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TITLE TALK with Katie Button

BOUNDARY LINE AGREEMENTS AND LOT LINE ADJUSTMENTS IN NEW HAMPSHIRE

Although similar in name, boundary line agreements and lot line adjustments serve different functions in our state. In the most simple of explanations, if a boundary line is unknown, or cannot be placed, it may be appropriate to enter into an agreement whereby the abutting parties settle upon a mutually agreeable common boundary. In contrast, a lot line adjustment may be appropriate when a common boundary is not in dispute but none the less is relocated for a variety of different reasons. The process of undertaking either a boundary line agreement, or lot line adjustment, is not identical and requires an understanding of the related statutes, title standards, and municipal requirements.

Boundary Line Agreements.

NH RSA 472 and the NHBA Title Examination Standards lay out the process for a boundary line agreement which includes the survey and placement of monuments memorializing the agreed common boundary line and the recording of both the survey and an agreement signed by the adjoining land owners. The agreement must strictly adhere to the statutory requirements, a signed and acknowledged writing by the adjoining owners, evidencing a certain line as being in dispute and that it cannot be located on the ground by reason of loss or obliteration of the monuments and boundaries, a description of the agreed upon line, and a statement identifying each respective owner's source of title. In lieu of a separately recorded deed, it is common for the agreement to incorporate grant language to exchange any would be interest each abutter may have had in the other's land. *See NH RSA 472:4 for detailed statutory requirements.* A boundary line agreement is limited to boundary lines that can not be located on the ground due to historic or vague descriptions and a boundary line agreement does not require planning board approval because it's not considered a subdivision. A boundary line agreement can not be used to relocate a known and plottable boundary line.

Lot Line Adjustments.

Lot line adjustments are utilized when the property lines are known, but the owners wish to relocate one or more of the lines. We most often see lot line adjustments used when a party built out improvements that violate a setback requirement or encroach over a boundary line. Using this encroachment example, the owner of the offending property may choose to enter into a lot line adjustment with the owner of the abutting property as a solution to bring the property into compliance. The adjustment functions to re-establish the lot line far enough away from the improvements to remedying the encroachment. Typically the benefitting lot will also convey a parcel of equal acreage or value to the donor lot in a like for like exchange, but that is not required.

A lot line adjustment is a subdivision and municipal planning board approval is required. Once the approved plan is recorded, if the abutting properties are not in common ownership, deeds for the respective conveyances must be exchanged. Also important is the recording of partial releases by lien holders of record. Abutters often undertake lot line adjustments without assistance from counsel and frequently fail to exchange deeds and obtain requisite releases, an error which can delay a future sale or refinance.

We are often asked if once a lot line adjustment plan has been granted municipal approval and recorded, can the new line location be abandoned by the parties unwillingness or failure to exchange deeds? Once the lot line adjustment plan is approved and recorded, the municipality may revise their assessing records to reflect the new lot lines resulting in a tax parcel configuration that does not match with the actual lines of ownership. A lot line adjustment that is not completed by the recording of deeds, and in which the owners wish to cease the process, should be formally abandoned or reversed by the municipality. This process may vary between municipalities.

Related NHBA Title Examination Standards.

5-31. *Boundary Line Agreement.* Where the title to two properties is not in dispute, but the common boundary line cannot be determined on the ground due to loss or obliteration of monuments, a boundary line agreement is appropriate. A boundary line agreement confirming the location of that common boundary must be signed and acknowledged and comply with all requirements of RSA 472. The common boundary line must be surveyed and suitable permanent monuments placed at each end and angle as required by RSA 472:4. *See New Hampshire Dept. of Resources and Economic Development v. Dow, 148 N.H. 60 (2002).*

5-38. *Lot Line Adjustment—New Subdivision Lines Created.* When parties agree to change the common boundaries as shown on a recorded plan or in a deed, a recorded, approved lot line adjustment plan constitutes a subdivision, and subsequent conveyances should be consistent with the adjusted lot line. *See Standard 5-24.*

5-39. *Lot Line Adjustment—Deed Transfer.* Where the adjacent parcels are held by more than one owner, deed or deeds of transfer are required to adjust the lot lines.

5-40. *Lot Line Adjustment—Parcels of One Owner Affected.* The recording of a lot line adjustment plan approved by the planning board where one owner owns both lots is effective without a deed, and a subsequent conveyance, not in accordance with the adjusted line, is an illegal subdivision. *See Standard 5-24.*

10-4. *Boundary Line Agreement and Plan.* A boundary line agreement and plan are defective unless all the prerequisites of RSA 472:3 are met, including actual placement of permanent monuments as shown on the plan. *See Standard 5-31 and New Hampshire Department of Resources and Economic Development v. Dow, 148 N.H. 60 (2002).*

10-5. *Lot Line Adjustment Plan.* A lot line adjustment plan requires subdivision approval. *See Standards 5-38, 5-39 and 5-40.*

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