

# Who Needs a Survey?

Whether you are buying, selling, or acting as another's representative, there are several reasons a land survey may need to be performed in real estate transactions.

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**T**here is no way around it. Buying property is an expensive undertaking, and investing in real property is often the single largest investment an individual will make in their lifetime. It involves acquiring rights and interests in real property. The client sees the attorney, title company, and even the Realtor as experts in protecting different aspects of their interests. This all adds to the cost of the transaction. It's expensive, and as Will Rogers once said, "They ain't making any more of it." Knowing a property's boundary is of fundamental importance in nearly all real estate transfers. Yet, experience tells us land surveying and boundaries are one of the least understood and most overlooked elements.

Whether you are buying, selling, or acting as another's representative there are several reasons a land survey may need to be performed in real estate transactions. A Realtor, a title

company, county recorder, county assessor, and even your attorney cannot identify where the property boundaries are. While the surveyor works for the buyer or the seller, he is not an advocate for a client. In fact, we do not serve our client at all if we can be persuaded to present less than the truth. A licensed land surveyor is responsible equally to his client and the client's neighboring landowners for accurately locating existing boundaries. He is also charged with the accurate location, setting visible monuments at boundary corners, and describing new lines that a landowner may authorize him to create.

The only professional legally authorized to do this is the licensed land surveyor. The surveyor is not concerned about whether he can exactly reproduce the measurements of the previous surveyor. His concern is that he can find or reproduce the exact corners that were originally set. To correctly replace missing corners,

he must have a firm foundation in property law. The correct application of the law means that if the property ends up in court, the court would agree with the boundary surveyor's conclusion. What we really do as land surveyors is protect the property rights of our clients and their neighbors. We do that by understanding and applying land law and by evaluating evidence. It is the individual who is not served, and possibly harmed, by not consulting the licensed surveyor.

Most people investing in real property are buying homes and businesses. Very often, (and to their detriment) they do not know where the boundaries of the property are.



The land surveyor renders a highly technical and complex service and is the recognized expert in matters pertaining to property boundaries.

There are several fundamental questions that should be asked in real property transactions to see if a survey is needed. Some of these are:

#### **What is the Property's Boundary?**

In its most simple terms, it is the point or line where the rights and interest in real property stop, and those of another begin. This is the realm of the land surveyor.

#### **What is a Boundary Survey?**

The surveyor examines the current and historic record description of the property. No boundary exists by itself. All boundaries are affected by, and

have an effect on, the boundaries of the neighboring properties. The surveyor also examines the records of all the adjoining properties, and any implied record such as maps, plats, and drawings. The surveyor uses technical equipment, scientific principles, legal principles, an understanding of boundary case law, and the intention of the parties as expressed in the deed to position himself in the vicinity of the boundary. That is where the search for boundary evidence begins. The objective is to accurately determine the original location. Accuracy is not how well we can measure cited courses and distances. Accuracy is how close we come to finding and perpetuating the original bounds of the property.

#### **What isn't a Boundary Survey?**

A survey prepared for an architect or consulting engineer may have been accomplished to standards very different from those required for a boundary survey. An "as-built" survey is merely a detailed map of a building or other improvement and its relation to the plans it was built from. It appears complex and comprehensive, but it may not address boundary concerns.

#### **What is the Relationship of the Property to the Neighboring Properties?**

All parcels of land exist in relation to the parcels surrounding them. Surrounding parcels may include privately or publicly owned lands, rights-of-way, easements, roads, and



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■ There are many unrecorded rights that can affect title to land that may not show up in a title search, but would be obvious with a survey of the property.

navigable and non-navigable bodies of water. Legal descriptions were written by different people at different times often with no established standards and are very inconsistent. The described boundary may in fact overlap or not meet, and there may not be legal access to the parcel. The surveyor identifies problems and conflicts if they exist, and they are instrumental in conflict resolution.

#### **What is the Relationship of Occupied Lines to Record Lines?**

Many times the boundary lines of a parcel as physically occupied or possessed are different from the distances and direction called for in the written record, or deed. These discrepancies may be nothing more

than minor discrepancies between measurements, or it may identify a significant encroachment of one property onto another. The survey map or plat should show any discrepancy or possible encroachment.

#### **How are the Easements and Physical Improvements Related to the Boundary?**

The typical features of a survey include fences, driveways, buildings and utilities. The easements are shown, and discrepancies between the written easement and the actual location of the utility are shown. There are also many unrecorded rights that can affect title to land that may not show up in a title search, but would be obvious with a survey of the property,

## Why Can't Two Surveyors Agree?

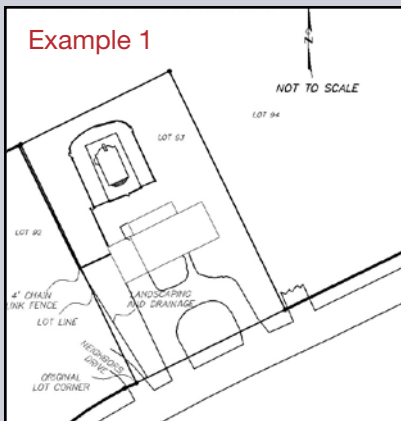
It is not particularly unusual for two competent surveyors to disagree as to where a boundary line should be located. How and why do such problems occur? For an explanation of the sources of these types of discrepancies, ALTA members should attend "Why Can't Two Surveyors Agree? Understanding Boundaries & Legal Descriptions," presented by Gary R. Kent, L.S. at the Annual Convention in Palm Beach, Fla., on Oct. 23. Gary is a member of ALTA and serves as its liaison to the National Society of Professional Surveyors (NSPS). He is also the chair of the NSPS committee on the ALTA/ACSM Standards.

such as the right of a neighbor to use utility lines, drainage ditches, sewer lines, or unrecorded travel easements across the property. Rights may have been acquired by prescription or other methods of land transfer by unwritten means.

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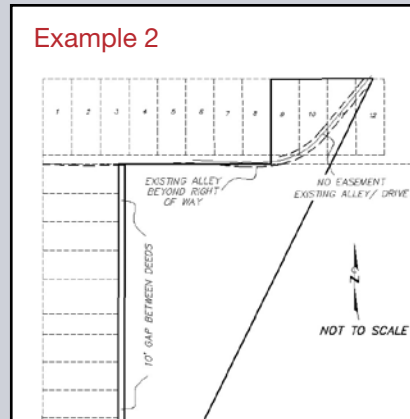
## Examples of Different Survey Disputes

Some examples and discussion of these problems from recent surveys follow. In the course of their work, surveyors frequently identify problems with neighboring properties such as conflicting descriptions, gaps, overlaps and encroachments.



### Discussion: Example 1

This scenario involves a well established neighborhood in a 1960s subdivision. Deeds and adjoining deeds all read: all of Lot 92, all of Lot 93, all of Lot 94. Property sold as is since houses were first build. All lots are simple rectangular lots, however, the existing long standing improvements create an angle point on the west line of Lot 93. The property was surveyed. A search was made for the southwest corner, and an original lot corner was found as called for in the subdivision plat. The corner falls in the middle of the west adjoiners drive. The surveyor did not create the problem, rather identified the problem. The owners, their title company and surveyor worked to resolve the problem.

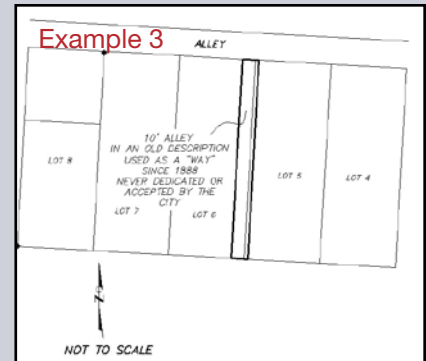


### Discussion: Example 2

The north lots are in a well established 1889 subdivision. The parcels along the west are all described from the southwest corner of Lot 1; Thence South 15 feet to the south line of the alley; Thence east 120 feet to the point of beginning. All lots are 120 feet east-west. The property south of the subdivision lots and east of the 120 foot east-west parcels begins at the southwest corner of Lot 1; Thence south 15 feet to the south line of the alley; Thence east 130 feet to the point of beginning. The diagonal east line is the westerly right of way of an old railroad, now a trail owned by the state parks. The railroad owned the parcel shown as well as the right of way.

There is a 10 foot gap between the deeds. There is one common line on the ground. All of the west adjoining parcels were created between 1889 and 1998. There is no indication that any of these parcels have ever exercised any claim over the strip. The railroad has never done anything within the strip other than mowing.

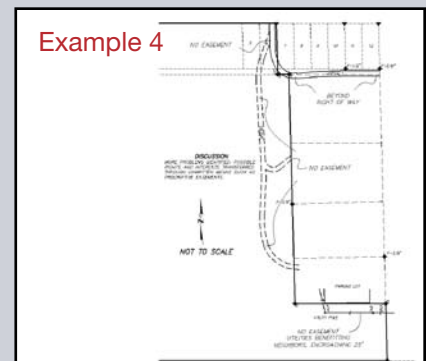
The platted alley extended to the east side of Lot 12 before the railroad was built. These issues are ongoing and have not been fully resolved.



### Discussion: Example 3

The deeds from 1948 to date mention no north-south alley, but the city had maintained a way for many years. Research was conducted and it was found that the person who created the subdivision sold these two lots in 1888. They described them as all of Lot 5 except the west two feet, and all of Lot 6 except the east eight feet to be used as a way.

It was never dedicated or accepted by the city. The title company, attorneys, surveyor and the city worked to resolve the modern issues chiefly brought on by the way being dropped from descriptions and recent searches only going back 50 years.



### Discussion: Example 4

More problems identified. Possible rights and interests transferred through unwritten means such as prescriptive easements.