

2005-2006 UPDATE COURSE

SECTION 5

THE BENEFITS OF SURVEYS

OUTLINE:
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LEARNING OBJECTIVE: After completing this Section, licensees should have a better understanding of the different types of surveys, the benefits a current survey affords, and the use of surveys.

Surveyors

All land surveyors in North Carolina must be duly licensed by the North Carolina State Board of Examiners for Engineers and Surveyors pursuant to Chapter 89C of the North Carolina General Statutes. Land surveying may encompass a number of disciplines including geodetic surveying, hydrographic surveying, cadastral surveying, engineering surveying, route surveying, photogrammetric (aerial) surveying, and topographic surveying. A professional land surveyor is only to practice within his/her area of expertise. Gathering information necessary to provide the requested service may be accomplished by conventional ground measurements, by aerial photography, by global positioning via satellites, or by a combination of methods.

Types of Surveys

Different types of surveys include:

- **Boundary Survey:** includes only the boundaries of a property according to the description in the recorded deed and improvements along the boundaries, e.g., fences, drives, streets, etc. It does *not* include improvements inside, but not touching, the boundaries, e.g., buildings, sheds, drives, etc.. A map showing the boundaries and improvements along the boundaries is prepared and any missing corner markers are replaced.
- **Location Survey:** includes everything found in a boundary survey in addition to the location of all improvements inside the boundaries. Typically this is the type of survey a lender may require or a buyer might want when purchasing property.

- **Topographic Survey:** locates not only all improvements, but also the topographic features of the land, such as embankments, land elevations, contours, trees, water courses, road ditches, utilities, etc. This type of survey might be used with a location survey to prepare a site design map, a subdivision map or an erosion control plan.
- **Site Planning Survey:** uses boundary and topographic surveys as a base from which to design future improvements, such as a residential subdivision, a shopping center, new streets or highways, etc..
- **Subdivision Survey:** frequently includes a topographic survey of land which will be divided into smaller tracts or lots which may also be used for site design of lots, streets and drainage and which is for construction and recording.
- **Construction Survey:** stakes out buildings, roads, walls, utilities, etc. and includes horizontal and vertical grading, slope staking and final “as-built” surveys.
- **ALTA/ACSM Survey:** often a very detailed survey required by lenders, the request for which must be in writing and include all of the deeds and easements affecting the subject property, as well as deeds to adjoining properties.

(The foregoing definitions are based on information contained in “Facts You Should Know About Having Your Land Surveyed” published by the NC Society of Surveyors, Inc.)

Why Have a Survey?

In a vast majority of residential sales transactions where the purchase is being financed by a third party lender, the lender often will require a current survey by a licensed surveyor. However, even if the purchaser is not required to obtain a current survey, there are good reasons why the purchaser should consider obtaining a survey.

Buyers who order a survey pay a relatively small price, particularly when compared to the investment they are making, for peace of mind. Rather than relying on the seller’s statements concerning boundaries or improvements added to the property since a previous survey was done, a buyer who invests in a survey will obtain written verification from a licensed professional of the boundaries and location of all improvements affecting the subject property. The buyer may hold the surveyor accountable for the accuracy of his/her representations. The survey will identify any encroachments, whether fences, driveways, landscaping, outbuildings, or easements, and will identify any issues such as minimum building lines or setback violations or whether any part of the property is in a flood zone. A current survey will allow the buyer to knowledgeably determine where s/he may wish to locate certain improvements or build fences or landscape without violating an adjacent owner’s property rights.

Licenses should refrain from attempting to interpret surveys for others, instead redirecting questions to the surveyor. Licenses also should exercise great caution concerning statements they may make when showing property as to various features, improvements and boundaries. For example, a buyer asks his agent where the back lot line is. The agent, holding a

copy of an old survey, replies “I don’t know. My guess is that it’s where that row of trees is planted.” In fact, the back lot line is much closer to the house than the row of trees and the back yard thus much smaller than the buyer thought. Should the buyer have relied on the agent’s statement? Probably not, phrased as it was. May the buyer try to claim misrepresentation? Possibly, even though there may no foundation for the claim. What should the agent have done? How about suggest that the buyer have his own survey or at least talk to a surveyor if the size of the lot and knowing where the boundaries are is important to the buyer.

In another case, a buyer who ordered a survey learned pre-closing that 199 out of 200 15-foot tall redtip bushes which formed a lovely hedge buffer shielding the buyer’s property from a neighbor’s poorly maintained and unsightly property were actually on the neighbor’s property. The first bush was on the property line, but the remaining 199 skewed slightly to the right and were planted on the neighbor’s land, meaning the neighbor could cut them down, or ask the buyer to remove them, at any point in the future. As it turned out, it was not an issue for the buyer, but at least the buyer was forewarned and aware that the hedge might be removed in the future.

What is the Cost?

The cost of a survey will vary and is influenced by factors such as the size and shape of the property, the site conditions (e.g., heavily wooded, dense underbrush, waterways, or relatively open) and when and who last surveyed the property. For existing construction in established neighborhoods, the cost of a survey for one lot might be around \$350 to \$500. If the purchaser is paying \$150,000 for the property, a \$500 survey still is only .33% of the total investment. If the purchaser is paying \$300,000 for the property, the proportionate cost for the survey is only .16%. In both instances, well under one-half of one percent. A worthwhile investment? A question each buyer must answer for himself or herself.

Use of Surveys

To whom does the survey belong? That is a difficult question involving rather complex legal concepts which most licensees have no real reason to know. Some would argue that surveys are subject to copyright protection; others argue that it is a work for hire which may be original, but generally is not *creative* and thus not subject to copyright. It could well be mixed, with some types of survey eligible for copyright protection while other types are not. Either way, copyright protection is not automatic; it must be asserted. Thus, a survey which does not have the © symbol and date on it is not protected as no copyright interest has been claimed. Recording a survey in the register of deeds allows anyone to copy the survey as a public record, but not necessarily to profit by selling copies.

It seems unlikely that a seller would be in jeopardy by displaying to prospective buyers a survey the seller ordered when s/he purchased the property 15 years earlier. What would ruffle surveyors’ feathers is if the seller allowed the buyer to use a copy of the seller’s old survey, in conjunction with an affidavit from the seller that s/he has made no changes to the property, to submit to the buyer’s lender in lieu of a new survey. Such use most likely would be inappropriate, even if not subject to copyright protection. In this situation, the surveyor has

absolutely no liability to the buyer in the event there is an error in the survey, as there is no privity of contract between the surveyor and this buyer.

Could a property owner use his/her old survey coupled with an affidavit when refinancing his/her mortgage or obtaining a home equity loan? Uncertain. One way to resolve the issue of permitted uses is to address it in the employment contract between the surveyor and the person ordering the survey. For example, the contract may say that the property owner may make copies for his/her own use and benefit but may not allow others to use the survey for lending purposes.

Licensees may wish to suggest that a person consult an attorney if the individual has questions about what s/he may or may not do with a given survey.