SURVEYS, LEGAL DESCRIPTIONS AND PLATTING
by
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WHY GET SURVEYS?

The survey exception from Schedule B of the title commitment and policies:
“Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements.”

“Old” Procedural Rule P-2 provided:
“In either an Owner or Mortgagee Policy, when the Insured desires to have amended the exception as to area and boundaries, (i.e. Item 2 of Schedule B) to delete all save “shortages in area”, the Company may, if it considers the additional risk insurable, amend such exception upon being paid all expenses in connection with a complete current survey made by a surveyor of its selection... and in that event shall amend such exception by indicating same in Schedule B of the policy or by endorsement as provided herein upon payment of such expenses, and the premium prescribed in R-16 in the case of an Owner Policy.”

HOW DOES THE COVERAGE CHANGE?

What is actually removed from the exception:

“Any discrepancies or conflicts in boundary lines, or any encroachments or protrusions, or any overlapping of improvements”

This change in coverage is very extensive and covers a huge number of potential issues. The deleted language is drafted broadly so that without the amendment of the survey exception, referred to as the “area and boundary deletion” the improvements located on the property are not connected to the policy coverage.
WHAT IS A SURVEY?

A. What we refer to as a “survey” is actually a survey plat. It is a drawing of a specific property, showing the boundaries, dimensions, corner markings, the locations of easements, building lines and improvements. It is part of the work product of the surveyor, produced from an on the ground survey of the property.

B. Surveyors are licensed by the Texas Board of Professional Land Surveying. They must meet certain educational and experience requirements, have standards of practice that they comply with, and are subject to disciplinary action for failing to meet those standards. Most surveyors are “Registered Professional Land Surveyors”. There is a higher standards for “Licensed State Land Surveyors” that do work to the standards of the General Land Office.

WHY GET A SURVEY?

A. Acquiring a survey give you a better idea of the property boundaries, the location of easements, the location of improvements, whether there are any boundary issues and whether there are any encroachments or protrusions.

B. This may be easier to understand if you think of some of the very bad things a survey can reveal:
   1. There is manhole in the driveway and there is no easement you know of
   2. There are graves or headstones on the property
   3. There is a storm sewer inlet in the front curb and an outlet pipe in the ravine behind the house
   4. The house isn’t on the lot

ELEMENTS OF A SURVEY

A. Surveyor’s signature
B. Surveyor’s seal
C. Surveyor’s certification
D. Boundaries
E. Boundaries of adjoiners, if different
F. Corner markings
G. Dimensions
H. Improvements
   1. Fences
   2. Buildings
   3. Driveways and roads
   4. Utility lines
SURVEYS

THINGS TO LOOK FOR

A. Monuments, found or set?
B. Air conditioning units
C. The curb or edge of the road
D. Telephone or cable boxes
E. Electric transformer boxes
F. Water meters
G. Electric meters

USING AN EXISTING SURVEY

From the Texas Insurance Code:
Sec. 2704.102. RULES AUTHORIZING ACCEPTANCE OF EXISTING SURVEY.
(a) The commissioner by rule may authorize a title insurance company providing area and boundary coverage to accept an existing real property survey as provided by this section.
(b) A title insurance company may accept an existing real property survey rather than requiring a new survey if, notwithstanding the age of the survey or the identity of the person for whom the survey was prepared, the company is willing to accept:
   (1) evidence of the existing survey; and
   (2) an affidavit prescribed by the commissioner that verifies the existing survey.

USING AN EXISTING SURVEY

From the Basic Manual, Procedural Rule P-2:
In either an Owner or Mortgagee Policy, when the Insured desires to have amended the exception as to area and boundaries, (i.e. Item 2 of Schedule B) to delete all save "shortages in area", a title insurance company may accept an existing real property survey and not require a new survey when providing area and boundary coverage if the title insurance company is willing to accept evidence of an existing real property survey, and an affidavit verifying the existing survey, notwithstanding the age of the survey or the identity of the person for whom the survey was prepared. If the transaction involves Residential Real Property, the affidavit verifying the existing survey shall be the Form T-47 Residential Real Property Affidavit.
USING AN EXISTING SURVEY

Stewart will accept an existing survey, regardless of age, accompanied by the T-47 affidavit, with the word “Residential” removed from the affidavit title if the property is non-residential.

If the T-47 indicates that changes have been made since the survey, the scale of the property, the existence of easements or setbacks, and the nature of the changes are all relevant as to whether a new survey is needed or not.

LEGAL DESCRIPTIONS

The test of a legal description is whether it is sufficient to allow a surveyor to go out onto the property and to locate the boundaries of the property. A recorded document can reference other recorded documents in order to provide the information necessary for the surveyor to locate the property.

Some that work:

Lot 4, Block C, of Western Oaks Subdivision, a subdivision in Henderson County, Texas according the plat of record in Vol. 15, Page 23, Plat Records of Henderson County, Texas.

12 acres of land, more or less, out of the Santiago Del Valle Grant in Travis County, Texas and being the same land described in that deed of record in Vol. 2413, Page 327, Deed Records of Travis County, Texas.

LEGAL DESCRIPTIONS

Some that work:

23.15 acres of land, more or less, out of the John Gunther Survey, Abstract No. 329 in Hall County, Texas, as more fully described by metes and bounds in the attached field notes (and the field notes are attached).

Lot 7, Block 123 of the Original City of Austin, in Travis County, Texas, according to the map or plat of the Original City of Austin filed in the General Land Office of the State of Texas.
LEGAL DESCRIPTIONS

Some descriptions that do not work:

742 Wellesley Drive, Cleburne, Texas
8 ac, J Sloan #812, Acct No 8473923-48341
See Attached Exhibit A (which is not attached)

LEGAL DESCRIPTIONS

Some descriptions that may work:

The east 10’ of Lot 7, Block 4, of Sandy Oaks Subdivision....
The east half of Lot 7, Block 4, of Sandy Oaks Subdivision...
The east half of that certain 120 acres of land, more or less,...

LEGAL DESCRIPTIONS

Factors to look at with questionable legal descriptions:

Is the property rectangular?
Is the property on a north/south orientation or is it tilted?
Has the description been used historically?
Stewart Title Guaranty Company prefers to have field note descriptions checked by a computer plotting program in order to check closure. However, many field note descriptions can contain errors that are not fatal to the description. The test, again, is whether a surveyor on the ground could successfully recreate the boundaries of the tract. That is not an issue of mathematical closure.

Consider: acreage tract is a rectangle, three sides are correctly described but the fourth side is short, long or off the correct direction. Using his professional judgment, a surveyor is likely to extend, shorten, or redirect this line in order to “close” the box.

When looking at a field note description and attempting to recreate it on the ground, one of the things that a surveyor looks at is the “priority of calls”. This is a prioritizing of certain aspects of the description, the higher the priority, the more likely these aspects of the description will be weighed. The priority is:

1. Natural objects, such as centers of streams, river banks or oceans
2. Artificial objects, such as iron pins, rock mounds, marked trees, concrete markers, cotton gin spindles, or car axels
3. Direction or course of a line
4. Distance
5. Quantity

A field note description is destroyed if the starting point cannot be located. This can sometime happen when sufficient detail is lacking or someone has accidentally removed an introductory paragraph.

Bad beginning points:

- Beginning at the southeast corner of this tract...
- Beginning at a iron rod in the southeast right of way line of FM 1302...
- Beginning at the southeast corner of Hodges’ hog pasture...
Recording a subdivision plat allows reference to a recorded document that contains detailed information on a property’s boundaries and dimensions. It provides a shorthand means of accurately describing a property.

In Texas both municipalities and counties have authority to require the filing of subdivision plats. For municipalities it is in Chapter 212 of the Local Government Code and for counties it is in Chapter 232 of the Local Government Code.

Within the limits of a municipality and within its Extra Territorial Jurisdiction (ETJ) a city can require the filing a subdivision plat for virtually any division of land, with some exceptions for tracts over 5 acres. The ETJ of a municipality is an area within a certain distance of the municipality’s city limits. It varies by city size, topping out at 5 miles.

Counties can generally control the subdividing of land into tracts of less than 10 acres. There is an exception for conveyances to family members.

The platting requirements for both municipality and county are almost identical, with some minor wording differences, for cities it is:

(a) To be recorded, the plat must:
   (1) describe the subdivision by metes and bounds;
   (2) locate the subdivision with respect to a corner of the survey or tract or an original corner of the original survey of which it is a part, and
   (3) state the dimensions of the subdivision and of each street, alley, square, park, or other part of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the street, alley, square, park, or other part.
PLATTING

Once platted, a subdivision or a part of a subdivision can be "re-platted" and the re-plat will control over the original plat. Occasionally you may see two lots re-platted into a single lot.

An "amended" plat can be filed to correct errors in plat, such as boundaries between plats.

However, neither a re-plat or an amended plat moves actual ownership lines, so that if you have different lot owners who are moving a boundary line, they may still need to convey property to each other and liens may need to be released.

THANK YOU!

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