



Agents should never brush off the need for a survey

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Nathan Vlahos and his wife are about to become first-time homebuyers. They are looking for a home between Richmond Hill and Newmarket and have selected a local real estate agent to help in their search.

Vlahos describes himself as a faithful reader of this column. He wrote me recently to say that he is puzzled because the advice he is getting from his own real estate agent and two others that he met conflicts with what I have repeatedly said in this column.

When Vlahos and his wife first interviewed their agent, they asked her to comment on my columns stating that the land survey is the single most important document in any real estate transaction. A survey shows the dimensions of the lot, the location of the house on the land and other features like rights of way.

"We were told," Vlahos wrote in his letter to me, "that no one she (the agent) had dealt with had ever insisted on having a recent survey," and that "it wasn't as serious a matter to her as having a home inspector."

Vlahos then attended two open houses in Newmarket and at both locations he said the agent on duty told him that "surveys were not too important as long as we got title insurance."

Vlahos said the two open house agents felt I was "hyping matters up too much for an issue that is really not that serious."

"Whose expertise do we trust?" he wrote. Vlahos gave me permission to respond to him in print. In my view, real estate agents who give the advice that Vlahos received do not belong in the profession and are leaving themselves wide open to litigation and professional discipline.

For example, look at the published decision of a discipline hearing of the Real Estate Council of Ontario (RECO) against Richard Lowes on July 29, 2003. The discipline committee found that he acted in an unprofessional manner for, among other things, failing to make the purchase offer conditional on approval of the survey, and failing to advise the buyer to have an expert review the survey if he was not capable.

Lowes was found to have breached the RECO code of ethics and fined \$3,000, plus \$1,350 costs.

A review of reported court decisions in recent years highlights a number of horror stories that went to court because of the lack of a survey. A few examples are:

A purchaser who built a house on the wrong lot.

A purchaser who thought he was getting an adjoining garage and laneway but was entitled to neither.

A purchaser who thought his lot was 10 feet wider than it really was, and built five feet of his new house on the neighbour's property.

A buyer whose cottage was located 95 per cent on land he didn't own.

Buyers who had to alter their renovation plans because they discovered a sewer easement across the front yard after closing.

Over the years, I have personally encountered numerous other examples of cases where the lack of a survey caused, or almost caused, serious problems.

Some real estate agents promote the incorrect view that title insurance eliminates the need for a survey – technically known as a surveyor's real property report.

William O'Hara and Anna Husa are lawyers at Gardiner Roberts LLP in Toronto. They recently published an article entitled "A Place For Everything and Everything in Its Place – Why title insurance cannot take the place of a survey." It is referenced at www.gardiner-roberts.com on the page for William O'Hara.

The authors conclude "title insurance is not a substitute for a survey prepared by a professional land surveyor." They are "both important parts of a real estate transaction."

I couldn't agree more. Perhaps it's time for RECO to get serious about protecting the public and require land surveys in every transaction.

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