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Unwritten Boundary Agreement

presented by
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for the
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- Land surveyors receive right to practice under ORS 672
 - Engineers & photogrammetrist perform some functions
- Only land surveyors can establish, re-establish, or restore land boundaries, corners or monuments between land not held in common ownership (ORS 672.025(3))

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- Deeds, which acknowledge land ownership, required in England since 1677
 - Primary source of US land ownership
 - A deed is a writing, signed, sealed, acknowledged, delivered, and recorded
 - ‘Grantor’ is person selling; ‘grantee’ is person buying

Most land transactions accomplished by passing of a deed

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Deed Contains Four Parts

- Caption gives general area of land transfer
- Body written or graphical information
- Qualifying clause subtracts from body
- Augmenting clause puts back into body

About 95% of land boundaries are located from the deed body

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Written Deed Description

- Rules to interpret – ORS 93.310
 - Precedence to monuments, distance, direction, area
- Format description;
 - Metes and bounds
 - Bounds
 - Proportional parts
 - Linear
 - Strip
 - Area

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Graphical Description

- USPLS deed requires government accepted plat containing numerical data
- Subdivision plat (Lot 5 Fairhaven Heights Subdivision) shows lot dimensions
- Combination of written and graphical descriptions exist

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Surveyor Duties

- Research
 - Copy client's deed & all land owner deeds adjacent to described piece
 - Determine 'junior senior' rights
 - Senior, parent parcel
 - Junior, cannot extinguish senior rights
 - Both called sequential conveyances
 - Check for simultaneous parcel conveyance as in subdivision. All share equally in excess or deficiency of land areas – created at same time

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Surveyor Duties

- Field Work
 - Contact parties for right of entry (ORS 672.047)
 - Gather parcel evidence
 - Match deed with field occupation
 - File 'resurvey' plat (ORS 209.250) after reviewing evidence and establishing / re-establishing monument

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Surveyor Duties



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- Resurvey plat
 - Contains location of body of deed
 - Any variations – fences, parol, written or circumstantial evidence
 - Written narrative to explain findings and evidence reviewed
 - May show unwritten boundary established

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Unwritten Boundary Agreement



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- A person may gain or lose land without writing by;
 - An agreement expressed or implied,
 - Adverse possession,
 - or, acts of nature.
- Prescription or long usage right may ripen into easement

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Unwritten Agreement

- Unwritten agreement
 - Disputed, unknown verbally agreed upon boundary with possession
- Estoppel
- Recognition and acquiescence
- Practical location
 - Cooperation of parties in the mutual belief that they have true boundary

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Key Case of Oregon Boundary by Agreement

Blaisdell v Nelson 674 P.2d 1208, 66 Or. App 511 (1984)

- Facts
- Essential elements
 - Initial uncertainty or dispute regarding true location
 - Must be resolved to recognize a particular line
 - Parties must evidence actions by subsequent agreements

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Adverse Possession



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- Acquiring title to real property by possession for a statutory period
 - First statute in Oregon created in 1999 (ORS 105.620)
 - Prior cases tried under ORS 12.050, Action to recover real property

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Prove All Elements



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- Actual
- Open and notorious
- Claim of title
- Continuous
- Hostile
- Exclusive
- 10-yr period statute
- Color of title
- Honest belief

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Case of Adverse Possession

Russell v Gullett 589 P.2d 729, 285 Or. 63 (1979)



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- Facts
- Essential elements
 - Parties agreed to most elements
 - Exclusive use agreement for 10-yr period
 - Court testimony favored Russells, who won

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Acts of Nature



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- Water boundaries - ocean, river, or ponds and lakes, can move with time
 - Littoral lands border ocean; land ownership stops at high tide, tidelands belong to the state
 - Riparian owners own river bank, boundaries can change
 - Streams may or may not be navigable
 - Navigable to the ordinary high water line belong to the state
 - Non-navigable have ownership to stream thread

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Tidelands

(submersible lands)

- Oregon redefined lands near ocean waters, ORS 274
 - Upland
 - Submersible lands
 - Submerged lands

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River Boundaries

- River water reacts differently to water actions;
 - Erosion
 - Accretion
 - Reliction
 - Avulsion

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Water River Boundary Case

Morse Bros., Inc v Wallace 714 P.2d 1095, 78 Or. App 138 (1986)



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- Facts
- Essential elements
 - Property at South Santiam River east of Lebanon
 - Original Ridgeway Donation Land Claim meandered south boundary disputed
 - Ruling Wallace won; river moved northerly and accretions belong to them

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Surveyors Obligation to Client



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- Lay out body of deed
- Gather evidence of boundary lines
- File resurvey plat (ORS 209.250) if pins are established or re-established
- Outline all evidence in resurvey plat; indicate occupation differences
- Solve obvious problems with boundary line agreement
- Courts will determine final boundary line location

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