

Straight Talk Title

Description

Surveys & Title, Why We Need Them Both



VLTA Examiner

We all know, in our profession, that we can search the title to a piece of

property and come up with the owners of the property, in most cases, with careful research. What we can't do is visually see the property to confirm that what we think we've found about that property is what's really located on that property.

This can cause several problems that are real issues we need to consider. For example, we have no idea if the exceptions we've included in the commitment and policy are actually located on the property. Therefore, we can only rely on what's recorded in the Land Records. Likewise, the customer has no way of knowing if what they saw when they went out and looked at the home, the property and the improvements that were sitting there are really all part of what they are purchasing. And finally, it's all but impossible to be able to locate where the easements of record are without a survey.

So, these two, the title search and a survey of the property, clearly need to go hand in hand. Unfortunately, what has happened is that there has been lots of pressure by consumer groups pushing the lenders to stop requiring the survey because of the expense. Because of this, our industry has been tasked with accepting an affidavit from the seller and insuring over any possible encroachments for the lender. This clearly protects the lender but leaves both the consumer and potentially the title companies with lots of risk! As the old saying goes! *Those who have the gold make the rules*, which really applies here. Lenders have conceded to the pressure and now don't require a survey to protect their insured interest because the title insurance underwriters agreed collectively to rely on the seller affidavit confirming there are no encroachments.

As I said, the consumer/buyer is the big loser here. We all know they really don't understand what we do anyway and this is an area where they are very vulnerable. Buyers are told that they don't need to spend their money on a survey because either the seller had a survey and gave them a copy or the seller had a survey and promised to give them a copy after closing but never did or they are

assured by everyone at the closing table that you just don't need to spend the money on that• particularly if they are in a planned subdivision.

Let's talk about that last one for a minute, if they are in a planned subdivision there is a huge misnomer that everyone's property lines are very defined and there won't be any problems. Wrong, this is the farthest from the truth! Honestly, most of the survey/title issues we have seen have been in planned neighborhoods where the property lines aren't correct and structures are built over the property line or fences aren't built on the correct line or are over the line and need to be moved. When this happens, the consumer loses. They must spend money either moving something installed incorrectly or hire counsel to protect them and fight to have something incorrectly installed on their property moved. All because they didn't get a survey before closing, where they would have seen the encroachment and had the opportunity to discuss it with the seller. Since they didn't have a survey done, they now have no title insurance protection because the policy excludes items that could be detected by a survey.

WHO EXPLAINS THIS TO THE CONSUMER? Another area in which we need to take charge and protect that ownership as we do in so many other areas. This is one of those things that even the realtors and lenders don't really understand that protection is not there until a problem arises. Instead, they are taught that this is the way everyone does it and they advise their clients they don't need it and don't spend the money on a survey.

How many times have you had an instance where a buyer called you after closing because when they were installing a fence they discover their neighbors fence is on their property? Or even better, sometime later during their ownership they have a survey done so they can build a garage and find out their neighbors shed, that is a permanent fixture in concrete, is over their property line? Then your buyer is very surprised and angered to find out their Owners Title Insurance that you sold them at closing doesn't cover them for this? Now they must negotiate an agreement with their neighbor alone. This could be an easy fix or a very costly battle that they have no protection for.

Our job is to insure the Lender and the Buyer with title insurance and in doing that, we have a moral obligation to ensure the buyer knows not only what coverage and protection they do have, but also what coverage and protection they DON'T have. Surveys, whether a location or a boundary survey, are so undervalued in the closing process and yet, they provide us all so much insight into the property being transferred.

To learn more about this and many other topics Connie speaks on and to stay in touch with new resources to use in your business click here www.conniefuksa.com and sign up for our emails. We promise not to spam, we want to help you succeed!

Connie Fuksa



Connie Fuksa is an energetic speaker and facilitator who is on a mission to raise

awareness of the value and purpose of title agencies so home buyers can make more informed buying decisions. As the head of her own title company for nearly 30 years, Connie knows the challenges of the industry, but also sees the opportunities. She is pioneering a new way of doing business by empowering other title companies to grow passionate teams and better communicate with home buyers. Connie also produces a regular broadcast that provides advice and information directly to home buyers and new home owners. Outside of her work, Connie rides Harleys and loves to garden. She's been married for over 20 years and is proud mama to a son, who's a Navy sailor, and two very active pups.

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Date Created

2018/04/03

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