbody>
<tr>
<td>Boundary Line Agreement.</td>
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### Compare LLA & PBA: City still Boss?

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<td><strong>Avoid permission now?</strong></td>
<td>Owners in subdivision may exchange title to portions if approved by land use authority</td>
<td>Notice of approval is not required in order to record a document conveying title. 10-9a-608(5).</td>
</tr>
<tr>
<td><strong>Must still comply later?</strong></td>
<td>But you still need to comply with land use, before permitted to build.</td>
<td>But chair says there may be consequences later.</td>
</tr>
</tbody>
</table>
Example: Lindon City ordinance as to Parcel Boundary Adjustment (PBA)

17.34.020 When these regulations apply.

A PBA does not require Land Use Authority approval, but a parcel that may be modified or altered by a PBA must comply with the provisions of this Title. Lindon City may require a property owner to bring parcels into compliance with this Title and Chapter through a zoning enforcement action, including denial of permits or licenses, the issuance of stop work orders, or red tagging the lot. Amendments to property lines that are part of a platted subdivision lot may not be completed through a PBA, but instead shall follow the requirements set forth in LCC 17.33.

17.34.030 Review of Resulting Parcels.

Upon learning that a lot has been modified or altered by a PBA and fails to comply with requirements for parcel size and acreage, street frontage, water shares regulations, and parcel improvements as set forth in this Title, the City may require the property owner to bring the parcel into compliance with this Title and other zoning and development standards.
What Assistance can Land Surveyor Provide?
What is the practice of law?


- Attorney can’t tell them where boundary is, and can’t prep subdiv. plat, yet these require knowledge of law.

- Can surveyor prepare a boundary line agreement, and then work with parties to get it signed and recorded?
Definition of practicing Law v. Surveying: Which best includes Boundary Line Agreements?

Utah Definition of Practicing Law, Utah Code of Judicial Admin., Rule 14-802
• (b)(1) The “practice of law” is the representation of the interests of another person by informing, counseling, advising, assisting, advocating for or drafting documents for that person through application of the law and associated legal principles to that person’s facts and circumstances.
• (c) ... the following activity by a non-lawyer ... is permitted:
  • (12) (B) ... title insurance agent ... may ... prepare deeds ....

Utah Definition of Practicing Surveying, Utah Code section 58-22-101(11)
"Professional land surveying" or "the practice of land surveying" means a service or work, the adequate performance of which requires the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law for adequate evidence to the act of measuring and locating lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water for the purpose of determining areas and volumes, for the monumenting or locating of property boundaries or points controlling boundaries, and for the platting and layout of lands and subdivisions of lands, including the topography, alignment and grades of streets, and for the preparation and perpetuation of maps, record plats, field notes records, and property descriptions that represent these surveys and other duties as sound surveying practices could direct.
Can land surveyor prepare a deed? (Or BLA?)

Natural tendency to expand one’s territory: must be an L.S. to do GIS, or chain crew which measures whether is a first down.

• The selection and completion of form legal documents, or the drafting of such documents, including deeds, ... constitutes the practice of law. Washington Bar v. Great Western Federal, 586 P.2d 870 (Wa. 1978).

• The practice of law in this state is defined as: ... (2) Conveyancing; Georgia Code section 15-19-50.

• It constitutes the unlicensed practice of law for a nonlawyer to prepare a warranty deed, or quitclaim deed. Florida Bar v. Irizarry, 268 So. 2d 377 (Fla. 1972).

• In most (if not all) jurisdictions, the preparation deeds is the practice of law. Jeff Lucas, slide 79, Boundary Dispute Resolution, copyright 2010.

• The Department of Justice sued and obtained a judgment against a bar association that had restrained title insurance companies from competing in the business of certifying title. Comments on Potential Unlicensed Practice of Law, Opinion regarding real estate closing activities. Dept. of Justice & Federal Trade Commission, 3/20/2006 at 6, citing U.S. v. Allen County Indiana Bar Association (1980).
Arguably:

• Surveyor can do boundary agreement, because not a conveyance.
• Surveyor can do lot line adjustment, because is traditional to work with land use authority.
Hippocratic oath: First, do no Harm.

- Unnecessary Surgery: Is old fence already referenced up the chain?
- What you did will be looked at under microscope if result is poor.
- Even if within scope of surveying, must be within scope of your skill.
  - Diversity of those in surveying profession.
- Only surveyors can prepare descriptions.
- Keep growing. Associate with others.
- Great need for surveyors who can put boundary problems to rest.
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