

# TITLE INSURANCE and BOUNDARY SURVEYS

---

By Jeffery N. Lucas, JD, PLS, Esq.

© 2002-2023 All Rights Reserved

Lucas & Company, LLC

Post Office Box 361606, Birmingham, AL 35236

Ph: 205-425-5200

[Jeff@lucasandcompany.com](mailto:Jeff@lucasandcompany.com)

# TITLE INSURANCE and BOUNDARY SURVEYS

By Jeffery N. Lucas, JD, PLS, Esq.  
© 2002-2023 All Rights Reserved  
Lucas & Company, LLC  
Post Office Box 361606, Birmingham, AL 35236  
Ph: 205-425-5200  
[jeff@lucasandcompany.com](mailto:jeff@lucasandcompany.com)

1

---

---

---

---

---

---

---

---

---

---

**Signup For  
THE LUCAS LETTER**

**The only legal newsletter  
specifically for the Land  
Surveying and Engineering  
community.**

**WEBSITE:**  
[www.lucasandcompany.com](http://www.lucasandcompany.com)

**E-MAIL:**  
[info@lucasandcompany.com](mailto:info@lucasandcompany.com)

2

---

---

---

---

---

---

---

---

---

---

**ALABAMA  
BOUNDARY LAW**

Available at The Lucas Letter  
website.

**WEBSITE:**  
[www.lucasandcompany.com](http://www.lucasandcompany.com)

**E-MAIL:**

3

---

---

---

---

---

---

---

---

---

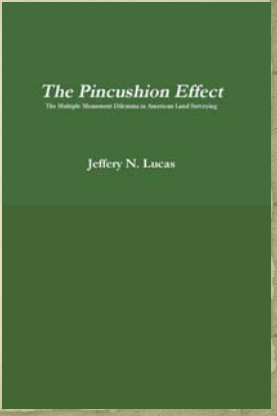
---

**THE PINCUSHION EFFECT**  
The Multiple Monument Dilemma in American Land Surveying

Available at The Lucas Letter website.

WEBSITE:  
[www.lucasandcompany.com](http://www.lucasandcompany.com)

E-MAIL:  
[info@lucasandcompany.com](mailto:info@lucasandcompany.com)



4

---

---

---

---

---

---

---


---

**ILLINOIS BOUNDARY LAW**  
Copyright © 2012 Lucas & Company, LLC

By Jeffery N. Lucas

WEBSITE:  
[www.lucasaandcompany.com](http://www.lucasaandcompany.com)

E-MAIL:  
[info@lucasandcompany.com](mailto:info@lucasandcompany.com)



5

---

---

---

---

---

---

---

---

**XYHT**  
2022  
What modernizing the State Plane Coordinate System means to U.S. surveyors



**INSIDE**

- 14 Surveying Tough in Alaska
- 22 Satellite on 3D Laser Scanning
- 30 Social Science the Surveyor

6

---

---

---

---

---

---

---

---

## DISCLAIMER

### ***I Am Not Your Attorney.***

This seminar is not intended to provide you with legal advice. Seek legal advice from an attorney who is familiar with your particular situation and the facts in your particular case. The example contract clauses contained herein (if any) are intended as examples only and should be reviewed and modified by competent legal counsel to reflect variations in applicable state and local law specific to your circumstances.

---

---

---

---

---

---

---

---

7

## Jeff's 10 Commandments

### **I. THE TWO MOST IMPORTANT DOCUMENTS RELATIVE TO THE CONVEYANCE OF REAL PROPERTY MAY BE THE TITLE INSURANCE POLICY AND THE BOUNDARY SURVEY**

The deed, although important, is a result of the conveyance. Further assurances of successful ownership are title insurance and the location of the limits of that ownership.

---

---

---

---

---

---

---

---

8

## Title Insurance Basics

- WHERE DID TITLE INSURANCE COME FROM?

---

---

---

---

---

---

---

---

9

### Title Insurance Basics

The American Land Title Association, the national trade association for the title industry, *was founded in 1907* and currently represents 2,000 abstracters, title insurance agents, and title insurance underwriting companies.

"Title Insurance: A Comprehensive Overview," American Land Title Association.

10

---

---

---

---

---

---

---

---

### Title Insurance Basics

Protecting the parties involved in real estate transactions is the reason the title insurance product was developed. ... Title insurance emphasizes *risk prevention* rather than risk assumption.

"Title Insurance: A Comprehensive Overview," American Land Title Association.

11

---

---

---

---

---

---

---

---

### Title Insurance Basics

Until the nation was nearly a century old, the conveyance of real property did not include any form of guarantee or insurance. Many of the transactions were *handled by conveyancers*, who either personally searched titles or obtained some form of abstract (summary of public records) to determine ownership of the land and encumbrances on the title.

"Title Insurance: A Comprehensive Overview," American Land Title Association.

12

---

---

---

---

---

---

---

---

**Watson v. Muirhead**  
Supreme Court of Pennsylvania  
57 Pa. 161 (Pa.1868)  
February 10, 1868

13

---

---

---

---

---

---

---

---

**Title Insurance Basics**

*Watson v. Muirhead*, settled the matter of ownership over a property purchased after an “abstract of title,” or title records search, was conducted. During his research, the transaction conveyancer found a lien on the title, which he then turned over to an attorney for legal opinion. The attorney advised that the judgment was not in fact a valid lien. With this assurance, the conveyancer and purchaser completed the transaction.

“History of Title Insurance,” by First American Title.

14

---

---

---

---

---

---

---

---

**Title Insurance Basics**

Not long afterward, the property was sold at a Sherriff’s sale in order to pay off the lien. The court ruled that the lien, and thus the Sherriff’s sale, was indeed lawful, and the conveyancer involved in the transaction was not held liable for misinformation because the legal standard was “*negligence*,” or failure to act with due care. Since the conveyancer had relied upon an attorney’s opinion that the lien was invalid, the conveyancer had used due care — even if he was incorrect.

“History of Title Insurance,” by First American Title.

15

---

---

---

---

---

---

---

---

### Title Insurance Basics

In 1876, a group of Philadelphia conveyancers founded the first title insurance company. In an initial advertisement, the company said it was beginning operation to insure "*the purchasers of real estate and mortgages against losses from defective title, liens and encumbrances,*" and added, "Through these facilities, transfer of real estate and real estate securities can be made more speedily and with greater security than heretofore."

"Title Insurance: A Comprehensive Overview," American Land Title Association.

---

---

---

---

---

---

---

---

16

### Jeff's 10 Commandments

**II. PRESENTLY, THERE ARE SIX BASIC ALTA POLICIES OF TITLE INSURANCE. THESE INCLUDE LENDERS, LENDERS LEASEHOLD, OWNERS, OWNERS LEASEHOLD, RESIDENTIAL (Plain Language), AND CONSTRUCTION LOAN POLICIES**

"Title Insurance: A Comprehensive Overview," American Land Title Association.

---

---

---

---

---

---

---

---

17

### Title Insurance Basics

An ***Owner's Policy*** is typically issued in the amount of the real estate purchase price, and remains in effect for as long as the owner, or his or her heirs, retains an interest in the property. In addition to identifying risk before a transaction is completed, the Owner's Policy will pay valid claims and all defense costs against attacks on the title.

"Title Insurance: A Comprehensive Overview," American Land Title Association.

---

---

---

---

---

---

---

---

18

### Title Insurance Basics

A **Loan Policy** [or Lenders Policy] assures the lender of the validity, priority and enforceability of its lien (mortgage) – serving as protection for the lender’s security interest in the property. A Loan Policy is issued in the amount of the loan, and liability decreases as the mortgage debt is reduced.

“Title Insurance: A Comprehensive Overview,” American Land Title Association.

---

---

---

---

---

---

---

---

19

### Title Insurance Basics

*Approximately 25 percent* of all residential real estate transactions have *issues with the title* – issues that are resolved by title professionals before closing. This emphasis on loss prevention results in fewer claims paid by title insurers compared to other lines of insurance.

“Title Insurance: A Comprehensive Overview,” American Land Title Association.

---

---

---

---

---

---

---

---

20

### Title Insurance Basics

*Searching* the public records provides a basis for title insurance and usually includes visits to the offices of recorders or registers of deeds, clerks of courts and other officials.

“Title Insurance: A Comprehensive Overview,” American Land Title Association.

---

---

---

---

---

---

---

---

21



**Jeff's 10 Commandments**

**III. THERE ARE AT LEAST FIVE "TYPES" OF TITLE TO REAL PROPERTY**

- 1. Title as an Operation of Law (e.g., Adverse Possession)
- 2. Equitable Title
- 3. Record (Legal) Title
- 4. Marketable Title
- 5. Insurable Title

---

---

---

---

---

---

---

---

22

**Real Property Title**

**Real Property Title**

In real property law, "title" is the *"formal right of ownership"* of property.

*Black's Law Dictionary.*

---

---

---

---

---

---

---

---

23

**Jeff's 10 Commandments**

**IV. THE STATUTE OF FRAUDS REQUIRES THAT EVERY CONVEYANCE OF REAL PROPERTY BE MEMORIALIZED BY A WRITTEN DOCUMENT**

In order for a conveyance of real property and associated rights to take place it must be in compliance with the Statute of Frauds, i.e., it *must be in writing.*

---

---

---

---

---

---

---

---

24

## Statute of Frauds

“Practically all existing statute of frauds provisions in the various jurisdictions are based upon Section 4 of the English statute of 1677, with very little change in the language of that statute. In the 300 years since that statute was adopted, such heavy accretion of case law has developed that the matter of interpretation of the statute has become essentially a common law matter.”

Rabin, Edward H., Roberta Rosenthal Kwall and Jeffrey L. Kwall, *Fundamentals of Modern Property Law, Fourth Edition*, Foundation Press, New York, New York, 2000 at 859

25

---

---

---

---

---

---

---

---

## Statute of Frauds

“The most important justification for the adverse possession doctrine is that it protects one who innocently and mistakenly possesses the land of another for such a long period that a justifiable reliance on the existing state of affairs can be presumed. A change in this state of affairs would give a windfall to the record owner. ... The Doctrine of adverse possession also promotes certainty in land titles, nullifies conveyance errors, and often settles boundary disputes.”

Edward H. Rabin, et al, *Fundamentals of Modern Property Law, Fourth Edition*, 790 (Foundation Press 2000).

26

---

---

---

---

---

---

---

---

## Statute of Frauds

### Statute of Frauds and Adverse Possession

- Generally speaking, adverse possession is a title remedy. It will change the title of both properties involved by conveying the disputed property to the plaintiff and divesting the defendant of the same property. However, because of the Statute of Frauds, the disputed strip cannot be conveyed until there is a written court decree memorializing the conveyance.

27

---

---

---

---

---

---

---

---

## Statute of Frauds

### Statute of Frauds and Adverse Possession

- If the plaintiff's deed extends over a strip of land in the possession of another, the more appropriate approach would be a "quite-title" and "ejectment" action to confirm plaintiff's rights and remove the defendant from the adversely possessed land.

28

---

---

---

---

---

---

---

---

## Statute of Frauds

### Statute of Frauds and Adverse Possession

- If both parties have "color of title" over the disputed property (e.g., the deeds overlap), then, ostensibly, both parties have been conveyed the same piece of property. A successful adverse possession claim would simply clear the title to the overlapping property in favor of the one while divesting the other of the same property.

29

---

---

---

---

---

---

---

---

## Statute of Frauds

### Statute of Frauds and Adverse Possession

- A divestment of an interest in property is also a form of a conveyance, which cannot satisfy the Statute of Frauds without a written document to memorialize the conveyance. A court decree or the conveyance of the disputed property through a quit-claim deed or other conveyance vehicle is necessary.

30

---

---

---

---

---

---

---

---

## Statute of Frauds

### Statute of Frauds and Adverse Possession

- The case of overlapping deeds is not necessarily an adverse possession case. It could simply be a junior/senior rights issue, which can be resolved by a proper interpretation of the sequence of conveyances out of a common grantor—*if one where actually interested in resolving such a situation.*

31

---

---

---

---

---

---

---

---

## Statute of Frauds

### Statute of Frauds and Adverse Possession

- Bottom Line: Adverse possession is a right and remedy that may be asserted by a plaintiff or claimed by a defendant to accomplish the transfer of title to property and the associated rights. In my mind, *an adversely possessed line is a potential property line* that will not be realized until a court decree has been obtained and, therefore, is not a doctrine of boundary location that can be utilized by the practicing land surveyor.

32

---

---

---

---

---

---

---

---

## Real Property Title

### Title as an Operation of Law

- In Alabama there are two types of adverse possession; *statutory adverse possession* and *adverse possession by prescription*. Prescription is a form of adverse possession but in most states it carries a right or interest in property as opposed to fee title.

33

---

---

---

---

---

---

---

---

## Real Property Title

### Title as an Operation of Law

- *Statutory adverse possession* is a result of legislative action to create a mechanism whereby one in possession of land, with or without “record title” (e.g., a deed), may obtain title to property by operation of the law.

34

---

---

---

---

---

---

---

---

## Real Property Title

### Title as an Operation of Law and Equity

“Whereas title is conferred through a court decree for statutory adverse possession, *adverse possession by prescription*, as the Alabama Supreme Court has said on at least one occasion, ‘is a rule of absolute repose’ and ‘the presumption created by prescription precludes judicial inquiry in a title so acquired.’”

*Lay v. Phillips*, 161 So.2d 477, 480 (Ala. 1964).

35

---

---

---

---

---

---

---

---

## Real Property Title

### Title as an Operation of Law and Equity

“The very term prescription is derived from ‘*Praescriptio*’ meaning a pre-scribing or former writing, and *presupposes a lost grant*.”

*Lay v. Phillips*, 161 So.2d 477, 480 (Ala. 1964).

36

---

---

---

---

---

---

---

---

## Real Property Title

### Title as an Operation of Law and Equity

“Further, the presumption rests not only on the supposition of a lost grant, but on the higher ground that it *‘conduces to the peace of society*, and relieves courts from the necessity of adjudicating rights so obscured by the lapse of time and the accidents of life, that the attainment of truth and justice is next to impossible.”

*Lay v. Phillips*, 161 So.2d 477, 480 (Ala. 1964).

---

---

---

---

---

---

---

---

37

## Kendall v. Lowther

Supreme Court of Iowa

356 N.W.2d 181

September 19, 1984

---

---

---

---

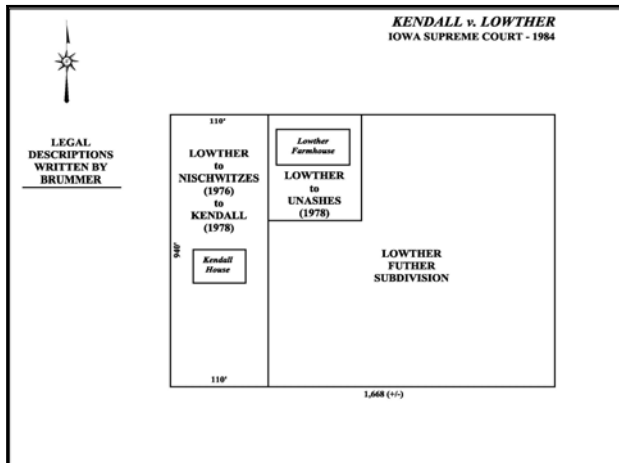
---

---

---

---

38



---

---

---

---

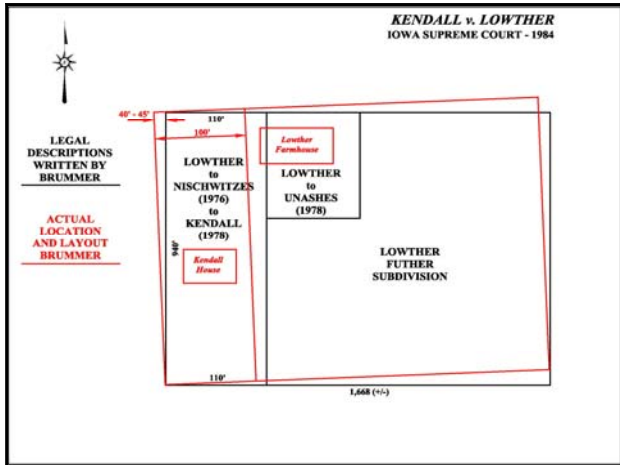
---

---

---

---

39



40

---

---

---

---

---

---

---

---

**Real Property Title**

**Equitable Title**

“To quiet title in accordance with the legally described property contained in the Kendall and Unash deeds would result in either great expense or *inequity to the Unashes*. In the event this court were to quiet title to the disputed property in Kendalls, Unashes could be required to remove their home from the Kendall property.”

*Kendall v. Lowther*, 356 N.W.2d 181, 186 (Iowa 1984).

41

---

---

---

---

---

---

---

---

**Real Property Title**

**Equitable Title**

“Although the Kendalls had the *superior legal title* to the ground described in their deed, including the portion east of the west line of Meadowood Estates Lot 1 as monumented, the Unashes have had color of title to said property *based upon their actual possession and have a superior equitable right to said property*.”

*Kendall v. Lowther*, 356 N.W.2d 181, 186 (Iowa 1984).

42

---

---

---

---

---

---

---

---

**Real Property Title**

**Equitable Title**

“The Unashes’ claim was based on what the trial court correctly described as a superior equitable title. It makes no difference that Kendalls had been deeded legal title to that property based on the legal description in the Lowther and Nischwitz deeds. The Unashes’ title was what the *Eggers* case described as a paramount title— ‘one which prevails in an action or is successfully asserted.’”

*Kendall v. Lowther, 356 N.W.2d 181, 190 (Iowa 1984).*

43

---

---

---

---

---

---

---

---

**Real Property Title**

**Equitable Title**

“The Kendall claim was based on a superior legal title. Only by virtue of the lawsuit and decree was the Unash equitable title found to be paramount to the Kendall legal title. Consequently the trial court properly awarded Unashes recovery of their attorney fees and expenses incurred in defending this action, based on the theory that Lowthers had failed to warrant and defend the premises against the Kendalls’ claim which was based on a superior legal title.”

*Kendall v. Lowther, 356 N.W.2d 181, 190 (Iowa 1984).*

44

---

---

---

---

---

---

---

---

**Real Property Title**

**Record (Legal) Title**

- Record title is also conferred, in essence, by operation of law when an instrument of conveyance (usually a deed) is properly prepared, executed, delivered and recorded in the Public Records.

45

---

---

---

---

---

---

---

---



## Real Property Title

### Marketable Title

Title which is free from encumbrances and any reasonable doubt as to its validity, and such as a reasonably intelligent person, who is well informed as to the facts and their legal bearing, and ready and willing to perform his contract, would be willing to accept in exercise of ordinary business prudence.

*Black's Law Dictionary.*

46

---

---

---

---

---

---

---

---

## Real Property Title

### Insurable Title

- Insurable title is simply that title a reputable insurance company is willing to assure through the issuance of a title insurance policy. It would seem that if title were insurable it would automatically be marketable. This, however, is not necessarily the case.

47

---

---

---

---

---

---

---

---

## Real Property Title

“It is of the greatest importance to note that the title to certain property may be insurable though not necessarily marketable. Various types of policies are issued by the title insurers and some of these policies do not insure the marketability of title, but only that there will be no actual dispossession of the insured.”

Evans, Jesse P., *Alabama Property Rights and Remedies*, Second Edition, 1998, LEXIS Law Publishing, Charlottesville, Virginia, at 153.

48

---

---

---

---

---

---

---

---

**Jeff's 10 Commandments**

**V. DEEDS AND OCCUPATION OF REAL PROPERTY ARE BOTH MERELY EVIDENCE OF TITLE; NEITHER IS PROOF OF TITLE.**

“A written deed is evidence of ownership; it is not proof of ownership. Land can be gained by unwritten means; hence, a paper title does not prove ownership. It is evidence only of the claim of ownership and the right of possession.”

*Evidence and Procedures for Boundary Location, Fifth Edition, 2006.*

49

---

---

---

---

---

---

---

---

**Deed v. Occupation**

“However, it is well settled that the actual occupation of property is equivalent to the recording of the instrument under which the occupant is claiming an interest. Where property is occupied by someone other than the record owner, a prospective purchaser is charged with constructive notice of all facts which a reasonable inquiry would have disclosed.”

*Dana Point Cond. Assoc. v. Keystone Service Co., 491 N.E.2d 63, 67 (Ill.App.1986).*

50

---

---

---

---

---

---

---

---

**Deed v. Occupation**

“The estate thus created is to be determined, not alone by the words used, but by the situation and circumstances of the parties, the context of the instrument, and the fact that the instrument was or was not written by a person acquainted with “the use of legal technical words.”

*Smith v. Bachus, 70 So. 261, 264 (Ala.1915).*

51

---

---

---

---

---

---

---

---

### Deed v. Occupation

“It is not the office of a description to identify the premises, but to furnish the means by which they can be identified.” Parol evidence is, and must of necessity be, always admissible to identify the property described in and conveyed by a deed, to ascertain to what property the particulars of description in the deed apply.

*Sengfelder v. Hill*, 58 P. 250 (Wash.1899).

52

---

---

---

---

---

---

---

---

### Deed v. Occupation

The true doctrine on this subject is that, where a purchaser has knowledge of any fact sufficient to put him on inquiry as to the existence of some right or title in conflict with that he is about to purchase, he is presumed either to have made the inquiry and ascertained the extent of such prior right, or to have been guilty of a degree of negligence equally fatal to his claim to be considered as a bona fide purchaser.

*Sengfelder v. Hill*, 58 P. 250 (Wash.1899).

53

---

---

---

---

---

---

---

---

### Deed v. Occupation

The protection is granted to a “bona fide purchaser,” which is almost universally construed to mean a purchaser without notice or knowledge of an outstanding superior title.

*Sengfelder v. Hill*, 58 P. 250 (Wash.1899).

54

---

---

---

---

---

---

---

---

### Deed v. Occupation

It can hardly be insisted on too often or too vigorously that language at its best is always a defective and uncertain instrument, that words do not define themselves, that terms and sentences in a contract, a deed, or a will do not apply themselves to external objects and performances, that the meaning of such terms and sentences consists of the ideas that they induce in the mind of some individual person who uses or hears or reads them, and that seldom in a litigated case do the words of a contract convey one identical meaning to the two contracting parties or to third persons.

*Berg v. Hudesman*, 801 P.2d 222 (Wash.1990).

55

---

---

---

---

---

---

---

---

### Deed v. Occupation

We now hold that extrinsic evidence is admissible as to the entire circumstances under which the contract was made, as an aid in ascertaining the parties' intent. ... We thus reject the theory that ambiguity in the meaning of contract language must exist before evidence of the surrounding circumstances is admissible. Cases to the contrary are overruled.

*Berg v. Hudesman*, 801 P.2d 222 (Wash.1990).

56

---

---

---

---

---

---

---

---

### Jeff's 10 Commandments

#### VI. THE DETERMINATION OF ANY REAL PROPERTY BOUNDARY IS A MIXED QUESTION OF LAW AND FACT

"What are the boundaries is a question of law, and where the boundaries are is a question of fact."

*DD&L v. Burgess*, 753 P.3d 561 (Wash.App. 1988).

57

---

---

---

---

---

---

---

---

### Stop Sign Analogy

- Legal Question: What is it?



58

---

---

---

---

---

---

---

---

### Stop Sign Analogy

- Legal Argument: The What Has Changed!



59

---

---

---

---

---

---

---

---

### Stop Sign Analogy

- Factual Question: Where do you Stop?



60

---

---

---

---

---

---

---

---

### Stop Sign Analogy

- Factual Question: Where do you Stop?



61

---

---

---

---

---

---

---

---

### Stop Sign Analogy

- Factual Question: Where do you Stop?



62

---

---

---

---

---

---

---

---

## *Harris v. Robertson*

Supreme Court of Arkansas  
813 S.W.2d 252  
July 8, 1991

63

---

---

---

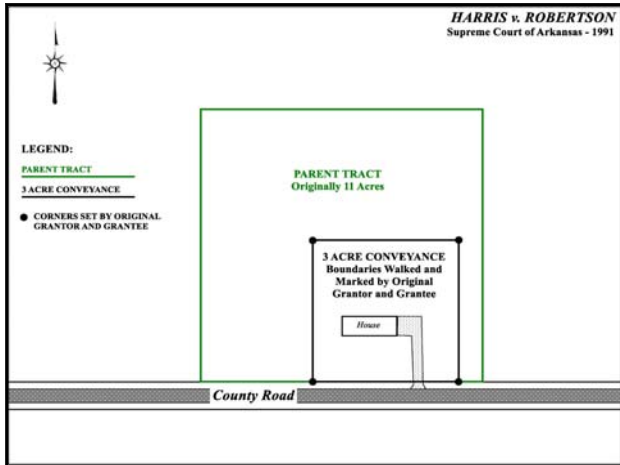
---

---

---

---

---



64

---

---

---

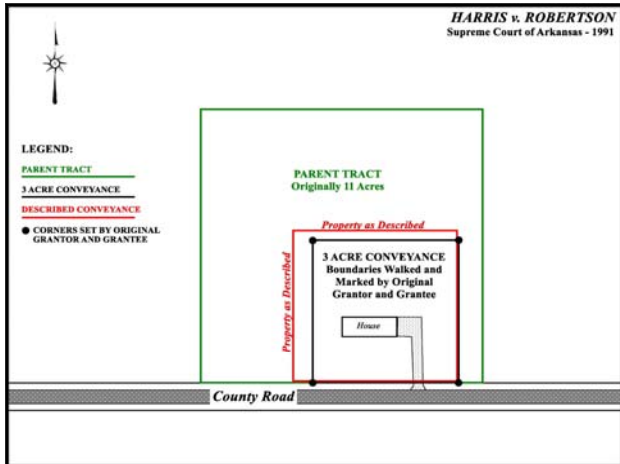
---

---

---

---

---



65

---

---

---

---

---

---

---

---

**Jeff's 10 Commandments**

**VII. GENERALLY SPEAKING, TITLE INSURANCE ONLY INSURES THE LEGAL QUESTION OF TITLE, HOWEVER, IT CAN ALSO INSURE THE LOCATION OF THAT PROPERTY ON THE GROUND.**

“*Survey Coverage*” is provided as a covered risk on the front page of the standard title insurance policy and then excluded in Schedule B.

66

---

---

---

---

---

---

---

---







70

---

---

---

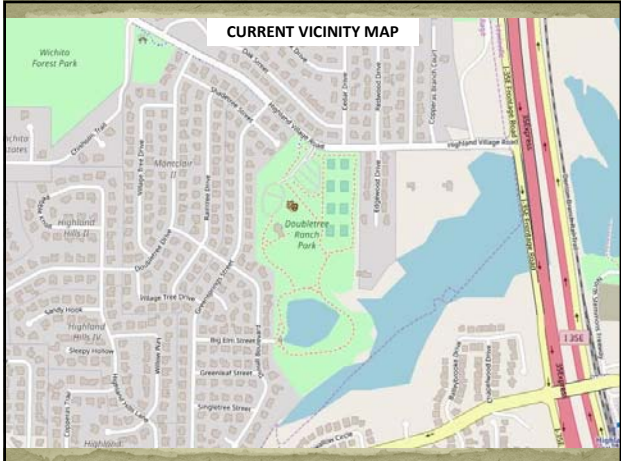
---

---

---

---

---



71

---

---

---

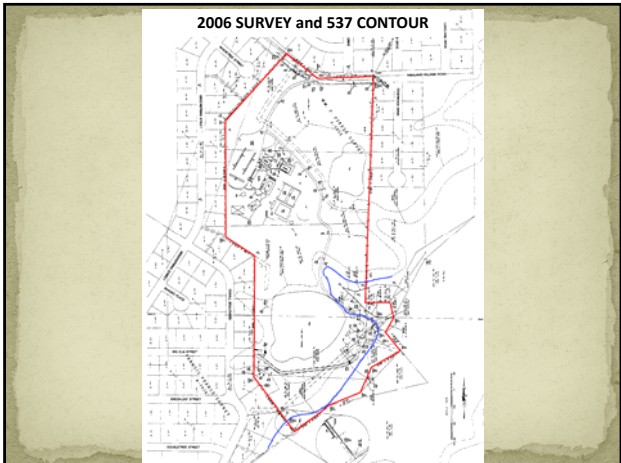
---

---

---

---

---



72

---

---

---

---

---

---

---

---



73

---

---

---

---

---

---

---

---

### Lawyers Title v. Doubletree

“In connection with the purchase, Doubletree acquired a title insurance policy from Lawyers Title. In addition, Lawyers Title offered to provide Doubletree ‘a more complete title insurance policy’ that would insure ‘against loss because of discrepancies or conflicts in boundary lines, encroachments or protrusions, or overlapping of improvements, excluding from the coverage specific matters disclosed by the survey,’ if Doubletree obtained a survey of the property and paid an additional premium.”

*Lawyers Title v. Doubletree Partners, 739 F.3d 848 (U.S. 5<sup>th</sup> Cir. 2014).*

74

---

---

---

---

---

---

---

---

### Lawyers Title v. Doubletree

“Doubletree decided to purchase this more complete policy, and the parties have referred to the additional coverage Doubletree purchased as ‘survey coverage.’”

*Lawyers Title v. Doubletree Partners, 739 F.3d 848 (U.S. 5<sup>th</sup> Cir. 2014).*

75

---

---

---

---

---

---

---

---

## Lawyers Title v. Doubletree

“Before closing, Doubletree retained a professional surveyor, Mark Paine, to conduct a pre-closing survey. This original March 2006 survey indicated the approximate location of the flowage easement held by the United States, showing that it covered a relatively small portion of the property’s southern edge.”

*Lawyers Title v. Doubletree Partners*, 739 F.3d 848 (U.S. 5<sup>th</sup> Cir. 2014).

76

---

---

---

---

---

---

---

---

## Lawyers Title v. Doubletree

“The purpose of the survey exception is to exclude coverage when the insured fails to provide the insurer with a survey. From a search of relevant public records, a title company cannot ascertain the risks that an accurate survey would disclose.”

*Lawyers Title v. Doubletree Partners*, 739 F.3d 848 (U.S. 5<sup>th</sup> Cir. 2014).

77

---

---

---

---

---

---

---

---

## Lawyers Title v. Doubletree

“In conducting the survey, Paine relied on flood insurance rate maps. However, Paine did not measure elevations with respect to the flowage easement, and he did not consult a publicly available contour map from the City of Highland Village.”

*Lawyers Title v. Doubletree Partners*, 739 F.3d 848 (U.S. 5<sup>th</sup> Cir. 2014).

78

---

---

---

---

---

---

---

---

## Lawyers Title v. Doubletree

“It is for this reason that the title company puts that risk on the insured, who can control it either by obtaining a survey or arranging for the elimination of the survey exception. Thus, the very purpose of a survey exception is to exclude from coverage errors that would be revealed not by a search of public records, but by an accurate survey.”

*Lawyers Title v. Doubletree Partners*, 739 F.3d 848 (U.S. 5<sup>th</sup> Cir. 2014).

79

---

---

---

---

---

---

---

---

## Lawyers Title v. Doubletree

“Either removal of the survey exception or amendments to that exception could therefore shift certain survey-related risks from the insured to the insurer. As Doubletree obtained a survey, paid for an amended policy altering the standard survey exception, and received a survey disclosing the location of the flowage easement, it was reasonable for Doubletree to believe that the flowage easement was excluded only to the extent shown on the survey.”

*Lawyers Title v. Doubletree Partners*, 739 F.3d 848 (U.S. 5<sup>th</sup> Cir. 2014).

80

---

---

---

---

---

---

---

---

## Interpreting Insurance Agreements

“Exceptions in insurance policies are strictly construed against the insurer. *Furthermore, when the language of an insurance contract is subject to two or more reasonable interpretations, that construction which affords coverage is to be the one adopted.*”

*Larson v. Cook Consultants*, 690 S.W.2d 567, 570 (Tex.1985).

81

---

---

---

---

---

---

---

---

### Interpreting Insurance Agreements

“A title insurance company has an obligation to answer for any loss due to a defect in a title if it has not excepted that defect from its coverage. It cannot escape liability when it does not except a defect that is a matter of public record. It is generally assumed that a title defect that appears in the public records but that is not noted is covered by a title policy.”

*Parker v. Commonwealth*, 614 So.2d 975 (Ala.1992).

---

---

---

---

---

---

---

---

82

### Interpreting Insurance Agreements

“Title insurers are not allowed to give opinions as to the state of title; and the examination of the public records, the preparation of a commitment to insure and the issuance of the policy insuring the named insured do not constitute the practice of law.”

Evans, Jesse P., *Alabama Property Rights and Remedies*, Second Edition, 1998, LEXIS Law Publishing, Charlottesville, Virginia, at 153.

---

---

---

---

---

---

---

---

83

### Interpreting Insurance Agreements

“Title insurance does not replace the need for a lawyer in a real estate transaction. Indeed, an insured under a policy may often need independent advice on rights and remedies available to a purchaser under the policy.”

Evans, Jesse P., *Alabama Property Rights and Remedies*, Second Edition, 1998, LEXIS Law Publishing, Charlottesville, Virginia, at 154.

---

---

---

---

---

---

---

---

84

### Interpreting Insurance Agreements

“A title insurer *cannot and should not give advice* to parties to a transaction as there is an inherent conflict of interest between all parties to the transaction and the title insurance representative may or may not be licensed to practice law.”

Evans, Jesse P., *Alabama Property Rights and Remedies*, Second Edition, 1998, LEXIS Law Publishing, Charlottesville, Virginia, at 154.

85

---

---

---

---

---

---

---

---

### Interpreting Insurance Agreements

While ALTA recommends that all parties to real estate transactions be represented by their own counsel, it is the view of the association that no real estate attorney adequately protects the interests of a client without advising that client of the *availability and protection of title insurance*.

“Title Insurance: A Comprehensive Overview,” American Land Title Association.

86

---

---

---

---

---

---

---

---

### Interpreting Insurance Agreements

“Like other types of insurance contracts, *title insurance policies are governed by the rules of construction* applicable to ordinary contracts. Accordingly, unambiguous terms and language in a policy are not subject to construction merely because two interpretations are advocated by the parties to a controversy over coverage.”

Evans, Jesse P., *Alabama Property Rights and Remedies*, Second Edition, 1998, LEXIS Law Publishing, Charlottesville, Virginia, at 155, 156.

87

---

---

---

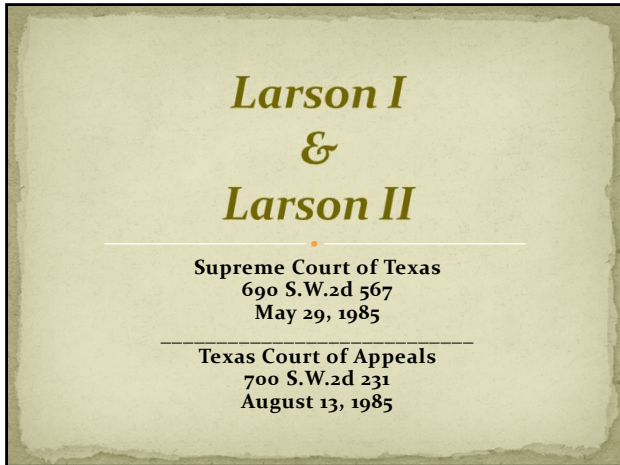
---

---

---

---

---



88

---

---

---

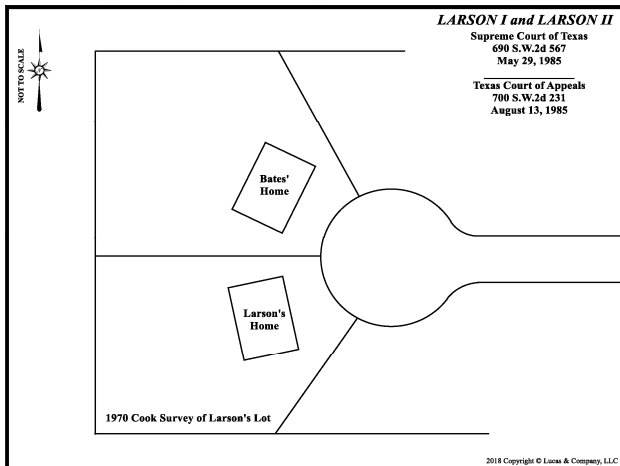
---

---

---

---

---



89

---

---

---

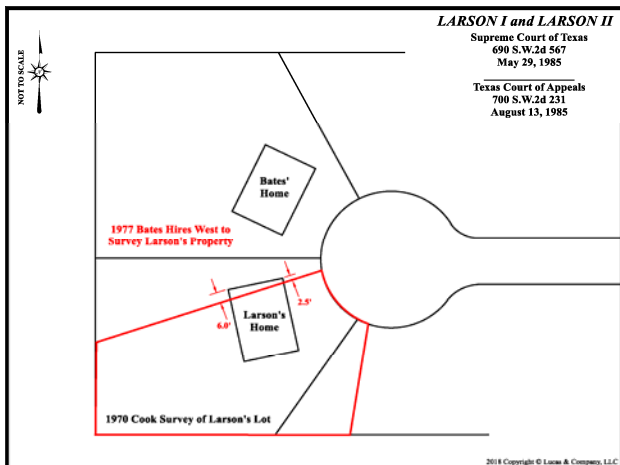
---

---

---

---

---



90

---

---

---

---

---

---

---

---



91

---

---

---

---

---

---

---

---

### Jeff's 10 Commandments

**VIII. THE BOUNDARY SURVEY IS AN OPINION ON THE FACTUAL QUESTION OF LOCATION, IT IS NOT AN OPINION ON TITLE TO THE PROPERTY**

92

---

---

---

---

---

---

---

---

### Factual Question of Location

*"The mere matter of the locating the boundary of lands, however, does not involve the title. It relates only to the limit to which the land covered by the title extends. The statute of frauds is inapplicable to an award made under a parol submission which had nothing in view beyond the settling of a dispute as to the boundary of land, and not the title of it. No right or title passes in virtue of the award. It merely fixes the boundary, and the title which existed previously becomes precisely located and limited by it."*

*Shaw v. State, 28 So. 390 (Ala.1899).*

93

---

---

---

---

---

---

---

---



## THE BOUNDARY LOCATION DOCTRINES

- Adverse Possession – Title and Location Doctrine
- Common Grantor Doctrine – Location
- Doctrine of Monuments - Location
- Original Surveyor/Following Surveyor – Location
- Lines Actually Run on the Ground – Location
- Acquiescence – Location
- Oral Agreement – Location
- Practical Location – Location
- Repose – Location
- Estoppel – Location
- Junior/Senior Conveyances – Primarily Location

Figure 1

94

---

---

---

---

---

---

---

---

### Factual Question of Location

“And whenever it can be proved that there was a line actually run by the surveyor, was marked and a corner made, the party claiming under the grant or deed, shall hold accordingly, notwithstanding a mistaken description of the land in the grant or deed.”

*Riley v. Griffin*, 16 Ga. 141, 143 (Ga.1854).

95

---

---

---

---

---

---

---

---

### Factual Question of Location

“This litigation grows out of a new survey recently made by the city surveyor. This officer after searching for the original stakes and finding none, has proceeded to take measurements according to the original plat, and to drive stakes of his own. According to this survey the practical location of the whole plat is wrong, and all the lines should be moved between four and five feet to the east.”

*Diehl v. Zanger*, 39 Mich. 601, 604 (Mich.1878). Opinion by Cooley

96

---

---

---

---

---

---

---

---

### Factual Question of Location

“The surveyor testifies with positiveness and apparently without the least hesitation that ‘the fences and buildings on all the lots are not correctly located’ and there is of course an opportunity for forty-eight suits at law and probably many more than that.”

*Diehl v. Zanger*, 39 Mich. 601, 604 (Mich.1878). Opinion by Cooley

97

---

---

---

---

---

---

---

---

### Factual Question of Location

“In construing a description in a deed the court should consider the circumstances of the transaction between the parties and then read and interpret the words used in the deed in light of these circumstances.”

*DD&L v. Burgess*, 735 P.2d 561 (Wash.App.1988).

98

---

---

---

---

---

---

---

---

### Factual Question of Location

“Though the monument referred to in a deed does not actually exist at the time the deed was drafted, but is afterward erected by the parties with the intention that it shall conform to the deed, it will control.”

*DD&L v. Burgess*, 735 P.2d 561 (Wash.App.1988).

99

---

---

---

---

---

---

---

---

### Factual Question of Location

“Parol evidence is admissible to show the position of the monuments and boundary marks mentioned in a deed.”

*DD&L v. Burgess, 735 P.2d 561 (Wash.App.1988).*

100

---

---

---

---

---

---

---

---

### Factual Question of Location

“In cases of conflicting calls, the priority of calls is: (1) lines actually run in the field, (2) natural monuments, (3) artificial monuments, (4) courses, (5) distances, (6) quantity or area. Where it is shown by competent evidence that a monument does not accord with a survey or plat, the monument as established on the ground must control.”

*DD&L v. Burgess, 735 P.2d 561 (Wash.App.1988).*

101

---

---

---

---

---

---

---

---

### Factual Question of Location

“If the property is resurveyed, the resurvey must rediscover where the original surveyors placed the boundaries rather than determine where new and modern surveys would place them.”

*DD&L v. Burgess, 735 P.2d 561 (Wash.App.1988).*

102

---

---

---

---

---

---

---

---

**Jeff's 10 Commandments**

**IX. THE PURPOSE OF AN ALTA/NSPS LAND TITLE SURVEY IS TO REMOVE THE "SURVEY EXCEPTION" FROM THE TITLE POLICY BY PROVIDING A COMPLETE AND ACCURATE SURVEY**

This, of course, begs the question, what constitutes a "complete" survey and what does it mean for a survey to be "accurate"?

---

---

---

---

---

---

---

---

103

**2021 Minimum Standards**

**Sec. 1. Purpose**

For a survey of real property, and the plat, map or record of such survey, to be acceptable to a title insurance company for the purpose of insuring title to said real property free and clear of survey matters (except those matters disclosed by the survey and indicated on the plat or map), ...  
[Emphasis added.]

2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, Sec. 1, Para. 2. Effective Date of Feb. 23, 2021.

---

---

---

---

---

---

---

---

104

**2021 Minimum Standards**

**Sec. 1. Purpose**

... certain specific and pertinent information must be presented for the distinct and clear understanding between the insured, the client (if different from the insured), the title insurance company (insurer), the lender, and the surveyor professionally responsible for the survey.

[Emphasis added.]

2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, Sec. 1, Para. 2. Effective Date of Feb. 23, 2021.

---

---

---

---

---

---

---

---

105

**2021 Minimum Standards**

**Sec. 1. Purpose**

In order to meet such needs, clients, insurers, insureds, and lenders are entitled to rely on surveyors to conduct surveys and prepare associated plats or maps that are of a professional quality and appropriately uniform, *complete, and accurate*.  
[Emphasis added.]

2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, Sec. 1, Para. 3. Effective Date of Feb. 23, 2021.

106

---

---

---

---

---

---

---

---

**2021 Minimum Standards**

**Sec. 1. Purpose**

To that end, and in the interests of the general public, the surveying profession, title insurers, and abstracters, the ALTA and the NSPS jointly promulgate the within details and criteria setting forth a minimum standard of performance for ALTA/NSPS Land Title Surveys. A complete 2021 ALTA/NSPS Land Title Survey includes:  
[Emphasis added.]

2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, Sec. 1, Para. 3. Effective Date of Feb. 23, 2021.

107

---

---

---

---

---

---

---

---

**2021 Minimum Standards**

**Sec. 1. Purpose**

(i) the on-site fieldwork required pursuant to Section 5,  
(ii) the preparation of a plat or map pursuant to Section 6 showing the results of the fieldwork and its relationship to documents provided to or obtained by the surveyor pursuant to Section 4,  
(iii) any information from Table A items requested by the client, and  
(iv) the certification outlined in Section 7.

2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, Sec. 1, Para. 3. Effective Date of Feb. 23, 2021.

108

---

---

---

---

---

---

---

---

**2021 Minimum Standards**

**Sec. 3. D. Boundary**

The boundary lines and corners of any property or interest in real property being surveyed (hereafter, the “*surveyed property*” or “*property to be surveyed*”) as part of an ALTA/NSPS Land Title Survey ...

[Emphasis added.]

2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, Section 3.D.

---

---

---

---

---

---

---

---

109

**2021 Minimum Standards**

**Sec. 3. D. Boundary**

... *must be established and/or retraced* in accordance with *appropriate boundary law principles* governed by the set of facts and evidence found in the course of performing the research and fieldwork.

[Emphasis added.]

2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, Section 3.D.

---

---

---

---

---

---

---

---

110

**2021 Minimum Standards**

**Sec. 3. E. ii. Measurement Standards**

Any boundary lines and corners established or retraced *may have uncertainties* in location resulting from (1) the availability, condition, history and integrity of reference or controlling monuments, (2) ambiguities in the record descriptions or plats of the surveyed property or its adjoiners, (3) occupation or possession lines as they may differ from the written title lines, or (4) Relative Positional Precision.

[Emphasis added.]

2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, Sec.3.E.ii.

---

---

---

---

---

---

---

---

111

**2021 Minimum Standards**

**Sec. 3. E. ii. Measurement Standards**

Of these four sources of uncertainty, only Relative Positional Precision is controllable, although, due to the inherent errors in any measurement, it cannot be eliminated. The magnitude of the first three uncertainties can be projected based on evidence; Relative Positional Precision is estimated using statistical means. [Emphasis added.]

2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, Sec.3.E.ii.

112

---

---

---

---

---

---

---

---

**2021 Minimum Standards**

**Sec. 3. E. iii. Measurement Standards**

The first three of these sources of uncertainty must be weighed as part of the evidence in the determination of where, in the surveyor's opinion, the boundary lines and corners of the surveyed property should be located (see Section 3.D. above). [Emphasis added.]

2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, Sec.3.E.iii.

113

---

---

---

---

---

---

---

---

**2021 Minimum Standards**

**Sec. 3. E. iii. Measurement Standards**

The first three of these sources of uncertainty must be weighed as part of the evidence in the determination of where, in the surveyor's opinion, the boundary lines and corners of the surveyed property should be located. Relative Positional Precision is a measure of how precisely the surveyor is able to monument and report those positions; it is not a substitute for the application of proper boundary law principles. [Emphasis added.]

2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, Sec.3.E.iii.

114

---

---

---

---

---

---

---

---

**2021 Minimum Standards**

**Sec. 3. E. iii. Measurement Standards**

A boundary corner or line may have a small Relative Positional Precision because the survey measurements were precise, yet still be *in the wrong position* (i.e., *inaccurate*) if it was established or *retraced using faulty or improper application of boundary law principles*. [Emphasis added.]

2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, Sec.3.E.iii.

115

---

---

---

---

---

---

---

---

**2021 Minimum Standards**

**Sec. 6. B. vii. Plat or Map**

The relationship of the boundaries of the surveyed property to its adjoiners (e.g., contiguity, gaps, overlaps) where ascertainable from documents provided to or obtained by the surveyor pursuant to Section 4 and/or *from field evidence gathered during the process of conducting the fieldwork*. [Emphasis added.]

2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, Sec.6.B.vii.

116

---

---

---

---

---

---

---

---

**2021 Minimum Standards**

**Sec. 6. B. vii. Plat or Map**

If the surveyed property is composed of multiple parcels, the extent of any gaps or overlaps between those parcels must be identified. *Where gaps or overlaps are identified, the surveyor must, prior to or upon delivery of the final plat or map, disclose this to the insurer and client*. [Emphasis added.]

2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, Sec.6.B.vii.

117

---

---

---

---

---

---

---

---



**2021 Minimum Standards**

**Sec. 7. Certification**

To (name of insured, if known), (name of lender, if known), (name of insurer, if known), (names of others as negotiated with the client):

2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, Sec.7.

118

---

---

---

---

---

---

---

---

**2021 Minimum Standards**

**Sec. 7. Certification**

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items \_\_\_\_\_ of Table A thereof.

2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, Sec.7.

119

---

---

---

---

---

---

---

---

**2021 Minimum Standards**

**Sec. 7. Certification**

The fieldwork was completed on \_\_\_\_\_ [date].  
Date of Plat or Map: \_\_\_\_\_ (Surveyor's signature, printed name and seal with Registration/License Number).

2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, Sec.7.

120

---

---

---

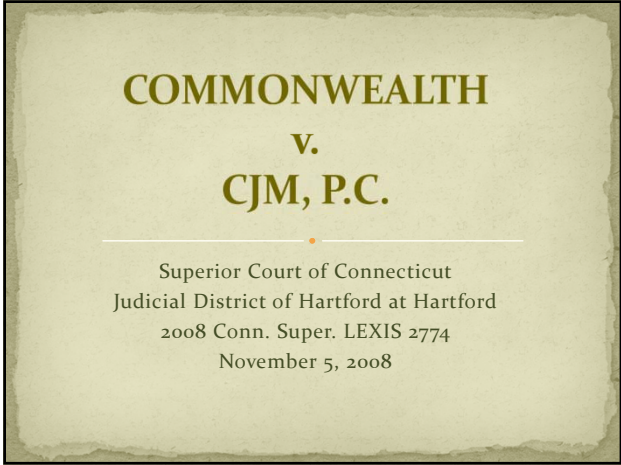
---

---

---

---

---



121

---

---

---

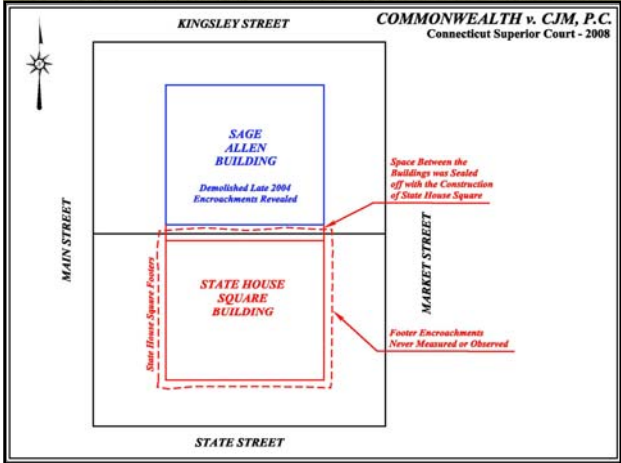
---

---

---

---

---



122

---

---

---

---

---

---

---

---

Commonwealth v. CJM

*“Professional negligence or malpractice is defined as the failure of one rendering professional services to exercise that degree of skill and learning commonly applied under all the circumstances in the community by the average prudent, reputable member of the profession with the result of injury, of loss, or damage to the recipient of those services.”*

*Commonwealth Land Title v. CJM, PC, 2008 Conn.Super. LEXIS 2774 (Conn.Super.2008).*

123

---

---

---

---

---

---

---

---

### Commonwealth v. CJM

“While the standards require a surveyor to cite all visible encroachments and need not cite any invisible encroachments, the standards do not allow the surveyor categorically to state there are no encroachments when he cannot observe whether or not there are encroachments. His obligation under the standards is, rather, to cite that there are no *visible* encroachments.”

*Commonwealth Land Title v. CJM, PC, 2008 Conn.Super. LEXIS 2774 (Conn.Super.2008).*

124

---

---

---

---

---

---

---

---

### Commonwealth v. CJM

“The survey certified to Commonwealth recognized the distinction. It certified to no ‘visible easements,’ but as to encroachments, it certified to ‘no encroachments.’ This was a breach of surveyors’ professional standards. Particularly is this so when defendants’ own expert testified that it was *common knowledge* that adjacent buildings in cities encroach upon each other’s property lines.”

*Commonwealth Land Title v. CJM, PC, 2008 Conn.Super. LEXIS 2774 (Conn.Super.2008).*

125

---

---

---

---

---

---

---

---

### Jeff’s 10 Commandments

#### X. THE SURVEYOR IS RESPONSIBLE FOR THE “UTLIMATE ISSUE” WITH REGARD TO THE LOCATION OF THE PROPERTY ON THE GROUND

The “Ultimate Issue” in any boundary dispute case is the “property” boundary between the disputing parties. No other line really matters.

126

---

---

---

---

---

---

---

---

**The Ultimate Issue Rule**

“The purpose of the surveys in this boundary dispute is to locate accurately the *boundary between the plaintiff's and defendants' property*. To do this, the survey must begin with an accurate description of what land the parties own.”

*Andrews v. Barton*, 2008 Fla.App. LEXIS 1836 (Fla.App. 2008)

127

---

---

---

---

---

---

---

---

**The Ultimate Issue Rule**

**Federal Rules of Evidence**

**Rule 704.**

Opinion on Ultimate Issue. (a) Except as provided in subdivision (b), testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

128

---

---

---

---

---

---

---

---

**The Ultimate Issue Rule**

**Washington Rules of Evidence**

**Title VII. Opinions and Expert Testimony**

**Rule 704. Opinion on Ultimate Issue**

Testimony in the form of an opinion or inferences otherwise admissible *is not objectionable* because it embraces an ultimate issue to be decided by the trier of fact.

129

---

---

---

---

---

---

---

---

### The Ultimate Issue Rule

“In all courts, evidence is the purview of the jury (or judge as ‘trier of the facts’ if there is no jury); the law is always in the purview of the court. A Georgia decision permitted the surveyor to testify as to his opinion on the ultimate issue of the case without invading the province of the jury, so long as the subject matter was an appropriate one for opinion evidence. This is quite unusual. *North Carolina still retains the majority approach* in that the expert land surveyor cannot give an opinion as to where a true boundary line is located, for that decision is the ultimate fact in issue to be determined by the jury from the evidence presented during the trial.”

Robillard, Walter G., Lane J. Bouman and Hon. Robert Shelton, *Clark on Surveying and Boundaries, Seventh Edition* at 49.

---

---

---

---

---

---

---

---

130

### The Ultimate Issue Rule

“Rule 704, provides that opinion testimony ‘*is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.*’ This rule abrogates the doctrine that opinion testimony should be excluded for the reason that it goes to the ultimate issue which should be decided by the trier of fact.”

*Green Hi-Win Farm, Inc. v. Neal*, S.E.2d 614, 616, 617 (N.C.App. 1986).

---

---

---

---

---

---

---

---

131

### The Ultimate Issue Rule

“*No witness can give opinions on the ultimate fact that is being tried.* Permitting an expert to tell the members of the jury what they must decide is usurping their exclusive rights. ... The surveyor is more or less limited in the responses to the questions asked.”

Robillard, Walter G., Donald A. Wilson, Curtis M. Brown, *Evidence and Procedures for Boundary Location, Sixth Edition*, 2011, John Wiley & Sons, Inc., Hoboken, New Jersey, at 549-550.

---

---

---

---

---

---

---

---

132

**The Ultimate Issue Rule**

“A Mississippi court ruled on the question of whether the surveyor could be asked, ‘Where is the true line?’ The court replied: ‘*This is not a matter about which they could give their opinion.*’”

Robillard, Walter G., Donald A. Wilson, Curtis M. Brown, *Evidence and Procedures for Boundary Location, Sixth Edition*, 2011, John Wiley & Sons, Inc., Hoboken, New Jersey, at 550. According to the endnotes, quoting from the case of *Gichner v. Antonio Title Co.*, 410 F.2d 238 (Miss.1969).

133

---

---

---

---

---

---

---

---

**The Ultimate Issue Rule**

**Mississippi Rules of Evidence**  
**Rule 704. Opinion on ultimate issue.**

Testimony in the form of an opinion or inference otherwise admissible *is not objectionable* because it embraces an ultimate issue to be decided by the trier of fact.

134

---

---

---

---

---

---

---

---

**The Ultimate Issue Rule**

**Mississippi Rules of Evidence**  
**Commentary to Rule 704.**

Rule 704 abolishes the “*ultimate issue rule*” which existed in pre-rule Mississippi practice. The ultimate issue rule was often unnecessarily restrictive and generally difficult to apply. More often than not the invocation of the rule served to deprive the trier of fact of useful information. Rule 704 clarifies much of the confusion over the ultimate issue rule. An opinion is no longer objectionable solely on grounds that it ‘invades the province of the jury.’

135

---

---

---

---

---

---

---

---

### The Ultimate Issue Rule

#### Mississippi Rules of Evidence

##### Commentary to Rule 704.

The abolition of the ultimate issue rule does not result in the admission of all opinions. It is an absolute requirement under Rules 701 and 702 that opinions *must be helpful* to a determination of the case before they are admissible. Furthermore, under Rule 403 evidence is excluded which *wastes time*.

---

---

---

---

---

---

---

---

136

### The Ultimate Issue Rule

#### Nebraska Rules of Evidence

##### Case Notes on Rule 704.

Under this section, the test is not whether the expert's opinion or inference invades the province of the jury, but whether the opinion or inference is otherwise admissible and will *assist the trier of fact* to understand the evidence or determine a fact in issue ....

---

---

---

---

---

---

---

---

137

### The Ultimate Issue Rule

#### The Lone Detractor

“In keeping with recent legal decisions, we have somewhat modified some of the terminology. *For instance, seldom is the term property line or property boundary used.* It is our belief that property rights, including property boundaries, *are legal questions* and as such are not addressed by land surveyors. Surveyors locate boundaries, or land boundaries or deed lines. They do not and cannot locate property rights.”

Robillard, Walter G., Donald A. Wilson, Curtis M. Brown, *Evidence and Procedures for Boundary Location, Sixth Edition*, 2011, John Wiley & Sons, Inc., Hoboken, New Jersey, at 2.

---

---

---

---

---

---

---

---

138

**BROWN'S DILEMMA**  
**a.k.a. Brown's Overlap Case**  
*Western Title v. Murray & McCormick (1976)*

"LAND SURVEYOR'S LIABILITY TO UNWRITTEN RIGHTS"  
By Curtis M. Brown  
Reprinted in: *THE CURT BROWN CHRONICLES*  
By Michael J. Pallamary  
2011, Author House, 323 thru 330

139

---

---

---

---

---

---

---

---

**BROWN'S DILEMMA**

**Brown Recants**

"In my early writings, I generally advocated that surveyors should locate land boundaries in accordance with a written deed; all conveyances based upon unwritten rights should be referred to attorneys for resolution. Within recent years, there have been cases, *one in particular*, wherein surveyors have been held liable for failure to react to a change in ownership created by prolonged possession. ....

Brown, Curtis M., "Land Surveyor's Liability to Unwritten Rights," 1979.  
Reprinted in: *The Curt Brown Chronicles*, 2011, Michael J. Pallamary, 323-330.

140

---

---

---

---

---

---

---

---

**BROWN'S DILEMMA**

**Brown Recants**

"Can a surveyor monument the lines of ownership obtained by unwritten means? To my knowledge absolutely nothing in the law prevents him from doing so. Clearly from my conversations with attorneys, this is not the unauthorized practice of law. If the surveyor chooses to claim that a possessory right has ripened into a fee title, he is certainly privileged to do so. The real question is *What should he do?*"

Brown, Curtis M., "Land Surveyor's Liability to Unwritten Rights," 1979.  
Reprinted in: *The Curt Brown Chronicles*, 2011, Michael J. Pallamary, 323-330.

141

---

---

---

---

---

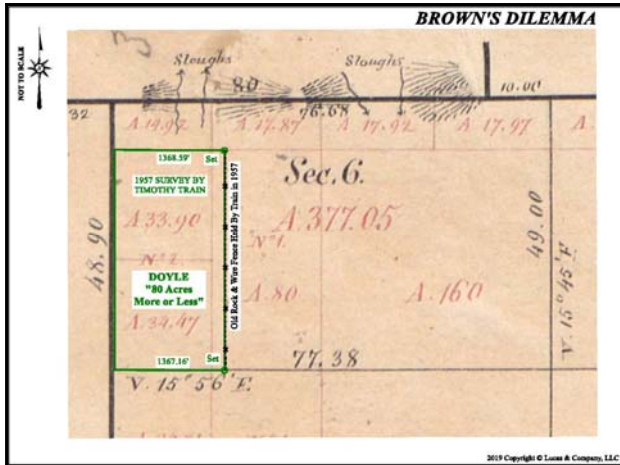
---

---

---







145

---

---

---

---

---

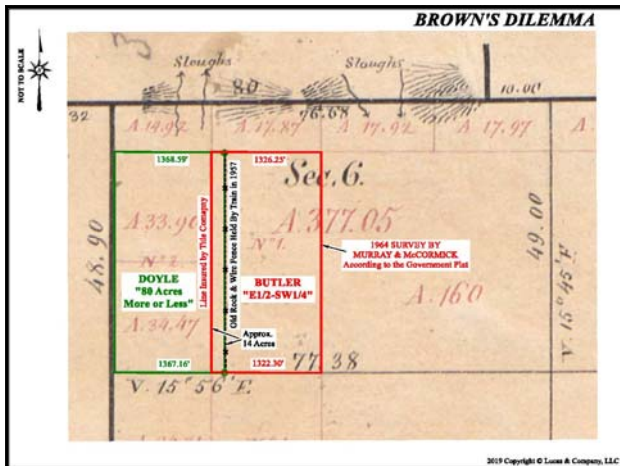
---

---

---

---

---



146

---

---

---

---

---

---

---

---

---

---

**BROWN'S DILEMMA**

**Brown Criticized as a "Fence-Line" Surveyor**

"The principle enunciated [by Brown] is that of occupation, i.e., the *idea that possession of land [the fence line in this case] is sometimes the best evidence for the location of a boundary.* To many readers of this essay, this will seem self-evident, and they may have utilized such a principle in their own work."

Williams, Mitchell G., "The Great Dilemma—or, When is a Fence Just a Fence?" 1980. Reprinted in: *The Curt Brown Chronicles*, 2011, Michael J. Pallamary, 334-346.

147

---

---

---

---

---

---

---

---

---

---

## BROWN'S DILEMMA

### Brown Criticized as a Fence-Line Surveyor

"It is to these readers that I address what follows, for this principle is based on a basic misunderstanding of both the nature of boundary lines and the legal role of the land surveyor."

Williams, Mitchell G., "The Great Dilemma—or, When is a Fence Just a Fence?" 1980. Reprinted in: *The Curt Brown Chronicles*, 2011, Michael J. Pallamary, 334-346.

---

---

---

---

---

---

---

---

148

## BROWN'S DILEMMA

### Brown Criticized as a Fence-Line Surveyor

"The resolution of the dilemma lies in the realization that when deed lines and possessed lines are contradictory, the issue must be moved to a higher plane—that of the courts. Obviously, there is a discrepancy. Either the deed is mistaken, or the house was actually built on the wrong lot, or someone can claim adverse possession, or there was a second deed that was overlooked in the abstract, etc."

Williams, Mitchell G., "The Great Dilemma—or, When is a Fence Just a Fence?" 1980. Reprinted in: *The Curt Brown Chronicles*, 2011, Michael J. Pallamary, 334-346.

---

---

---

---

---

---

---

---

149

## BROWN'S DILEMMA

### Brown Criticized as a Fence-Line Surveyor

"These possibilities must be resolved legally by a court. The Brown solution would result in a kind of 'Brownian' motion of property lines. Let surveyor **A** come out and monument your fence. Move your fence 20 feet, rip out all of surveyors **A**'s monuments, wait ten years, hire surveyor **B** to come out and monument your fence, and voila! The process can be repeated innumerable times by all the adjoiners, and soon there will be gunplay in the streets."

Williams, Mitchell G., "The Great Dilemma—or, When is a Fence Just a Fence?" 1980. Reprinted in: *The Curt Brown Chronicles*, 2011, Michael J. Pallamary, 334-346.

---

---

---

---

---

---

---

---

150