



Get A Survey. Then Get Advice.

By: Randall S. Schipper
Attorney at Law

Q: I am buying some property. Do I really need a survey?

A: Yes, you really need a survey. If you buy property without a survey, you run the risk that the boundaries of the property are not where you thought. Your house may encroach onto your neighbor's or theirs may encroach onto yours, or part of what you thought was your yard may be someone else's. This can result in hard feelings with neighbors or law suits. A staked survey would reveal problems like these. An unstaked survey, properly called a "mortgage report" but sometimes loosely called a "survey", is not good enough. They specifically state that you cannot rely upon them to determine property boundaries and usually are certified only to your lender, not to you. While you can get a mortgage report certified to you, you will still not be able to rely on it to determine boundaries and the surveyor will not have staked the boundaries of the property to determine if there is a problem. Your lender will let you close on a mortgage report, sometimes without even that, because it will be protected by title insurance, but you will not be. Title insurance excludes any problem that would have been discovered by an accurate survey. You need a staked survey to protect yourself. It is well worth the cost.

Q: OK, I got a survey. The stakes show my neighbor's fence is on my land. What happens?

A: The survey cannot by itself answer the question of what happens. Discrepancies between legal descriptions of neighboring properties may arise because of errors in the descriptions (they may overlap or have gaps between them) or because one neighbor has occupied part of a neighboring property. It would be chaos if every time a survey revealed an encroachment, fences and buildings up and down the block had to be moved to fit within the survey lines but we cannot lightly disregard boundaries established in deeds either. Sometimes the survey line, which should reflect the boundaries described in the deed, will control and other times the line of occupation will control. Courts have developed principles to deal with these situations, such as adverse possession and acquiescence. An attorney who understands these principles may help you determine whether the survey line or the line of occupation controls in your situation and convince your neighbor (or, if necessary, a court) of the correct resolution of the problem.

Cunningham Dalman, P.C. is a full service law firm located in Douglas, Michigan, as well as in Holland, Michigan. Our attorneys possess skill and experience in real estate matters as well as a broad spectrum of other areas of practice, and have proudly served the lakeshore community for over 100 years. Contact us at 269-857-7879.

COME JOIN US FOR A SEMINAR!



Jeff Helder

Date: Friday, March 17, 2006

Topic: How to Avoid Probate Taking a Piece Out of Your Estate

Date: 03/17/2006 Time: 3:00pm-5:00pm

Location: Laketown Golf & Conference Center

Presenters: Jeffrey K. Helder and P. Haans Mulder



Haans Mulder