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## Real Estate LAW

# Survey says: Survey maps are invaluable in real estate transactions

Nobody likes surprises when making a purchase, especially when buying real estate. For that reason, the survey map is one of the most important documents in any real estate transaction. An exception for any state of facts which a guaranteed survey of current date would disclose is a very broad exception from a title insurance policy. Any violation, variation, encroachment or adverse circumstance which would have been revealed by a survey map is not covered.

Surveys identify the property of a transaction. While the street address might help someone find the property, it does not sufficiently identify it. Tax maps, although seemingly showing the location and area of the parcel, can be inaccurate and should not be relied upon. In fact, on most tax maps you will see the disclaimer that the tax map is not to be used for conveyancing purposes.

Surveys locate the boundaries of a property. Where are the boundary lines? Is the land shown on the survey the same as the land described in the title commitment? Does the survey show the property the buyer thought he was buying? What is the actual acreage of the property? Did the buyer base the purchase price on the acreage? Is there enough acreage for the buyer's planned development?

Beyond boundary lines, surveys further locate the improvements on a property and can show the relationship of



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those improvements to the boundary lines to determine any encroachments or possible adverse use of the property. Does a neighbor's improvement cross or cut off access to a portion of the seller's property with possible adverse use? Do any of the seller's improvements cross or encroach on to the neighbor's property or on to easements? Are there improvements benefiting the property that are located in the public road right of way?

Surveys demonstrate the physical usability of the property. They show physical impediments such as rivers, ponds, roads, easements, etc. which might impair development on the property. A survey may show lands under water to which others may have rights. Is the property waterfront or just water view? Are there filled areas extending into the lake bed or below the high-water line? Is there access to the property? "Legal" or "reasonable" access covered by a title policy may not be the same as the physical access actually used in connection with the property. Maybe the driveway

crosses the neighbor's property. Maybe the property is located on a controlled access public right of way, but the physical access is over a private road. Who maintains the private road? Does the title insurance policy cover an appurtenant easement for the private access? Are there utilities or access roads (either with or without the benefit of a recorded easement) that might inhibit the construction or replacement of improvements on the property? Is the well or the septic field serving the property located on the neighbor's property? If so, is there an appurtenant easement and maintenance agreement?

The legal usability of a property and whether the property is in compliance with laws, ordinances and regulations such as zoning and building codes are also demonstrated on a survey. Showing improvements such as decks, sheds, swimming pools, etc. can raise the question as to whether or not proper permits and code compliance certificates have been obtained. Remember, that in New York, title insurance does not cover zoning matters, so the only way you might be able to tell if there is a zoning or building code violation is with a survey map. Has the property been illegally subdivided? Are the improvements in compliance with current zoning requirements or are they grandfathered as a pre-existing non-conforming use? Are there sidewalks or other services for which municipal assessments could be

charged?

Surveys also show whether a property is in compliance with private agreements such as restrictive covenants and easements. Do the improvements violate setback or buffer requirements established by private deed restrictions? Do any improvements violate any restrictive covenant regarding use, size, location, etc. A survey may show the location and use of easements, both recorded and unrecorded.

As to marketability of title, maybe the current buyer doesn't care about having a survey, but the next person purchasing from that buyer might care enough to back out of a contract to purchase or

delay closing until a matter revealed by an accurate survey map can be cleared.

There are many important questions that need to be asked and answered in a real estate transaction. To find those answers, look at what the survey says.

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