

LEGAL OPINION

Plan Liability

Question

“Surveyor John Smith prepares a survey on a parcel of land in 1962 and prepares a plan for the same. Copies of the plan are provided to the client, one Mr. Brown. In subsequent years the following groups request copies of the plan:

1. The new owner of the property claims the survey is transferred to his ownership and requests copies of the plan.
2. The municipal planning department requests all plans in a certain area.
3. Miscellaneous requests from other sources.”

Question 1:

Since the survey was prepared for the client Mr. Brown, and he paid for the preparation of the plan, is the surveyor obligated to release copies of his plan to future owners of the property?

Question 2:

What is the surveyor's liability regarding the survey information contained on the plan if the same is given to either future owners or to other agencies or to other people?

Question 3:

Should the surveyor, if he does give out the plan, mark the plan in such a way to indicate that it is neither up-to-date nor that he assumes liability for the same?

Answer:

Dealing with the first question, being that of the releasing of copies of plans of survey to future owners and other entities, the basic concept which has to be

dealt with here is that of the law of property or ownership. The client has entered into a contract with the surveyor for surveying services the result of which will be a presentation to the client by the surveyor of a plan of survey in return for consideration.

At that point in time the property in the plan of survey passes from the surveyor to the client and from thence onwards the client is the legal owner of the Plan of Survey for which he has made payment, and the surveyor has received remuneration in return for the service rendered which resulted in a plan being delivered to the client in question.

Given that ownership in the plan has passed to the client it is submitted that the surveyor is under no obligation to third parties, to, on demand, supply them with copies of the plan of survey, now owned by the client in question.

In future transactions dealing with the property surveyed the client as vendor would be obliged to transfer the survey to the prospective purchaser and/or mortgagee as part of the documentation concerning the property in question, but it can hardly be expected that the surveyor is the trustee of a survey done for a client at a specific point in time, because those are not the terms of reference for the initial survey and, in any event, there is no guarantee that the survey itself reflects the situation with respect to the property at another future point in time.

It is submitted that the second part of the question asked with respect to plans of survey, that of liability, can be answered as follows:

The surveyor is liable for the plan

of survey insofar as he is responsible for the survey reflecting the boundary of the property together with easements and other restrictions which affect the plan of survey and that if in fact the plan of survey is inaccurate and does not reflect the situation at the point of time at which the survey is dated then the surveyor is responsible for any errors caused by virtue of his negligence.

Should there be subsequent changes to the plan of survey which were not in existence at the time of the drawing up of the survey then the surveyor would not be liable for or responsible for any subsequent changes to the survey, provided that the survey was properly dated and was obvious on its face as being a plan which reflected the property as it was at the time it was dated and signed by the Ontario Land Surveyor in question.

A surveyor should thus do a plan of survey which is up-to-date as of the time that the survey was done but it is submitted that it is not necessary for the surveyor to indicate that he is not liable for subsequent developments because that is apparent from the date of the survey and the signature.

With respect to the suggestion of requesting authorization from the original client if another individual or entity requests a copy of the survey, this should not impose any hardship on the surveyor because it would be up to the requestor to find the client and obtain the client's authorization because the client owns the plan of survey.