

Title Insurance is not an Alternative to a Professional Surveyor's Opinion

In a real estate transaction, absolutely nothing can replace the knowledge disclosed by a current Surveyors Real Property Report (SRPR). Title insurance is **not an alternative** to a survey, as it requires less diligence in the investigation of title, is assumed to be "no fault" insurance when it isn't, and provides a misleading and shallow assurance of savings to the party making the purchase.

Current full opinions of the quality of title by a lawyer and extent of title by a surveyor are the best assurance a party can obtain.

Title insurance may mask or hide potential title and boundary problems, rather than identifying and addressing them before a property is purchased. The purchasers of title insurance think that they save the cost difference between an insurance policy and a surveyor's opinion. In reality, they are missing the clear picture of the property being purchased.

Retaining the Services of a Professional Surveyor

The services of a professional surveyor should be sought well in advance of the closing date to allow enough time to deal with any issues or concerns that are revealed by the survey. The professional opinion of an Ontario Land Surveyor is not a mere commodity, so price should never be the sole consideration. A licensed surveyor should be selected because he or she has the appropriate skills, experience and capacity to do the job.

Qualifications of an Ontario Land Surveyor

Professional membership in the Association of Ontario Land Surveyors requires a degree from an accredited university program, or equivalent. This is followed by a 1-1/2 year term of Articles and a set of professional examinations.



Nothing can replace a survey!

"Both lawyers and surveyors believe that there is nothing that can replace a survey or provide as much information to the property owner about the extent of the owner's title. An up-to-date survey could save thousands of dollars worth of trouble down the road."

**Bob Aaron, Real Estate Lawyer
and Toronto Star Columnist**



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What Real Estate Professionals Should Know About the Role of the Professional Surveyor in the Real Estate Transaction



Protecting The Public Interest

Real Estate Professionals and Ontario Land Surveyors best serve and protect their clients' interests when they understand the importance of each other's role in the real estate transaction. Consulting with a Professional Surveyor and obtaining a new survey should be seen as an integral part of the real estate transaction. If there is any doubt or if there are any questions about a survey or the boundaries of a parcel, then a Professional Surveyor should be contacted to protect the interests of both the Real Estate Professional and the client.

A Professional Surveyor's Opinion is an Informed Opinion

A Professional Surveyor is trained to gather and analyse facts and use legal principles and rules of law to interpret the information to prepare a professional opinion. Before preparing an opinion, a surveyor examines the documentary evidence related to both the subject land and the adjoining land. This would include documents obtained by searching their own files, those of professional colleagues, and those of the Land Registry Office. An Ontario Land Surveyor will carry out a thorough field investigation for the best available evidence of all boundaries, lines and corners, and give priority to the evidence in accordance with *Statute and Case Law*.

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What Is A Survey?

The survey in a real estate transaction enables the certification of title by providing a plan which shows the extent of title and any factors which may affect the quality of the extent. It is not, as many people believe, for the sole purpose of showing the buildings in relation to the property lines. In common use, the term "survey" often refers to a drawing or plan of a parcel of real property, yet the final plan or report represents only one element of a "survey." A survey of a parcel of land is a project undertaken with four components: research, measurement, monumentation and a plan or report. All of these elements combined represent an Ontario Land Surveyor's professional opinion of the boundary of a parcel. In Ontario case law, the term "survey" in a purchase agreement has been held to mean an **up-to-date** plan of survey prepared by an Ontario Land Surveyor.

A plan of survey may be up-to-date if:

- The Plan complies with the current Statutes and Regulations of Ontario;
- No physical changes have taken place to the property or the monumentation since the plan was signed; and,
- A search for documentary evidence (including a search in the Land Registry Office) indicates that no changes have occurred.

An "old survey" is a document that has not been prepared for the current transaction. A current opinion must have the embossed seal of an Ontario Land Surveyor on the print.

A Professional Surveyor's Opinion can best be expressed through different plan formats, and each one is prepared for a specific purpose. A Real Estate Professional should use caution in the selection of the type of survey for the purposes needed. Old surveys are rarely suitable for the purpose for which the Real Estate Professional and his or her client intended.

Common types of survey plans are:

Plans of Subdivision (M-Plan, Registered Plan, Condominium Plan) Upon registration in the Land Registry Office, these divide property into lots or units and set out boundaries for the first time, after appropriate approvals have been obtained.

Reference Plans (R-Plans) These are deposited plans and graphical representations of descriptions, as well as representations of divisions of land under the Planning Act.

Plan of Survey This may be a reference plan, an undeposited plan in the form of a Surveyor's Real Property Report (SRPR), or a standard survey plan.

Surveyor's Real Property Report

A Surveyor's Real Property Report (SRPR) is a legal document that clearly illustrates the location of all visible public and private improvements relative to property boundaries. It takes the form of a plan illustrating the various physical features of the property along with a written report highlighting the Professional Surveyor's opinion of any concerns. The plan and report may be combined in one document. **The best disclosure of the extent of title is a current SRPR, which is a land surveyor's professional opinion of the extent of title at a point in time.** In a real estate transaction, the SRPR can be relied upon by the purchaser, the seller, the lending institution, the municipality, the Realtor and all other parties to the transaction as an accurate representation of the property.



Copyright and Fair Use of a Survey Plan

A plan illustrates a surveyor's opinion of the extent of title and falls within the definition of an 'artistic work' under Section 2 of the Copyright Act, R.S.C. 1985 c. C-42. Copyright remains with the Professional Surveyor who created the plan.

Under the Copyright Act, "fair use" allows a person to use a plan for research only. It is not "fair use" to use it for benefit in any transaction beyond the time of the preparation of the original plan. Under "fair use," a surveyor or a lawyer has the right to use the information on a plan for title research. The original client has the right to use the plan for private use in accordance with the purpose of the plan. It is not advisable to pass on a photocopy of the plan to another party after the original transaction, as it could be outdated and misleading. Using a photocopy of a plan of survey is a breach of the strict copyright laws of Canada.

A client does not have the right to unlimited use of the plan in subsequent dealings. A client does not have the right to re-use the plan for some other purpose than was originally intended. No one, other than the Professional Surveyor who prepared the plan, has the right to alter the plan. No third party, such as a Real Estate Professional, has the right to use a plan for a use not intended at the time it was originally prepared.

Misuse of Survey Documents or Plans

The re-use of survey documents and plans after their original release is misuse. Any reliance on a Professional Surveyor's product beyond the original intended use is potentially costly to the user, and in most cases, an infringement of copyright.

What is the Real Estate Professional's Liability?

The Real Estate Professional is **assuming all liability** by using and re-using "old" documents that were never intended to be used in current transactions. It is similar to using an appraisal of the value of the same parcel beyond the time of the transaction. Both the Appraisal and the plan must be current to reflect the accurate value and extent of title. It has always been important to address what is not on the plan rather than only what is on the old plan.

What is the Value of a Professional Surveyor's Opinion?

Ontario Land Surveyors provide professional opinions for a wide range of purposes. Many may be relevant to the marketability of title or compliance with local building by-laws. Professional Surveyors work with clients to add value to real estate assets. The cost of the survey is small as a percentage of the total investment and a reasonable price to pay for the protection from potential lawsuits resulting from misrepresentation in the Offer of Purchase related to property boundaries and improvements.