

Location surveys vital

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Building location surveys should be an integral part of any real estate transaction. Now referred to as Real Property Reports, surveys outline the extent of a property by reflecting the location of all structures on a two-dimensional drawing, complete with measurements and notes.

Only Ontario Land Surveyors are qualified to perform this task, and, like everything else, their services come at a cost.

The need for a new survey is often questioned, but few home buyers recognize the risk they inherit when they compromise for something less. The degree of risk can be measured from best to worst on the following scale:

- Brand new survey: When a home buyer commissions a new survey of a residential property, the price rarely exceeds \$1,000. The cost depends on the level of research required and whether the property has been surveyed before. It will also depend on such factors as the lot shape and size, number of buildings or features, and the age and topography of the land.

Aside from the drawing, the buyer gets the professional opinion of a qualified surveyor. If there are any errors or omissions on the survey, the surveyor will be responsible for the loss suffered if he or she is at fault. There is no risk to the home buyer.

Most builders of new homes will supply a survey. However, builder-supplied surveys normally only outline the property just after the foundations have been poured. There is no indication of decks, fences, pools, etc.

- Seller provides original survey: In many transactions, a seller will provide the original copy of the survey obtained when he or she bought the property. The surveyor's signature and seal verifies it's the original. This is an attractive selling feature.

All the home buyer gets is a drawing. The surveyor's opinion does not transfer from owner to owner. Although in most cases you can be confident of the accuracy of the surveyor's work, any errors or omissions will be your responsibility.

Getting a survey without an opinion is like owning a purebred dog without any papers.

Any changes that have occurred to the property since the date of the survey (which could create problems if they are not apparent) will not be on the survey. Thus the risk to the home buyer increases, albeit minimally, depending on the amount of change.

A prudent home buyer will ask the original surveyor for an update of the opinion, which will come with a new drawing. If there have been no or few changes, the cost is a fraction of that for a whole new survey. The home buyer then returns to a position of bearing no risk.

- Seller provides a copy of the original survey: Too often, a seller only has a photocopy of the original survey. In many cases, depending on how many times it has been copied, this is nearly worthless. Not only does the home buyer have no opinion to rely on, he or she also has no way of knowing whether the original has been tampered with or amended before being copied; the risk to the home buyer increases accordingly.

Again, a prudent home buyer should contact the original surveyor for a fee quote for updating. However, usually where only a copy is available, the survey is quite old and many changes may have occurred since it was drawn. The cost of an update may come close to that of a whole new survey.

- No survey at all: Few home buyers will proceed with a transaction in the total absence of a survey. Even should they wish to do so and absorb completely the tremendous risk involved, where mortgage financing is involved, virtually all lending institutions will insist on one.

The only compromise available if a home buyer chooses not to buy a survey is title insurance. Although a fraction of the cost of a survey, title insurance only addresses the risk of loss.

Without a drawing of the land and buildings, the home buyer has no way of knowing whether the property complies with municipal bylaws or whether other buildings are encroaching on the land. There may also be rights of way or other easements traversing the property. In fact, without a survey there is no way of knowing that the house you'll own is actually on the land you think you're buying.

Without a survey, a home buyer also lacks the ability to take issue with the seller before a transaction closes. There is no ability to walk away from the deal or negotiate a reduction in the purchase price if a problem is discovered after the deal has closed.

Admittedly, many buyers of resale homes do not purchase a new survey. More times than not, they rely on an affidavit given by the seller that to "the best of their knowledge and belief, there have been no changes to the property since the date of the survey."

A home buyer should seriously scrutinize the wisdom of accepting declarations made by the party most likely to conceal a problem. And yet buyers, their lawyers and their lenders all seem to accept these affidavits, even where they refer to mere photocopies. I have even seen affidavits where the seller has pencilled in additions or deletions and then sworn to their accuracy.

Although this method may avoid the cost of buying a new survey, it will not decrease the risk to the home buyer. It's difficult to sue a seller after the deal has closed when what you relied on was a statement of his or her knowledge and belief.

But most residential real-estate transactions close without a hitch, whether or not a new survey is obtained. It all comes down to the level of risk you're prepared to accept. When it comes to your home, is it a risk worth taking?

March 14: How surveys are addressed in agreements of purchase and sale.