

Title for the Surveyor

by

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The surveyor provides important services that often allow an attorney to identify potential title problems. For the surveyor to provide quality, complete, and effective services that identify title problems, the surveyor should be familiar with certain aspects of property title, what information to gather, what information to communicate, and how to communicate the information to the client and client's attorney. This workshop will examine how the surveyor should communicate information, what information will impact title, and what advice the surveyor can provide the client and attorney.

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Categories of Title:

- Clear Title** – Clear title, also known as good title, is title that is free of defects and impediments. It is title that raises no questions regarding ownership or fee-simple transferability.
- Marketable Title** - Marketable title is title that a reasonable person, knowing the facts would pay the fair market value of the property - that is the value of all similarly situated and similar property in the area. It is title that is free of pending claims, limiting defects, and likely litigation.
- Insurable Title** - Insurable title is title that a reputable company will indemnify from loss and known risks, defects, claims, and possible litigation. The title problem, if one exists, is deemed a profitable risk.
- Clouded Title** - Clouded title, also known as encumbered title, is title that has a limiting defect, potential claim, question of ownership, or may be subject to litigation.
- Paper Title** - Paper title is title in appearance only. It is the appearance of ownership without factual and legal support for ownership.

Categories of Boundaries:

- Record Boundary** – The record or deed boundary is the boundary that is located by the operative deed applying the rules of construction.
- Occupation Boundary** – The occupation or possession boundary is the boundary that one or more landowners use up to or possess up to and treating as the extent of their ownership.
- Ownership Boundary** – The ownership boundary is the boundary that the landowner owns to or has a legitimate claim to.

Title Basics:

- A deed is only evidence of title, it is not proof of title.
- Good descriptions do not necessarily mean good title. Bad title does not necessarily mean bad descriptions.
- The ownership boundary may not coincide with the record boundary. When the record boundary and occupation boundary do not coincide, there may be a title problem.
- When the use is inconsistent with the legal title, there may be a title problem.
- Title problems are based on a reasonable person standard.
- What the landowner believes is a title problem may not be a title problem or covered under title insurance.

Limitations on Record Search:

Research Constraints	Attorney	Surveyor
Depth of Research	40 years or to last title policy	To operative document
Scope of Research	Locus deeds, mortgages, liens	Locus, neighbor, plat, road

Extent of Record Research

	Highest	High	Ordinary	Low
Scope	All neighboring property records. Public road easements on or near property. Historical private easements. Other surveyor's records. Utility company records. Historical Society archives. Transportation Dept. records. State Archives. Municipal records	All neighboring property records. Public road easements on or near property. Other surveyors' records. Utility company records. Transportation Dept. records. Municipal records	All neighboring property records. Public road easements on or near property that may be found in registry of deeds within the depth of search.	Client's current deed only.
Depth	The original survey (from government) and subsequent conveyance from the government.	To the original division where ALL neighboring title records and the client's title records are one title (common grantor). In other words, the point where all the boundaries where created.	Examine all the current neighboring property records and the client's current records to assure the client's and neighbor's record information does not conflict or reveal any potential problems.	Client's current deed.

Ten Common Title Problems – First American Title

The following are the ten most common title problems as listed by First American Title (copied from: <https://www.firstam.com/ownership/10-common-title-problems/>)

1. **Errors in public records**
2. **Unknown liens**
3. **Illegal deeds**
4. **Missing heirs**
5. **Forgeries**
6. **Undiscovered encumbrances**
7. **Unknown easements**
8. **Boundary/survey disputes**
9. **Undiscovered will**
10. **False impersonation of previous owner**

Common Title Problems Discovered by Surveyor

- Boundary disputes or boundary litigation
- Apparent encroachments
- Setback violations
- Floodplain
- Wetlands
- Driveway access
- Possession contrary to the deed
- Use contrary to the deed
- Lack of practical access
- Septic and well too close
- Spatial zoning violations (e.g., frontage)
- Illegal subdivisions
- Implied easements & location
- Illegal improvements

Common Survey/Title Problem Scenarios:

Boundary Dispute - The neighbor indicates a pipe is the common corner. The surveyor determines that the pipe is not the common corner.

Possession Contrary to the Deed – The possession line does not coincide with the record boundary.

Apparent Encroachments - The utility line goes from the utility pole at the road to a structure, crossing other property. There is no easement for the utility line.

Apparent Encroachments - Part of the neighbor's driveway is crossing the client's property or vice versa.

Lack of Practical Access – There is a 1960 easement to provide access to the client's property. No road has been built. The easement crosses protected wetlands or an environmentally sensitive area that will not allow development.

Driveway Access – There is an easement providing access from the client's property to the public road. The location of the easement at the public road does not provide enough sight distance to enter the public road due safely.

Setback – The client has built an addition that encroaches on the public right of way.

Implied Easement – The neighboring property does not appear to have access. Your client's property is the 'remaining' lands of the grantor when the neighbor's property was created.

Septic & Wells - Both neighbor's wells are too close to the client's boundary and will not allow an on-site septic field to be placed on the client's property.

Water – Water bodies in or along a client's property generally has some limitation factors affecting title that the client should be made aware of.

Access by Easement – Access to the property that relies on an easement often represents a problem since access easements are often undefined, are overburdened, or its maintenance subject to dispute.

Environmental Factors – Septic field has failed or is partly on neighbor's land.

Inquiry Notice – Often a survey will reveal to an attorney some spatial fact requiring further record search or inquiry such as maintenance obligations for a shared driveway, quasi easements, easements by necessity, unrecorded deeds, or implied easements.

Resolution of Title Problems Discovered by a Survey

- Do nothing – This is often the best option since the cost of doing something exceeds the value of the property put in question.
- Agreement – Agreement with the neighbor to resolve disputes will often resolve the disputes in a timely and inexpensive manner.
- ADR - Alternate dispute resolution is often far faster and less expensive than litigation.
- Litigation - In some situations, the only recourse is litigation. Litigation is expensive, time consuming, and stressful.

Advice

Obtain the location of improvements on the neighbor's property that are close to the common boundary.

Architects tend to forget the difference between the drip line and building face causing intrusion into the building set back lines.

Locate all utility poles that are close to the client's property along with the direction of the utility wires.

Be cautious in setting corner monuments that will initiate a dispute. Counsel the client on ramifications and litigation cost before setting monuments. It would be wise to ask the client before setting monuments.

Easements are a major source of liability for the surveyor.

In some cases, the surveyor may wish to terminate services if the surveyor would be required by minimum standards to reveal a client's title problems.

Consider explaining potential problems in a letter or survey report rather than on a plat that would be recorded. Cite the letter or survey report on the plat.

When surveying services have limitations (such as wetland delineation), be sure to notify the client about the limitations and the ramifications.