I. INTRODUCTION

These materials discuss the history and nature of the Torrens system and how boundary lines can be registered in a Torrens proceeding, both at the time of an initial registration and in a proceeding subsequent to registration. This presentation will also include a discussion of the use of boundary by practical location to pursue a judicial determination of boundary for registered property.

II. TORRENS PRIMER

The Torrens system of determining interests in real property is an alternative to abstract property ownership. “Under the abstract system, documents evidencing marketable title may be found in recorded documents or by material outside the recording system. . . . the prospective purchaser of real property looks at recorded documents to determine marketable title of record.” Hersh Properties, LLC v. McDonald’s Corp., 588 N.W.2d 728, 733-34 (Minn. 1999). In contrast, interests in Torrens property are determined – in fact, established –by a court. Id.

And, whether property is abstract or Torrens affects more than where documents are recorded, or who examines title. It also impacts on issues such as whether possession of the property will mature into ownership. Recent cases and a statutory change in Minnesota not only illustrate how complex these issues can be, but have impacted on how they will be resolved.

a. Invention of the Torrens System in Australia

Torrens introduced his land registration system in South Australia’s Parliament in 1858. *Id.* at 28. At the time, “land titles were in serious disarray” in South Australia. Croucher, *supra*, at 303. The population was growing quickly, and with it land titles; it was estimated that “the documents for three-quarters of the titles had been lost.” *Id.* Torrens described the existing law of real property as “complex and cumbrous in its nature, ruinously expensive in its working, uncertain and perplexing in its issues, and specially unsuited to the requirements of this community.” *Id.* at 301.

This unfavorable opinion was both personally and philosophically motivated. *Id.* at 302. Personally, the plight of a good friend troubled Torrens: While serving as an officer in the Indian Army, the friend lost his land in South Australia as well as upwards of 20,000 pounds in improvements to that land, when a title defect was discovered. *Id.* at 304. Philosophically, Torrens, the economist’s son, had a commitment to economic liberalism: He wanted to establish a free market in land and saw the lack of security of title as discouraging investment of capital in it. *Id.* at 302.

Such considerations may have motivated him, but his reform was made feasible by his work as controller of customs (and hence experience with ship ownership), and as a registrar of deeds. *Id.* at 304. Torrens sought to apply the principles of ship ownership registration (under the English law known as the “Merchants Shipping Act”) to registration of title to land. *The Torrens System, supra*, at 25. Torrens also learned of a German custom of registering land titles; from these sources, he formulated his system of land title transfer. *Id.*


**b. History of Torrens in America**

In America, Illinois was the first state to adopt a Torrens Title Act: The Chicago fire of 1871 destroyed Cook County real-estate records, and the County was growing quickly. John T. Durkin, *Torrens Title*, The Electronic Encyclopedia of Chicago, [http://encyclopedia.chicagohistory.org/pages/1262.html](http://encyclopedia.chicagohistory.org/pages/1262.html) (last visited September 30, 2011). There was a serious demand for secure and adequate verification of title. *Id.* The first act passed in 1895, but was declared unconstitutional by the Illinois Supreme Court. *The Torrens Law in Illinois*, N.Y. Times, Nov. 3, 1897. See, *People ex rel. Kern v. Chase*, 165 Ill. 527, 46 N.E. 454 (1896). In 1897, the Illinois legislature passed an amended version. *Id.* Virginia was the first state to provide in its constitution for the enactment of a Torrens Act; the Virginia Torrens Act was passed in 1916. Case Comment, *Yes Virginia – There is a Torrens Act, supra*, at 304. At the end of the 1800s, it was lamented that, regarding the Torrens system, “the favoring flood-tide, that will surely sweep over the country, has been kept back so long.” *The Torrens System, supra*, at 2.

However, that did not occur. Torrens-type registration statutes were enacted in twenty-two states. Note, *Possessory Title Registration, supra*, at 828. But, Torrens came into widespread use in only five: Hawaii, Illinois, Massachusetts, Ohio, and Minnesota. Anh T. Le, *Property—The Effect of the Hersh...*

What stemmed the Torrens tide? Critics point to the expense and time involved in the registration process. Case Comment, Yes Virginia – There is a Torrens Act, supra, at 318. In some states, Torrens was opposed by interest groups. The dormant Virginia Torrens Act found early opposition from various interest groups within the legal, real estate, and banking industries. Id. at 320. The antipathy may have been exacerbated by well publicized claims that Sir Robert Torrens, the man, had a distaste for lawyers; he saw them holding a vested interest in a broken system, and he claimed that “lawyers got ‘the oyster’ while litigants got ‘the shell.’” Croucher, supra, at 301-02. Old fashioned unfamiliarity with a new system and inertia may have played a role, as well. Case Comment, Yes Virginia – There is a Torrens Act, supra, at 320.

The Torrens system was adopted in Minnesota in 1901 as a reform measure. Hersh Properties, 588 N.W.2d at 733 (noting that “[i]n 1901, Minnesota adopted the Torrens system . . . the goal of the legislature was ‘to clear up and settle land titles.’”) (Citations omitted). Torrens thrives in Minnesota today. And “Hennepin County . . . is the largest county in the state in terms of population and has more Torrens property than any other county in the state.” In re Collier, In re Collier, 726 N.W.2d 799, 808 n.4 (Minn. 2007).

c. Distinctive Characteristics of Torrens Title

Specifically, “[t]he purpose of the Torrens system [is] to create a title registration procedure intended to simplify conveyancing by eliminating the need to examine extensive abstracts of title by issuance of a single certificate of title, free from ‘any and all rights or claims not registered with the registrar of titles.’” Hersh Properties, LLC v. McDonald’s Corp., 588 N.W.2d 728, 733 (Minn. 1999). This adjudication relieves a purchaser of the need to conduct certain due diligence, such as investigating documents of record and inspecting the property itself: “Under the abstract system, documents evidencing marketable title may be found in recorded documents or by material outside the recording system . . . the prospective purchaser of real property looks at recorded documents to determine marketable title of record . . .” Id. at 734.

Property owners derive significant benefit from the Torrens system; the purchaser of Torrens property does not have to pay for an expensive abstract to ascertain the quality of title, but may simply consult the certificate of title:

Under the Torrens system, time-consuming and expensive title searches, which characterize the abstract system, are alleviated because the purchaser of Torrens property may, subject to limited exceptions, determine the status of title by inspecting the certificate of title.

In re Collier, 726 N.W.2d at 804. But, for such a system to work, property purchasers and owners must be able to rely on their certificates of title:

Registered land stands on a different footing than unregistered land: The purpose of the Torrens law is to establish an indefeasible title free from any and all rights or claims not registered with the register of titles, with certain unimportant
exceptions, to the end that anyone may deal with such property with the assurance that the only rights or claims of which he need take notice are those so registered.

_Mill City Heating and Air Conditioning Co. v. Nelson_, 351 N.W.2d 362, 364 (Minn. 1984) (emphasis added). When one purchases Torrens property, then, they take subject only to “the estates, mortgages, liens, charges, and interests as may be noted in the last certificate of title in the office of the registrar.” Minn. Stat. § 508.25. The Torrens statute provides that every person “who receives a certificate of title in good faith and for a valuable consideration shall hold it free from all encumbrances and adverse claims . . .” _Id._ (emphasis added).

The most significant exceptions to this rule are “certain rights or encumbrances subsisting against,” or existing at the time of the issuance of, the certificate of title, which by law do not need to be listed at memorials on the certificate of title. _Id._ The Minnesota Court of Appeals has referred to them as “seven exceptions that encumber Torrens property in spite of their failure to appear on the last certificate of title.” _In re Collier_, 726 N.W.2d at 802 n. 1 (emphasis added).

These exceptions are:

1. liens, claims, or rights arising or existing under the laws or the Constitution of the United States, which this state cannot require to appear of record;
2. the lien of any real property tax or special assessment;
3. any lease for a period not exceeding three years when there is actual occupation of the premises thereunder;
4. all rights in public highways upon the land;
5. the right of appeal, or right to appear and contest the application, as is allowed by this chapter;
6. the rights of any person in possession under deed or contract for deed from the owner of the certificate of title; and
7. any outstanding mechanics lien rights which may exist under sections 514.01 to 514.17.

Minn. Stat. § 508.25.

There are many implications of this policy. For example, to the extent that ownership can be established by possession, certificates of title are made more unreliable. Consistent with that, Minn. Stat. § 508.02 prohibits adverse possession (but allows for practical location of boundaries), as it provides that “[n]o title to registered land in derogation of that of the registered owner shall be acquired by prescription or by adverse possession, but the common law doctrine of practical location of boundaries applies to registered land whenever registered.”

Further, since the certificate of title must authoritatively recite ownership, no interest is established against the property until it is registered. That is true of voluntary conveyances, such that delivery of a deed does not effect a transfer:

No voluntary instrument of conveyance purporting to convey or affect registered land, except a will, and a lease for a term not exceeding three years, shall take effect as a conveyance, or bind or affect the land, but shall operate only as a contract between the parties, and as authority to the registrar to make registration. _The act of registration shall be the operative act to convey or affect the land._
Minn. Stat. § 508.47 (emphasis added). Liens, also, must be registered to be established as interests against the subject property.

Every conveyance, lien, attachment, order, decree, or judgment, or other instrument or proceeding, which would affect the title to unregistered land under existing laws, if recorded, or filed with the county recorder, shall, in like manner, affect the title to registered land if filed and registered with the registrar in the county where the real estate is situated, and shall be notice to all persons from the time of such registering or filing of the interests therein created.

Minn. Stat. § 508.48 (emphasis added).

III. BOUNDARY REGISTRATION UNDER MINN. STAT. 508.06 & 508.671

The Torrens Act provides for the judicial determination of boundaries either at the time of the initial registration (in Minn. Stat. § 508.06), or subsequent to the initial registration (Minn. Stat. § 508.671).

a. BOUNDARY REGISTRATION @ TIME OF ORIGINAL REGISTRATION

During the initial registration of land, the applicant decides whether to seek to have the boundary lines registered. While pursuing a judicial determination of the boundaries will require additional cost to the applicant, there may be a variety of reasons to have the boundary lines adjudicated in the proceeding and marked with judicial landmarks. A common reason for pursuing a registration of the boundaries is where there is a known dispute or discrepancy in the location of a common boundary.

The following is an excerpt from the form Application available through the Hennepin County Examiner’s Office website highlighting the portion of the Application where an applicant would indicate whether the applicant seeks to have the boundary lines judicially determined:

I. □ Applicant does not wish to fix and establish the boundary lines of the land [or]

□ Applicant desires to fix and establish the __________________________

boundary lines of the land: [State the full names and addresses of all owners of adjoining lands, which are in any manner affected, and the legal description of the affected adjoining lands.]

A complete copy of the Application form is attached as Appendix A. The list of what is required in the Application can be found in Minn. Stat. § 508.06 which includes:

(11) if it is desired to fix and establish the boundary lines of the land, the full names and addresses of all owners of adjoining lands which are in any manner affected by it shall be fully stated.

Minn. Stat. § 508.06, subd. 11.

b. BOUNDARY REGISTRATION AFTER TITLE IS REGISTERED
Under Minn. Stat. § 508.671, the owner of registered land may apply to have all or some of the boundary lines judicially determined. The owner of unregistered land may also file a petition under Minn. Stat. § 508.671 as long as the boundary to be determine “affects one or more adjoining parcels of registered land.” Minn. Stat. § 508.671 sub. 1.

The applicant must identify (1) the adjoining landowners (names and post office addresses); and (2) the legal description of the adjoining land impacted by the boundary determination, in order for the examiner to identify who must be notified of the proceedings and served with a land summons. Minn. Stat. § 508.671 sub. 1. A copy of the petition is recorded and entered as a memorial on the petitioner’s certificate of title and on the certificates, if any, of other property impacted. The following is an excerpt from a Certificate of Title showing the Petition memorialized, similar to the use of a lis pendens to put the world on notice of the pending proceeding:

With the Petition, the owner submits a survey prepared by a licensed land surveyor showing the correct location of the boundary line (or lines) to be determined. Minn. Stat. § 508.671 sub. 1. Rule 211 of the Minnesota General Rules of Practice also provides the procedural process for establishing the boundaries. Rule 211 requires that applicant to have the property surveyed by a registered land surveyor and submit the survey to the examiner.

The petition is then referred to the examiner of titles who examines the petition and issues a report in the manner provided for the reference of initial applications for registration.

c. CONTESTED MATTERS

Notice of the proceeding is given to all interested persons, as identified in the Examiner’s Report, by the service of a summons in the same form as service of a summons in an initial application proceeding. Minn. Stat. § 508.671 sub. 1.

When there is a contested matter (e.g., the neighboring property challenges the petitioner’s claimed boundary line), the matter is heard before the Examiner of Titles or by the District Court.

Once a determination on the merits has been made (e.g. survey A wins over survey B), the non-prevailing party has the right to appeal the decision. While the next step after a determination has been made is to proceed with an interlocutory order to locate the proposed JLM location, the prevailing party may wait until the appeal period has run or the court may order the prevailing party to wait to move ahead with the next steps until the appeal period has passed.

d. INTERLOCUTORY ORDER – PROPOSED JLM PLACEMENT

Once a determination is made the on the merits (e.g. met burden of proof to establish the location of the boundary line or proved up boundary by practical location), Minn. Stat. § 508.671 provides steps to follow to reach the finish line (i.e. a judicial determination of boundary memorialized on the certificate(s) of title).
An interlocutory order is issued ordering the petitioner’s surveyor to prepare a plat of survey, which includes the proposed location for the judicial landmarks to be placed. As provided in Rule 211, “before any final adjudication of registration, the court by order shall fix and establish such boundaries and direct the establishment of ‘judicial landmarks’ in the manner provided by Minnesota Statutes, section 559.25.” There are statutory requirements as to what the survey must show and the county’s examiner of titles may have additional requirements upon her/his review. Attached as Appendix B is an sample of an interlocutory order.

Minnesota Statute § 559.25 provides:

The judgment shall locate and define the boundary lines involved by reference to well-known permanent landmarks, and, if it shall be deemed for the interest of the parties, after the entry of judgment, the court may direct a competent surveyor to establish a permanent stone or iron landmark in accordance with the judgment, from which future surveys of the land embraced in the judgment shall be made. Such landmarks shall have distinctly cut or marked thereon "Judicial Landmark." The surveyor shall make report to the court, and in the report shall accurately describe the landmark so erected, and define its location as nearly as practicable.

Minn. stat. § 559.25 (emphasis added).

By way of example of what the county examiner requires for the survey, Exhibit C sets forth the requirements published by the Hennepin County Examiner of Titles office.

e. FINAL ORDER

Once the plat of survey document is approved by the examiner, the surveyor sets the JLMs and prepares a final plat of survey with a certification that the JLMs have been placed. Once the final plat of survey is filed, an order is issued to direct the registrar of titles to receive a copy of a plat of survey and show the judicial determination of boundary as a memorial on the relevant certificates of title.

The following is an excerpt from a certificate of title highlighting the memorials subsequent to a final order:
In the decree of registration entered, and in certificates of title thereafter issued, the description of the land will contain appropriate reference to such "judicial landmarks."

IV. **BOUNDARY BY PRACTICAL LOCATION -- TORRENS PROPERTY.**

Torrens property is not subject to claims based on adverse possession. Why should Torrens title property be treated differently? The Court of Appeals has answered the questions squarely:

The purpose of the Torrens law is to establish an indefeasible title which is immune from adverse claims not registered with the registrar of titles and to assure that the property can become encumbered only with registered rights and claims.

*Petition of McGinnis*, 536 N.W.2d 33, 35 (Minn. Ct. App. 1995). Though Torrens property is protected from adverse possession and prescriptive easement claims, registered property remains subject to claims based on boundary by practical location:

No title to registered land in derogation of that of the registered owner shall be acquired by prescription or by adverse possession, but the common law doctrine of practical location of boundaries applies to registered land whenever registered. Section 508.671 shall apply in a proceedings subsequent to establish a boundary by practical location for registered land.


In general, here are three means of claiming boundary by practical location – by acquiescence, agreement, and estoppel:

Ordinarily, in order to establish a practical location of a boundary line it must appear (1) the location relied on was acquiesced in for the full period of the statute of limitations; or (2) the line was expressly agreed upon by the parties and afterwards acquiesced in; or (3) the party barred acquiesced in the encroachment by the other, who subjected himself to expense which he would not have done if there had been a dispute as to the line.

*Romanchuk v. Plotkin*, 9 N.W.2d 421, 427 (Minn. 1943). Though all three means involve possession, the Minnesota Supreme has noted that boundary by practical location is “independent of adverse possession.” *Enquist v. Wirtjes*, 68 N.W.2d 412, 417 (Minn. 1955).
For Torrens property, the doctrine of boundary by practical location was historically applied only in limited instances. The Minnesota Court of Appeals once held it applied only where a boundary line dispute existed at the time the property was registered, or when there was an ambiguity with respect to the legal description of the boundary line:

[T]he doctrine of boundary by practical location has been applied in limited instances to determine boundaries to registered property. See Minneapolis & St. Louis Ry. v. Ellsworth, 237 Minn. 439, 444-45, 54 N.W.2d 800, 804 (1952) (doctrine applied where original registration proceeding did not determine boundary lines, basis for boundary dispute existed at time of registration, and dispute is not collateral attack on Torrens proceeding); In re Zahradka, 472 N.W.2d 153, 155-56 (Minn. Ct. App. 1991) (doctrine applied to resolve conflict between two certificates of title with ambiguous property descriptions that could include same property), pet. for rev. denied (Minn. Aug. 29, 1991). In a recent case, this court recognized that adverse claims have only affected registered property where there was an ambiguous description in the certificate of title or the dispute existed at the time the property was registered. In re Building D, Inc. 502 N.W.2d 406, 408 (Minn. Ct. App. 1993), pet. for rev. denied (Minn. Aug. 24, 1993). Here, there is no ambiguity in Lot 66's certificate of title, nor was there a dispute over the location of boundaries when Lot 5 was registered in 1914. The boundaries of Lots 1 and 66 were delineated by the July 7, 1915 plat which was filed with the registrar of titles on January 15, 1917. Both Williams and McGinnis' predecessors in title signed the 1915 plat as owners of the platted property, affirming the location of the boundaries at that time. As there was no boundary disagreement at the time of the 1914 registration, Williams cannot now assert that the failure to establish boundaries during the registration proceeding provides a basis for an adverse claim. Cf. Ellsworth, 237 Minn. at 445, 54 N.W.2d at 804.

Petition of McGinnis, 536 N.W.2d 33, 36 (Minn. Ct. App. 1995). In 2008, however, the Minnesota legislature modified the wording of the Torrens Act by adding the following italicized language:

No title to registered land in derogation of that of the registered owner shall be acquired by prescription or by adverse possession, but the common law doctrine of practical location of boundaries applies to registered land whenever registered. Section 508.671 shall apply in a proceedings subsequent to establish a boundary by practical location for registered land.

Minn. Stat. § 508.02. The added language stated the “common law doctrine” of boundary by practical location applied to Torrens, but did not explicitly state its application was limited to situations where there the factors referenced in McGinnis were present, i.e., an ambiguity or pre-registration dispute.

And, in Britney v. Swan Lake Cabin Corp., heard after the modification of Minn. Stat. § 508.02 took effect, the change to the language was very important: The Britney Court did not analyze the case to see whether “there was an ambiguous description in the certificate of title,” or a “dispute which existed at the time the property was registered.”

Instead, the Britney Court simply analyzed the doctrine in light of the use put to the property, and distinguished between practical location and adverse possession. The acquiescence theory of boundary by practical location reviewed by the Britney Court is a direct analogue of adverse possession, and the basis for it is Minn. Stat. § 541.02:
“To acquire land by practical location of boundaries by acquiescence, a person must show by evidence that is clear, positive, and unequivocal that the alleged property line was “acquiesced in for a sufficient length of time to bar a right of entry under the statute of limitations.” Theros v. Phillips, 256 N.W.2d 852, 858 (Minn. 1977). The statute of limitations is 15 years. Minn. Stat. § 541.02 (2000); see Allred v. Reed, 362 N.W.2d 374, 376 (Minn. Ct. App. 1985) (citing Minn. Stat. § 541.02 in practical-location case), review denied (Minn. Apr. 18, 1985).

Pratt Inv. Co. v. Kennedy, 636 N.W.2d 844, 850 (Minn. Ct. App. 2001). The Minnesota Supreme Court has called Minn. Stat. §541.02 “the adverse possession statute,” and has found that it cannot apply to Torrens property:

City asserts that the landowners' claim for ejectment is time-barred by the 15–year statute of limitations set forth in Minn. Stat. § 541.02(2006), which provides: “No action for the recovery of real estate or the possession thereof shall be maintained unless it appears that the plaintiff * * * was seized or possessed of the premises in question within 15 years before the beginning of the action.” Section 541.02 is the adverse possession statute in Minnesota. . . As such, it cannot operate against Torrens property.

Hebert, 744 N.W.2d at 233 (emphasis added). Previously § 508.02 specifically prohibited adverse possession claims, and the Hebert Court held this proscription extended to analogues of adverse possession.

However, the Britney Court noted that the type of acquiescence required to establish boundary by practical location must be something beyond mere passive conduct on the part of the owner of the property being claimed. Some conduct evidencing assent was required:

In the present case, appellant argues only that it has established a boundary by practical location by way of acquiescence. The acquiescence required is not merely passive consent but conduct from which assent may be reasonably inferred. Engquist v. Wirtjes, 243 Minn. 502, 507–08, 68 N.W.2d 412, 417 (1955) (affirming no-practical-location finding absent evidence that disseized or predecessors recognized or treated a fence as a division line, or that disseizor or predecessors used the disputed land); LeeJoice v. Harris, 404 N.W.2d 4, 7 (Minn. Ct. App. 1987) (no practical location by acquiescence when disseizor does not use disputed area for statutory period, even though disseized “tacitly consented” to boundary by failing to dispute a sightline).

795 N.W.2d at 872. This is different from adverse possession, of course; there, the requisite showing is different. “The claimant must show he had actual, exclusive, open, continuous and hostile possession of the real property in question for a period greater than 15 years. If he has, he has become the owner of the property involved and the court confirms that ownership.” Ehle v. Prosser, 197 N.W.2d 458, 462 (Minn. 1972). And, one need only show that the use was sufficiently “open” to give notice to a reasonable owner, not that the owner actually had notice or acquiesced:

The claim of right must be exercised with the knowledge of the owner of the servient estate, i. e., actual knowledge or a user on the part of the claimant of such character that knowledge will be presumed.

Naporra v. Weckwerth, 226 N.W. 569, 571 (Minn. 1929) (emphasis added)
The Hickersons argue that the improvements were not ‘open, notorious, and hostile’ because the improvements may not have been visible to their predecessors in title from adjoining Green Gables Road. *We construe ‘open,’ however, to mean visible from the surroundings, or visible to one seeking to exercise his rights.*


The *Britney* court went on to note that conduct implying assent is typically shown through physically marking the boundary line, most often with a fence; something that did not occur in the *Britney* case:

Typically, practical location by acquiescence “occurs when neighbors attempt to establish a fence as close to the actual boundary as possible, or when the disseizor unilaterally marks the boundary, and the disseized neighbor thereafter recognizes that line as the actual boundary.” *Pratt,* 636 N.W.2d at 851; *see also Fishman v. Nielsen,* 237 Minn. 1, 5–6, 53 N.W.2d 553, 555–56 (1952) [finding practical location by acquiescence when parties and their predecessors in title built dividing fence as close as possible to actual boundary and remained satisfied with fence's location for statutory period]; *Allred,* 362 N.W.2d at 376–77 (finding practical location by acquiescence when disseizor built fence with intent to be as close to boundary as possible and when disseized treated fence as boundary). Appellant, both before the district court and now on appeal, points to a number of actions that it and its predecessors in interest took in seeking to determine the location of the boundary between Lots Four and Five, most notably constructing a fence that ran in the approximate vicinity of the boundary line. But appellant points to no evidence of respondents or their predecessors in interest acquiescing to such actions constituting the boundary between Lots Four and Five other than its statement that respondents “never assert[ed] ownership to the questioned land.” Assent may not be reasonably inferred from this passive conduct. *See Engquist,* 243 Minn. at 507–08, 68 N.W.2d at 417 (requiring more than passive consent to establish a practical-location boundary by acquiescence).

795 N.W.2d at 872-73. The *Britney* Court went on to further distinguish the acquiescence theory from adverse possession by stating that case law from adverse possession cases would not apply, due to the prohibition of adverse possession of Torrens property:

*Appellant’s theory relies on outdated cases addressing the doctrine of adverse possession, which the legislature has explicitly precluded in the Torrens Act. See Minn. Stat. § 508.02 (providing that no title to registered land in derogation of that of the registered owner may be acquired by adverse possession). The district court therefore did not err by concluding that appellant had failed to establish the practical location of the boundary line between Lots Four and Five by acquiescence.*

795 N.W.2d at 873 (emphasis added).

The distinction between acquiescence and merely allowing possession to continue to exist is subtle. Although the Britney court stated “[a]ssent may not be reasonably inferred from this passive conduct,” the Court of Appeals has noted, in a boundary by practical location case, that “[a]cquiescence entails affirmative or tacit consent to an action by the alleged disseizor, such as construction of a physical boundary or other use . . .” *Pratt Inv. Co. v. Kennedy,* 636 N.W.2d 844, 849 (Minn. Ct. App.
2001); *LeeJoice v. Harris*, 404 N.W.2d 4, 7 (Minn. Ct. App. 1987). Actual knowledge may be a means of distinguishing between abiding a trespass and acquiescing to it.

When adjoining landowners occupy their respective premises up to a certain line that they both recognize and acquiesce in for 15 years, a Court may determine they are precluded from contesting that boundary line. *Amato v. Haraden*, 159 N.W.2d 907, 910 (Minn. 1968); see Minn. Stat. § 541.02 (stating 15–year limitation on real-estate actions). In *Soland v. Evert*, the Minnesota Court of Appeals reviewed the evidence of an old pasture fence to support a boundary by practical location claim asserted:

The Solands presented substantial evidence that the Everts and their predecessors acquiesced in the fence line as the certain, visible, and well-known boundary between the properties. Antonsen testified that for 26 years, from 1947 to 1973, the fence divided two pastures that were used as hog pastures: one owned and used by his father, the Everts’ predecessor, and the other owned by Keane.

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Acquiescence requires actual or implied consent to some action by the disseizor, such as construction of a boundary or other use of the disputed property, and acknowledgement of that boundary by the disseized party for an extended period of time. *Engquist v. Wirtjes*, 243 Minn. 502, 507–08, 68 N.W.2d 412, 417 (1955); *LeeJoice v. Harris*, 404 N.W.2d 4, 7 (Minn. Ct. App. 1987). To demonstrate acquiescence in a boundary location, the line must be “certain, visible, and well-known.” Beardsley, 52 Minn. at 546, 54 N.W. at 742.


The *Britney* Court also provided a practice pointer concerning the modified statute: One seeking to change the boundary line contained in a certificate of title must comply with the procedural requirements of Minn. Stat. § 508.671, even though one opposing the boundary by practical location claim, in bringing an ejectment action, does not:

Because the procedural requirements of Minn. Stat. § 508.671 were not followed, the district court properly dismissed appellant’s counterclaim. . . The procedure for seeking a judicial determination of a boundary line of one or more Torrens properties is set forth in Minn. Stat. § 508.671:...A proceeding under section 508.671 must follow several steps, including filing a certified copy of the petition with the registrar of titles and providing notice to all interested parties..... Appellant also argues on appeal that the district court was without authority to consider respondents' claim, as respondents' action similarly did not follow the procedural requirements of Minn. Stat. § 508.671. We disagree. The statute governs the procedural steps that must be followed by a party seeking to have “all or some of the common boundary lines judicially determined.” Minn. Stat. § 508.671, sub. 1. Respondents' claim, however, was not one seeking a judicial determination of a boundary line. Instead, respondents' complaint sought a judgment that they were the “owner[s] in fee of the entirety of Lot Five (5), Block Two (2), Plat of Swan Lake” and were entitled to recovery of possession “of the whole thereof.” Because respondents' complaint sought a judicial determination of ownership—rather than a judicial determination of the boundary—and the Northern Lights survey accurately described the boundary as platted, the procedural requirements of Minn. Stat. § 508.671 do not apply to respondents' claim.
V. CONCLUSION

Please feel free to contact the presenters if you have any further questions about these materials. Thank you.
In the Matter of the Application of

APPLICATION

To Register the Title to Certain Land

TO THE JUDGES OF THE ABOVE-NAMED COURT

Applicant hereby applies to register the title to the land described in this Application and solemnly swears that the contents of this Application are true to the best of Applicant’s own knowledge, except as to those matters stated on Applicant’s information and belief, and that as to those matters Applicant believes them to be true.

A. Name:__________________________________________________________
   Address:________________________________________________________________________
   [Note: If Applicant is not a resident of the state of Minnesota, see Minn. Stat. §508.07 regarding appointment of an agent.]

   Applicant is 18 years of age or older and is not under any legal incapacity.

B. Applicant is __married to______________________________________________
   who resides at __________________________________________________________________

   Applicant has never been divorced, except: [State the date of the divorce decree, the county and state where granted, the court file number and the name of the former spouse; if no divorce strike “except”]

C. Description of land: [For the registration of easements over unregistered land, the fee simple estate to which the easements are appurtenant must also be described]
The estimated market value of the land to be registered, exclusive of improvements, according to the last official assessment is $___________. [This information is available from the Property Tax Section of Taxpayer Services, 612-348-3011]

D. Estate or interest claimed in the land is fee simple and is ☐ subject to homestead [or]
☐ not subject to homestead.

E. ☐ The land is occupied by Applicant [or]
☐ The land is unoccupied [or]
☐ The land is occupied as follows: [State the full name and address of each occupant and the nature of the estate, interest, lien, or charge which the occupant or occupants have, or claim to have, in the land]

F. The land is encumbered by the following liens and interests, recorded or unrecorded: [Describe each lien or interest, recorded or unrecorded, which applicant recognizes as encumbering the land, including the nature of the lien or interest, any information about its recording, and the name of the interested party]

G. Applicant seeks a determination terminating or modifying the following liens or interests: [Describe each lien or interest, recorded or unrecorded, for which applicant seeks a determination terminating or modifying the interest, together with the reason for the relief requested, and including the nature of the lien or interest, any information about its recording, and the name of the interested party]

H. The title to the land is subject to the following other defects: [Describe the defects and state the reasons for curing them]
I. □ Applicant does not wish to fix and establish the boundary lines of the land [or]

□ Applicant desires to fix and establish the boundary lines of the land: [State the full names and addresses of all owners of adjoining lands, which are in any manner affected, and the legal description of the affected adjoining lands.]

Applicant requests the Court to adjudicate that Applicant is vested with title to the estate or estates in the lands as described in this Application, and that the Court direct the Registrar of Titles to register the same in Applicant’s name, and for such other relief as the Court finds appropriate.

________________________________________

Applicant’s Signature

Subscribed and sworn to before me on

__________________ by ____________________

date

__________________

applicant

__________________

Notary Public

Notary Seal

OPTIONAL ASSENT OF SPOUSE

I hereby assent to the registration of the above-described land as requested by the Applicant who is my spouse.

STATE OF MINNESOTA ) SS
COUNTY OF HENNEPIN )

This assent was acknowledged before me on

__________________ by ____________________

date spouse of applicant

__________________

Notary Public

Notary Seal

Attorney for Applicant:
Name: ________________________________
Address: ________________________________
Telephone: ________________________________
Fax: ________________________________
Attorney Registration No.: __________________
Email: ________________________________

Approved for Filing:

__________________
Deputy Examiner of Titles
STATE OF MINNESOTA
COUNTY OF HENNEPIN

In the matter of the Application (or Petition) of:

______________________________

To Register the Title to Certain Land (or In Relation to Land registered in Certificate of Title No. ________for an Order determining boundary lines under Minn. Stat. §508.671)

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Case type: Other Civil – Torrens

INTERLOCUTORY ORDER
DETERMINING BOUNDARIES

Rule 211, Minn. Gen. R. Prac.

The above-entitled matter came on for hearing on __________ at the Hennepin County Government Center, A-702, Minneapolis, Minnesota before the examiner of titles or deputy to whom said matter has been duly referred, to hear the evidence and report the examiner’s conclusions, pursuant to Minn. Stat. § 508.13. ______________ appeared as attorney for __________ and __________. All the defendants in this proceeding have been served with process, as required by law, the time to answer has expired, and no answer or notice of appearance of any kind has been served or filed (other than _______________).

The applicant (or petitioner) seeks to judicially determine the _______ boundary line(s) of the subject land, described as follows:

(insert legal description for applicant’s/petitioner’s land)

The court, having duly considered the contents of the court file and the evidence adduced by the applicant (or petitioner), finds that said boundary line(s) are as shown on the plat of survey on file herein dated __________, prepared for the applicant (or petitioner) by __________, a Licensed Land Surveyor, _________________________________ (firm name and city).

IT IS THEREFORE ORDERED:

That the applicant (or petitioner) proceed to have the surveyor mark the _______ boundary line(s) by placing stone or iron (not aluminum) judicial landmarks which are distinctly cut or marked “Judicial Landmark”, in accordance with Minn. Stat. §559.25. A plat of survey showing the location of the boundary lines by reference to well-known permanent landmarks and

APPENDIX B
showing the location of each placed judicial landmark, shall be filed herein. The certification on the plat of survey shall read substantially as follows:

I hereby certify that pursuant to the order of the Fourth Judicial District Court, State of Minnesota, dated ____________ (date of interlocutory order) in Case No. 27-ET-CV-________ judicial landmarks have been placed as shown on the annexed plat. Each judicial landmark consists of (describe size, shape and materials of judicial landmarks) with letters cut or marked thereon reading “judicial landmark.”

Dated: ___________________________  
Judge of District Court

The foregoing facts were found by me after due hearing, and the entry of this Order is recommended.

Susan T. Ledray, Examiner of Titles

By: ____________________________
Survey Requirements for Boundary Registration

A survey showing the boundaries claimed by the Applicant/Petitioner should be filed in the court file before the examiner issues a Report of Examiner.

You already have a survey

- For an original registration: Submit the survey with the Application when obtaining examiner approval of the Application. E-file the approved Application and survey.
- For a proceeding subsequent: E-file the Petition and submit the survey by email. The Examiner will review the survey, and inform you of any necessary revisions. E-file the approved survey.

You do not have a survey

- Provide the following survey guidelines to your surveyor. When the survey is ready, submit it by email to the examiner. If the survey is sufficient, the examiner will ask you to e-file the survey.

Survey Guidelines

1. For an original registration: The survey is certified to the legal description in the filed Application, or Report of Examiner, if issued. For a proceeding subsequent: The survey is certified to the legal description on the Petitioner’s certificate of title; or, if the Petitioner owns abstract land with a common boundary with registered land, the survey is certified to the legal description of the Petitioner’s abstract land and identifies the registered land.

2. Boundary lines are located by reference to “well-known permanent landmarks.” Minn. Stat. §559.25. Generally, these will be two section corners maintained by the Hennepin County Surveyor. In Minneapolis, the landmarks may be “Minneapolis City Control Monuments.”
3. Bearings and distances are shown for all boundary lines, and the survey complies with 6 B. iii-vii., inclusive of the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys (“2016 ALTA”). If the legal description contains bearings and distances, those are shown on the survey.

4. The boundary lines and corners of the property being surveyed shall be established and/or retraced in accordance with appropriate boundary law principles governed by the set of facts and evidence found in the course of performing the research and fieldwork. 3 D. of “2016 ALTA”.

5. Precision meets 3.E.v. of “2016 ALTA”.

6. Shows all found monuments near the boundary lines, labelled as “found” and described by location, size, character and type.

7. Shows all existing JLMs, labelled as such, with reference to the court file number and described by location, size, character and type. If an existing JLM cannot be located, show the location and label it “not found” or “missing” with reference to the court file number.

8. Shows irons placed by the surveyor in preparing the survey. Describes irons by location, size, character and type and clearly labels any irons marking the proposed JLMs as such. The irons marking the proposed JLMs may be off-set if necessary (e.g. due to a road). JLMs will be placed at each corner and point of change of direction in the boundary line(s) to be judicially determined.

9. Shows improvements within five feet of each side of the boundary lines to be set, including public and private rights-of-way, walls, buildings, fences and other structures, and trees.

10. Shows potential encroachments without expressing a legal opinion as to the ownership or nature of the potential encroachment. Note: Not required for a Proceeding Subsequent.

11. Shows location of underground public utilities, and surface indications of underground easements (e.g. utility cuts, vent pipes, meters, utility poles.) Note: Not required for a Proceeding Subsequent.

12. Shows location of water features in accordance with 5 G. of “2016 ALTA”.

13. Shows the current record legal description, but only if different from the legal description in the Application, and if the difference in descriptions is discernible and depicted on the survey. Note: Not required for a Proceeding Subsequent.

14. Presentation complies with 6. D i. and ii. (a) through (j) of “2016 ALTA.”

15. In addition to the certification required by Rule 1800.4200, have a certification substantially as follows:

   To (name of client):

   This is to certify that this map or plat and the survey on which it is based were made in accordance with survey guidelines (last revised 11/13/17) provided by Hennepin County, and in addition, in accordance with local standards of practice. The field work was completed on _________.

   Date of Plat or Map: ________________ (Surveyor’s signature, printed name, license number, seal, street address, telephone number, email address, and company name.)

   An ALTA certification is also acceptable.
Plat of Survey Showing Judicial Landmarks

After judicial landmarks have been placed pursuant to Interlocutory Order, a 2nd plat of survey must be prepared (the “JLM survey”). Judicial landmarks must be stone or iron, marked “judicial landmark.” Minn. Stat. §559.25. To minimize the loss or destruction of judicial landmarks, Hennepin County strongly prefers the use of cast iron, 20 inch monuments, with a cast iron cap clearly marked “judicial landmark.” The surveyor’s license number does not have to appear on the JLM.

The “JLM survey” is a revision of the first plat of survey:

1. Shows the legal description of the property as contained in the Interlocutory Order.
2. Shows the ties to well-known monuments and the bearings, distances, curves, etc. of all boundary lines.
3. Shows the placed JLMs and describes them by location, size, character and type.
4. Shows all other found or placed irons and monuments on or near the boundary lines, and any missing JLMs with reference to the court case number (previous case), and describes them by location, size, character and type.
5. Omits all other information (such as encroachments, utilities, improvements within 5 feet of the boundaries, historical legal description and boundaries) not necessary to show the location of boundary line(s) as determined in the current court action.
6. In addition to the certification required by Rule 1800.4200, have a certification substantially in the following form:

   I hereby certify that pursuant to the Order of the Fourth Judicial District Court, State of Minnesota, dated____ (date of Interlocutory Order) in Case No. 27-ET-CV-____, judicial landmarks have been placed as shown on the annexed plat. Each judicial landmark consists of (describe size, shape and materials of judicial landmarks) with letters cut or marked thereon reading “judicial landmark.”

Revised 11/13/17