

# THE LAND SURVEY -- THE LYNCHPIN OF ANY REAL ESTATE TRANSACTION

BY PETER JOHANNES, B.Sc.



Throughout my experience working as a real estate agent and mortgage consultant, I've found the worst loose end in most property transactions is the land survey.

The average residential property survey costs about \$800 these days. I guess it's understandable that many real estate and mortgage deals are attempted with an out-of-date or incomplete survey, or even no survey at all.

A land survey is a detailed graphic description of a property and all its characteristics. In Ontario, "legal" land surveys can only be done by a certified Ontario Land Surveyor or O.L.S. and each survey bears a signature and seal.

The surveyor is not only concerned with physical ground based measurement, but also with verifying the extent of title the owners have to the land. Often, a surveyor's job is as much in the Land Registry Office as it is at the property.

The completed survey and report serve as a comparison between what is registered on paper and the actual physical evidence of the parcel of land. It provides a check that existing deeds have been prepared correctly as well as what the present property rights and boundaries really are.

In some cases, there may be no good markers indicating the lot lines. With some properties, lot dimensions are variable, such as a depth dimension that depends on the present high water mark of a lake or river.

The work the surveyor does is vital to ensuring that the purchasers know what they are buying and the mortgage company knows what is securing the mortgage loan. The

purchaser's lawyer requires a survey to help verify the lot and concession or plan number. It is also necessary to determine whether all the structures are legally located on the property and whether there may be any boundary or right-of-way disputes.

The land survey is really the lynchpin of any real estate transaction. Without an accurate up-to-date survey, none of the other professionals that may be involved, such as lawyers, real estate agents and mortgage brokers, can really do their jobs protecting the interests of their clients.

The only reason many people think they need a survey in a property purchase is because the mortgage company wants it as part of the application. In practice, competition between lenders has led to almost routine exceptions to the requirement for a land survey not older than 10 years.

Occasionally, a lender might even accept a very old survey of the property accompanied by an affidavit from the owner stating that there have been no substantial changes since the survey was done.

I personally don't think this serves anyone's interests, though, and it puts all the future liability for any errors or oversights squarely on the seller's shoulders. Eight hundred dollars seems to be a small price to pay for that much piece of mind.

Who should pay for an acceptable survey if there isn't one? The seller or the buyer, whoever has agreed to it in the Agreement of Purchase and Sale. If there is no typed-in clause setting

this out, then a preprinted clause in the Agreement of Purchase and Sale form (clause 11 in the Toronto Real Estate Board form) usually stipulates that the purchaser cannot ask for anything more than what the seller already has. That makes arranging for and paying for a new survey the purchaser's responsibility.

It is usually a good rule of thumb for the purchaser's house buying budget to include the cost of a new survey, just in case.

Purchasers have a vested interest in knowing what they are buying. A new survey, done to modern standards will usually show major landscaping elements such as fences, trees and shrubbery and resolve whether they are part of the property being bought, or really belong to the neighbours.

Whatever the situation, my feeling is that purchasers should not agree to buy a property until they know that they have or can get a current land survey.

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