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Land surveys: A necessary step in real estate transactions - by Philip Hastings and Nickolas Arnold

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Land surveying dates back to ancient Egypt and the building of the pyramids. Presidents Washington, Jefferson and Lincoln were all land surveyors. For multiple practical and legal reasons, land surveying remains an important part of most commercial, and many residential, real estate transactions.

A land survey is conducted by a professional land surveyor, who will measure the property's

boundary and research the property's history and legal description. This information is an important part of a purchaser's due diligence. A survey will precisely locate the property's boundary lines, show any easements and/or rights-of-way that may encumber the property, and identify any encroachments on or from the property. This is particularly important when dealing with real estate whose deed description is historically imprecise (think: "...along the fence to the Oak tree at the corner of the Smith Farm...") or densely occupied areas where property lines have not been well demarcated or adhered to (lake front property, for example, is notorious for boundary line problems).

For more complex transactions, a survey is a useful tool for determining compliance with zoning requirements (e.g., lot size, frontage, building setbacks, lot coverage, and parking), flood hazards, and a myriad of other factors that are not readily discernable from a routine property inspection. The purchaser's attorney may need a survey to better understand how certain easements and encumbrances revealed in the title search apply to the property. A survey also provides a baseline of existing conditions, informing future development and construction plans.

Even if a purchaser is comfortable proceeding with a transaction without a survey, mortgage lenders and title insurers often will require one. In addition to the same due diligence it provides the purchaser, a survey enhances the protection afforded by a title insurance policy. The standard owner's and lender's title insurance policies exclude from coverage any matters that a survey would otherwise disclose. The traditional "survey exception" takes exception for "any encroachment, encumbrance, violation, variation or adverse circumstance affecting the title, including discrepancies, conflicts in boundary lines, shortages in area, or any other facts that would be disclosed by an accurate and complete land survey of the insured property." This is a gaping loophole in title insurance coverage!

Accordingly, purchasers and their lenders look to delete the standard survey exception to get "survey coverage". In certain circumstances, like typical residential transactions, homeowners can get survey coverage based on a survey affidavit from the seller. In commercial transactions, this alternative is usually only available for lender's policies; the survey exception ordinarily cannot be deleted from a commercial owner's title insurance policy without a current, complete and accurate survey.

We routinely advise our purchaser/clients to obtain a land survey before any real estate closing. Surveys, however, are not inexpensive and purchasers sometimes balk at the expense. For the legal and practical reasons discussed above, paying for a survey before purchasing the property likely will save the purchaser money in the long run. While there are some alternatives to a full survey that will provide some benefit (e.g., a limited scope "plot plan"), a full survey provides the greatest benefits and protections for a purchaser.

Surveys are "long-lead time" items as well. Particularly in this real estate market, surveyors are extremely busy and need to be brought on board as early in the transaction process as possible, preferably soon after the purchase and sale agreement is signed, if not before.

With so much at stake, don't overlook the need to engage a qualified land surveyor.

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