SIMULTANEOUS CONVEYANCES

Sequential Conveyances

Simultaneous Conveyances

When several parcels of land are created at the same moment of time, such as lots in a subdivision, several parcels in a will, or sections in a township, each parcel has equal legal standing. They were all created at the moment of filing the subdivision map, at the moment of death of the testator, or in the case of a U.S. township, at the time the plat was approved. Sequential rights (senior rights) to lots in a filed subdivision rarely exist. Usually, each party is entitled to his proportion of any discovered excess or deficiency. However, when measurements between original monument positions do not agree with those called for in the conveyance or when there is a significant error of closure, correcting these discrepancies becomes a problem. The treatment of the discrepancy varies depending upon whether the conveyance is sequential or simultaneous. In this lesson errors of measurements found in sequential conveyances are discussed.

Subdivisions

A legal subdivision is any partition of land into two or more parcels with the following conditions fulfilled:

1. A map or plat is made showing all of the divisions of land.

2. The map or plat is filed with or by the governing agency in compliance with its subdivision laws.

3. Parcels of land are sold by reference to the map or plat, and no parcel is sold prior to the filing of the map.

If lots are sold in accordance with a plan or map, and no reference to the lot exists other than the map, no one lot can be said to be senior to any other lot. All lots are created at the same moment of time. That is, at the moment of filing the map or at the moment of the first transfer of title, and are of equal standing. A deficiency in a block found to exist within a platted subdivision is divided among the several lots in proportion to frontages as indicated on the plat, without regard to the sequence of their sale by the proprietor. However, if lots are sold in sequence and the lots are added on the map after they are sold, senior rights may exist.

Locating subdivision lots on the ground presents essentially the same legal elements as those presented for metes and bounds description except for certain modifications caused by an absence of senior rights. In a metes and bounds description the owner of the senior title receives all that is coming to him, and the junior title holder has the remainder. Within a subdivision, any excess or deficiency is divided among several lots in accordance with principles that have evolved from court cases.
Excepting federal subdivisions, lands subdivided within a state are governed by the state laws, and relocation of boundaries must be done in accordance with the rules or laws of the state. If the state law says that federal law governs, then surveys must be done according to federal rules.

Lot and block conveyances calling for a plat offer a minimum of written language on the face of the deed. However, this does not necessarily mean that a lot and block description is the simplest conveyance to establish on the ground. Many older subdivisions and some poorly surveyed modern subdivisions present difficult situations to the person attempting to survey the property. Litigation arising from ambiguous lines and figures on maps has produced many principles of common law.

**Excess and Deficiency**

Where a tract of land is subdivided and platted, any excess or deficiency is to be apportioned among the several parcels. It can not be presumed that the variance arose from the defective survey of any part, but it must be concluded in the absence of evidence that it arose from imperfect measurement of the whole line. The excess or deficiency, determined by actual measurement between recognized monuments as compared with the plat dimensions, must be apportioned between the subdivisions of the whole line in proportion to their respective lengths. If there is an excess the title does not remain in the original owner of the tract.

Where the excess or deficiency is due to the original chain or tape being too long or too short, rigid mathematics dictates that the error be distributed proportionally among the subdivisions of the line. Where a small discrepancy is due to careless surveying, and there are no circumstances suggesting that there is a gross blunder in any part of the survey, the law of probability supports proportioning. Where it can be proved that the error is caused by an erroneous assumption in regard to one of the lines or sides, then the rule has no rational basis. An error which is located and explained should not, from a mathematical standpoint, be distributed.

*The rule of apportionment of excess or deficiency applies:*

1. Where the tract is divided into lots by a plan, and conveyance is made solely by lot number with reference to the plat.

2. Where the tract is divided by partition.

3. Where the tract is divided into two or more parts of designated area.

4. Where the whole tract is intended to be conveyed by two or more deeds executed at the same time, and no lines are laid down on the ground, but it is the intention that the tracts shall adjoin.

5. Where the tract consists of a number of surveys lying between lines fixed by the adjoining tracts.
6. Where the tract consists of two or more surveys made into one inclusive survey or made at or about the same time by the same surveyor.

7. Where the lots conveyed are intended to adjoin, but it appears when laid down as described in the conveyances there is a space between them.

**Limitations on Proportioning**

While certain circumstances raise a presumption that an excess or deficiency is to be apportioned, the facts in any particular case may establish that the intention is otherwise, the presumption is overcome, and the rule does not apply:

1. Where the plat referred to shows all lots but one dimensioned. It is the clear intent of the grantor that this lot be regarded as a remnant to take the excess or deficiency.

2. Where a street or other recognized and acknowledged monument shown on the plat and found on the ground limits the distribution of the excess or deficiency. The best evidence of the location of a line is the stakes or monuments set by the surveyor.

3. Where the land is platted into blocks with intervening streets, each block should be treated as distinct. The shortage or excess should be distributed among the lot owners, except where possession prevails.

4. Where improvements have been made on the original lines, the grantee has been put in possession to certain definite lines whose identity and position can be unquestionably established. The superior rule in regard to lines marked and surveyed prevails.

5. Where the footsteps of the surveyor in setting out the plat can be followed, and the location of the excess or deficiency established, the lines as originally run in the field govern and the excess and deficiency is not apportioned.

6. Where there is no connection between the deeds of the various grantees in both time and circumstances. Each grant is distinct and separate and they take precedence in order of seniority, and the junior grant must bear the excess and deficiency.

7. Where the tracts of land are conveyed separately and simultaneously by a common grantor, but one is based on a prior survey (this is in effect a senior grant).

8. Where an attempt to apportion the excess or deficiency would cause the boundary lines to pass through houses and improvements.

**Streets**

Streets, that have been opened in conformity to a plat and have been long acquiesced, should be accepted as fixed monuments in locating lots or blocks contiguous to or fronting on them.
Streets limit the apportionment of excess and deficiency because it is essential that their location be undisturbed, but where they themselves are not fixed, the reason for their control ceases, and cases may arise where apportionment should be extended over more than one block.

It is questionable whether the shortage should be prorated in a street. Street widths are usually first determined before the actual platting is begun, and several widths accepted as representing the requirements for the various classes of streets. The general tendency is to keep the street area down to a minimum, and it is usually a reasonable presumption to assume that the platter gave careful thought to his street dimensions and intended them as shown. Had he known of a deficiency he would have taken a little off the lots on either side or rearranged his street plan to give a more satisfactory layout. When the width of a street is changed, the public is very much interested, and a court which protects public rights from private encroachments should not, in the apportionment of a deficiency, assign any land within the stated width of a street to the abutting lot owners.

**Improvements**

"In resurveying a tract of land according to a former plat or survey, the surveyor's only function is to relocate, upon the best evidence obtainable, the corners and lines at the same places where originally located by the first surveyor on the ground." Where existing improvements were erected soon after the plat had been staked and the improvements were in conformity with the original lines and stakes, these structures preclude the apportionment of an excess or deficiency since they are controlling evidence of the platter's intention. Practical location or use and occupation. Must be referenced to the original survey lines or markings to be evidence of original locations. Significant structures, built according to lot lines and upon the probability that their builders, at the time of construction, had knowledge of the location of the original lines of the plat.

**Plat Irregularity**

1. **Lot Not Dimensioned.** To apportion a discrepancy among the several lots of a block, it is necessary to know the frontage of each lot. Where all lots but one are fully dimensioned, it is impossible from a mathematical standpoint to apply the rule of proportion. The dimension can not be scaled from the plat because of the impossibility of platting to a small scale. More accurate field measurements and office calculations can be made. Furthermore, when the impracticability of scaling an undimensioned detail of a plat is acknowledged, there no longer exists a surplus or deficiency. The survey must be made in compliance with the dimensions of the plat, and the undimensioned lot, must take what is unassigned, be it more or less than the scaled dimension.

2. **Lots Dimensioned But Irregular.** Where all the lots of a plan are definitely dimensioned, but one is irregular in shape or proportions, there is some authority for placing an existing surplus or deficiency in the irregular lot.

**Proportioning as Last Resort**

Before prorating an excess or a deficiency an investigation of the possible causes of the excess or deficiency should always be made. In a Washington case, the Supreme Court observed that the shortage, 15 feet probably did belong to the western lots and suggested that:
1. The eastern lots in question, although included in the subdivision, were sold by metes and bounds prior to the filing of the subdivision and thus had senior rights.

2. The street west of the western lots was on the centerline of a section, and at the time the city improved the street it probably included part of the western lots.

In other words, the upper court ordered a new trial for the purpose of discovering where the shortage occurred. Proration was not to be applied if the cause of the shortage could be discovered.

**Summary of Proration Rules**

From these situations and from others, the following general principles have evolved.

**Principle 1.** *Proportionate measurement is used to distribute discovered excess or deficiency as compared to the record where:*

1. A whole is simultaneously divided into dimensioned parts by protraction; that is, the parts platted are not monumented on the ground, and no part is designated to receive a remainder.

2. Equal parts are created by a will or partition; that is, each child receives a proportion of a whole.

3. Proportionate parts are created by the conveyance; that is, the west one-half and the east one-half of Lot 12, Map 1313.

4. To restore a lost monument position, as nearly as may be, to its original position where there are references from several directions, all of equal value (not applicable in sequence conveyances).

**Principle 2.** *Proportionate measurement cannot be used:*

1. To alter senior rights or in sectionalized lands to alter the superiority of one line over another.

2. To distribute a mistake that can be proved to exist in one place; that is, the rule of a blunder.

3. To alter legal rights obtained by possession.

4. To alter an acceptable original monument position.
**Principle 3. Proportionate measurement:**

1. Begins and ends at the nearest original monument position on each side of the area of excess or deficiency.

2. Is a rule of last resort.

3. Varies in interpretation in different jurisdictions.