

Levene Gouldin & Thompson, LLP

Real Estate Q&A

Do I Need a Survey?

Know exactly what you're buying. A licensed land surveyor can illustrate your property on a map so that you can actually see where your home is located in relation to your boundary lines. Your surveyor will do the necessary research, survey the property and prepare a survey map that will reveal:

- Whether other people are entitled to partial use of your property through easements for utilities or rights-of-way;
- Whether fences, trees, buildings, gardens, embankments, driveways, walkways, swimming pools, house additions and other property are correctly placed within the boundaries of your property;
- Whether your deed accurately describes your property;
- Since a survey will show any encroachments or other irregularities that might be the cause of later legal disputes, a survey gives you a form of protection in addition to clarifying what you've purchased.
- In addition, your surveyor can mark the exact corners of your site with survey monuments;

Some mortgage lenders require a survey (or appropriate title insurance survey coverage) to protect their investment. They want to be sure that the land and buildings on which they are lending money are as described in the documents which accompany the transaction. Does the lot size, building set backs, pool and fence locations meet with local Zoning Laws? They also need to know that if they have to foreclose there will be no problems in re-selling the property.

In the instance where there is an existing survey, it may be less expensive and faster to have that survey updated. This will show any changes to the prior survey, including additions to the structures, added / removed fences, pools, etc.

According to New York State law, only surveys made by licensed and registered New York Land Surveyors are legal. (<http://www.op.nysed.gov/prof/pels/lbroch.htm>)

Do I Need Title Insurance and What is it?

When you purchase property, it is important that the title (your proof of ownership) not be subject to claims associated with any of the previous owners. For example, unpaid taxes or mortgages, past court actions and judgments that can threaten or even invalidate your title to the property.

Most mortgage lenders in New York State require you to purchase mortgagee title insurance, which insures only the lender against financial loss associated with a faulty title. To protect your personal interests as the owner, you need to purchase a separate owner's title insurance policy which preserves your ownership rights.

If you are required to purchase mortgagee title insurance, the New York State Insurance Board makes it possible for you to buy your owner's policy at the same time at a significantly reduced cost. Unlike other forms of insurance, the Title Insurance Premium is a one-time cost and the insurance stays in place for the term of the mortgage, for Mortgagee Title Insurance, and for the length of ownership, for Owner's Title Insurance. An Owner's Policy also gives you the option to purchase a low-cost rider which automatically increases your coverage as the market value of your home grows. From the time you close on your property, owner's title insurance continues to protect you against claims, even after you sell.

Title Insurance provides protection against risks that cannot be discovered through the usual sources. Title searches of public records are conducted to verify the seller's right to transfer ownership. Unfortunately, public records can contain errors that even the most diligent title search will not reveal. As a result, undiscovered interests could surface after you buy the property, which could give someone else legal claim to your home. Title Insurance also protects the rights of the insured from many hidden risks that can't be discovered by a search of public records, such as:

- Forged deeds, mortgages, satisfactions of mortgages and other instruments
- False impersonation of the true owner of the land or property
- Instruments executed under fabricated or expired powers of attorney
- Ownership claims of a spouse or child of a former owner involving a contested will or divorce proceeding
- Invalid deed transfers by a former owner who was not mentally competent, or who did not actually own the property
- Misinterpretation of wills, deeds and other instruments

If you have owner's title insurance and your ownership is challenged, the title company will defend your title at no cost to you, pay all legal fees and pay the cost of settling any valid claim. Additionally, owner's title insurance covers any legal costs you incur to defend yourself against wrongful lawsuits that are decided in your favor. When you consider that even a simple boundary dispute can cost thousands of dollars in legal fees, owner's title insurance is one of the smartest investments you can make.

Deeds

By definition, a deed is "a document sealed as an instrument of bond, contract or conveyance, especially pertaining to property." A deed documents the transfer of ownership of real estate, and no real property transaction is complete until the deed is delivered to the buyer. The deed is signed by the person transferring the property, and may make that person responsible to the buyer for other claims against or conditions on the property. Recording the deed in the County Clerk's Office documents the change of ownership.

When buying or selling real estate, the choice of deed defines exactly what the buyer is getting for his or her money or the seller is agreeing to give. Each type of deed includes different rights, guarantees, and legal protections. The two of the most common types of deeds are warranty and quitclaim deeds.

A warranty deed transfers ownership and explicitly promises the buyer that the seller has good title to the property. A warranty deed offers the greatest protection for buyers since a seller must warrant good title to the property, with no liens and encumbrances not disclosed in the deed. The seller also agrees to defend against any defects found in the deed.

A quitclaim deed lets the transferor give away whatever rights he or she has to the property, but does not guarantee the extent of the interest transferred. Quitclaims are common in divorces when one spouse grants his or her rights in real estate from the marriage over to the other spouse.