

The Merits of Due Diligence

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Probably the most common interaction between a BC land surveyor and a BC Notary occurs when a lending institution requires a land surveyor's certificate of location as part of the mortgage approval process.

Since the whole conveyancing industry is now very competitive and, since some lenders do not require surveys, there is a lot of pressure to find alternatives. This puts Notaries and other legal professionals in the uncomfortable position of having to recommend a course of action to their clients without being able to assess the risks.

In most cases, a survey does not reveal significant problems, with either the boundaries or the location of improvements. This has led to the assumption that the risk is so low, surveys can safely be dispensed with. Unfortunately, when their advice could help make a more informed decision, land surveyors are rarely consulted.

Just like smoking and high blood pressure are factors that elevate the risk of heart disease, there are factors land surveyors look for when assessing the "health" of the survey that defines the extent of a title. Here are a few of the main risk factors.

- **Age**

Generally, the older the underlying survey, the more problems a surveyor can expect to find. Over time, as survey posts are gradually lost by attrition to the forces of nature and the actions of man, the task of finding the remaining undisturbed evidence becomes more difficult. Before iron posts came into common use in the late 1950s, lot corners were marked with "durable wooden posts."

Many older neighbourhoods are devoid of undisturbed survey posts, yet the houses are bought and sold all the time.

Surveying equipment has greatly improved since the days of compass and chain so the dimensions shown on newer plans are generally more reliable than older ones.

- **Natural Boundaries**

Waterfront properties are usually the most expensive real estate and those natural boundaries are a common source of problems. Most often, the title boundary—the one shown on the survey plan—does not agree with the physical location of the natural boundary. This may be due to erosion or accretion caused by natural forces or by the dumping of fill or the construction of retaining walls.

- **Described Boundaries**

These include parcels created by metes and bounds description or aliquot parts of large parcels, e.g., the Northeast quarter of the Southwest quarter of Section 23, Township 2... . The main reason these are often prone to problems is that some of the boundaries were never marked in the field.

The township system was adopted in various forms because it was the quickest way to create a framework for settlement with a minimum of surveying.

In most cases, only the perimeter boundaries of sections one mile square were run and marked with wooden posts every quarter mile; the internal divisions were simply described as fractions of the whole. This often results in descriptions challenging to interpret and even more difficult to survey on the ground.

While this may seem like a rural problem, there are urban equivalents. For example the boundary between parcels described as "the westerly 33 feet of Lot 23" and "the easterly 33 feet of Lot 23" can be ambiguous when it turns out Lot 23 was really only 65 feet wide.

- **Reminders**

These are problematic because the extent of the remaining portion of the original parcel can't be determined without examining the plans that define the exceptions. In extreme cases, this can involve dozens of plans;

the remainder can be one legal parcel that actually consists of a number of physically separate parts.

Some properties have multiple risk factors, akin to an overweight smoker with high cholesterol, yet with a fresh coat of paint, they can look quite benign to the unsuspecting.

As well as these "red flags," there are less obvious factors that sometimes require more in-depth investigation. These can include gazetted road allowances that were never constructed, exceptions in the original Crown Grant, or survey evidence and dimensions that conflict with plans of adjacent properties. Sometimes a review of plans and other records is all that is required to resolve these issues.

As with anything that ages, the survey that defines the boundaries of real property needs occasional maintenance and care. Survey monuments may be obliterated and lost or may be moved from their correct position and yet appear fine.

Precise understanding of the location of boundaries at the time of a sale helps the buyer in two ways:

- the buyer is assured of the extent of the property and the location of improvements or features, and
- this knowledge helps prevent encroachments in the future.

Land surveyors have the training and experience to recognize potential problems and can provide assistance to Notaries and other legal professionals with respect to boundary issues. Sometimes having the boundaries of a property confirmed on the ground and the location of the improvements verified are more important than others. In some cases, where there are no improvements, a survey may still be warranted, especially if dimensions or area are important.

Please don't hesitate to ask a BC land surveyor for information to help in making an informed choice. ▲