

A parol agreement is a verbal agreement. As discussed in the chapter on Written Title Transfer, there cannot be a transfer of title in land without a writing. Well, this is not absolutely true. There are certain exceptions to the Statute of Frauds. There is adverse possession for example. The exceptions to the Statute of Frauds depends on many conditions, such as whether there are statutes providing otherwise, or whether operation of law (court decisions) would dictate otherwise, and whether equity needs to be applied.

The following quotation is from the case of Desruisseau v. Isley, 27 Ariz. App. 257, 553 P.2d. 1242, which is also shown in the chapter on Estoppel:

"With certain exceptions, such as passage of title by decent and distribution, operation of law, eminent domain and adverse possession, title to real property may be transferred only by an instrument in writing as specified by A.R.S. 33-401."

What this case did, was to hold estoppel as an unavailable theory by which to divest one party of their title to real property (see chapter on Estoppel). Adverse possession was acknowledged, but of course there are statutes which apply to that method (see chapter on Adverse Possession). What needs to be investigated is whether parol sale of land and parol agreements would be considered as an "operation of law", whereby title can be transferred. Two questions must be considered. First, whether real property can be conveyed by parol; and second, whether a parol agreement can establish an unknown or disputed boundary line.

#### PAROL GIFT AND SALE OF LAND

The case of French v. French, 125 Ariz. 12, 606 P.2d. 830, sets forth criteria for a parol gift of land as follows:

"A parol gift of land is completed when the statute of frauds is complied with or the donee takes possession of the land in pursuance of the gift and makes valuable improvements on it."

Other criteria is set forth in Stewart v. Damron, 63 Ariz. 158, 160 P.2d. 321, shown as follows:

"To constitute a completed or valid gift, the donor must intend to relinquish the right of dominion over the property and create it in the donee, and his intention must be to make a present gift."

It appears that certain factors will establish footing for a transfer of title by a parol gift. The case of Stewart v. Damron further correlates a parol gift of land to a parol sale of land, as follows:

"A parol gift of land may be said to be upon the same footing as a parol sale of land. The rule as to this is succinctly stated in 24 Am. Jur. 764, 68, Gifts:

"...It has been said that a parol gift of land is on the same footing as parol sale of land, and that in order to take a parol gift of land out of the statute of frauds possession must be taken in pursuance of the gift, and as further condition to the consummation of the equitable right and title, the donee must have made improvements of a valuable and permanent character, induced thereto by the promise to give the land. When these conditions and considerations have followed, the performance of the promise, although by parol, can be enforced in equity, and the donee becomes entitled to specific performance...". (underlines added for emphasis).

From the last quote, it appears that there needs to be some status for requiring "equity". This is also indicated by the following quote from the case of Fargo v. McAlester Fuel Company, 532 F.2d. 149 (1976):

"...the record before the Court contains no written instrument attesting to them, nor a basis upon which to found an equitable exception to the Statute of Frauds excusing a writing." (underlines added for emphasis).

Arizona courts have stated that transfer of title by parol gift is on the same standing as transfer of title by parol sale. The criteria set forth for transfer of title by parol gift may be summarized as follows:

- (1) The intent of the donor must be to make a present gift.
- (2) The intent of the donor must be to relinquish the right of his dominion.
- (3) Donee takes possession and makes valuable improvements.
- (4) An equitable exception to the statute of frauds must be necessary.

#### PAROL AGREEMENTS

The question of whether there can be parol agreement to establish or fix a disputed or unknown boundary line has not been specifically addressed by Arizona courts. It is a well settled rule of law that an unknown or disputed boundary line may be established permanently by a parol agreement between the adjoining owners. The principle issue to understand is that an agreement of this type does not create an original line nor change the location of an existing line, it merely establishes the location of an uncertain line, therefore the agreement does not pass title to real estate. The agreement simply fixes the

location of the unknown location. Because title does not pass, the parol agreement is not in conflict with the statute of frauds. Some conditions to make the agreement binding are that the line so fixed be certain and clearly marked with reference made to the unknown line and subsequent possession is taken up to the newly fixed line. If the property line is not uncertain or unknown, then any agreement to change a known line does pass title and is in violation of the statute of frauds.

This issue has been addressed by the Supreme Court of Colorado in the case of Schleining v. White, 431 P.2d. 458 (1967), which case quotes from Sobol v. Gulinson, 94 Colo. 92, 28 P.2d. 810, where the court stated as follows:

"When there is a doubt or uncertainty, or a dispute has arisen, as to the true location of a boundary line the adjoining owners may by parol agreement establish a division line; and, where the agreement is executed and actual possession is taken under such agreement, it is conclusive against the owners and those claiming under them." (underlines added for emphasis).

Some courts have held that after possession is taken up to the fixed line there must be continued acquiescence. Usually the time does not have to be for the required time set forth for gaining title by adverse possession, but a reasonable time period. For all practicable purposes a reasonable time could be a few days if improvements were immediately made with reference to the fixed line.

#### ROLE OF THE SURVEYOR

As with any boundary location where possession or monuments do not match described lines, it becomes necessary to locate the possession lines and monuments, and gather parol evidence. Parol agreements would be difficult to prove in court since a major consideration of the facts would be proving the actual verbal agreement. It is always encouraged to take parol evidence in form of an affidavit, duly signed by the party testifying and acknowledged by a notary public. In this way it becomes less likely that one party could refute prior statements in a court of law.