

3.34. Standard of Measurement Used by Surveyor (CPLR 4534)

An official certificate of any state, county, city, village or town sealer elected or appointed pursuant to the laws of the state, or the statement under oath of a surveyor, that the chain or measure used by him conformed to the state standard at the time a survey was made is prima facie evidence of conformity, and an official certificate made by any sealer that the implement used in measuring such chain or other measure was the one provided the sealer pursuant to the provisions of the laws of the state is prima facie evidence of that fact.

Note

This rule restates verbatim CPLR 4534.

The statute provides that certain documents related to the standard of measurement used by a surveyor are prima facie evidence of their contents and thereby establishes an exception to the rule against the admission of hearsay.

Those documents are:

1. an “official certificate” of a state or municipal “sealer” (i.e. “an official who attests or certifies conformity to a standard of correctness” [Merriam-Webster Online Dictionary, sealer (<https://www.merriam-webster.com/dictionary/sealer>)]), or a statement under oath of a surveyor, that the chain or measure used by the surveyor conformed to the then current applicable state standard, and
2. a certificate made by a sealer that the implement used in measuring the chain or measure was one provided by the sealer pursuant to law.

While those documents are admissible and are “prima facie evidence” of the accuracy of their contents, evidence may be introduced to rebut the accuracy of their contents or otherwise to affect the weight of the evidence. (*Cf. Knox Vil. Assoc. v Town of New Windsor*, 219 AD2d 585, 586 [2d Dept 1995] [“the defendants overcame the presumption of accuracy afforded to the ancient documents produced by the plaintiff (*see*, CPLR 4522 . . .)”]; *Berman v Golden*, 131 AD2d 416, 417 [2d Dept 1987] [indicating that the terminology “prima facie evidence” in CPLR 4522 (Ancient filed maps, surveys and records affecting real

property) created a rebuttable presumption of the accuracy of the documents]. *See* Vincent C. Alexander, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C4518:9.)