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Up-to-date survey is vital

It can save a lot of confusion.

With the growing popularity of title insurance in recent years, there seems to be a widespread misconception that it is no longer necessary to have a survey for a residential property purchase. Even though title insurance will, in some circumstances, avoid the need for a proper survey by an Ontario land surveyor, the fact is that aside from the deed, the survey is probably the most important document in a real estate transaction.

What is a survey? In everyday terms, a survey resembles a two-dimensional, overhead line drawing of a piece of real estate. It shows the measurements and boundaries of the land, and is prepared by an Ontario Land Surveyor using calculations taken on the ground and compared with the paper title of the property and surrounding lands on file at the Land Registry Office.

It reveals the location of the buildings on the land in relation to the lot lines, and usually shows improvements such as fences, hedges, pools, overhead wires, easements and rights-of-way in favour of neighbouring owners or utility companies. Surveys also show the location of survey bars marking the property corners.

If the document is not legible, or signed and dated by an Ontario land surveyor, it's not a survey. As well, surveys should not be confused with appraisals, which determine only the value of the property, and not the size of the lot or location of the buildings and improvements.

What happens if you don't have a survey? In a 1987 Alberta case, there were several vacant lots on a street. A purchaser bought one without a survey, and was well into construction when he discovered that the town owned the lot he was building on.

In a 1981 Ontario case, the purchaser thought he was buying a garage and adjoining laneway but a survey made after closing showed they were not covered by the owner's deed.

Back in 1973, a purchaser was told that the lot he was buying was 10 feet wider than its actual measurements. The purchaser closed without a survey and started construction of a house encroaching five feet onto the adjoining land.

The British Columbia court awarded damages to the property owner against the real estate agent who advertised the wrong lot size.

Last year the Ontario Court of Appeal tossed out the case of a cottage owner whose building was built 95 per cent on land he didn't own. The owner failed to get a survey when he purchased the property.

A survey will help answer questions like: whose tree is on the boundary line?

Where does the city street allowance begin? Where can we build a fence? Can we install a pool under the hydro right-of-way? Is the building entirely on the land? Is part of my neighbour's house or garage sitting on my land?

Some years ago, on behalf of a client I ordered a new survey for one of two side-by-side rural houses where the lots had been carved out of a farm. The surveyor later phoned to say that the two neighbours had deeds to each other's houses. Had a survey been done during construction instead of years later, the problem never would have arisen. It took months to fix up that mess.

Why get a survey if a title insurance policy protects you from not having one?

Typically title insurance ensures the state of the property as of the closing date. Title insurance ensures that the purchaser legally obtains what he or she sees physically on the land at the time of the purchase, or will be compensated for its loss. Anything that a survey done on the date of closing would have revealed is covered by a title insurance policy. But title insurance does not tell you how far the house is from the lot lines, or where to install fences. It does not cover the ability to install a swimming pool, garage or hot tub in the future. Nor does title insurance protect the owner from damages resulting from misplaced border fences, party walls, or retaining walls.

In condominium properties, surveys are called condominium plans but they are no less important than survey plans for individually titled properties. I have seen at least two transactions in recent years where the owners and their neighbours on the same level were occupying each other's units because no one had checked the condominium plans before the deeds were registered.

Nothing can truly replace a survey or provide as much information to the property owner about the extent of the title. Although it costs only a tiny fraction of the purchase price, an up-to-date survey could save thousands of dollars of trouble down the road - title insurance or not.