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Land survey outlines what's really yours

Get the details of property you're buying in all-important survey



I think it's time that a land survey be made a compulsory part of every real estate transaction. It baffles me why a clause to that effect is not a part of the standard form agreement of purchase and sale, or at the very least added to every contract as part of a schedule.

In lay terms, a land survey shows:

- the size of a parcel of land
- its location relative to nearby lands, roads, or geographical features
- the location of public and private improvements such as buildings, pools and fences, relative to the property boundaries, and
- the physical features of the property.

The purchase agreements commonly used in the industry today are published by the Ontario Real Estate Association (OREA) and in annual revisions over many decades have avoided any reference to land surveys.

I have repeatedly stated that the land survey is the most important document in any real estate transaction and yet in most of the non-condominium transactions that cross my desk, the word survey does not appear. Without one, purchasers cannot possibly know the full extent and measurements of their title.

A real estate agent who fails to provide for a survey in creating purchase agreements risks running afoul of the industry's code of ethics. Back in June, 2001, an Ontario real estate agent was acting for the buyers and sellers of a home. He failed to indicate on the MLS listing that the driveway providing access to the property belonged to the Ontario Ministry of Transportation and was not included in the title to the house.

The agent failed to explain this to the buyers, and did not advise them to seek outside professional advice from a lawyer or surveyor. Although a survey was provided to the buyers before they submitted the offer, it was not explained to them that the driveway was not part of the deal.

Shortly after closing, the buyers discovered that they did not own the driveway. The buyers' title insurer paid to install a new driveway, but the lot remained considerably smaller than originally advertised.

In 2003, after the buyers complained to the Real Estate Council of Ontario, the agent was found to have breached the code of ethics by failing to make the offer conditional on approval of the survey and was fined \$4,350. In this case, as in most cases, title insurance was not a substitute for a survey.

Sellers often tell their agents that they do not have a survey, when in fact they received one at the time of their purchase. Although using an old survey entails some risk since it is not current, many historical surveys are available online for a modest fee from <http://www.landsurveyrecords.com>. I think it's fair to say that a land survey exists for every home built in Ontario in the last 30 or more years, and I have often seen century-old surveys showing the same house that is standing today.

In 2002, the law firm Miller Thomson prepared a report for the Alberta Land Surveyor's Association. It concluded, "Using title insurance as a replacement for a (survey) would be like purchasing theft insurance and then leaving the car door unlocked with the keys under the floor mat. Your car may not be stolen, but you increase the likelihood by acting in a careless manner."

Title insurance, as valuable as it is, is no substitute for knowing that the homeowners have valid title to all the land underneath the house, that they own the driveway, and that a utility easement is not running beneath the living room.

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