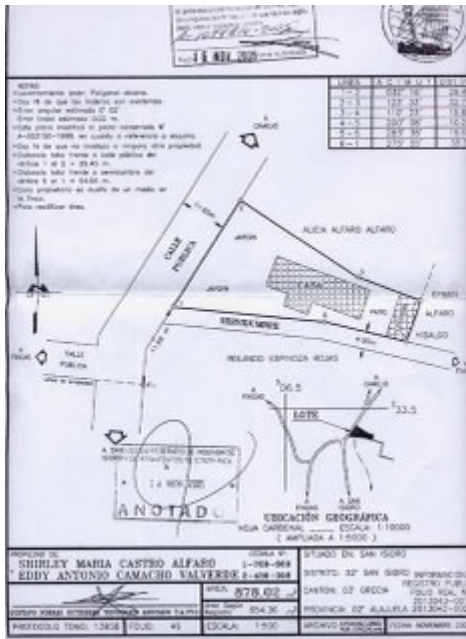


A Survey or Title Insurance?



By Brian Madigan LL.B.

Actually, it shouldn't be one or the other. It should be both.

One of the problems is that title insurance was marketed as a cheaper alternative to a survey. This is not the case.

Right now, a survey of most reasonably sized building lots in southern Ontario will cost about \$1,200.00, and they will depict:

- 1) the **dimensions** of the lot,
- 2) the **location** of the building on the lot,
- 3) the **setback** of the building from the lot lines,
- 4) any curvatures, radiuses of the lot, ie. a **boundary** with a circular shape (an arc) rather than a straight line,
- 5) the location of any **outbuildings**, garages, sheds, boathouses etc.,
- 6) any significant **landscaping** items (natural or man-made), driveways, retaining walls, patios, decks etc.,
- 7) any significant **improvements**, ie. swimming pools, hotubs, and related enclosures,
- 8) boundary related items like hedges and **fencing**,
- 9) **easements**, utility locations, underground sewers and overhead wires,
- 10) **encroachments** from items apparently owned by neighbours, like eavestrough, fences, driveways and so on,
- 11) **rights-of-way** over the property of the adjoining properties (like access),
- 12) **mutual driveways**, being a combination of an easement in favour of the neighbour and a right-of-way over adjoining property of a neighbour.

Now, this was not intended to be an exhaustive list, but rather simply to illustrate some of the items that will be shown upon a survey. All of these items are important. If you are purchasing a property, you want to know the facts. With a survey, you will **know the facts**. Without a survey, you will only find out the facts, once your neighbour acquires a survey.

Title insurance alone will not solve the problem. It will only help pay for an

alternative solution. However, you must appreciate that I said “alternative”. That is not the best solution, the way you would like to see the matter resolved (or even close to it).

Title insurance will only help pay for a reasonable alternative solution. And, one thing more. If there is no solution, title insurance doesn't pay anything!

So, a survey is really not an alternative, it's a must. You should always acquire an up-to-date survey when you purchase a property.

Then, you will know the facts, otherwise you're just guessing. And the only time you can do anything about any of the problems shown by a survey, is before you close the deal. Afterwards, it's too late. Now, it's your problem.

So, as soon as your offer is accepted, get a copy of the survey. Request one either through your realtor or your lawyer. Examine it yourself and determine if it's up-to-date. Your realtor might know, but your lawyer won't. If it's not, then order a new one at your own expense prior to closing. Then, your lawyer can get any affidavits signed as may be required by the current owners before they get their money. Afterwards, they won't want to sign anything. Before closing, they will be most helpful.

Let's deal with one quick example. The current owners construct a fence around the swimming pool in 1995. It's a solid wood, 6 foot high privacy fence along what they believe to be the lot line. At the front of the lot, between the two buildings, it's right on the lot line, but at the back of the lot it's off by one foot, some 200 feet to the rear. The fence is straight, but after a few feet it starts encroaching on the neighbour's property, at first just by less than an inch, but at the rear lot line, one full foot. This means (possibly) that the entire fence has to be removed. Or, does it? If the fence has been there for more than 10 years (in Ontario, and if squatter's rights apply), you will be able to leave the fence in its present location forever. In fact, you will be able to repair it, and even replace it in the future with another fence, in this exact location.

But, you will have to prove it. So, that's where the survey comes in, and the supporting affidavits.

However, getting a survey doesn't mean you should not get **title insurance**. You should **get that too!**

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