Reviewing Survey a Must in any Transaction

By Bob Aaron

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There's a general misconception in the real estate field that a land survey for a house is not necessary as long as a purchaser gets a title insurance policy.

The truth is that a survey is the most important document in any real estate transaction, because without one, the purchaser cannot accurately determine the full extent, dimensions and location of the property, whether it is a new or a resale home.

This lesson came home to me quite vividly late last month as I encountered three transactions within one week where nobody bothered to check a survey. And in all three cases, the vendors selling to my purchaser clients had deeds to the wrong house.

A real estate lawyer can practise for decades without this nightmare happening, but it crossed my desk three times within just a few days.

Michael and Karen are hoping to buy a house on Dundas St. E. When they came into my office, we carefully reviewed an up-to-date survey prepared one year ago. The survey, properly called a surveyor's real property report, shows three houses — one in the middle, and one on each side — lets call them L, M and R.

The lawyer for the seller to Michael and Karen had prepared a deed to L, the house on the left side, and that was the title I had searched. The survey report showed it to be a house with a mutual driveway.

Sitting in my office, Michael and Karen told me that the L house was not the one they were buying. They had purchased R, the right-side house with a private driveway, but the title search of that one showed the property was not owned by their vendor but by someone else who bought it a year ago.

The mix-up occurred after the death in 2003 of the woman who owned both properties, and the houses were sold by her estate trustees. Despite the fact that a new survey was created in 2004, nobody actually bothered checking which one was being sold to whom, and the two deeds were switched.

When the new owners of L got a deed to R instead and placed a $463,000 mortgage on it, they moved into it and substantially renovated a house they don't own. The vendors to my clients also have a deed to the wrong house, which they bought from the estate in 2003. Neither the purchasers of each property nor their lawyers checked the surveyor's real property report or the subdivision plan to verify which house they were buying.

Although title insurance — if it was purchased — might eventually pay for the costs of straightening out the mess, Michael and Karen can't close the deal until the titles are exchanged and the mortgages re-registered.

Two weeks after the scheduled closing, we're still waiting for the titles to be switched. To say the least, my clients are not happy.

The same week, my client Brendan was buying a house on Percy St., a tiny laneway near King St. E. and Sumach.

Since there was no survey for Brendan's property, I had to plot out the deed description on a huge subdivision map dating from 1855. It was clear to me when I did this that title to the house Brendan was buying was on the east side of the street. But Brendan's house has an even number, so it had to be on the west side of the street.

The same thing had happened in this case that happened to Michael and Karen's house.

One person had owned both houses, and in selling the first one, the deeds got reversed. Fortunately, everybody involved was alive and cooperative and there was no mortgage on the house owned by the "wrong" purchaser.

Fellow lawyer Mitchell Weisberg, who was not the lawyer who had created the problem in the first place, managed to register correcting deeds and Brendan got the right deed and keys on the scheduled closing date.

Had there been a proper survey, the problem might never have arisen, or at least it could have been detected and corrected much earlier.

The third case involved a house in west central Toronto. Two semi-detached houses were owned by the same person. The owner had obtained permission from the City of Toronto to sever the combined title and sell each house separately.

When the first house sold recently, the deed inadvertently contained a description of all of one house and half of the adjacent house being purchased by my clients. All that was left to sell to my clients was the west half of their house, with a frontage of just over nine feet!

If anyone had bothered to check the old survey when the other house was sold, they would have discovered that the deed transferred 1 1/2 houses.

Lawyer Graham Tobe acted for the vendor, although he had not created the initial problem. Tobe immediately recognized what had to be done, and moved into high gear to get the mess corrected. He arranged for the neighbours to transfer back to his client the half-house that shouldn't have been in their deed. The neighbour's bank also had to discharge their mortgage and re-register it on only one house.

Through Tobe's efforts, the transaction was able to close within a week of the scheduled date.

The lesson from these three tales is that although title insurance may eventually pay to straighten out errors in ownership, it won't compensate for the embarrassment in owning the wrong house, for the risk that a purchaser could back out at the last moment if good title is lacking, or for the inconvenience of not closing on time.

There is simply no substitute for having, and reviewing, an up-to-date surveyor's real property report. Whoever said there was such a thing as a simple real estate deal was wrong.

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