

Land survey offers to buyer assurance he owns piece of property he thinks he owns

By RAYMOND A. KOCH

One of the single largest investments in your lifetime is about to be completed. How much do you really know about it? What are you purchasing anyway?

- One out of 400 houses are 75 percent to 100 percent off the deeded lot.
- One out of 40 have serious encroachments.
- One out of 30 have a problem with driveways (shared or individual).
- Three out of five fences do not show accurately the boundaries of the lot (one out of five do not have fences).
- One out of seven deed descriptions do not provide enforceable boundaries.

The above statistics come from a sampling of 2,000 land surveys completed in the Capital District within the last four years. It's hard to believe these facts are true. But the home buyer must be aware that he is the only one responsible for getting all the information and assurances needed to make safe transfer of title.

Many places in this area have not been surveyed in years or, in too many cases, have never been surveyed. And there is no special requirement that demands that land intended for conveyance has to be surveyed. Any seller can write up his own description without the aid of anyone else. That this description actually describes the property the seller intends to convey, or describes something else, cannot be known without a survey.

It's a fact that a "survey" is the visual representation of the deed that is being transferred to the buyer, and the buyer is purchasing only what that deed has to offer.

A survey is an important factor in the assurance of a reliable and marketable title. Surveyors, by law, are the only professionals who can tell someone whether a new home and all other structures being purchased are really on the deeded lot.

Attorneys, abstractors and title insurance people can make sure that the title is clean, and that all interest in the parcel is protected, but they cannot tell someone where that parcel is located or if there is a house on that deed.

Many people think that when they receive a deed at a real estate closing they really are receiving a deed for their house. This is not so. They receive a deed for a plot of land. There are usually no assur-

ances in the deed stating that it contains the same house someone thinks they bought.

What a survey is, and how it benefits all the parties involved, is not truly understood by the majority of professionals who directly order and rely on it. When people don't understand the advantages of what a survey represents, it becomes hard to defend having one done.

It is true you do not have to have a survey, but you may very well need one.

Many people are involved in the transfer of real estate today. They include the buyer and seller, each frequently represented by a real estate salesperson; a bank appraiser; an attorney for the buyer and one for the seller; the lending institution's attorney; the title insurer; the county clerk; various clerks, paper producers and office equipment firms, and many others who provide supporting roles.

One of the few people involved who is obliged to see and set foot on the real estate being conveyed is the land surveyor, and sometimes his services may be omitted. Establishing a land line requires knowledge of previous surveys in the area, the relative importance of evidence of these earlier survey lines, identification of corner witnesses, measurements in re-establishing lost corners, accuracy of current and previous work, and in many cases a "feel" for the task.

On the other hand, establishing a property line sometimes involves agreed on boundaries, questions of equity, adverse possession, and other points of law. It is important to note that land ownership in a free society is a condition that could not exist without the land surveyor.

The Connecticut State Counsel for Lawyers Title Insurance Corp. was quoted recently at a professional seminar as saying, "We [title insurance companies] are not professionals. We are insurers. We are not a substitute for good legal counsel or a land survey."

Many people mistakenly think that if the lenders do not require a survey, that they, the purchasers, don't need it.

The lender is not out to protect the buyer's investment—only the lender's investment. How is that different? When you purchase property, you have a "down payment." The down payment is your investment. The mortgage amount is the lender's investment.

If there is a small dispute between you

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and your neighbor over fencing, the lender's investment is not challenged. Fences normally will not change the market value of the property so the lender's investment is not at risk. However, you may well have to move or remove a fence costing you out-of-pocket money.

Or on a more emotional level, that beautiful tree that shades your yard so well—that you were assured belonged to you—now is being cut down. A survey map would have shown where your property corners are in relation to the structures on the property.

Some people think that the towns have been surveyed and that is where "tax maps" came from. Tax maps are only renderings of deed plots put together like a jigsaw puzzle over aerial maps. These aerial photos commonly were done at a scale of 1 inch equals 800 feet. The thickness of your pencil can represent 20 feet. Is this the kind of error you want to describe your parcel of land?

Tax maps are used only as a representation of a piece of land in relation to others for assessment of taxes. By placing all the pieces on the aerial photo, assessors can find places where taxpayers may not have been paying their share of the taxes.

An accurate survey given by the owner of the property to the real property department can help adjust the taxes. Sometimes unplotable deeds have produced tax-map parcels that do not even exist, so taxpayers are paying more than their fair share.

Below are some recent examples which demonstrate how someone can end up not owning the house he thinks he owns:

• In the village of Scotia, the tax maps had several parcels misplaced, overlapping adjoining parcels, and another "owner unknown" parcel was depicted where none should have been. The real property department did not follow the old deeds back, so it was unable to determine where the parcels should be. With the help of a modern survey, this was brought to the attention of the Schenectady County real property department and corrected.

• A common error that places a purchaser in the wrong house is a deed that is passed incorrectly to another buyer. It has happened, more than once, with sellers (such as developers and builders) who own many parcels of property on the same street. There's a mistake and they put a deed with the wrong purchase. Time passes and then someone discovers that he owns the house next door. A survey can eliminate this kind of potential problem.

• Two deeds originally described a parcel of land. One deed went unrecorded. This error was not picked up by the county clerk's office. When the property was sold, only one deed was passed on to the new owner. Unfortunately, that deed contained an oddly shaped, unbuildable plot of land. The deed that was passed described the parcel as Lot Nos. 1 and 2 on a filed map. The house was on Lot No. 3. Fortunately, the original owner (two passes of title back) was still alive to pass a new deed for the missing parcel.

Survey technology has improved greatly over the years. A little more than 40 years ago, the accepted tolerances for mathematical closure were not as small as they are today. Some land planners designed subdivisions that were beyond their abilities. They usually left out data vital to compute accurate angles and closure. The

recorded plats consequently are plagued with mathematical errors that do affect the present-day structure. Blindly accepting the description in the deed of these old plats (prior to the 1950s) has perpetuated, and will continue to perpetuate, boundary-line problems.

A new neighbor may very well have a survey done when he purchases his property, to clear up any misunderstanding that may come along. Then he will have documentation that may compel the other person to move or remove a structure.

A survey is completed, like an abstract is updated, as a matter of course in many transfers of real property in other states. Together, these services give assurances of defendable ownership. When not done regularly, many problems arise; for this reason, it's wise to have a survey done on the transfer of all real property.

There are many steps in the process of completing a survey. Below are the steps normally taken after a surveyor receives the initial phone call:

• After receiving the order, the surveyor explains the steps involved and requests that a copy of the deed be sent as soon as possible, as well as a copy of the abstract of title, easements of record, old deed plots or surveys, and any information about the description and use of the land.

• The job is scheduled after the preliminary work in the field is completed.

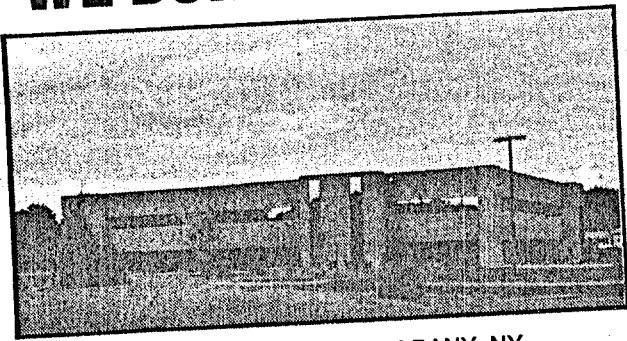
• The surveyor researches the property by obtaining from the appropriate county clerk's office information on the adjoining properties, original subdivision map (if there is one), tax-map information for identification of owners, deeds and maps of easements.

• The field crew is sent out to the property to measure and gather data on the subject property and the neighborhood. The crew searches for old "evidence" of any kind, measures the house, and documents its location in respect to other houses, fences and driveways.

• The information is computed back at the office by comparing the evidence to the old maps and deeds to determine if everything conforms with the intent of the original conveyance. Then the final survey map of the property can be drawn up.

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