



**CHICAGO TITLE INSURANCE COMPANY  
NORTH CAROLINA**

**Owners Need Surveys - Still!**  
**(Or, The Risks To You and Your Client of Lender's "Survey Coverage Without a Survey")**  
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You have heard it a hundred times. In gathering information about a closing, you ask either the real estate broker or the owner about whether you should obtain a survey. Their response: "My broker told me I do not have to have a survey. The title insurance company will cover it." To assist in lowering costs, the practice of providing lender's coverage without a new survey was developed in residential transactions. In the absence of a current survey, the customary practice is to issue the loan policy without a survey exception. And now this has expanded into commercial properties (under \$5 million) as well! But the owner will not be covered, even in those situations where the lender might be! The owner's policy contains an exception for easements, setbacks and other matters which would have been shown on a survey. Below are a few examples of situations that arise all too often where the owner really needed a survey, for title insurance and other reasons! In many of these cases, the lender could have avoided delinquencies and other problems if they, too, had obtained an actual survey to identify problems at or before closing.

1. **Access:** Does the owner have "reasonable," "legal" or any right of access at all? Is this clear from the public record? Is the physical access within this legal access? Some examples: The driveway is actually across the property line on the neighbor's property or in an exclusive right-of-way for the benefit of an unfriendly neighbor. Physical access is over a private road, even though they abut a public road, and no one is sure who is responsible for maintenance of the private road, if anyone. Does your owner need a search of and title insurance coverage for a critical appurtenant easement? Is the access actually located in (but not recorded in the Registry of) the adjoining county? (NOTE: Physical access used may not be the same as the "legal" or "reasonable" access covered by a title policy.)
2. **Acreage:** Was actual acreage important to your owner in determining the value of the property? Will the sale violate a subdivision ordinance? Loss through an acreage discrepancy of even one acre of land to be developed for an office park may have serious financial ramifications for your client's development plan!
3. **Waterfront?** Does the property extend to the lake's high water mark or is it just lake view?. Have creeks moved, rivers or beaches eroded? Is there any filled area? Or are there areas that have been excavated (for a boat dock, for example) placing the areas outside the lot's boundary which the plat sets at an elevation and not a location (common on power company lakes)? Is the lot even above water?
4. **Utilities:** Electrical, sewer or other rights-of-way, either underground or currently underutilized, whose location or size would be clearly apparent on a survey, may inhibit or prevent contemplated construction or replacement of improvements on the property. Wells or septic fields may be located on other nearby properties, for which appurtenance conveyances, easements and maintenance agreements may be needed to protect your buyer.
5. **Road rights-of-way:** Where are your improvements in relation to the actual state- or city-claimed right-of-way, including gas pumps, signs, needed parking areas?
6. **Setbacks, buffers:** Can you identify and protect your buyer with regard to any violations?
7. **Governmental exclusions:** Illegal subdivisions, revised flood zones, street widenings or other governmental matters not covered by a title insurance policy may be shown or

- made apparent on a survey. New sidewalks or sewer lines (indicating potential assessments not yet billed) may be indicated.
8. **Boundary lines:** Remember the rules of construction. Abutters' claimed boundaries are a "permanent monument" with clear priority over metes and bounds. Do your owner's expectations match these presumptions? Is it even the same "dirt" your owner thinks they are buying? Are the parties contracting for one rental home, where the old legal description into the seller actually included two homes?
  9. **Wrong property altogether!** The owner has good title to (and a good title policy coverage on) Lot 1 of Happy Homes Subdivision. Unfortunately the house they thought they bought was on Lot 2. And by the time this was determined, Lot 2's title was in chaos after intestate decedents' estates, minor heirs and foreclosures had intervened.
  10. **Old improvements:** Existing building in a very old subdivision was substantially destroyed by casualty. It could not be rebuilt in compliance with current zoning ordinance without seeking (and obtaining) a variance, the outcome of which is uncertain.
  11. **Old plats:** One of last undeveloped lots in a 1920's subdivision was purchased (without survey). Several years later when the owners planned to begin construction, a new survey using new technology reflected the remaining lot area to be 10% less than originally thought, causing serious revision of the building plans and substantial cost.
  12. **Encroachments by others:** A neighbor's stone wall cuts off 10' strip from the side of the owner's property. Or an old driveway still in use for access to mobile home in the woods actually crossed rear portion of lot in new upscale neighborhood. (FYI: Trespass is not a title issue, but a tort!)
  13. **Encroachments by your owner:** New owner of adjoining property demands removal of fence encroaching onto their property.
  14. **Improvements:** Is this a mobile home, requiring verification of title cancellation, permanent foundation, property tax listing, etc.? Is there evidence of recent construction which might indicate a risk of mechanics' liens arising post-closing?
  15. **Marketability and re-sale:** Maybe your owner does not care, but the next person purchasing from them may care enough to back out of the contract or at least delay the closing until a matter can be resolved – at your owner's expense!
  16. **Liability:** Most importantly, if the owner does not obtain their own survey, they have no privity with the surveyor – and no claim against a surveyor for any inaccuracies in a prior survey.

The surveyor is a critical link between your legal assessment of title and the actual "dirt" your client believes they are purchasing. The surveyor can save you and your client untold misery in the future. Many of the above cases have also caused losses to lenders, due to delays in foreclosures, joinder as necessary parties in lawsuits or disruptions in their borrowers' desire to make payments pending resolution of problems, often not covered by their title policies because not purely title problems.

So, the next time your owner says "my broker told me . . .," perhaps you'll have a few more examples to add to your stock of advice to them! And maybe a Waiver of Survey Affidavit form such as the attached might be in order!

**Happy Closings!**