

The Survey and the Real Estate Transaction

Traditionally, lawyers have been responsible for the “chain” of title (i.e., ensuring that clear title was passed properly to each of the owners of the property over time) in their opinions and not the exact size of the parcel of land. Additionally, with the growth, expansion and complexity of modern zoning regulations, municipal charge and development regulations, a full solicitor’s title opinion requires a survey that illustrates the current location and state of improvements on the lands. A new survey of a property by an Ontario Land Surveyor can take weeks to prepare and will likely cost in excess of \$2,500.00.

Fewer and fewer purchasers are choosing to incur the cost of a survey and instead rely on title insurance to protect them, avoiding both the costs of survey and the costs of municipal compliance reports. Also avoided are the significant time and delays involved in obtaining the survey and obtaining the municipal compliance reports.

Generally, the survey related risks that title insurance will provide coverage for include the following:

- violations of municipal zoning by-laws
- encroachments onto an adjoining property (other than fences and boundary walls)
- setback violations
- existing work orders
- lack of legal access to the property
- unmarketability of the land due to adverse matters that would have been revealed by an up-to-date survey or Building Location Certificate

While the cost and time savings associated with proceeding without a survey can be significant, purchasers need to consider the value of having a survey which clearly shows the boundaries and location of all improvements. In particular, this is important if they plan to make any changes in use to the property or construct new improvements on the property. It may be that obtaining a survey provides benefits and protection that justify the cost.