

What you should know about surveys

There are many situations when REALTORS® should recommend to their clients to have a survey of the property completed. A survey allows clients to know exactly what they are buying, including fence lines, easements, encroachments, location of structures and other visual matters not covered by title insurance.

According to the Association of Ontario Land Surveyors' pamphlet (<http://www.aols.org/>) called What Real Estate Professionals Should Know About the Role of the Professional Surveyor in the Real Estate Transaction, "If there is any doubt or if there are any questions about a survey or the boundaries of a parcel, then a Professional Surveyor should be contacted to protect the interests of both the Real Estate Professional and the client."

Real Property Report

A Surveyor's Real Property Report (SRPR) is a legal document that clearly illustrates the location of all visible public and private improvements relative to property boundaries.

It generally takes the form of a plan or illustration of the various physical features of the property along with a written report highlighting the surveyor's opinion of any concerns. In a real estate transaction, the SRPR can be relied upon by the purchaser, the seller, the lending institution, the municipality, the REALTOR® and all other parties to the transaction as an accurate representation of the property.

Although REALTORS® can offer guidance when it comes to suggesting property surveys, only a trained and licensed Ontario Land Surveyor can legally prepare an SRPR. An SRPR can help REALTORS® to avoid potential lawsuits resulting from misrepresentation in the offer to purchase related to property boundaries and improvements. However, as with all areas of real estate, never advise clients on matters outside of your area of expertise.

If you are unsure whether a survey is necessary, suggest your clients discuss the matter with their lawyer. The Law Society of Upper Canada advises Ontario lawyers that, "The lawyer should advise the client of the options available to assure title in order to protect the client's interests and minimize the client's risk."

According to the AOLS, the survey report will include the following:

a search of title of the subject and abutting properties,

a search of all pertinent encumbrances registered against the title of the subject property,

a search of other surveyor's offices to obtain all plans relating to location of boundaries of the subject property,

a field survey to determine the actual dimensions of the property, the location of improvements and the setting of corner markers,

an analysis of research and field data, the preparation of the plan illustrating the results of the field survey and the title research,

the preparation of a written report providing the surveyor's opinion about any contentious issues that may have been found during the survey.

Because of the amount of work and detail involved, surveys generally cost significantly more than title insurance. However, while it may sometimes be marketed as a way for home buyers and sellers to save money, title insurance does not take the place of a survey. "As noted in a pending case, the usual title insurance policy, although it provides title protection, may not be a substitute for a new surveyor's real property report," says real estate lawyer, Merv Burgard.

Also keep in mind that failing to recommend a survey could potentially land REALTORS® in hot water.

For example, in 2003, a REALTOR® was found to have breached the RECO code of ethics by failing to make a purchase agreement conditional on review and approval of a survey (www.reco.on.ca). In this case, it was not explained to the buyer that the driveway on the property belonged to the Ministry of Transportation (MTO).

“The salesperson failed to advise the buyers to seek outside professional advice such as a lawyer or a surveyor.” RECO’s Discipline Committee found that the salesperson acted in an unprofessional manner by failing to make the offer conditional on the approval of a survey and failing to advise the buyers to have an expert review the survey.

An up-to-date survey would have made it clear that the driveway did not come with the house. Even title insurance providers agree that a survey is necessary in some cases. In its November 2006 member newsletter, Stewart Title discusses situations where clients should be advised to obtain a survey of the property, and to do building and zoning searches even though the clients are obtaining title insurance.

These situations include where the client intends to alter the house by adding an addition to the property or where the exact dimensions of the property, or the area of the property set out in the Agreement of Purchase and Sale is important to the purchaser.

OREA clauses

A survey may be a condition of a purchase. In some cases, the survey may be the financial responsibility of the seller and in others the buyer may pick up the tab. In either case, be sure to allow adequate time in the offer and ensure the deadline for the survey is prior to the end of the requisition period.

Another way to phrase it in the offer is “within ____ days after waiver of all conditions (and prior to the end of requisition period).” As with all conditions or clauses, ensure the wording is clear. For example, do not use the phrase, “up-to-date” as it is subject to different interpretations by individual buyers, sellers and their respective solicitors.

Depending on the situation, OREA has four standard clauses that deal with surveys including Buyer Acknowledges Possible Survey Requirement; Seller to Provide Existing Survey with Declaration; Seller to Provide New Survey and Survey, Building Plans, Mechanical Drawings, Warranties. All four standard clauses are available on the OREA website.

Source: OREA