



HOW RESIDENTIAL SURVEYS AFFECT TITLE INSURANCE AND THE CLOSING PROCESS

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Surveys are an important part of both residential and commercial real estate transactions, both to the parties involved in the transaction and the title company insuring the land. Surveys provide many important pieces of information needed for the closing including, but not limited to, confirming the correct property is being sold or mortgaged and insured; confirming the dimensions of the property; showing any easements of record such as for utilities and access; and showing any encroachments that affect the property. Parties to the transaction rely on surveys, and the title company reviews them to confirm any exceptions of record are properly platted against the property along with any easements.

There are several types of surveys typically used, depending on the nature of the transaction. The most common surveys are as follows:

- A Boundary Survey is acceptable for residential transactions as it accurately locates the boundaries of the land in question.
- A Land Title/ ALTA Survey is acceptable for commercial transactions as it conforms to standards adopted by the American Land Title Association (referred to as an "ALTA" survey) and done to exacting requirements.
- A Condominium Survey is surveying cubes of air, dimensions bound by floors, ceilings and walls of the living space. A condominium plat is part of the condominium declaration. A survey is not needed for subsequent transfers for a condominium unit as the original plat of survey for the condominium is attached to the recorded Declaration.

There are several requirements for a survey to be acceptable by the title company. First, in order to insure the transaction, the title company needs to review the Surveyor's affirmation to confirm the nature of the fieldwork performed and type of survey or plat produced. Also, there needs to be confirmation that the surveyor actually surveyed the same property being insured which includes the correct legal description and common property address.

If the legal description on the survey does not match the legal description on the title commitment, it needs to be determined if the two different legal descriptions describe the same parcel. If they do, then the title company could issue an equivalency endorsement.

The survey should also be certified to name the parties who have a right to rely on said survey. Also, the title company will check the date of that the survey, preferring that it has been completed within six months of the closing.

If these requirements are met, the title company should be able to use the survey to insure the transaction.



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The buyer and lender will usually request that the extended coverage form of title policy be provided by the title company. With extended coverage, the title company waives certain general exceptions. For extended coverage, a survey is necessary to waive general exceptions 2 and 3 of Schedule B of the title commitment, which read as follows:

2. Any encroachment, encumbrance, violation, variation or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey.
3. Easements, or claims of easements, not shown by Public Records.

With an appropriate survey, general exceptions 2 and 3 can be waived. General Exceptions 1, 4 and 5 can be waived with an acceptable executed ALTA statement.

A separate situation arises when a current survey is not used for the transaction but an older survey is available. As a result, the correct parties are not named and certified to on the older survey. The title company will sometimes agree to accept an older survey along with an Affidavit of No Change which simply states that no changes were made or no physical improvements were added to the land since the date of the old survey. However, title companies are reluctant to use an older survey with an Affidavit of No Change for several reasons. First, there is a question of liability to 3rd parties and subsequent purchasers. Also, the Affidavit is self-serving to the Party that executed it. The Affidavit also does not attest if adjoining land owners have made any changes to their property such as encroachments, additions and fences. Using an older survey with an Affidavit should be discussed with the title company to confirm that it will accept the survey to insure the transaction. A current survey with all of the requirements mentioned above is the best course of action to avoid potential future problems.

A big issue that concerns the parties is encroachments. If there is an encroachment, is the title company willing to insure the buyer or lender in the event that there are damages otherwise covered in the title policy.

Encroachments are part of the survey review process and there are several different types of encroachments that can affect a property.

One example is an encroachment of improvements (i.e. buildings, fences onto utility or drainage easements such as garages, sheds or other permanent structures). Another example is an encroachment over building lines. However, a building line violation is not an actual encroachment. Building lines create setback lines, create areas of unobstructed light, air, and vision for the benefit of lots or parcels in restricted areas.

Some common examples of encroachments on residential transactions are as follows:

True bay windows are probably not an encroachment. However, if the bay window extends the entire height of the building, it probably is an encroachment. A screened in porch is a possible encroachment, but concrete steps probably are not. Decks are probably not unless high and enclosed by privacy fences.

For the type of encroachments listed above, the title company may be willing to insure over or issue an endorsement which insures the party usually for forced removal, but not for monetary damages. The endorsement also does not protect against loss that the property is not marketable.

Another common example is an encroachment of improvements by the property in question onto adjoining property. It is important to check and confirm the surveyor's notations when dealing with encroachments. Again, the title company would only insure against forced removal, not money damages. In addition, title companies are reluctant to insure over fences because of high risk.



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There are several factors that the title company will consider before “insuring over” including the encroachment size, nature of the encroachment, length of time it existed, whether it is deliberate and whether the title company is asked to insure an owner’s policy versus a loan policy. Title companies are more likely to insure for a loan policy.

Adverse encroachments or encroachment of Improvements on an adjacent property to the property in question can cause substantial issues in a residential transactions. Adverse encroachments burden the land and a Schedule B Exception must be raised. However, for the loan policy, a Diminution endorsement may be issued which insures the lender against loss that the lender may sustain as a result in decrease in value of property.

There are several types of other risky encroachments that the title company usually will not insure over as follows: railroad rights of way; bike and walking paths; conservation area; lake or river; and, townhome common areas.

Also, unrecorded easements or unusual boundary matters arise when reviewing a survey. These may have to be raised on the title commitment and policy; joint/party driveway, common parking lot, fire escape, retaining wall, unrecorded easements and fences.

Any recorded easements and building lines should be reflected on survey and should be raised as a Schedule B exception on the title commitment.

Based upon the wide array of issues that may arise based upon the survey review, surveys become a very important part of the transaction. From the basic review to determine that the correct property is being sold to complicated issues of encroachments, the type of title insurance and coverage that can be provided to the parties may determine whether the parties decide to proceed with the transaction. Surveys should be completed and forwarded well in advance of the closing to allow the parties and title company time to review and raise any issues from the survey. It will also give the parties and the title company time to work out any potential insurance coverage prior to closing.

This article was written by Christopher J. Stasko, edited by Douglas M. Karlen and incorporates Chicago Title Insurance Company underwriting guidebooks and manuals and the Guide to Residential and Commercial Surveys article by Richard F. Bales, dated September 2015.

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