



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. We will briefly review 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.

Improvement or Boundary Survey - 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?

Is there title insurance coverage available to protect the property owner or lender from matters found on a survey?

Section 7.1 of the 2010 Colorado Contract to Buy and Sell Property begins to address this issue for an Owners Title Policy.

209 7.1. **Evidence of Title.** On or before **Title Deadline** (§ 2.3), Seller shall cause to be furnished to Buyer, at Seller's expense, a current 210 commitment for owner's title insurance policy (Title Commitment) in an amount equal to the Purchase Price, or if this box is checked, **An** 211 **Abstract** of title certified to a current date. If title insurance is furnished, Seller shall also deliver to Buyer copies of any abstracts of title covering 212 all or any portion of the Property (Abstract) in Seller's possession. At Seller's expense, Seller shall cause the title insurance policy to be issued and 213 delivered to Buyer as soon as practicable at or after Closing. **The title insurance commitment Shall Shall Not commit to delete or insure** 214 **over the standard exceptions which relate to: (1) parties in possession, (2) unrecorded easements, (3) survey matters, (4) any unrecorded mechanics'** 215 **liens, (5) gap period (effective date of commitment to date deed is recorded), and (6) unpaid taxes, assessments and unredeemed tax sales prior to** 216 **the year of Closing.** Any additional premium expense to obtain this additional coverage shall be paid by **Buyer** **Seller.** 217 Note: The title insurance company may not agree to delete or insure over any or all of the standard exceptions. Buyer shall have the right to review

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 Guardian Title Agency 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. Guardian Title's policy for deletion removes all six from the final policy issued.

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.

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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 feel free to contact your local Guardian Title office as needed with any questions. Our locations can be found at www.guardiantitleagency.com.

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