

Boundaries and Surveys

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Introduction

Boundary issues are not uncommon in rural settings. What if a survey doesn't match an existing fence line? What controls? How is the actual legal property boundary determined? Can an existing fence that is not on the actual surveyed line between two tracts of farmland become the legal boundary? How do disagreements get resolved?

These are some of the common boundary questions and it's the topic of today's post – boundary issues in agriculture.

What is the Boundary?

Landowners generally consider existing fences to be the boundary between adjacent properties. But the law may view things differently. The actual boundary is an imaginary line that can be found by examining the deeds to the adjacent properties. An existing fence line is merely evidence of where the boundary line between the properties is located. It is immaterial whether the fence is a permanent fence or not.

However, there may be situations where the fence line has become part of the property description over time as the land changed hands. In that situation, the fence line may be considered to be the legal property boundary. But, if a parcel is described by mapping out survey lines, an existing fence may not be on the surveyed boundary. Instead, the adjacent owners may have treated that old fence as the boundary. When that happens, the old fence can be substituted for the actual legal boundary under the doctrine of practical location. Once that fence has been used as the boundary for a set period of time defined by state law, it can become the legal boundary by filing a court action to quiet title. In the ag setting, it's often the case that boundaries are determined by usage rather than by survey.

Misplaced Fence as Legal Boundary

An existing fence may not be on the surveyed boundary, but there are ways it can become the legal boundary between separate tracts of farmland. While the mere passage of time, by itself, does not cause a fence line to be substituted for the actual property boundary, the manner in which the adjacent property owners have used the property over time might. This is true if the party claiming title to a disputed area knows that the existing fence line is not on the property boundary and uses the additional property between the true boundary and the fence line as their own.



If the true boundary is not known, courts typically examine the intent of the party benefiting from the misplaced fence. If the property is occupied by mere mistake, the boundary won't change. But, if one party possesses the property believing the land to be his up to the mistaken line and claims title to it, the boundary can shift if the true owner knows of the other party's assertion of ownership and does nothing to prevent it for a period of time set by state law. This is known as adverse possession.

A boundary that changes based on these facts is formalized by a "quiet title" action in court.

Settling Disagreements

What are some ways for resolving boundary disputes short of going to court? For starters, check the land records to see if there is a recorded fence agreement. While uncommon, if an agreement exists it will bind the adjacent landowners. Another way to settle a dispute over an uncertain boundary is by the parties executing a memorandum of understanding designating the existing fence line as the boundary. The memo can also be recorded in the land records. Once recorded, it will bind the present and subsequent owners of the property and their successors.

If a boundary remains in dispute because of conflicting surveys, any boundaries and markers set by the first survey control in a conflict with a subsequent survey. This is true even if there were errors in the original survey.

When a boundary dispute involves disagreement between surveys, consider how the use of the land has been affected by the original survey's location of the boundary. If the fence was erected along the old but erroneous survey line, and the parties have actively farmed to the fence line, the fence should not be moved. If the fence does not follow either the original survey or the later survey, the true boundary line may need to be designated.

Conclusion

Boundary disputes are not uncommon when agricultural land is involved. Hopefully this brief review provides some insight.

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