

Boundary Disputes

Though a boundary dispute can arise between any two adjacent owners, those who own waterfront property are much more likely to find themselves involved in a boundary dispute. Many of the areas around Michigan's lakes were platted in the early part of the last century when zoning codes were much more lax or non-existent. Many of the platted lots were tiny by today's standards, though likely suitable for the small seasonal cottages that were built. Today, many, if not most of those cottages have been razed and replaced with much larger cottages or year-round residences.

One should not assume that a survey will be the final word on the proper location of boundaries. Michigan courts have frequently held that long-recognized lines of occupation will not be disturbed by recent surveys. Anyone involved in an actual or potential boundary dispute should be familiar with the doctrines of adverse possession, prescriptive rights and acquiescence.

Adverse Possession

Adverse possession involves the nonconsensual or "hostile" use of another's land for a continuous period of more than 15 years. One who satisfies the requirements of adverse possession can file a court action to obtain title to the land that was adversely possessed. Adverse use by one's seller or other predecessor in title, called "tacking," may be considered to satisfy the 15 year requirement. Tacking is permitted if the subject property is included in the deed or where oral statements by the seller reflect an intention to transfer that additional property.

Prescriptive Rights

Prescriptive rights may also be acquired to use another's land. A prescriptive right does not affect title to the land, though the legal requirements for adverse possession and prescriptive rights are essentially the same. If one crosses your land for a period of 15 years to gain access to the lake, that individual may have acquired a prescriptive right to do so indefinitely. Similarly, the "over-use" of an express easement can give rise to additional rights, acquired by prescription. For instance, if one erects a dock at the end of an easement for ingress/egress for in excess of 15 years, that individual may have acquired the prescriptive right to maintain a dock there indefinitely.

Acquiescence

Acquiescence, like adverse possession, can also undermine legal property boundaries. Michigan appellate courts have recognized 3 variations of acquiescence: 1) acquiescence for the statutory period of 15 years; 2) based upon an agreement following a dispute over a property line; and 3) arising from an intention to deed to a marked boundary. Unlike adverse possession, acquiescence does not require "hostility." Parties often succeed on a claim for acquiescence when they are unable to meet the more exacting requirements for adverse possession.