

THE IMPORTANCE OF SURVEYS

By Kellie Army, Investors Title Claims Counsel

If I could teach one thing to people buying property of any nature, it would be that, if you do not have a survey, you do not know what you are buying. And, when one day somebody tells you what you have actually bought, your title insurance policy will not cover the cost of whatever fix is necessary to resolve the issue that would have been disclosed by the survey. Following are some examples of the most common type of claims that could be avoided had the buyer obtained a survey prior to closing on the property:

Boundary lines: A buyer can walk every inch of the property and not find a bit of evidence that anybody else claims ownership of part of the property – there isn’t always a fence or some other obvious indicator of an adverse claim. Frequently, this claim only comes to light when a neighbor wants to fence or sell their property and obtains a survey. The insured then files a claim that, for example, they only own .7 acres as opposed to the 2 acres that they believed that they had acquired. Because the insured did not obtain a survey, their claim will be denied as a result of the exception for matters that would be disclosed by an accurate survey of the property.

Encroachments: Sometimes there is a fence, be it the buyer’s fence or the neighbor’s, but, either way, its intrusion onto either the insured property or the neighbor’s property will not be covered if the insured did not obtain a survey prior to closing. Often, encroachments are a lot more involved than just a fence. Sometimes, owners receive the horrifying news that part of the house they are living in encroaches onto a neighbor’s property. A buyer who obtained a survey prior to closing would either walk away or require the title issue to be resolved prior to purchase, but the buyer who proceeds to closing without a survey is stuck with a significant title issue and likely no coverage from their title insurance policy.

Ownership of the “wrong” property: The title insurance policy insures the property described in Schedule A of the policy. With a frequency that I never would have expected before working in this role, the Schedule A property is sometimes not the property that the insured intended to acquire. This claim comes in many forms – the buyer who thought they were acquiring a lot with a house but only received good title to a vacant lot; the buyer who makes improvements to an existing structure, only to discover that they actually own a different house in the same neighborhood; or the buyer of a townhouse who moves in and discovers ten years later that she actually has title to the townhouse next door, etc. In each of these cases, there is no coverage because the insured has good title to the property described in Schedule A. The title insurer is unaware of the buyer’s intent and can only insure the property to which the attorney has certified title. A survey, however, could alert the buyer of the issue and prevent them from acquiring the “wrong” property by showing them what is actually being conveyed.

Access: Issues with property access take many forms, from minor encroachments to completely landlocked property, but each of them can cause headaches for owners, which, many times, can be avoided with a pre-purchase survey. Additionally, owners should be aware that the policy only insures legal access. Legal access can be fairly broad and only assures the right to use a means of entry onto the property. If, for example, an owner discovers that they cannot use the lovely tree-lined access that they saw prior to closing, but one other part of the property touches a public road, they have legal access and the policy is not going to insure anything more.

One of the hardest parts of the claims counsel job is having to tell an insured owner that they do not have coverage for a title issue because it would have been disclosed by an accurate survey of the property. Let's all spread the word about the importance of surveys to put an end to these conversations and be sure that buyers understand the possible financial and emotional cost they can unknowingly incur when they make the decision to save money on a survey.