
10 Common Survey Issues Relevant to Title Problems

Description



10. History of Surveying in the Colonial Era

- Surveys in the colonial era were quite inadequate due to the lack of qualified personnel and the use of poor equipment.
- The most qualified surveyors were busy mapping the country and plotting rivers, which was the main source of transportation of that time.
- The surveys performed for private transactions were done in a part time manner by school teachers and preachers who were inefficiently trained in surveying; this caused major problems in the original Land Grants by the King.
- The colony of North Carolina, for example, consists of 55,000 square miles. Patents were issued for 100,000 square miles thus giving more than one owner per square mile in that colony. There were twenty-four counties in Georgia which contained 8,718,000 acres. Grants for 29,090,000 acres of land were given thus creating 3.3 owners per acre in those counties. These problems still exist today. That is why it is important to obtain title insurance when buying property.

9. Boundary Conflicts

- Boundary conflicts are caused by poor legal descriptions and/or the age of the survey in an effort to recover the monumentation called for in the deed.
- Many descriptions contain a patent ambiguity in the description itself, such as a missing description of a line or two different distances for the same call in the description. The latent ambiguity can resolve the patent ambiguity only by conducting a new survey and discovering which distance is correct.
- Boundary conflicts are also caused by conflicting monumentation and the conflicting area should be shown on the survey as an area of conflict to be resolved by proper legal proceedings if necessary when the two adjoiners cannot agree to the boundary line.
- Boundary conflicts can be resolved without litigation by boundary line agreements. The boundary line agreement is used when the line between two adjoiners cannot be established due to missing monumentation and poor legal descriptions. In order to resolve this conflict, a new deed description between the land owners should be agreed upon.

8. Physical Encumbrances

- The property owner usually creates physical encumbrances. Including the building of additions (being built onto the building restriction lines), enclosing carports (which makes them livable space and violates side yard restrictions), and building pools, decks, and other out-buildings over existing easements. Adjacent owners may also cause a drainage encumbrance when building additions and doing landscape work.
 - Note: Easements are considered encumbrances.
- Encroachments are caused by adjacent landowners who are buildings improvements such as: fences, garages, additions, and driveways onto adjacent properties. These encroachments can lead to an adverse possession if they go unnoticed. The settlement survey will identify these problems and aid the settlement attorney in resolving these issues with the adjacent owner.

7. Types of Conveyances

- Sequential Conveyance: Occurs in metes and bounds descriptions and carries senior and junior rights based on the order of time the conveyance was made from the parent tract.
- Example: Mr. Jones is the grantor of a 40-acre parent tract, he sells Mr. Smith 20 acres in 1896, and then conveys Mr. Johnson the remaining 20 acres in 1925. The parent tract was surveyed in 1930 and only contained 35 acres. Mr. Smith would retain 20 acres by senior rights and Mr. Johnson would receive the remaining 15 acres. If the survey contained 42 acres then the grantor, Mr. Jones, would retain the remaining 2 acres based on the contents of a proper legal description.
- Simultaneous Conveyance: Occurs in the dedication of subdivisions even though the lots may be sold at different times, they all have equal rights. The perimeter of subdivision boundary lines between two adjoining subdivisions is subject to senior and junior rights when a deed gap or overlap is discovered at the time of the survey.

6. Building Setbacks

- Building setbacks in most subdivision properties are shown on the recorded subdivision plat if they are recent. Setback requirements for older subdivisions may be subject to the restrictive covenants of the subdivision and the current zoning requirements of the municipality it is located. Metes and bounds parcels are subject to the current zoning requirements or the restrictions in the deed. These are cases where subdivision setbacks differ from the current zoning requirements; these must be considered in the building of any new projects and in most cases, the more stringent setback would prevail.
- Restrictions for the property may be shown in the covenants of the subdivision as well as current zoning and land use requirements by the municipality. The title insurer should carefully examine all restrictions in redevelopment and rezoning projects. Covenants or restrictions in an old subdivision sometimes retain that if a majority of the remaining homeowners do not want a redevelopment concept to take place they can overrule it.

5. Deed Gaps and Deed Overlaps

- Deed Gap: Occurs when parcels of land surveyed between two adjoining properties have a gap between them due to poor legal descriptions or surveys.
- Deed Overlap: Occurs when adjoining parcels overlap due to poor legal descriptions or surveys. Deed overlaps are also subject to senior and junior rights. This problem occurred often in the early surveys of the colonies. They were the main reason the United States went to a public land system in the western part of the country.

4. Legal Descriptions – Potential Pitfalls

- Landowners often prepared legal descriptions in the early years of the country without the benefit of a land survey or an attorney, resulting in poor at best legal descriptions. They often called for adjoiners, such as 300' in a southerly direction to Jones' line, without any monumentation proposed thus making the location of the land with legal certainty a real problem. Ambiguities were also created in the deed itself thus creating more problems.
- Legal descriptions today are written by surveyors or real estate attorneys, which have helped create accurate legal descriptions. The law requires that conveyances should be conveyed as follows:
 1. Be in writing.
 2. Show grantors and grantee.
 3. Show interests being conveyed.
 4. Showing intent to convey.
 5. The described parcel should be locatable.
- **Potential Pitfalls:**
 1. Legal descriptions are written with junior calls for adjoiners instead of a call for senior adjoiners, which helps in title identity.
 2. Courses and distances for the same line differ from the senior adjoiner
 3. Missing courses and distances.
 4. Ambiguity caused by proportionate conveyances; such as lots 10 & 11 and the east 20' thereof.

5. Area discrepancies.
6. Description does not mathematically close.

3. Prescriptive Easements

Roadways & Improvements not shown on plats:

- A prescriptive easement is a right of use only that is consistent to the owners' rights and does not convey title.
- The prescriptive easement is subject to six legal requirements before it can be granted by a court:
 1. The use was open.
 2. The use was notorious.
 3. The use was uninterrupted.
 4. The use was peaceable for the statutory period of time (20 years in most states).
 5. The use was under a hostile claim of right.
 6. The use was adverse.

2. Outlet Roads and Ingress/Egress Easements

- Actual width of outlet road or ingress/egress easement does not agree with the recorded width.
 - Example: 20' outlet road called for on plat and the actual width is 30'.
- New subdivisions being created may have left the outlet road and ingress/easement off the plat or the roads were built outside the recorded area as shown on the plat and may run across the adjoiner's property.
- Ingress/Egress easements or outlet roads that were meant to be vacated because the new subdivision made them unnecessary were never vacated thus causing major title problems.

1. Proper Deed Reference

- The worst case I have ever experienced occurred when the property being sold reflected the wrong lot number and there was no house on the property. This happened when a 16 lot subdivision was created and was never built. The property was split up between the two partners with one owning lots 1-8 and the other owning lots 9-16. There was one house built in the subdivision. The buyer declined to have a survey done at the time of sale. I was called a year later to stake out a two acre property referred to as lot 9 of said subdivision. The actual house was built on lot 8 being only one acre and did not belong to the seller.

Category

1. Underwriting

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1. featured

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