

Surveys are Important Protection!

A survey is a measured drawing of a tract of land showing the boundaries of the property and the physical location of all significant improvements and easements affecting the land. Without a current survey, prospective property owners really do not have any assurance that they are getting what they think they are buying. An accurate survey will reveal setback violations, encroachments of improvements into easements or across property lines, recorded but undisclosed easements and the correct location of property lines and improvements. A survey will reveal whether the main structure is even located on the lot being sold! There have been occasions where a house has been built on an adjoining lot, owned by the seller, next to the one conveyed at closing. These are just a few of the problems that a survey might reveal.

In most transactions, the attorney's title examination will not reveal the kinds of problems that a survey should disclose. An attorney's title examination is limited to those matters affecting title that are disclosed in the records of the local county courthouse. The majority of what is shown on the survey is the result of the surveyor's inspection and physical measurement of the property and improvements. The attorney does not see nor inspect the property. As a result, a buyer of property needs a title examination and a survey in order to be accurately informed of what is actually being purchased.

It is the general practice in the title insurance industry to give survey protection in lender's title insurance policies without requiring a current survey. The primary reason for their willingness to provide such coverage to lenders, is that lenders will not normally have a claim against the title policy until there has been a default in the loan and the survey defect reduced the foreclosure sales price below the payoff amount. Title insurers have found that there are no more lender's policy claims arising due to lack of survey than due to incorrect surveys. This coverage is not extended to the owner because the claim for a defect would arise immediately upon issuing the owner's policy. This explanation is an over-simplification but is helpful to understand what a lender means when they tell a borrower "you don't need a survey". What the lender really means is that the lender will not require the borrower to get a survey as long as the lender is protected by the title insurer. The typical purchaser believes that if the lender is satisfied, if the attorney has searched the title and if a title insurance policy has been delivered, that they are adequately protected. This is clearly not the case where a survey has not been obtained.

THEREFORE, IT IS OUR RECOMMENDATION THAT A NEW SURVEY BE OBTAINED FOR YOUR PROTECTION ON YOUR PURCHASE.