



As previously discussed, there are many papers signed at the closing table. In addition to the deeds and mortgages signed by the purchaser or borrower, there are various forms of affidavits to be signed. Among these forms are affidavits that enable us to insure over certain title issues. One common title issue, or exception, addressed prior to closing and made a part of the title policy, is the analysis (or “reading”) of a survey covering the insured premises.

Title surveys are drawings by licensed land surveyors of the property lines and the improvements that lie within these record lines of title. Surveys disclose boundary issues, encroachments onto or by the subject premises, violations of setback lines and/or setback or zoning requirements, and variations of lot lines. In other words, surveys disclose adverse boundary matters affecting the subject property or those of adjoining properties that adversely impact the subject property. Surveys are also crucial in determining whether the boundaries of the actual premises match the description set forth in the last deed of record.

For purchase transactions it is customary for the buyer’s attorney to request a new survey of the property, or in the alternative, to ask us to perform a company inspection based upon an existing survey of the property. Company inspections are done by individuals who go to the property site and visually compare what they find on the property to the actual copy of the survey. These individuals will note the changes and we will list those changes in the survey reading in the title report.

In the case of a refinance, or in certain cases where a survey is not requested on behalf of a purchaser and a mortgage is being given, we provide a “Survey Endorsement”.

One condition to the Survey Endorsement is that it is only issued in a one to four family residential transaction. Another pre-requisite to issuing this endorsement is that a “Survey Affidavit” must be signed by the owners, or sellers, of the property. It states that they are the legal owners of the property and that no additional interest in the property exists, either by a tenant or pursuant to a land contract of sale. Should the statements made in this affidavit be false, and a title claim arise after the closing regarding an adverse situation such as an ongoing boundary dispute between the owner and the adjoining neighbor--wherein the owner has actual knowledge of potential litigation, for example, we as title agents would use this affidavit and enforce it in a court of law to attempt recovery of monetary loss due to a title claim payout. As the survey affidavit states: *“There has not been any dispute with any neighbor with respect to the locations of any structures or our property lines”*.

Another statement in the Survey Affidavit is: *“That the structures have been in existence in their current condition for a least two years”*. When we issue the title policy along with the Survey Endorsement, we rely upon the facts presented in the Survey Affidavit.

If more than two years have gone by and an adverse matter such as a pool that was built 5 feet over onto the adjoining property owner in the rear, without it being challenged by the adjoining owner, the risk undertaken by the title company/agent is somewhat minimized, though not entirely eliminated.

Another survey issue addressed within the Survey Affidavit is *“That none of the improvements on structure on structure lie within the bed of XYZ Street.”* Had the building on the property been situated 10 feet onto the bed of the street, it is possible for the City of New York to come onto the property and direct the removal of that portion of the property which violates the street line .

Another representation made in the affidavit is: *“We are unaware of any judgment, encumbrance, or lien on the premises or of any federal tax lien outstanding.....we are currently not in bankruptcy.....No claim has been asserted of any right in or title to the insured premises, nor of any defect in our title or interest therein not shown as an exception to the title report”.* Basically, this language affords us a greater comfort level in taking the Survey Affidavit with minimal risk in the survey coverage.

This Survey Affidavit is required at closing to allow us as title agents to provide additional affirmative insurance to the lender. It states that the *“policy insures against loss or damage by any violation, variation, encroachment or adverse circumstance that would have been disclosed had an accurate survey been provided.”*

It is always beneficial to know what your client will be signing at closing and the representations being given thereto. It allows you to explain to your client why the particular statement is being set forth in the affidavit, and minimizes the anxiety of the client during a very intimidating process.