

Acquiescence is not a big mystery, nor are complex legal issues involved. There were no Arizona cases found while researching for this chapter that specifically address adjudication of a boundary line by the theory of recognition and acquiescence. However, the legal principles have been discussed in Arizona cases, and the groundwork has been laid by the Arizona courts to utilize acquiescence as a means of settling a boundary dispute. Other states have had specific cases using acquiescence as an applicable doctrine.

Acquiesce may be defined as an implied consent to a transaction or to an existing set of circumstances as a result of one's mere silence, or without formal written notice or acknowledgement.

#### ACQUIESCENCE OF DIVISION LINES

In general, one major difference between acquiescence and adverse possession is that for acquiescence to occur, the true boundary line must be uncertain or unknown.

"It is well settled that where the boundary lines of adjoining parcels are not definitely known or their location is in dispute, such owners may establish the lines either by a written or by a parol agreement; such boundary lines may also be established by their mutual recognition of, and acquiescence in, certain lines as the true boundaries..." Hak. v. Manders, 63 N.W.2d. 436. (underlines added for emphasis).

"...in order to establish an agreed boundary line, the evidence must show more than mere acquiescence and occupancy for the time prescribed by the statute of limitations; it must go farther, and show that the boundary line was uncertain, or believed by all parties to be uncertain..." Phelan v. Drescher, 268 P. 465. (underlines added for emphasis).

In other words, it is a well established rule of law that where adjoining property owners possess up to a given line, such as a wall or fence, or cultivated line, and both parties recognize, accept and acquiesce in that line for a substantial length of time under the belief that the true line is not known, then the courts have readily held that this line is the true boundary line between the parcels. The length of time for the acquiescence required to establish the line is usually the same period of time required to establish title to land by adverse possession. Some jurisdictions have stated that the record boundary line must be in doubt or uncertain of location, however, many cases approving of the doctrine of acquiescence have not distinguished whether the cases involved uncertain lines or whether the record lines were actually known. It has also been stated by the courts that if acquiescence occurs over a line where the record line's location is definitely known, then the doctrine of adverse possession must apply.

Many court cases in other jurisdictions have started out with arguments of acquiescence and resulted in establishment of the boundary by adverse possession. The Arizona case of Trevillian v. Rais, 40 Ariz. 42 considered and discussed acquiescence, but finally adverse possession was applied.

Some states have statutes that specifically address time requirements for acquiescence, but Arizona has no such statute. In absence of an acquiescence statute, the time period required for gaining title to land by adverse possession will apply. The case of Hein v. Nutt, 66 Ariz. 107, 184 P.2d. 656 addressed this, and was also the one case that came the closest to application of acquiescence to settle a boundary dispute. The one element that was missing was the time requirement. The court stated as follows:

"In the absence of estoppel, the period for acquiescence must continue for the period prescribed by statutes relating thereto or required by statutes of limitations relating to the acquisition of title by adverse possession...Arizona has no statute on acquiescence and our applicable statute of limitations on adverse possession, 29-102, A.C.A. 1939, requires five years." (underlines added for emphasis).

As mentioned in this case, five years was the applicable statute of limitations. The chapter on Adverse Possession discusses several different statutes of limitations for gaining title by adverse possession. It would seem that depending upon the situation, it would first need to be determined which statute of limitation would apply, then decide if that time requirement is met. In any event, the longest time requirement is ten years.

#### ACQUIESCENCE OF SURVEYS AND MONUMENTS

Often times surveyors encounter resurvey monuments that were set by other surveyors, that are flat out wrong. The monuments being incorrect due to improperly following a deed, or due to inaccurate work. Erroneous monuments however, when established in good faith, may be subject to the same principles of acquiescence as fences or other occupation. Acquiescence can

often be used to legally support the position of a found monument not in harmony with record calls. This is an often overlooked method which may be used to accept a monument, and surveyors often set another monument a few tenths away when the existing monument is the true legal corner. This is evidenced by the following cases:

"This case comes within the rule of *Farrow v. Planich*, 134 Wash. 690, 236 P. 288, where we held that an old survey, accepted by the parties for many years, fixes the true line, even though the survey may be in error." *Stewart v. Hoffman*, 390 P.2d. 553.

"\* \* \* The pertinent rule is that where a boundary has been defined in good faith by the interested parties and thereafter for a long period of time acquiesced in, acted upon, and improvements made with reference to the line, such a boundary will be considered the true dividing line and will govern. Whether or not the line so established is correct is immaterial...The period of time which must elapse before a boundary line is established by acquiescence is the same as is required to secure property by adverse possession." *Scott v. Slater*, 42 Wash. 2d. 366, 368, 255 P.2d. 377, 378.

#### THE ROLE OF THE SURVEYOR

The surveyor cannot make the final legal decision whether acquiescence has occurred with respect to occupation. However, during the course of the survey, after landowners have been talked with, it would be very appropriate to show on a duly recorded "record of survey", any statements made by the landowners or other witnesses that would relate to the elements required for acquiescence. If facts that would constitute acquiescence of a boundary line are ignored, and monuments set subsequently disrupt well settled occupation, it could throw an entire neighborhood into dispute. If the conditions clearly indicate a possibility that acquiescence has occurred, show every bit of evidence so no person interpreting the plat can err in being informed of the conditions in the field.

It is the surveyor's responsibility to accept a monument set in good faith by another surveyor, if that monument is legally controlling. The surveyor should do everything in his power to accept existing monuments and promote another professional's work, even if the measurements are not quite right. Find a way to accept a found monument. Originality, common report, seniority and acquiescence are all acceptable doctrines by which a surveyor can base decisions of whether to accept a monument or not. Whenever possible utilize acquiescence as a means of accepting a monument, but in any event a "record of survey" should be filed showing the facts and conclusions.

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Thomas M. Cooley, Chief Justice, Supreme Court of Michigan, 1864-1885, wrote an opinion entitled "The Judicial Functions of Surveyors", where Justice Cooley discusses acquiescence as follows:

"...Public policy requires that such lines be not lightly disturbed, or disputed at all after the lapse of any considerable time. The litigant, therefore, who in such a case pins his faith on the surveyor is likely to suffer for his reliance, and the surveyor himself to be mortified by a result that seems to impeach his judgement.

Of course, nothing in what has been said can require a surveyor to conceal his own judgement, or to report the facts one way when he believes them to be another. He has no right to mislead, and he may rightfully express his opinion that an original monument was at one place, when at the same time he is satisfied that acquiescence has fixed the rights of parties as if it were at another. But he would do mischief if he were to attempt to "establish" monuments which he knew would tend to disturb settled rights; the farthest he has a right to go, as an officer of the law, is to express his opinion where the monument should be, at the same time that he imparts the information to those who employ him and who might otherwise be misled, that the same authority that makes him an officer and entrusts him to make surveys, also allows parties to settle their own boundary lines, and considers acquiescence in a particular line or monument, for any considerable period, as strong if not conclusive evidence of such settlement. The peace of the community absolutely requires this rule."