

# Ramblings of a Disgruntled Surveyor

The following letter is from a "Disgruntled Surveyor" (Bill Webster, O.L.S.). The AOLS Council, Administration and Public Relations Committee share some of his concerns.

## Buyer Beware

Title Insurance for the new Purchaser/Homeowner/Property Investor seems to be an inexpensive alternative in the land transfer process. It may be a time bomb. Title Insurance seems to nicely satisfy the mortgage lenders **but** where does the new Purchaser fit into this scenario?

The inherent value of a land survey, being usually in the form of the "Surveyors' Real Property Report", must somehow be communicated to the consumer, the Purchaser.

Having only Title Insurance to rely on, how can a Purchaser be aware of, concerned with, or allow for, the possibility of the following conditions?

1. *Prescriptive Easements or Rights-of-Way* that the property may have become subject to, or together with over a period of time and/or usage, which do not show up as registered on title at the local Registry Office.
2. Does the actual legal description of the property conform substantially to the existing site conditions? Do occupied boundaries correspond to the paper title? Is there potential for claims of *Adverse Possession*?
3. Is the property satisfactorily and sufficiently *Monumented* by official or verifiable survey monuments? Are these monuments currently in their intended and correct positions?
4. Will you later discover *Encroachment* problems? If your property is encroached upon, it could cause a reduction in terms of the full enjoyment thereof. (Is this enjoyment reduction recoverable and at a reasonable cost?) What if in due course a neighbour contracts to have their property surveyed and discovers that your fence, hedge, pool, garage, curb or laneway or the like encroaches onto their property? Who owns the liability and who pays to

rectify the situation? Does Title Insurance cover the Homeowner?

What if you decide to now hire a surveyor to verify for your own satisfaction that you neighbour's new survey is correct? What about potential court costs, possible physical relocation costs for certain features of your property to remedy an encroachment, possible loss of a heretofore friendly neighbour?

5. Do *Property Improvements* constructed by prior property owners presently comply with local municipal rules and regulations? (such as carports, additions to main dwelling, garages, walkways, decks, etc.)
6. Does it seem wise to accept and rely on *Statutory Declarations of Possession* or *Affidavits* sworn by the present owner (vendor) attesting to existing conditions with respect to property improvements and zoning compliance? Does a vendor's unqualified opinion **protect the needs of the purchaser**? Also, honestly and most realistically, we must all recognize a perfectly natural and expected bias on the part of a vendor to want the sale to proceed.

A Surveyors' Real Property Report shows existing conditions up-front. Buyer Beware. Title Insurance is a purchaser's expense for a lender's enhanced security. A valid question a purchaser must address is, although it appears some cost savings may be realized now by accepting "cheap insurance" aren't they just engaging in a slick and sophisticated form of Russian Roulette?

The potential for long term savings in terms of a purchaser's property tenure and future marketability thereof should not be underestimated. **The Surveyors' Real Property Report is not only FULL value in terms of its cost, BUT, in the long run could prove to be the purchaser's best Title Insurance of all.** The purchaser can judge before closing, what problems may lie ahead and address them from a forewarned position.

The mortgage lenders' interest lies in securely receiving mortgage payments, not in one's ability to fully enjoy the property as purchased. Strictly business on their part.

Choices and their implications should be clear and informed. Perhaps it is the onus of the surveying profession to inform (educate) the legal profession. Is it not our responsibility to help lawyers protect themselves and their clients by enabling them to properly inform their clients of the benefits of an up-to-date Surveyors' Real Property Report? Could our input to lawyers enable them to be more knowledgeable and thereby more professional in terms of their real estate clients? Thus they possibly would respect our input and our professional position and endorse our surveying activities more enthusiastically!

Bill Webster

*The Association of Ontario Land Surveyors has prepared a Title Insurance package. The package consists of three parts. The first is a white folder entitled "Opinion, Guarantees and Insurance in the Real Property Transaction." This document was written specifically for Ontario Land Surveyors to give them background on title insurance. If you choose to give this information to a member of the public, keep in mind that some of the language in the document may be difficult for the lay person to understand.*

*The second component is a two page summary of title insurance. If you are giving a presentation, it may be more appropriate to hand out these two pages.*

*The last and most important component is a number of slides and explanations to go with each package. Every presenter will have their own style and will want to emphasize what their knowledge and experience has shown them over the years on what can happen in a real estate transaction. It is very important that we understand that there is a place for title insurance. It is important that we emphasize what it is Ontario Land Surveyors do so that the public may protect their interests. People must understand what it is they are insuring. Full disclosure is an important concept for not only the homeowner but also the lawyer undertaking to contract with a title insurance company.*

*Remember, this is a positive presentation on what Ontario Land Surveyors do best!*

Carl J. Rooth  
Executive Director

**For a Title Insurance package, contact the AOLS office.**

