12 Am. Jur. 2d Boundaries § 84

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Boundaries
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V. Establishment of Boundaries by Agreement or Acts of Parties

B. By Acts of Parties

3. Estoppel

§ 84. Estoppel, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Boundaries 47(1) to 47(5)

Forms

Forms relating to **estoppel**; defense of reliance, generally, see Am. Jur. Pleading and Practice Forms, Boundaries [Westlaw®(r) Search Query]

The doctrine of agreed boundaries may be said to rest somewhere between adverse possession and **estoppel**.[1] Many cases of agreed boundaries involving the elements of adverse possession are referred to that principle for decision, while others involving elements of **estoppel** are said to be referable to that doctrine.[2] Generally, a parol agreement as to the boundaries of land, acquiesced in and followed by occupation and use of the premises for a reasonable period of time, may estop the parties from claiming another boundary than that agreed on.[3] Under this principle of **estoppel**, even an invalid parol agreement as to boundaries may be enforced where it would be inequitable for either party to ignore it and to endeavor to set up the true line.[4]

The erection of improvements by one adjoining owner after entering lands in accordance with an agreement, or an acquiescence for a long period of time, as to the location of a boundary line may estop the other from asserting that such boundary line was not the true line.[5] The fact that one party has improved the land in dispute up to the fence is a circumstance to preclude the other from claiming a boundary line beyond the fence after acquiescence thereto as a boundary line for a long period of time.[6] A landowner who knows the true line and silently permits an adjoining owner to make substantial improvements past the line

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unknowingly is estopped to claim to the true boundary;[7] and the same is true if a landowner by conduct or assertions as to the boundary line is instrumental in having the improvements made past the true line.[8] For **estoppel** to apply, the party against whom the **estoppel** is asserted must have acted with full knowledge of the material facts and his or her rights, or must have knowledge at the time the representations are made that the representations are untrue, or at least he or she should have had the means at hand of knowing all the facts, or must have been in such a position that he or she ought to have known them.[9] This rule applies with particular force where the case involves title to land or a dispute as to a boundary and there was no negligence of the party sought to be estopped in failing to assert his or her right.[10] The mere failure of one party to object to the erection of a fence does not operate as an **estoppel** where there is nothing to indicate that this party agrees to the fence as the boundary line.[11]

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Footnotes

1 Stone v. Rhodes, 107 N.M. 96, 1988-NMCA-024, 752 P.2d 1112 (Ct. App. 1988).

2 Joaquin v. Shiloh Orchards, 84 Cal. App. 3d 192, 148 Cal. Rptr. 495, 7 A.L.R.4th 46 (5th Dist. 1978).

3 Hutchins v. Strickland, 674 So. 2d 870 (Fla. 1st DCA 1996); Freiburger v. Fry, 439 N.E.2d 169 (Ind. Ct. App. 1982); Faulkner v. Lloyd, 253 S.W.2d 972 (Ky. 1952); Grunden v. Hurley, 1987 OK CIV APP 30, 736 P.2d 548 (Ct. App. Div. 1 1987).

4 Osteen v. Wynn, 131 Ga. 209, 62 S.E. 37 (1908).

5 Summers v. Dietsch, 41 Ark. App. 52, 849 S.W.2d 3 (1993); Trussell v. Lewis, 13 Neb. 415, 14 N.W. 155 (1882); Douglass v. Rowland, 540 S.W.2d 252 (Tenn. Ct. App. 1976).

6 E.O. Barnett Bros. v. Gentry, 117 Ark. 655, 173 S.W. 424 (1915); Kotze v. Sullivan, 210 Iowa 600, 231 N.W. 339 (1930); Howell v. Kelly, 129 Kan. 543, 283 P. 500 (1930).

7 Halverson v. Village of Deerwood, 322 N.W.2d 761, 36 A.L.R.4th 611 (Minn. 1982); Smithers v. Hagerman, 244 Mont. 182, 797 P.2d 177 (1990); Production Credit Ass'n of Mandan v. Terra Vallee, Inc., 303 N.W.2d 79 (N.D. 1981).

8 Faulkner v. Lloyd, 253 S.W.2d 972 (Ky. 1952); Severance v. Choate, 533 A.2d 1288 (Me. 1987); Roy v. Cunningham, 46 Wash. App. 409, 731 P.2d 526 (Div. 3 1986).

9 Am. Jur. 2d, **Estoppel** and Waiver § 44.

10 Am. Jur. 2d, **Estoppel** and Waiver § 44.

11 Wideman v. Faivre, 100 Kan. 102, 163 P. 619 (1917); Kinkade v. Simpson, 1948 OK 186, 200 Okla. 507, 197 P.2d 968 (1948).

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