The Kilby Group

4309 Winder Highway
Flowery Branch, Georgia 30542

Georgia ~ Tennessee ~ North Carolina

J. Dwight Kilby, LS
Dwight@TheKilbyGroup.com

D. Keith Kilby, LS
Keith@TheKilbyGroup.com

Reginald Kilby
Reg@TheKilbyGroup.com

770-965-9700 www.TheKilbyGroup.com

January 10, 2012

Doctrine of Acquiescence

One of the first things that come to mind when a property dispute arises is adverse possession. A lesser known doctrine (but a more common scenario) is the doctrine of acquiescence. Acquiescence does not require the elements of adverse possession and the time period can be much less.[1] Acquiescence deals with boundary lines and their physical location verses the deed description, unlike adverse possession which deals with title. One could have good marketable title and still be uncertain to the physical location of their boundary lines.

1. O.C.G.A. §44-4-6

A boundary line which is in dispute, uncertain or unascertained may be established by acquiescence for seven years.[2] Even if the line is clearly described in the deed it is still considered uncertain or unascertained if its location on the ground is unknown.[3] A line may not be established by acquiescence unless there is some contention between the coterminous owners as to its location. As a result a boundary line is established in which the coterminous owners acquiescence to its location. Coterminous owners may go for years without knowing the exact location of the boundary line dividing them and until there is some contention as to where the true line is there is, no reason to establish a line by acquiescence.

2. Osteen v. Wynn, 131 Ga. 209 (62 SE 37) (1908)
3. Warwick v. Ocean Pond Fishing Club, 206 Ga. 680 (58 SE2d 383) (1950)

Actions or declarations by coterminous owners, along with the stationary period of time, are adequate to establish a boundary line by acquiescence. Parol agreement or even the silence of the adjoining owner (Doctrine of Laches)[4] may be sufficient to fix an uncertain boundary line or establish a new one. Erection of a fence, either by one owner or jointly, drainage ditches[5], hedge rows[6], farming or even maintenance of a straight row of trees may be used to establish the boundary line[7]. Acquiescence may be established without actual passion when a declaration of both parties acknowledging the line can be shown.[8]

4. Swanson v. Swanson 269 Ga. 674 (501 SE 2d) (1998)
*"Whether laches should apply depends on a consideration of the particular circumstances, including the length of the delay in the claimant's assertion of rights, the sufficiency of the excuse for the delay, the loss of evidence on disputed matters, the opportunity for the claimant to have acted sooner, and whether the claimant or the adverse party 494*494 possessed the property during the delay. These factors are relevant because laches is not merely a question of time, but principally a matter of inequity in permitting the claim to be enforced. Hall v. Trubey, 269 Ga. 197, 498 S.E.2d 258 (1998); Troup v. Loden, 266 Ga. 650, 651(1), 469 S.E.2d 664 (1996); Yablon v. Metropolitan Life Ins. Co., 200 Ga. 693, 708(2), 38 S.E.2d 534 (1946)."*

5. Sacks et al. v. Martin et al., 417 Ga. 670, S.E. 2d 670 (2008)
6. Wood v. Fraker, 199 Ga. 190, 33 S.E. 2d 699 (1945)
7. Brown v. Hester, 169 Ga. 410, 150 S.E. 556 (1929)
8. Tietjen v. Dobson, 170 Ga. 123, 152 S.E. 222 (1930); Buchheit v. Gillis, 246 Ga.App. 838, 541 S.E. 2d 441 (2000)

Do to the very nature of boundary line disputes, one may find the process challenging and lacking in the remedies sought. Jury trails, more times than not, becomes "a hopeless exercise in futility"[9] and where boundary disputes are well within the jurisdiction of the Appellate Courts[10]; the time and cost may prove too great along with the fact, like the superior courts, have the right of refusing to hear a case if it deems another remedy should be sought[11]. An action of trespass, register title to land, summary judgment or any other statutory action to recover land could be used, but may prove to be inadequate when it comes to determining boundaries. When some other reason for equitable intervention can be proved, the lower courts have used injunction against trespass to settle boundary line disputes.

9. Trail of boundary disputes before a jury is often a hopeless exercise in futility, because they seldom understand the evidence. See Colley v. Dillion, 158 Ga.App. 416, 280 S.E.2d 425 (1981)
10. Hatcher v. Hatcher, 211 GaApp. 869, 440 S.E.2d 755 (1994)
11. Hall v. Christain Church of Georgia, inc., 280 Ga. App. 721, 634 S.E.2d (2006), cert. denied, (Nov. 20, 2006)

In keeping with the Legal Maxims: Ab assuetis non fit injuria (No injury is done by things long acquiesced in) and Quieta non movere (Not to disturb what is settled); the courts will not force coterminous owners to litigate what they are willing to do voluntarily.[12] The courts have preferred peaceable compromise rather than a lengthy and costly legal battle, and physical altercations serve no purpose except to expose one to civil and even possible criminal prosecution. Neighbors living in harmony with long settled boundaries are much preferred to hostile conflicts that serve no purpose other than cause strife and the unsettling of ancient land marks long held as true.

12. O.C.G.A. § 23-1-21

When coterminous owners are able to come to an agreement, an oral agreement is sufficient if it is fully executed by actual possession up to the newly agreed upon line for the statutory amount of time[13]; however, it is still a better practice to place all agreements in written and recorded. It is sufficient to have them placed on the face of the plat, duly signed, witnessed and notarized. It is also common practice to have a separate boundary line agreement drawn up or have coterminous owners to swap quitclaim deeds. Boundary line agreements are governed by the same rules as are applicable to other contracts,[14] as such, care should be taken to make sure that both parties are able to enter into binding agreements.

13. Farr v. Woolfolk, 118 Ga. 277, 45 S.E. 230 (1903); Holland v. Shackelford, 220 Ga. 104, 137 S.E.2d, 298 (1964)
14. See 6 E. G. L. Contracts

When coterminous owners are unable to reach a satisfactory agreement for both parties, arbitration may prove to be an acceptable alternative to litigation. And unlike boundary line agreements, fiduciary heirs maybe authorized to execute a boundary line agreement under the rules of arbitration.[15]

15. O.C.G.A. §9-9-1; Davis v. Gaona, 260 Ga. 450 396 S.E.2d 218 (1990)