
Updating Surveys

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THE PHONE just rang, and your caller wants you to update one of your old surveys. Since you made the original survey only 5½ years ago, that shouldn't be a problem, particularly since this is just a house on a lot being re-sold. It's funny, because just the other day you got a call to update surveys you made on a shopping centre that also was being sold and an apartment complex being taken over by a bank. The business of updating surveys has suddenly taken a favourable "spurt".

Or has it?

The problem with "updates" is that many clients are convinced your service should not cost much because you made the original survey. To some extent they may be right. An update survey is almost always less expensive than the original.

The update survey is remotely akin to the service offered by a tailor who custom designs clothing. The tailor can, sometime later, take in or let out the stitching to accommodate a certain amount of his client's physical changes without much difficulty. For this he charges a nominal fee, depending on how much work is required.

However, when more than "take in" or "let out" is required, a major restyling may be necessary. One thing the tailor must do is to "cover" his client so that there is durability, pleasing appearance, comfort and peace of mind.

Surveyors may not be too dissimilar, especially when it comes to "covering" their clients.

Another problem with "updates" is that not only clients but also some surveyors are not totally sensitive to the responsibility involved. When one surveyor readily signs and redates a plat because he feels confident nothing new has occurred on the property since his last survey, and does this frequently, sometimes simply on the say-so of a real estate agent friend, it is little wonder other similar clients would expect the same service.

There really are few, if any, reasons a surveyor should agree to update a survey without going on the ground. If the first survey was just finished a few days ago, maybe, just maybe, it would be a safe risk to update without going to field. The new buyer of any tract of real estate has every right to expect that the corners of the property in question are marked and visible for inspection, especially if an update survey has been made. Any buyer

trusting enough to take the seller's word, or the agent's word, as to the location of the corners or boundaries, is a buyer who has unknowingly played a fool's role and may soon part with more than his money.

A surveyor trusting any individual's word that there is no need to go to the field for an update survey is playing Russian roulette with his professional career. Likewise, the surveyor who doesn't go on the ground will be in the untenable position of trying to explain why the corners are not flagged or don't even exist, especially when the neighbours haven't seen anything like a survey party in the vicinity since 1979. A claim that someone pulled up the corners or something knocked them out will seldom hold water when the area is covered with a well manicured lawn and a three year old tree stands where that corner should be, or the neighbour's year old concrete driveway cuts across and covers the other front corner location.

Depending on the site for which the survey is to be updated, the underlying liability for an updated survey can be as great or even much greater than that of the original survey. The value of the real estate, may be higher than when the original survey was made. Any protrusion into the property by a new fence or an improvement to a neighbour's facility may not be readily visible. Conversely, an improvement to facilities on the original surveyed site may have protruded into neighbouring tracts. Landscaping improvements, such as shrubbery, ornamental trees and particularly sprinkling systems, can, in themselves, protrude into surrounding properties or help obscure more permanent installations of questionable location.

Liability for any survey can be substantial but prudent work will minimize risk and provide reasonable assurance to the client that visible problems pertaining to location have been identified. The liability for an update survey that has not been thoroughly re-checked on the ground may be astronomical. That type risk could not be considered anywhere near prudent practice and could most probably be the subject for a law suit.

Just going to the field, however, is not the answer to minimizing a surveyor's exposure to serious and factual claims of breach of contract, gross negligence or incompetence and damages to the client.

The updating of a residential survey is often so easy to do that some practitioners get a bit complacent and thereby allow their survey party to slack up on such work.

Not infrequently the party chief is told to "swing by this address and see if anything has changed".

The party chief may do exactly what he understood the boss to say. He swings by and with a quick look at the old plat and a glance or two at the residence - maybe even a tie from the house to a new, wooden fence - and then off to another more important assignment. No corners were found or even looked for because they were shown on the old plat to have been set or found at the time of the original survey.

Nothing looked disturbed. Later, the entry on the time sheet probably showed a half-hour or maybe an hour, including driving time; and the client was billed accordingly.

At that rate, update surveys are cheap!

But what about the new water line that had to be installed and subsequently knocked out one of the front corners? Then there is the back corner of the new wooden fence. It protrudes into the subject lot about 3½ feet to accommodate the swimming pool the next door neighbour put in three years ago. And the concrete walk around the pool adjoins the fence. So does the neighbour's filtration and chlorination facility. But none of that will show on the updated plat. The party chief couldn't see those things from the front of the lot where he had been asked to "swing by and see if anything has changed".

Shopping centres can really be a nightmare as update surveys. While the owner/manager should have a record of important physical changes, he/she does not always. Obviously the size of the centre is a major factor in the complexity of the update. A "mom and pop" centre with a drive-in grocery, washateria and barber shop would probably remain relatively uncomplicated once the original survey was made. But not necessarily. The adjoining properties may be more active and create problems imperceptible to the layman's eye.

The same circumstances apply to larger shopping centres or other sites requiring an update survey. The site to be updated is not always a cause of boundary complications. New works of any sort - installation of utilities, plumbing repairs, additional structures, fencing, patio slabs, guttering, automatic sprinklers - can destroy property corners and protrude beyond proper boundaries.

Every surveyor knows - or should know - the Texas Board of Land Surveying requires "sufficient" corners be set by the surveyor, or left as found, to mark boundaries of a tract or parcel. There is no way a surveyor can properly serve his client and obey the law without recovering or setting corners, even on an "update". That update survey will be relied upon just as much, if not more, than the original.

If corners are not in or wrong and the fact is discovered, woe to the surveyor who made the update. If encroachments are found, it would be too late to sell the farm unless it's for attorney's fees.

Any individual suggesting the surveyor need not do much work to update his old survey may be asked jokingly to furnish a notarized letter to the fact that the survey is released from all liability for such survey. In the remotest chance an individual were to accept such responsibility in writing, the surveyor, by the registration act, is prohibited from working under such circumstances.

Why are there no formal standards for service called an "update" survey? The answer is simple. An "update" survey is nothing less than a land title or standard land survey. The only difference is the original survey gives a head start for additional work necessary.

Any updated survey, therefore, should be done with no less concern and effort than the original. True, much, if not all, of the preliminary work need not be done over. That doesn't mean that the fundamentals for any boundary survey should then be waived just because the surveyor has a good head start.

An updated survey should follow the same processes performed for the original survey. That means the records, both public and private, should be reviewed to be certain nothing new has developed in the way of a sell-off, purchase, condemnation or easement taking. That review also should include a review of the adjoining properties; any one of which may have had something done influencing the common boundary. Then:

1. A survey party should visit the site and locate all corners, measuring between them to be certain they are the original corners and have not been disturbed.
2. Place stakes or visible markings on or near corner markers and replace missing corners by appropriate survey methods.
3. Check all installations, facilities, buildings, utilities against the original plat.
4. Keep sufficient field notes for work performed, particularly where changes or additions are found.
5. Contact the client promptly when, or if, unusual circumstances are found on the site.
6. Prepare the updated plat by any appropriate means, keeping a file copy of the original survey for possible future reference.

That's it! Why should an "update" survey be expensive? It never is when it does what it's supposed to do. The only time it is expensive is when it isn't done right.

Then guess who pays!

**SOUNDS FAMILIAR
DOESN'T IT?**