

PROPERTY LINE AGREEMENTS PER C.R.S. SEC. 38-44-112 DO NOT CONSTITUTE SUBDIVISIONS OF LAND SUBJECT TO REVIEW BY LOCAL AUTHORITIES

by: John B. Guyton, PLS, President, PLSC and President, Flatirons, Inc.
Ed T. Bristow, JD, PLS, General Counsel, Flatirons, Inc.

It is fairly common for property line disputes to arise between neighbors. The reasons for such disputes are numerous, and often simply involve misunderstandings or misinformation on the part of the landowners. However, when the location of the line is disputed, the landowners may certainly agree to the location of the line between themselves. Such agreements are often enforceable under common law, and in many jurisdictions, including Colorado, there are statutory provisions providing for such agreements. The applicable Colorado Statute reads as follows:

Any line or disputed corner or boundary may be determined and permanently established by written agreement of all parties thereby affected, signed and acknowledged by each as required for conveyances of real estate, clearly designating the same, and accompanied by a map or plat thereof which shall be recorded as an instrument affecting real estate, and shall be binding upon their heirs, successors, and assigns.¹

Such agreements provide a quick, low cost solution to property line disputes, and support the public interest in defining land ownership bounds for current and future landowners.²

In the recent past, some jurisdictions in Colorado have refused to allow recordation of such property line agreements, insisting that these agreements constitute "Minor Subdivisions" or "Lot Line Adjustments" subject to local review. There are a few surveyors who hold similar views. The strongest arguments, however, indicate that written Property Line Agreements complying with the requirements of C.R.S. § 38-44-112 are valid and outside of the purview of the local jurisdiction.

The annotations to the Statute cite 11 C.J.S., Boundaries, §64-76

for reference. The discussion in those sections of the treatise provide very useful information in interpreting the law and its application in your State's jurisdiction. Public policy interests provide strong arguments for allowing such agreements. The treatise states:

Where the boundary line between two adjoining landowners is uncertain, they may agree on a division line between them, and when executed each will own up to this line as if it were a natural boundary, or as if their deeds or grants call for it, particularly if the agreement is evidenced by a writing signed by the parties thereto. . .

Such an agreement is not against public policy, but rather, is favored by the law as a satisfactory means of preventing spiteful and vexatious litigation, and every consideration of public policy demands that such an agreement, when all requisites therefor are present, be upheld. Unless a written agreement contains apt words of conveyance sufficient to accomplish the transfer of title, there must be doubt or uncertainty as to the true boundary line. . .³

Sec 66 of the pertinent title in the treatise states that "as a general rule, it may be stated that only the owners of adjoining lands or those having vested interests therein are competent to agree on their dividing line." If followed literally, this would preclude the County from becoming involved where two adjoining landowners come to agreement as to the location of the property line between them. The Statute indicates that the agreement must be between "all parties thereby affected". Perhaps a County would argue that, under public policy considerations, it is an "affected party." We have found no instances of this argument being offered, and it seems unlikely that a Court would find in favor of such, as allowing County intervention would be

directly contrary to the goal of providing a quick and low cost solution to boundary disputes.

Property line agreements have historically taken the form of a parol (verbal) agreement. Such agreements are generally not subject to the statute of frauds, because they are not in the form or manner of a "transfer" of ownership.

The reason for this rule is based on the idea that the parties do not undertake to acquire and to pass the title to real estate, as must be done by written contract or conveyance; but they simply by agreement fix and determine the situation and location of the thing that they already own, the purpose being simply by something agreed on to identify their several holdings and to make certain that which they regarded as uncertain. To constitute a valid agreement by landowners, there must be an intent to determine or settle the permanent location of the line.

The agreement must be definite and unconditional, and must concern a boundary line between contiguous tracts.⁴

Where such agreements are solely in the form of parol agreements, there must generally be doubt or uncertainty to the true location of the line.⁵

As stated above, the purpose of such agreements is not to pass title to lands not previously owned, as is done in minor subdivisions or lot line adjustments, but to determine the location of the line defining current ownership.⁶ A property line agreement does not divide land, and therefore does not lie within the statutory definition of subdivision⁷ (i.e., a property line agreement does not create additional parcels). Even though a County has authority to exempt certain divisions of land from the definition of "subdivision" or "subdivided land"⁸, the County has no authority to adopt a definition of "subdivision" in its regula-

tions which is contrary to the express statutory definition found in C.R.S. § 30-28-101(10).⁹ Property line agreements bind the parties to the agreement, and their successors and assigns, but does not bind adjoining who are not parties to the agreement.¹⁰

Generally, there are four requirements for property line agreements to be valid.¹¹

1. There must be uncertainty to the location of the line;
2. All affected parties must agree to the location of the line;
3. The affected parties must "act" as if the agreed line is the true line; and
4. The agreed line must be identifiable on the ground.

In Colorado, there are four more requirements.

5. The agreement must be in writing;¹²
6. The written agreement must be signed and acknowledged by each affected party;
7. The written agreement must be accompanied by a map; and
8. The written agreement must be recorded "as an instrument affecting real estate" in the County¹³ in which the properties are located.¹⁴

Some have suggested using quit-claim deeds as a mechanism to complete the agreement. Boulder County uses this device for the subdivision exemption process where adjustment of the line between two properties described by metes and bounds descriptions is sought.

Some surveyors in Colorado have expressed an interest in using such deeds to finalize the agreement. However, using a deed may indicate a wish to "pass the title to real estate", and may make the agreement subject to County review as a subdivision or resubdivision of land.

In conclusion, written property line agreements pursuant to C.R.S. § 38-44-112 are quick, simple, low-cost solutions to property line disputes, are favored by law and public policy as a means of avoiding costly litigation, and if completed without the use of quit-claim deeds, are outside the purview of the County review process.

EXHIBIT A

Example From Boulder County, Colorado



BOUNDARY LINE AGREEMENT

THIS BOUNDARY LINE AGREEMENT (this "Agreement") is made and entered into as of the 10th day of April, 2003, by and between Michael John Sherman ("Sherman") and Frederick A. Bickford and David A. Bickford collectively, ("Bickford").

RECITALS

A. WHEREAS, Sherman represents and warrants he is the owner of fee simple title in its entirety to that certain real property commonly known as 1013 Mapleton Avenue, Boulder, Colorado (the "Sherman Property") which is more particularly described on that certain Improvement Survey Plat prepared by Flatirons Surveying, Inc., dated December 6, 2001, and as described in the deed to Sherman recorded in the Boulder County real property records at Reception No. 2037915; and

B. WHEREAS, Bickford represents and warrants they are the owner of fee simple title in its entirety to that certain real property commonly known as 1019 Mapleton Avenue, Boulder, Colorado (the "Bickford Property") which is more particularly described on that certain Land Survey Plat, prepared by Flagstaff Surveying, Inc., dated March 15, 2002, and as described in the deed to Bickford recorded in the Boulder County real property records at Reception No. 2246254; and

C. WHEREAS, the Sherman Property is adjacent to and immediately west of the Bickford Property and the two properties share a common boundary (the "Common Boundary") being the east boundary of the Sherman Property and the west boundary of the Bickford Property; and

D. WHEREAS, the above referenced Improvement Survey Plat of the Sherman Property and the above referenced Land Survey Plat of the Bickford Property each reference discrepancies in the legal descriptions of the Common Boundary contained in historical deeds and surveys of the Sherman Property and the Bickford Property; and

E. WHEREAS, Sherman and Bickford, and their predecessors in interest, have on occasion, with the consent of the other, erected fences in the general area of the Common Boundary and have used certain portions of the other's property in the general area of the Common Boundary; and

F. WHEREAS, pursuant to C.R.S. § 38-44-112, any line or disputed corner or boundary may be determined and permanently established by written agreement of all parties thereby affected, signed and acknowledged by each as required for conveyances of real estate clearly designating the same, and accompanied by a map or plat thereof which shall be recorded as an instrument affecting real estate, and shall be binding upon their heirs, successors and assigns; and

G. WHEREAS, Sherman and Bickford desire to forever settle any question as to the actual location and legal description of the Common Boundary between their respective properties.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated as if fully set forth herein, the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Designation of Common Boundary. Sherman and Bickford mutually agree that the Common Boundary between the Sherman Property and the Bickford Property is as shown on the legal description attached hereto as Exhibit A.

2. Easement for Garage Roof Encroachment. Bickford hereby grants, bargains, sells and conveys to Sherman a perpetual encroachment easement for the roof eave of the one story stucco garage currently located on the Sherman Property as the same overhangs the Common Boundary.

3. Binding Effect. Pursuant to C.R.S. § 38-44-112, this Agreement shall be binding upon and inure to the benefit of each of the signatories hereto and their respective successors and assigns as the same relates to the common boundaries between the land parcel of each such signatory.

4. Miscellaneous.

(a) Recording of Agreement. This Agreement shall be recorded in the Boulder County, Colorado real property records immediately upon execution by the parties hereto.

(b) Integration/Modification. This Agreement contains all of the terms and conditions of the parties' agreements and understandings with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. All other rights with respect to the parties' real property, or otherwise, not specifically addressed herein are hereby reserved. This Agreement may only be modified, amended, changed or terminated, in whole or in part, by a written instrument duly authorized and executed by each of the parties hereto. No consent of any third party shall be required for the negotiation and execution of any such instrument.

(c) Waivers and Modifications in Writing. No amendments, waivers or modifications hereof shall be made or deemed to have been made unless in writing executed by the parties to be bound thereby.

Continued page 34

BOUNDARY LINE AGREEMENT

(d) **Prevailing Party.** If any legal action or arbitration or other proceeding is brought for the enforcement of this Agreement, or because of any alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

(e) **Headings.** The headings and captions are inserted for reference only and the same shall not limit or construe the paragraphs or sections to which they apply or otherwise affect the interpretation hereof.

(f) **Counterparts.** This Agreement and any document or instrument executed pursuant hereto may be executed in any number of counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed by facsimile signatures and all such signatures shall be deemed to be original signatures for all purposes, provided, however, facsimile signatures shall be replaced with original signatures as soon thereafter as practicable.

(g) **Severability.** Invalidation of any of the provisions of this Agreement or of any paragraph, sentence, clause, phrase or work herein, or the application thereof in any given circumstance, shall not affect the validity of any other provision of this Agreement.

(h) **Governing Law.** The Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

(i) **Warranty of Capacity and Title.** By its execution hereof, each party hereto represents and warrants to the other parties that it or its representative signing hereunder has full power and lawful authority to execute this Agreement and bind said party and its respective real property to the terms hereof. Each party represents and warrants that no other person or entity has any interest in the real property affected hereby that would restrict such authority to execute this Agreement or affect the binding nature of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

THIS BOUNDARY LINE AGREEMENT (this "Agreement") is made and entered into as of the 17th day of February, 2003, by and between Michael John Sherman ("Sherman") and Frederick A. Bickford and David A. Bickford collectively, ("Bickford").

RECITALS

A. WHEREAS, Sherman represents and warrants he is the owner of fee simple title in its entirety to that certain real property commonly known as 1013 Mapleton Avenue, Boulder, Colorado (the "Sherman Property") which is more particularly described on that certain Improvement Survey Plat prepared by Flatirons Surveying, Inc., dated December 6, 2001, and as described in the deed to Sherman recorded in the Boulder County real property records at Reception No. 2037915; and

B. WHEREAS, Bickford represents and warrants they are the owner of fee simple title in its entirety to that certain real property commonly known as 1019 Mapleton Avenue, Boulder, Colorado (the "Bickford Property") which is more particularly described on that certain Land Survey Plat, prepared by Flagstaff Surveying, Inc., dated March 15, 2002, and as described in the deed to Bickford recorded in the Boulder County real property records at Reception No. 2246254; and

C. WHEREAS, the Sherman Property is adjacent to and immediately west of the Bickford Property and the two properties share a common boundary (the "Common Boundary") being the east boundary of the Sherman Property and the west boundary of the Bickford Property; and

D. WHEREAS, the above referenced Improvement Survey Plat of the Sherman Property and the above referenced Land Survey Plat of the Bickford Property each reference discrepancies in the legal descriptions of the Common Boundary contained in historical deeds and surveys of the Sherman Property and the Bickford Property; and

E. WHEREAS, Sherman and Bickford, and their predecessors in interest, have on occasion, with the consent of the other, erected fences in the general area of the Common Boundary and have used certain portions of the other's property in the general area of the Common Boundary; and

F. WHEREAS, pursuant to C.R.S. § 38-44-112, any line or disputed corner or boundary may be determined and permanently established by written agreement of all parties thereby affected, signed and acknowledged by each as required for conveyances of real estate clearly designating the same, and accompanied by a map or plat thereof which shall be recorded as an instrument affecting real estate, and shall be binding upon their heirs, successors and assigns; and

Michael John Sherman
Michael John Sherman
1013 Mapleton Avenue
Boulder, Colorado 80302

EXHIBIT A

PROPERTY LINE AGREEMENT
PORTIONS OF OUTLOT 2 SQUIRES ADDITION TO WEST BOULDER AND OF LOTS 27 AND 28, BLOCK 1, MAPLETON, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 71 WEST OF THE 6TH P.M., CITY OF BOULDER, COUNTY OF BOULDER, STATE OF COLORADO.
SHEET 1 OF 2

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this 17th day of February, 2003, by Michael John Sherman.

Witness my hand and official seal.

SAMANTHA R. TANNER
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires 03/26/2005

Samantha Tanner
Samantha Tanner
Notary Public
My commission expires: 3/26/2005

Frederick A. Bickford
Frederick A. Bickford
1019 Mapleton Avenue
Boulder, Colorado 80302

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this 17th day of February, 2003, by Frederick A. Bickford.

Witness my hand and official seal.



Frederick A. Bickford
Frederick A. Bickford
Notary Public
My commission expires: 03/26/2005

LINE DESCRIPTION: (SEE SHEETS 2 OF 2)

A LINE DIVIDING TWO PARCELS BEING PORTIONS OF OUTLOT 2 SQUIRES ADDITION TO WEST BOULDER AND OF LOTS 27 AND 28, BLOCK 1, MAPLETON, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 71 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF BOULDER, COUNTY OF BOULDER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ASSUMING THE SOUTH LINE OF THAT PARCEL OF LAND DESCRIBED IN DEED RECORDED SEPTEMBER 28, 1995 AT RECEPTION NUMBER 01551101, TO BEAR SOUTH 82°37'00" WEST BETWEEN FOUND MONUMENTS AS SHOWN HEREON, WITH ALL BEARINGS HEREIN RELATIVE THERETO.

COMMENCING AT THE SOUTHEAST CORNER OF OUTLOT 2, SQUIRES ADDITION TO WEST BOULDER, THENCE SOUTH 82°37'00" WEST, ALONG THE SOUTHERLY LINE OF SAID OUTLOT 2, SAID LINE ALSO BEING THE NORTHERLY RIGHT-OF-WAY OF MAPLETON AVENUE, A DISTANCE OF 100.00' TO THE SOUTHWEST CORNER OF THAT PARCEL OF LAND DESCRIBED IN DEED RECORDED SEPTEMBER 28, 1995 AT RECEPTION NUMBER 01551101, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF THAT PARCEL OF LAND DESCRIBED IN DEED RECORDED APRIL 18, 2000 AT RECEPTION NUMBER 2037915; THENCE CONTINUING SOUTH 82°37'00" WEST ALONG SAID NORTHERLY RIGHT-OF-WAY OF MAPLETON AVENUE, A DISTANCE OF 4.02', TO A POINT ON AN EXISTING SPLIT-RAIL FENCE, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE NORTH 10°31'39" WEST ALONG SAID SPLIT-RAIL FENCE, A DISTANCE OF 28.97' TO THE END OF SAID SPLIT-RAIL FENCE, ALSO BEING THE CORNER OF AN EXISTING WOOD FENCE; THENCE NORTH 14°37'35" WEST, A DISTANCE OF 108.32' TO THE SOUTHWEST CORNER OF AN EXISTING STONE AND FRAME GARAGE; THENCE NORTH 15°48'35" WEST ALONG THE WEST SIDE OF SAID STONE AND FRAME GARAGE, A DISTANCE OF 16.03' TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY OF A PUBLIC ALLEY, SAID POINT ALSO BEING THE POINT OF TERMINUS.

I, JOHN B. GUYTON, A REGISTERED LAND SURVEYOR, LICENSED IN THE STATE OF COLORADO DO HEREBY STATE THAT THIS PROPERTY LINE DESCRIPTION AND THE ATTACHED EXHIBIT BEING MADE A PART HEREOF WERE MADE UNDER MY DIRECT SUPERVISION AND CHECKING AND ARE ACCURATE TO THE BEST OF MY KNOWLEDGE AND INFORMATION AND BELIEF.

John B. Guyton
JOHN B. GUYTON
COLORADO P.L.S. #16406
PRESIDENT, FLATIRONS SURVEYING, INC. JOB NO. 02-41,372

NOTE:
REFER TO FLATIRONS SURVEYING, INC. JOB NUMBER 01-39,621 FOR BOUNDARY INFORMATION.
THIS EXHIBIT IS NOT A "LAND SURVEY PLAT" OR "IMPROVEMENT SURVEY PLAT" AND THIS EXHIBIT IS NOT INTENDED TO REPRESENT A SUBDIVISION OF LAND IN VIOLATION OF STATE STATUTES.

Flatirons Surveying, Inc.
5717 ARAPAHOE RD., BOULDER, CO 80303
(303) 443-7001

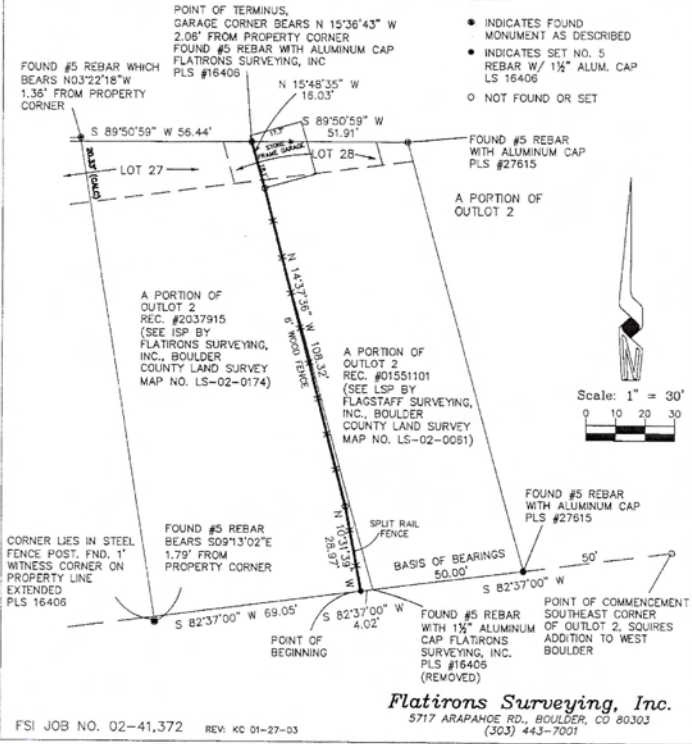
EXHIBIT

PROPERTY LINE AGREEMENT

PORTIONS OF OUTLOT 2 SQUIRES ADDITION TO WEST BOULDER AND OF LOTS 27 AND 28, BLOCK 1, MAPLETON, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 71 WEST OF THE 6TH P.M., CITY OF BOULDER, COUNTY OF BOULDER, STATE OF COLORADO.

SHEET 2 OF 2

- LEGEND**
- INDICATES FOUND MONUMENT AS DESCRIBED
 - INDICATES SET NO. 5 REBAR W/ 1/2" ALUM. CAP LS 16406
 - NOT FOUND OR SET



- ¹C.R.S. § 38-44-112.
- ²See T.S. MADSON, II, MADSON, ON COLORADO REAL PROPERTY BOUNDARY LAW 69-70 (LSS Pub.Co. 1983).
- ³11 C.J.S., Boundaries, § 64, Agreement Validity in General (footnotes omitted).
- ⁴11 C.J.S., Boundaries, § 67(a), Parol Agreement (footnotes omitted).
- ⁵11 C.J.S., § 67(b), Doubt or Uncertainty as to True Location: In order to establish the validity of a parol agreement establishing a boundary, it is necessary that there shall be doubt and uncertainty as to its true location, . . . It is not essential that the true line be absolutely unascertainable, for it is only where the true location is subsequently ascertained that actions involving disputed boundaries can arise; and if a boundary line which is the subject of dispute and contention is agreed on and adjusted, it cannot be disturbed although the parties afterward learn that the true line could have been found. . . . It is not necessary that an actual interference of boundary lines shall be shown by the title papers, but if the boundaries as shown by the title papers overlap, this will constitute an uncertainty sufficient to support an agreement. The fact that the true location could be determined by a survey or a correct measurement does not prevent an agreement. (footnotes omitted)
- ⁶11 C.J.S., § 69(a), Conclusiveness and Effect of Agreement, In General: If the requisites for its validity and binding force are present, a boundary agreement between adjoining owners is conclusive as to the location of the boundary and the line agreed on becomes the true line, even though neither party intended to claim beyond the true line. . . . The line is established conclusively, not because the agreement passes title, but because it determines the location of the estate of each and places beyond future doubt the true line of division between them. (footnotes omitted)
- ⁷C.R.S. § 30-28-101(10).
- ⁸C.R.S. § 30-28-101(10)(d).
- ⁹Pennobscot, Inc. V. Bd. Of County Comm'rs, 642 P.2d 915 (Colo. 1982).
- ¹⁰11 C.J.S., § 69(b), Persons Bound.
- ¹¹See CORA JORDAN, NEIGHBOR LAW: FENCES, TREES, BOUNDARIES AND NOISE, 2ND ED. 9/5-9/11 (Mary Randolph ed., Nolo Press 1994).
- ¹²For examples, see herein, EXHIBIT A. See also T.S. MADSON, II, MADSON, ON COLORADO REAL PROPERTY BOUNDARY LAW 76 (LSS Pub.Co. 1983), and also CORA JORDAN, NEIGHBOR LAW: FENCES, TREES, BOUNDARIES AND NOISE, 2ND ED. 9/10 (Mary Randolph ed., Nolo Press 1994).
- ¹³In the office of the County Clerk and Recorder.
- ¹⁴For more specific information concerning transfers of title to land which would apply in this case, see Colorado Revised Statutes, Title 38, Articles 30 and 35.

Complete Photogrammetric Services

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