

TITLE TRAPS AND SURVEYORS' RESPONSIBILITY*

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The subject today is "Title Problems — the Surveyor's Responsibility." It's a tough one that strikes to the heart of the basic problems that face every surveyor in private practice *today*.

The first aspect of the subject (one that has not yet caused enough anguish) is the Final Report and Recommendation of the Mortgage Loan Inspection Committee of the Land Surveying Division of the American Congress on Surveying and Mapping. This report was approved by the Land Surveyors Board as well as the American Congress on Surveying and Mapping Board. It represents five years of work by the Committee, from its inception in 1960 to the publishing of its work in 1973 in the journal of the ACSM.

The classic definition of a camel is that a camel is really a horse — but one designed by a national committee.

The final published report states, and I am quoting, "In addition to the original compilation of material, there has been continued input from individuals and groups from around the nation, including a movement in Indiana to establish a standard certification form, the banning of the service in Florida, and efforts by Georgia and other states to 'outlaw' the procedure by land surveyors. Tabulations of and lengthy discussions about the material gathered, both in committee session and between different groups of individuals, have led to the following proposed Land Survey Division policy."

This recommended policy, by summation, reads as follows:

1. Establish national guidelines for the procedures and requirements of performing mortgage inspections.
2. Encourage and, if possible, enforce compliance with said guidelines by all registered professional land surveyors.
3. Establish communications with *all* title insurers and their organizations, to continue to educate them and the public as to the limitations of any mortgage inspection document.

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4. Encourage and "lead the parade" to upgrade the professional services to the mortgage industry, with the end goal of eliminating the mortgage inspection by requiring an actual land survey for title purposes.

5. To expedite item 4 above and to give meaning to our professional obligations of protecting the public and to establish a deadline date, such as January 1, 1980, after which no professional land surveyor will conduct mortgage inspections, but rather perform land title surveys.

The body of the report states, among other things, that "it is the client's responsibility to provide the land surveyor with a copy of the proper legal description of said tract." It then goes on to say that "the surveyor shall have the responsibility to *check* said description and to determine if any *evident* easements are of record that might affect the tract. As stated later in the proposed certification statement, he is only accepting responsibility for 'record plate easements,' it being understood that the client shall notify the land surveyor of any other easements uncovered in the title search."

Among the field and office procedures, the surveyor must "determine position of improvements on subject tract by tape measurements to data previously obtained as to nearest street intersection, etc. A transit may be used for direction, two-tape measurements from an established base line (curb, walk, monumented property lines, etc.) or tape offsets from pre-determined base lines (as above), are all acceptable methods."

"It is here that the expertise of the land surveyor is most important. If, in his opinion, he is unable to establish the property lines sufficiently to identify any encroachments, etc., he is professionally obligated to insist to his client that an actual land survey must be performed. If this condition is not granted, he must, as a professional, refuse to certify the location of any improvements. The client has called for a professional opinion to protect himself. The land surveyor has the obligation, in protecting the public and himself, to recognize that his professional opinion cannot be given under certain circumstances."

"It must be remembered, however, that in this service the land surveyor is to create the calls of the mortgage description *and not attempt to resolve discrepancies, overages, shortages, and the like*. If these items should affect the improvement locations sufficient to cause the client problems, the land surveyor must, again as a professional, insist on performing an actual land survey or refuse to certify the improvement locations, *unless* he further qualifies his certificate to include the condition noted above."

In addition, it calls out the following items which are not to be included on the mortgage plate :

“a. Interior walkways, shrubs, trees, portable structures (no foundation), grills.

b. *Fence lines*, either along or near property lines or interior. The accuracy standard used for inspections makes the location of fence lines almost impossible without performing an actual land survey.

c. Any and all items commonly referred to on the FHA or HUD Surveyor’s Report form used for government financed work. This report should only be filled out and included if an actual land survey with corner monumentation is performed.

d. Type and width of pavement of street on which subject tract is located.

e. Zoning information and restrictive covenants affecting the subject tract.”

And it closes this section by stating that in all of these items, “the client will have either received the data required for his determinations from the title examiner, or the items do not have any financial effect on the mortgage or title insurance.”

Well, gentlemen, what I’ve reported so far appears to me to contain a lot of double-talk. In fact, it *does*. What *they* are proposing nationally for 1980, many of *us* have been doing in Connecticut for the past 10, 12, or more years. But then, that was designed by a national committee.

Remember the definition of the camel?

There was no organization in the state that included or consistently represented the surveyor until the late 1950’s with the formation of CALS, which has been desperately trying to bring surveying into its proper perspective with a proper set of standards.

Before this time, survey requirements were established by committees which, in almost all instances, did not consist primarily of surveyors, but rather members of the Bar Association, title insurance companies, the Conn. Technical Council, the State Board, etc.

In order to prepare for today’s report, I looked up some definitions. I’d like to share them with you.

A *survey* is made “to determine and delineate the form, extent and

position of (as a tract of land) by taking linear and angular measurements and by applying the principles of geometry and trigonometry.”

“To view comprehensively.”

“A surveyor is one that practices the art of surveying land.”

“Surveying is a branch of applied mathematics that teaches the art of making surveys.”

The Connecticut State Legislature views it as a branch of engineering, limited to the measurement and delineation of land.

All these definitions, viewed in their own context, are correct. That is, let us assume they are correct, and in themselves, give us no problems. However, in practice, surveying becomes a profession.

O.K., what is a profession? A profession is defined as “an act of openly declaring or publicly claiming a belief or opinion,” on one hand, and, it is “a calling, requiring specialized knowledge and often long and intensive academic preparation,” on the other.

What is a professional? It is “a person engaged in one of the professions characterized by or conforming to the technical or ethical standards of a profession.”

Let’s, for the moment, go back to the second definition of survey, which is “to view comprehensively.” Let’s spin all the definitions around and see if we can come up with a logical train of thought.

The first of these is that the moment that we, as surveyors, certify a map, we are performing an act of “openly declaring and publicly claiming a belief or opinion.” This is done after having taken “linear and angular measurements and by applying the principles of trigonometry.”

It is also the result of “specialized knowledge” and often “long and intensive academic preparation.” With this certification that the surveyor makes, is an acceptance of the responsibility that goes with such a certification. What that brings us to is the comprehensive view . . . Why was that survey made? . . . For whom was it made? . . . What use by others will be made of it? Herein lies the essence of responsibility.

The simplest of the answers is that it was made for the purpose of substantiating or disagreeing with (as the case may be) a legal description. But, this in itself has ramifications. It may be for a simple inexpensive one-family house that is in position on a piece of land, or it may be for a

very large structure to be put on the piece of land, the value of which may run into many millions.

To legally substantiate a deed, an attorney will do a search, going back sixty years in the chain of title only for the particular piece of land involved.

The attorney will then state what the description of the property is in the deeds of previous conveyances. In the absence of a substantiating survey, he will put in an escape clause which very clearly states (and here I am paraphrasing) all this property is warranted as described, together with such information as an accurate and up-to-date survey may reveal.

Without a survey, all the buyer is receiving for his money is a piece of paper that warrants or guarantees that the deed description for the past sixty years has been consistent and that the description of the property is as written in the land records of the particular community. *Where* that piece of land is, precisely, and *if* the limits of the property so described are in conflict with the limits of the two, three, or more surrounding properties and their descriptions are ignored — except where a survey is called for or the absence of a survey is noted in writing.

This is where other factors enter the picture. The first of these are the banks and insurance companies, or as we say, the lending institutions, which provide the financing for the transaction.

In the case of banks, they are lending public money, or I should say, money that belongs to their depositors. It is only in recent years that we have been able to get most of the banks to require surveys. Until recently, the loans were based on a lawyers certification of title, such as described a few moments ago, and the credit of the person or organization to whom they are lending the money.

Now the surveyor finds himself in a position of having to use what we call the “long form certification,” which is, in effect, his guarantee to the owner, the lending institution and the title company. If a flaw develops in the title, which causes any kind of financial damage or cost to the owner, the title company makes good financially. In most instances of title failure, throughout the country — not only here in Connecticut — the cause of the failure has been surveying errors. *By having included the title company in our certification, we have given them the right to try to recover from the surveyor.* They are beginning to do so.

At last report, the State Board and the CALS Ethical Practices Committee are absolutely swamped with complaints from our clients, lawyers,

and title companies. It has reached the point where insurance and protection for the investigating organization is being sought.

The practice of surveying, or should I say the importance of surveying, has for years been minimized to the public by the legal profession, not required by many banks, and played down by the real estate brokers.

Our State Board has been desperately trying to establish a comprehensive set of standards and requirements for the State. So far, it has not been reported out of committee.

Therefore, it is up to all of us, as the practicing responsible surveyors of Connecticut, to improve our methods of practice to the point where we are automatically in conformity with the uniform standards of CALS and the State Board.

By doing so, we can achieve de facto professionalism and, at the same time, stop unwarranted competition of the basis of lower fees based upon doing less work.

This is the fulcrum on which our professional leverage moves. This is where the surveyor's responsibility to the public is declared or certified. This is where his knowledge of existing laws regarding real property, mathematics, mensuration, at *least* title verification, if not real searching, finds its shining moment and its greatest responsibility.

But this is also the moment of truth when the surveyor, as a professional, is separated from the surveyor practicing his art as a technician.

EDITORIAL COMMENTARY:

It becomes obvious, as one studies the situation, that the legal fate of Connecticut surveyors is not altogether out of their hands. A unilateral action of all practicing professional land surveyors to decline from certifying mortgage descriptions without performing an actual survey is of the utmost importance. As no definite standards have been legally accepted to this date, the only protection the surveying profession has against liability in regard to errors and omissions relating to problems of title, is to insist on performing an actual survey, certify only what he has personally determined and generally upgrade the quality of work he performs, as well as the conditions under which he accepts it.