

Proper Survey Vital to Home Buyer

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Many a home buyer has been miffed by the requirement for a building location survey and few understand how much it contributes to the buying and selling transaction.

Still others will become annoyed when told by their lawyer or their mortgage company that a deal can't go forward until a building location survey is done. In standard real estate transactions, the lawyer's job is to examine the title and to give an opinion on the quality of that title. "Title" refers to the legal right of ownership in property as reflected in documents registered in the Ontario Registry System.

When a mortgage lending institution is involved, the lawyer normally must provide it with this opinion as well. The opinion will be based a review of the title documents, especially in relation to the agreement of purchase and sale and on a review of the reports from several municipal, provincial and, occasionally, federal government offices.

Be aware that the only survey a buyer can rely on is one bearing the embossed seal of a qualified surveyor. A photocopy is worthless.

The other important aspect of title that must be reflected in a lawyer's opinion is the "extent of title" - that is, how well the description of a property as recorded in the title documents matches the actual layout of the property. For this, lawyers rely on the expert drawings and written reports of Ontario Land Surveyors. The drawing and report, traditionally referred to as a "building location survey," make up what is called a Real Property Report. A proper survey contains the drawing a surveyor prepares showing the results of his or her findings at the house site.

It will also show any features that have been specifically requested. A survey should also comment on any abnormalities revealed by the surveyor's

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research and work at the site. The rules and regulations under which qualified surveyors operate require them to draw attention to all problems and issues found during their research.

Without an up-to-date survey a lawyer cannot provide an opinion about the lot size, access to the property, encroachments of any structures on or from neighbouring properties, the precise location of easements or rights-of-way additions, alterations, or subtractions such as road widenings, expropriations or partitions, possible Planning Act violations, shore lines, and other problems that may only become apparent when revealed by a survey. Without a survey, a lawyer cannot compare the actual dimensions of the property with municipal zoning requirements.

Armed with a Real Property Report, the lawyer has the information to give an opinion regarding violations of municipal bylaws, rights-of-way, encroachments and the like. All of these will be shown on the survey and will affect the quality of the title the buyer will be getting.

Most agreements of purchase and sale give the buyer's lawyer time to search the title to ensure the buyer won't inherit any surprises. Without an up-to-date survey, the lawyer's task will be severely constrained. It's prudent, therefore, to find out before signing the

agreement whether the seller has a survey and if not, to allow the buyer to factor the additional cost of having one done into his or her bargaining objectives.

In many new home transactions, the builder's standard agreement of purchase and sale will make provision for supplying the buyer with a survey, but often it will be silent on this issue. In all such cases, the buyer should ensure that the agreement is amended to require the builder to provide a Real Property Report.

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Many agreements of purchase and sale in resale transactions are amended by including the provision that the seller shall provide an "up-to-date" survey of the property. Real estate agents and lawyers will often consider "up-to-date" to be a function of how old a survey is; the only true measure is whether there have been any changes to the property since the survey was prepared. A survey prepared a month ago for construction purposes will not be "up-to-date," where a 30-year-old survey may be if there have been no changes to the property.

In almost every home purchase, an up-to-date building location survey should be obtained. When you compare the cost of a survey against the price of the house you are buying, you will normally discover it to be well below one per cent, making a survey an inescapably good value.

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