



**A *Very* Basic Introduction to Boundary Law** 

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**Learning Objectives**

- Types of law; Boundary control
- How boundaries are created; Characteristics
- Where the Rules of Construction come from
- How gaps and overlaps are handled
- Description interpretation issues: Ambiguities; Controlling/informative terms
- Written intent conflicts

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**Just enough to be dangerous...**

A ~50 slide Powerpoint doesn't make you a description interpretation expert. This material is a general overview with a lot of caveats because it is based on common law.

Common law can vary between jurisdictions; must be familiar with your area. Often there is no definitive solution to a re-establishment problem, only the "best" given the circumstances.

Changing evidence even a little can dramatically affect the conclusion. Research is key, including a title search back to parcel beginnings and parcel evidence.

Consider all reasonable alternatives and why they do or don't apply.

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**I. Law and Boundaries**

**A. Type of Law**


1. *Statutory*

Constitution creates Legislature and grants it law making power.

Legislative bodies at

- Federal
- State
- Local

Statutes are written law



Legislature can create regulatory or administrative agency and give it rule making authority

- Narrower scope than legislature
- Rules have same authority as statutes

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**I. Law and Boundaries**


**A. Type of Law**

2. *Common Law*

Rules, beliefs, and principles derived from long continued usage and customs (tradition), or judgments and decrees of judicial tribunals.

Based on consistent application.

- Use of pervious similar situations for decision framework.
- Quantity and quality of evidence is important.



Judicial common law

- Trial level courts (lowest level) decisions must be within framework of existing common law.
- It is created, affirmed, overturned at the appellate level (courts of appeals and supreme courts).

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**I. Law and Boundaries**

**B. Statute of Frauds**

*Contract must be in writing to be valid.*


- All terms included
- Prevents contradiction by action or word
- Interested third parties can interpret



All states have a Statute of Frauds

*Deed is a contract for property conveyance*

- Description defines physical extent and rights transferred
- Written intent



States have statutes which identify required elements for a valid deed.

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**I. Law and Boundaries**

**C. Boundaries**  
*Are either created or re-established*

1. *Creation*

Controlled by statutory law.  
 Examples include:  
 Subdivisions; Condominiums; Small land divisions, Cemeteries, etc

Regulations may define:  
 Minimum lot sizes, maps, descriptions, monumentation, survey accuracies

USPLS: Federal level regulation  
 Original instruction letters  
 1855 - First Manual  
 2009 - Latest Manual  
 Procedures, survey accuracies, monumentation, documentation, etc.

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**I. Law and Boundaries**

**C. Boundaries**  
*Are either created or re-established*

1. *Creation*

Corner

A legal entity with a specific location but without physical attributes (dimension and composition)  
 Boundaries connect corners; a corner is where a boundary changes direction or character.  
 A *monument* is physical evidence of a corner location.

To maintain boundary stability and integrity

- Where corners were originally placed is where they belong today
- Once created, a boundary exists in perpetuity unless removed by a legal process.
- Rights of adjoiners sharing a boundary are established at boundary creation.

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**I. Law and Boundaries**

**C. Boundaries**  
*Are either created or re-established*

1. *Re-Establishment*

Re-establishment seeks to re-create a boundary in its original location.  
 A resurvey collects evidence and surveyor evaluates it to determine original corner locations.

Re-establishment is controlled by common law.  
 Provides evidence evaluation framework  
 Evidence quantity and quality are paramount.

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**II. Parcel Creation Methods**

**A. Parentage**

*Parent-Child*

A child parcel is part of a parent parcel  
 At least one new boundary  
 Possible shared boundaries  
 Multiple children, multiple new boundaries – how do they relate?

*Family analogy*

Child inherits characteristics from parent  
 Parent must provide for child

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**I. Law and Boundaries**

**A. Parentage**

*How boundaries are created affect:*

Description type  
 How are gaps and overlaps handled

*Boundary creation*

Establishes boundary once and forever.  
 Creates adjoiner relationship  
 Location is "without error."  
 Creates evidence framework for later re-establishment.

*Creation methods*

Simultaneous  
 Sequential  
 Combination

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**I. Law and Boundaries**

**B. Processes**

*1. Simultaneous*

Boundaries created at the same time by the same legal instrument.  
 Have equal standing - no Sr-Jr relationships.

*Description types*

Lot and block  
 Aliquot part

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**I. Law and Boundaries**

**B. Processes**

*2. Sequential*

New parcels created independently from same parent over time.  
 Earlier created boundaries have precedence (senior) over later created ones (junior).

*Description types*  
 Metes  
 Bounds  
 Metes and Bounds

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**I. Law and Boundaries**

**B. Processes**

*3. Combination*

New parcels created by combination of simultaneous and sequential processes.  
 New boundaries can have characteristics of either or both.  
 Senior-junior standing may or may not exist

*Description type*  
 Quasi-metes and bounds;  
 "of"

New parcel is part of Lot 4 and part of Lot 5

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**III. Boundary Re-Establishment**

**A. Rules of Construction (RoC)**

*Evidence*

Evidence framework established at original boundary creation.  
 Deed (written intent) and (possibly) physical monumentation.  
 Over time, evidence added and removed based on human and natural action.

*Collateral evidence* is secondary, often derived from original evidence.  
 Examples: fences, streets, replacement monument, parol, etc.

At boundary re-est, evidence may conflict - How to resolve?

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**III. Boundary Re-Establishment**

**A. Rules of Construction (RoC)**

*Evaluation guide*

	Right of possession (unwritten rights)	Particular circumstances
	Senior right (in case of overlap)	
	Written intentions of the parties (description)	Written Record
	Call for survey	
	Call for monuments; adjoiner	
	Direction/distance	
	Area/Coordinates	

If elements conflict, RoC indicates their relative weight

- Not strict; guidelines
- Description wording can change order
- As can evidence type and character
- If higher elements are lost, lesser ones carry greater weight.

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**III. Boundary Re-Establishment**

**B. Right of Possession: Unwritten Rights**

*Based on adjacent owners actions/inactions*

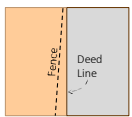
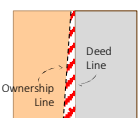
Ownership departs from description

Doctrines

- Adverse possession
- Prescription
- Oral agreement
- Equitable estoppel
- Recognition and acquiescence

Ownership determined by courts

- Surveyor doesn't have authority
- Map deed and use (encroachment) lines

Unwritten Right

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**III. Boundary Re-Establishment**

**C. Senior Right: Gap or Overlap**

*Precedence establishment*

Once boundary is created, Sr-Jr relationship is established and doesn't change unless boundary is legally removed.

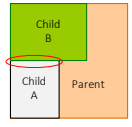
Is a **boundary** attribute, not an **owner** attribute

Child inherits parent's Sr-Jr standing along shared boundaries.

Parent is junior to children – parent must provide.

≥2 adjoining children from common parent- overlap/gap potential

Resolution depends on how parcels are created



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**III. Boundary Re-Establishment**

**C. Senior Right: Gap or Overlap**

1. *Simultaneous*

Parcel boundaries have equal standing: no sr-jr rights  
Excess or deficiency proportioned between found original corners

Subdivision

$Lot\ 1: W = (372.5/375.0) \times 125.0 = 124.2\ ft$   
 $Lot\ 2: W = (372.5/375.0) \times 100.0 = 99.3\ ft$   
 $Lot\ 3: W = (372.5/375.0) \times 150.0 = 149.0\ ft$   
 ✓ 372.5 ft

USPLS  
Single or Double Proportionate Measurement and variations.

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**III. Boundary Re-Establishment**

**C. Senior Right: Gap or Overlap**

2. *Sequential*

Earlier created boundaries have higher standing than later boundaries

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**III. Boundary Re-Establishment**

**C. Senior Right: Gap or Overlap**

2. *Sequential*

Child inherits parent's sr-jr relationship along shared boundaries

Inheritance

Parcel D description might call Parcel B as adjoiner **but** Parcel **D** is senior by inheritance.  
Typo

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**III. Boundary Re-Establishment**

**C. Senior Right: Gap or Overlap**

2. *Sequential*

Along sr-jr boundaries:

- Sr parcel protected in case of an overlap - the junior parcel yields.
- If excess, gap is parent remainder.

Touchy situation: Give to one parcel or other or split between?  
*Obviously original intent wasn't for a gap to exist.*  
 "The question is not what reasonable men intended to convey but what they in fact described in the contract or memorandum."  
*Wiegand v. Gissal, 28 Wis. 2d 488, Wis. Supreme Court 1965*

The gap was not conveyed.

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**III. Boundary Re-Establishment**

**C. Senior Right: Gap or Overlap**

3. *Combination*

Parcel boundaries may or may not have sr-jr relationships

Example:  
 Subdivision: simultaneous, no sr-jr relationships

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**III. Boundary Re-Establishment**

**C. Senior Right: Gap or Overlap**

3. *Combination*

Parcel boundaries may or may not have sr-jr relationships

Example:  
 Sequentially: "West 100.0 ft of Lot 12" later "East 100.0 ft of Lot 12"

No sr-jr relationships along these lines.

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**III. Boundary Re-Establishment**

**C. Senior Right: Gap or Overlap**

3. *Combination*

Parcel boundaries may or may not have sr-jr relationships

Example:  
 Sequentially: "West 100.0 ft of Lot 12" later "East 100.0 ft of Lot 12"  
 Resurvey: Deficiency on N, excess on S creates 2.0 ft remainder

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**III. Boundary Re-Establishment**

**C. Senior Right: Gap or Overlap**

3. *Combination*

Parcel boundaries may or may not have sr-jr relationships

Example:  
 Instead: "West 100.0 ft of Lot 12" later "Lot 12 except West 100.0 ft"

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**III. Boundary Re-Establishment**

**C. Senior Right: Gap or Overlap**

3. *Combination*

Parcel boundaries may or may not have sr-jr relationships

Example:  
 Instead: "West 100.0 ft of Lot 12" later "East 100.0 ft of Lot 12"  
 Resurvey: Deficiency on N, excess on S to junior parcel

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**III. Boundary Re-Establishment**

**D. Written Intent**

1. *Background*


b. Description Interpretation

Simultaneous: references to map or plat  
Unless errors on map, intent relatively clear

Sequential or Combination: *narrative* descriptions

Greater conflicts potential

- Archaic terms, "ancient" measurements  
"Commencing at a point 20 rods 19 links North of a point that is 26 links East of the East side of the steel tube at the Northeast corner of the wagon bridge..." (1992)
- Written by non-surveyors  
"Commencing at the West 1/4 corner of Section 9; thence N80° 29ft 17in. East, 2781.62 ft; thence S89° 11ft East, 177.84 ft;..." (1996)



Surveyor must follow common law principles to interpret & apply description

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**III. Boundary Re-Establishment**


**D. Written Intent**

1. *Background*

c. Controlling and Informative Terms

Controlling: defines course termination and/or path  
Key words: to, along, parallel, perpendicular, with, continuing...  
Identify a condition

Informative: all other terms, help identify controlling term(s)



"...thence North 38 degrees West 139.6 feet **to** an iron stake..."  
Go to and end at the iron stake (*to*);  
Monument higher element, dist & dir yield if conflict.

"...thence southwesterly **along** said high water mark **to** an iron stake..."  
Course follows topographic feature (*along*)  
and ends at an iron stake (*to*);

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**III. Boundary Re-Establishment**

**D. Written Intent**

1. *Background*

d. Ambiguities

(1) Extrinsic evidence  
Physical and parol evidence outside the description.  
Cannot be used to change description terms, only help explain.



(2) Ambiguity Types  
Ambiguity: when something can be *reasonably* interpreted more than one way. Introduces confusion.  
Common in descriptions written by non-surveyors.

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**III. Boundary Re-Establishment**

**D. Written Intent**

1. Background


d. Ambiguities

(2) Ambiguity Types

(a) Latent

Hidden, not apparent until application.

“Commencing at a point 84 1/4” East of the center of Section Seven (7); being station “A” having bearing tree viz; a black oak 14 inches in diameter, South 6° East 57 links distant, (said black oak being North 84 3/4” East, 24 7/25 rods of Stephen A. Thayer dwelling house),...” (1999)



May need extrinsic evidence to reconstruct location

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**III. Boundary Re-Establishment**

**D. Written Intent**

1. Background


d. Ambiguities

(2) Ambiguity Types

(a) Patent

Obvious, immediately apparent

“... thence S55° 55ft 20in West, 15.36 ft;...” (1999)



Mistake in original contract.  
Mistake must be found and applied where it occurred.  
Correction instrument

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**III. Boundary Re-Establishment**

**D. Written Intent**


2. Call for survey

Some boundary creations are based on survey and monumentation

USPLS: survey before sale

Subdivision plat: map and monument before sale

Survey & map are primary evidence of intent.  
Typical for simultaneously created parcels.



3. Monuments and Corners

a. Monument v Corner

Corner: legal location; dimensionless

Monument: physical feature used to mark a corner

Monument is corner surrogate, if it controls

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**III. Boundary Re-Establishment**

**D. Written Intent**

3. *Monuments and Corners*

b. Monument

(1) To control over lesser elements


Must be

- Called in description
- Identifiable
- Undisturbed

Can control

- Direction and termination
- Direction only; termination controlled by higher element

(2) Accessories  
When established at original monument placement, are considered part of the monument.




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**III. Boundary Re-Establishment**


**D. Written Intent**

3. *Monuments*

b. Monument

(3) Disposition: Location certainty

- Existent (Found): position can be identified by original mon/acc or acceptable physical & parol evidence. Location is certain.
- Obliterated: no traces of original mon/acc, but position can be re-est beyond reasonable doubt using physical & parol evidence.
- Lost: Insufficient evidence to re-est beyond reasonable doubt. Must resort to measurements to surrounding corners.




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**III. Boundary Re-Establishment**

**D. Written Intent**

3. *Monuments*


b. Monument

(4) Corner by Common Report

Location based on reputation

- Reasonable location
- Accepted by all affected parties
- Location can't be disproved

Avoid using this location justification. Based on unwritten rights. Evidence collection and evaluation.




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**III. Boundary Re-Establishment**

**D. Written Intent**

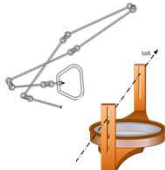
4. *Measurements*

a. Distance and Direction

Inferior to a controlling monument

Control if:

- Monuments not called
- Called monuments are lost



Direction basis? Can recreate in field?

How numbers are written convey magnitude and implied accuracy.

"North, 200 ft"

How close to north? Distance to 100 ft, 10 ft, 1 ft?

"...thence S88°16'52"W, 0.30 feet to the existing east line of Section 1, T5N, R9E; thence S00°18'01"W, 0.01 feet along said east line of Section 1;..." (2002)

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**III. Boundary Re-Establishment**

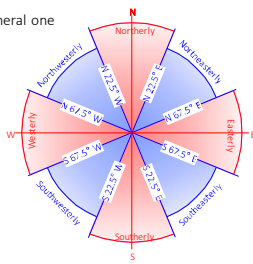
**D. Written Intent**

4. *Measurements*

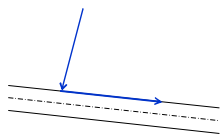
b. General directions

Informative term

A range of directions for each general one



"...to the northerly sideline of Maple Drive; thence easterly along said sideline..."




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**III. Boundary Re-Establishment**

**D. Written Intent**

4. *Measurements*

c. What's a conflict?

Last two courses "... thence S18°20'W, 283.2 ft to a 1/2-inch iron pin; thence 220 ft back to the point of beginning."

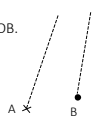
All corners have been recovered until last one before POB.

No mon evidence at S18°20'W, 283.2 ft, pt A.

1/2-inch iron pin at S17°50'10"W, 285.72 ft, p B.

A & B ~3 ft apart.

POB to pt A is 220.5 ft, to pt B 224.52 ft.



Are dist and dir to pt B "too far" from record dir and dist?

Can lower elements control over higher elements?

Does pt A fit closing line better than pt B?

Is B-POB dist within the uncertainty of the 220 ft call?

How much must elements differ to conflict with each other?

Extrinsic evidence?

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**III. Boundary Re-Establishment**

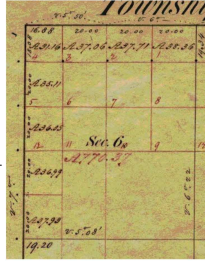
**D. Written Intent**

5. Area/Coordinates

a. Area

USPLS: nominal or legal area. Actual area may be larger or smaller.  
 Subdiv laws: areas included on plat  
 Informative in both cases.

M&B descriptions  
 Area generally in summation  
 "...said parcel containing 1.5 acres."  
 Informative  
 Controls if intent was to convey specific amount.  
 "...the Easterly 2 acres..."  
 "...the southeasterly half..."




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**III. Boundary Re-Establishment**

**D. Written Intent**

5. Area/Coordinates

b. Coordinates

Coordinates, even with GPS, are derived quantities.  
 Historically have either not been included or were informative.  
 Times achangin':  
 "...thence Northerly 487 feet, more or less, to GPS waypoint, Lat. 43.828655, Long. -90.661033; thence Northwesterly 296 feet, more or less, to GPS waypoint, Lat. 43.829424, Long. -90.661390; thence Westerly 298 feet more or less, to GPS waypoint, Lat. 43.829516, Long. -90.662515;..." (2005)

No higher element calls.  
 Controlling terms: to GPS waypoint  
 Coordinate questions  
 Units? Accuracy? Datum/adjustment?

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**III. Boundary Re-Establishment**

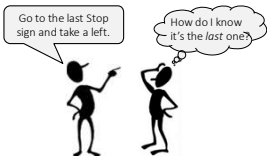
**D. Written Intent**

6. More or less

Indicates an element has unknown certainty.  
 The element is informative  
 Similar terms: *approximately*, *plus minus*,  $\pm$ , *about*

"...thence running in an Easterly and Southeasterly direction along the South and Southwesterly line of private road that is used by the grantee herein a distance of about 28 rods; thence..." (2001)

Need extrinsic evidence




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**III. Boundary Re-Establishment**

**D. Written Intent**

**7. Conflicting Title Elements**

"...Beginning at a 1-inch diameter iron bar in the north line of the Pohl property; thence N10°20'E 241 ft to a 1/2-inch iron pin; thence N85°35'E 267 ft to a 1/2-inch iron pin; thence S18°45'W 283 ft; thence back to the point of beginning"

First two courses found with no issues. Diagram shows third course situation. How to run in last two courses? Assume no extrinsic evidence available.

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**III. Boundary Re-Establishment**

**D. Written Intent**

**Short answer**

Proceed at record S18°45'W, ~281.7 ft, to Pohl's line and stop. Monument not called for, so it can't control. Neither can the 283 ft distance since that would violate Pohl's senior right.

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**III. Boundary Re-Establishment**

**D. Written Intent**

**Longer answer**

Although we are looking for the termination of the third course, we can check the next course to see if it provides any additional informative terms, such as a distance back to the POB. In this case it doesn't but if it did that *might* help.

Regardless, we know the third course must stop at Pohl's senior line.

Does the monument have a controlling role? Why is it there? Accept because it's like the others? Accept by Common Report?

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**III. Boundary Re-Establishment**

**D. Written Intent**  
**Longer answer continued**

Are  $S17^{\circ}50'36''W$  & 292.91 ft w/in uncertainty of record  $S18^{\circ}45'W$  and 283 ft? Brng might not, but the dist is. Does that mean because distance fits that the bearing yields and the monument controls direction?

Without a monument call, that's a tough sell.

Monument might be a potential unwritten rights ownership corner and line, but that's not for the surveyor to decide.

May be a reason the monument exists, but nothing in the description gives it authority.

What sources of extrinsic evidence should be investigated?

Always identify plausible alternatives and explain why they aren't acceptable.

No monument found at  $S18^{\circ}45'W$  283 ft. This location is 1.3 ft south of Pohl's line.

1/2-inch iron pin found at  $S17^{\circ}50'36''W$  282.91 ft. Pin is 2.0 ft south of Pohl's line. Origin unknown.

Distance between the two positions is ~2.5 ft.

Pohl (senior property)

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**Learning Objectives**

- Types of law; Boundary control
- How boundaries are created; Characteristics
- Where the Rules of Construction come from
- How gaps and overlaps are handled
- Description interpretation issues: Ambiguities; Controlling/informative terms
- Written intent conflicts

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