

Get a Survey When you Buy Real Estate

Title insurance is not and cannot be considered a sufficient alternative to a survey when purchasing real estate.

Perpetrated largely by the very companies who created and sell title insurance, there is a growing misconception amongst bankers, real estate agents and the consuming public that a survey is not necessary. "Just get Title Insurance" the familiar refrain goes. You don't need a survey.

Toronto Real Estate lawyer, Bob Aaron in his column "Title Page" once reported a discipline case where a real estate agent was fined for failing to cause the purchasers to seriously consider obtaining a survey. According to the Real Estate Council of Ontario, the agent failed to advise the buyers to seek outside professional advice from a lawyer or a surveyor before entering into a binding agreement to purchase. Apparently, the Real Estate Council's discipline committee may feel that the failure of an agent to provide a survey to purchasers before an offer is prepared, or, at least causing them to consider insisting upon a survey is professional misconduct and service falling below the standard expected of a competent real estate agent.

In the case in question, the purchasers claimed to be unaware that someone else owned the driveway located on their lot. A survey would have confirmed this. Title insurance did step forward and construct a new driveway in lieu of the one the purchasers thought they were obtaining. While title insurance paid for the construction, where the new driveway had to be located meant that a number of large shade trees had to be cut down. Given the loss of the shade and the privacy they afforded, no matter how one looks at it, title insurance did not and could not produce to the unsuspecting purchasers what they thought they had bargained for.

A survey is an essential element of the purchase of real property in Ontario. Without a survey, it is not possible to determine:

- a) The lot size and dimensions
- b) The location of buildings and improvements on the lot
- c) The existence of easements and right-of-ways or encroachments
- d) The location of fences, hedges, pools, overhead wires and other utilities
- e) The actual location of the parcel on the ground as opposed to the paper title that a Purchaser receives.

The consuming public has been lulled into believing that Title Insurance is an absolute substitute for a survey prepared by a licenced Ontario Land Surveyor. Mortgage lenders are quick to accept Title Insurance to protect them, however, Title Insurance does not necessarily protect the purchaser/ borrower at all.

If you are going to spend thousands of dollars on real estate, then isn't it worth spending a few hundred dollars on a survey in order to protect the significant investment that you are making? What's good for the lender and the vendor is not necessarily good for the purchaser.

The opinions expressed are for information purposes only and readers should consult with a lawyer in relation to specific cases.