

## Survey Matters

Questions are often raised about surveys as they may or may not apply to your closing. There are three primary uses of surveys by title companies and lenders:

1. Determine the description of the property including size and boundary lines.
2. Identify the location of existing improvements on the property.
3. Confirm and disclose any encroachments or boundary issues affecting the property.

There are several different types of surveys available for use in residential and commercial real estate. Here is a brief review of the most common types found today in resale transactions.

**Improvement Location Certificate (ILC)** - Typically used for single family homes in urban or suburban areas, the ILC is the simplest report and least expensive. An ILC identifies the general location of lot lines based on the legal description, but it is not a precise survey. ILCs also shows improvements, encroachments, and easements based on their relationship to the estimated property lines. If a property owner intends to make improvements to their property or if a boundary dispute occurs, an ILC is not legally reliable to solve discrepancies.

**Vacant Survey Plat** - An Improvement Survey indicates the pin locations at the corners of the property and the exact location of improvements on the property relative to the lot lines and pins. This differs slightly from a Boundary Survey which confirms the pin locations, lot lines and only improvements which encroach onto the property from an adjoining property.

**Improvement Survey Plat (ISP)** - An ISP is a land survey plat (results of a monumented land survey per CRS 38-51-102(12)) which also shows the locations of all structures, visible utilities, fences, hedges or walls situated on the described parcel and within five feet of all boundaries. An ISP also indicates any conflicting boundary evidence or visible encroachments, along with all easements, underground utilities, and tunnels for which properly recorded evidence is available.

**ALTA/ACSM Survey** - This is the most comprehensive and expensive survey available to property owners. The American Land Title Association/American Congress on Surveying and Mapping survey was developed in 1992 to establish a national set of standards for Land Title surveys. The ALTA Survey is based on land-use designations (ie urban, suburban, rural or mountain) and indicates both man-made and natural improvements within five feet of the property boundaries. It confirms all easements and encroachments evidenced by recorded documents or observation at the time of survey. Both recorded and measured distances must be clearly indicated, and any discrepancies in legal description (variances between recorded deed to current field survey) must be reflected on the ALTA survey. Other optional specifications such as land contour, elevation or placement of monuments may be added based on consumer request.

There are several factors that title companies and lenders consider when requiring an ILC or Survey for the property. Is it vacant or improved? What is the location - 1) Residential subdivided area described primarily by lot and block; 2) Rural or identified by metes and bounds; or 3) Subdivision known to have encroachments or discrepancies in boundaries? Is there a notable increase in value since last conveyed or insured indicating there may be improvements? Is there known recent construction?

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Section 8.1.3 of the 2016 Colorado Contract to Buy and Sell Property begins to address this issue for an Owners Title Policy.

294                   **8.1.3. Owner's Extended Coverage (OEC).** The Title Commitment  Will  Will Not contain Owner's  
295 Extended Coverage (OEC). If the Title Commitment is to contain OEC, it will commit to delete or insure over the standard  
296 exceptions which relate to: (1) parties in possession, (2) unrecorded easements, (3) survey matters, (4) unrecorded mechanics'  
297 liens, (5) gap period (period between the effective date and time of commitment to the date and time the deed is recorded), and (6)  
298 unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing. Any additional premium expense to obtain OEC  
299 will be paid by  Buyer  Seller  One-Half by Buyer and One-Half by Seller  Other \_\_\_\_\_.  
300 Regardless of whether the Contract requires OEC, the Title Insurance Commitment may not provide OEC or delete or insure over  
301 any or all of the standard exceptions for OEC. The Title Insurance Company may require a New Survey or New ILC, defined  
302 below, among other requirements for OEC. If the Title Insurance Commitment is not satisfactory to Buyer, Buyer has a right to  
303 object under § 8.4 (Right to Object to Title, Resolution).

A buyer may request that the title commitment and ultimate title policy issued will delete or insure over the standard exceptions which relate to survey matters including (1) parties in possession, (2) unrecorded easements, and (3) survey matters. Coverage may be given to the consumer by either deleting these standard exceptions or by issuing owners extended coverage.

Deleting the standard exceptions provides the most comprehensive coverage to the property owner. An example of those contained on a commitment produced by several title agencies include:

1. Rights and claims of parties in possession not shown the public records.
2. Easements or claims of easements not shown by the public records.
3. Discrepancies, conflicts and boundary lines, shortage in area, encroachments, and any facts in which a correct survey and inspection of the premises would disclose and which are not shown by public records.
4. Any lien, or right to a lien, for services, labor or material hereto or hereafter furnished, imposed by law and not shown by the public records.
5. Unpatented mining claims; reservations or exceptions in patents or in acts authorizing the issuance thereof.
6. Water rights, claims or title to water, whether or not shown by public records.

As an industry standard regulated by the Colorado Division of Insurance, deletion of standard exceptions refers to the deletion of items #1 through #4.

Owners Extended Coverage (OEC) or a Form 130 Endorsement to the title policy may be issued to offer extended coverage over standard exceptions but is less comprehensive than the deletion of exceptions. Protection includes coverage over unrecorded mechanics' liens provided that the work wasn't contracted for by the buyer and that work was completed by the date of the policy; coverage over rights of parties in possession, such as a tenant; and coverage over forced removal of the principal dwelling on account of encroachment of the dwelling onto adjoining lands or easements, violation of Covenants, Conditions, and Restrictions (CC&Rs) or setbacks, or violation of a zoning ordinance.

In order for a title company to offer any extended coverage in the insurance policy, an ILC or Survey may be required. When an ILC or survey is completed, the insurer also reserves the right to take exception to specific matters found on the survey such as newly identified encroachments or easements found to affect the property. In some cases, title companies may not be able to offer or provide survey protection.

Each property and situation is unique, so you should contact your title company to discuss the particular circumstances surrounding your closing. Every transaction is evaluated on a case-by-case basis. If an ILC or survey is required, the lender or title company will not mandate you to use a particular surveyor or surveying company. Per RESPA (the Real Estate Settlement Procedures Act), it is at the discretion of the consumer to select the service provider to complete the ILC or Survey.

Please contact your local Guardian Title office as needed with any questions.

*This information is deemed accurate and reliable, but is not guaranteed. Consumers should seek other professional or legal counsel as necessary for their transaction.*