

MORTGAGE SURVEYS or LOT SURVEYS in GEORGIA

In Georgia, a survey of a residential subdivision lot is often called a “mortgage survey”. This is because the vast majority of lot surveys were performed in order to facilitate the sale closing of a house and lot, i.e., to buy a mortgage or to refinance one. Throughout the United States there are a variety of “surveys” that fall under this term. At the low end of the scale, in some states there is the “Improvement Location Report” or a “windshield survey”, where it is common to take a cloth tape from what is assumed to be the property line and measure across to improvements meaning the house and driveway. By statute, that is a legal activity in some states, but not in Georgia, at least not to do so and call it a survey. At the higher end of the spectrum there are states that require surveyors to make no distinction between the lot survey and any other boundary survey, which leads them to run a closed traverse loop around a house and to return at a later time and set property corners. The only thing these two examples have in common is that they involve surveying a small parcel of land, usually a single lot in a residential subdivision. In Georgia the law is silent on this kind of survey. There is no provision in the law to perform anything less than a full survey for a residential lot. The argument could also be made that there is nothing that specifically excludes the surveyor from exercising professional judgment and lowering his standards to meet the needs of the situation. I am unaware of this being tested by the courts or by the Georgia Professional Board of Engineers and Land Surveyors. More about this later.

Lot surveys grew out of an activity from the 1940's and 1950's undertaken to assure lenders that there is a parcel of land, there is a house, and that said house is on said lot. That was their purpose; to verify to a reasonable level that the house was on the property as advertised and, possibly, that there were no major encroachments. A surveyor performing a lot survey was being the eyes for the title company and the bank; to see if there were any major problems. It gave the banks an educated guess to these issues, and a full boundary survey was not required to obtain this educated guess. Properly done, you might think of them as giving an opinion as to whether a real boundary survey is needed. This kind of activity, the “windshield survey” from above, is still standard practice in some states. But in Georgia around the early 1960's banks began to order land surveys for residential lots in order to obtain title insurance. Then, as now, there was a wide range in the quality of work done, but in those early days it was more common for some surveyors to locate the property corners with the survey transit and to do a rough sketch of the house and driveway, and take rough measurements from the sighted property line to the house, one from the side property line and one from the front right-of-way line. Later, in the 1970's most surveyors began to perform more rigorous surveys, similar to an ordinary boundary survey. Then it became common to get measurements with the survey transit of the improvements and property corners. Also, it began to be common for clients ordering the survey to request that fences and walls along the property line be shown and noted as to whose property they were on. From this point on it became incumbent upon surveyors to perform a true boundary survey. It was a hot, high volume market. Most residential properties that sold or got refinanced had a survey done. There were several companies that came to specialize in these surveys. Despite this the price per survey remained relatively low; the average cost was \$250.

Then, in the mid to late '90s the industry rapidly cooled, mostly due to the fact that title insurance companies began to write policies without the survey exception. Title insurance policies always have “exceptions” or things that are beyond the policy coverage and therefore excluded in writing. Previously, in order for a title company to issue a policy to cover the lender, there would have to be a survey in hand or a note in the policy to the effect, “excluding any problems that would be revealed by a current, accurate land survey”. But in the late 1990's the decision was made to offer the policy without a survey in hand or this exception. It should be pointed out that this is standard practice only with regards to the lender. The typical homeowner does not have coverage, and those that do usually do not get a policy without the survey exception. Therefore, if you are a homeowner seeking the protection of a title insurance policy, which I recommend, then you will need to obtain a current land survey to make your protection complete. Presently, in the state of Georgia, new lot surveys are rarely required or ordered for home sales and refinancings. And why not? Recall that when they are ordered they are done so by the bank or title insurer, and they are really only concerned with the big ticket items, the lot and the house. Encroaching fences, garden walls, and driveways do not jeopardize their loan, and thus, are not within their sphere of concern. So, the market for lot surveys dropped off almost completely.

One interesting feature of this market was that if the closing fell through at the last minute, the surveyor would not get paid, regardless that they had performed and delivered their product days before. Apart from sounding like very poor business sense, this is a highly questionable practice as it puts a surveyor's impartiality at risk. If the surveyor were to observe something in the field or courthouse record that could present a problem at closing, might he or she be tempted to ignore or at best rationalize the problem? But, that was the industry standard and it persisted throughout the heyday of the industry and still goes on today. However, more and more now, I hear of surveyors refusing to accept this arrangement.

Occasionally, lot surveys have been viewed as controversial. Some surveyors view lot surveys as not real surveying, simply due to the size of the surveyed area involved. I don't agree with this criticism, but it should be acknowledged that a surveyor will not encounter much complicated boundary retracement experience in performing these surveys due to several factors that we will see later. But most of the negative views of this market centered on the quality of the product provided and the companies that came to specialize in this market. These companies are sometimes referred to as "mortgage survey mills" or "loan survey mills". There are good and bad surveyors in every part of the industry, like any other profession, but it does seem that there is a higher percentage of the lower caliber professionals in this arena. By no means all, but some of the loan survey mills are old fashioned, and not up on the new technologies. The turnover rate among the crews that they hire to do the field work is higher than in other segments of the land surveying profession. The party chiefs who solely do this kind of work are usually not working towards being licensed as a Professional Land Surveyor and if they are, they find that the licensing board will often not count their time working for the loan survey mills as counting toward their required experience time. But the real question of quality comes down to the product provided. Again, some of the loan survey mills perform and produce less than stellar quality lot surveys. Some of these will entitle their products a "boundary exhibit" instead of "boundary survey" in the title block, in an attempt to avoid complying with the state's minimum technical standards for surveys. Or, they might contain disclaimers on it such as "not to be used to erect fences" or "property lines shown hereon represent field conditions by evidence of apparent possession only". Not that, in and of itself, this is fraudulent. It is not. The lender or title insurer needed to know that said house was on said lot and there were no major encroachments. A product was provided to ascertain this. It is only natural for land surveyors to provide a map product that looked similar to their other products, even if it is by design of lesser quality. If it was entitled "boundary exhibit" as opposed to "boundary survey" and if it contained a couple of disclaimers, these were nuances lost on individuals who are not familiar with the industry. They had value to the lender, but they did not have much if any value to the buyer. And just as title insurance required by the banks for a home closing insures only the lender, not the buyer, although the buyer pays for it, the lot survey certifies the depiction of the boundary lines only to the lender, not the buyer, although, again, the buyer pays for it. It is common to transfer copies of the survey at closing. So the buyer receives a copy of a stamped and signed lot survey of a parcel of land that they are buying. Naturally, they assume that they have bought, paid for, and received a boundary survey. If, for example, there is a neighbor's fence encroaching on their land, whether shown on the survey or not, they will not be able to use the survey in court to try to get the fence moved. The court would need to have a survey certified to the interested party. The survey is certified to the lending institution that couldn't care less. So, due to series of activities involving nuances of liability, responsibility, and levels of care, misconceptions arose. No one was getting defrauded but to the homeowner who experienced a boundary problem (usually an encroachment) and then discovered that the lot survey provides no cure or shelter, something very wrong has transpired indeed. The title of the lot survey, who it is certified to, and any disclaimers in the notes are just a version of the "small print" that was used to hoodwink them. Such instances are rare, but they happen.

There are some surveyors who believe that there should be no difference between a lot survey and a fifty acre rural boundary survey other than the size. I disagree. There are some shortcuts that can be safely taken in performing lot surveys. If the property is in the middle of a modern residential subdivision, the need for courthouse research of deeds and surveys is reduced. Your research usually can be confined to the subdivision plat and checking the deeds. If you have a copy of the subdivision plat of record with the latest revision then you have the definitive document, and probably don't need to go back any further in the records. Also, the deeds of the subject property and surrounding properties will most likely refer to the

respective lot number of the plat, meaning that there will not be long legal descriptions to type into the computer. In the majority of cases there will not be complicated boundary issues to resolve. This is due to the fact that in subdivisions, the lots were all created at the same time, a simultaneous conveyance, which means that there are no Junior/Senior rights issues to contend with. Often you can set the pins on the first and hopefully, only, field visit. You can usually perform the survey with a two point, open ended traverse. In normal boundary surveying a closed loop traverse is run to check as a check on the accuracy of the field work. But, with modern equipment, it has been largely agreed upon that for small parcels of land one is not likely to improve his precision or accuracy of field measurements by setting additional points just to close a control traverse. Finally, the surveyor can get a wealth of information from the subdivision plat such as which flood map to search for and what the setbacks are. One can derive the distances for a point of beginning without having to measure it in the field. It is important to note that everything in this paragraph applies to modern, suburban subdivisions. Older, in-town residential lots, whether in a recorded subdivision or not, involve substantial work and have their own particular art and science to them.

For older, in-town residential lots, the surveyor gets to play archaeologist, in which he or she, armed with the shovel and the plat or record searches for the original corners. The plat of record will likely not contain bearings for the lot you are surveying, nevertheless, it is the go-to document, that will hopefully, lead you to the original monuments. The way in which this most differs from surveying a lot in a more modern subdivision, is that the surveyor will encounter numerous pins that were set through the years by re-tracing surveyors. More often than not, for these older lot surveys, I have found some of the original pins still in place next to a shiny new pin, set by a surveyor who didn't find the original, perhaps due to relying on field personnel of less than stellar quality, as mentioned above. And this is exactly where you would need the most experience to find the original corners. Usually on these older lot surveys, one encounters fence corners at every property corner, and large, luxuriant vegetation along every property line. Also, one finds metallic detritus accumulated throughout the decades that will confound your metal detector. It is likely that one will need to excavate out about two feet from each fence corner before one can say confidently that no pin was found. But the original pins are out there, and they can still be found.

The clients for lot surveys fall into two categories. First, are the lenders and title insurers that order them for home closings. Despite the bust in the market, these still make up the most demand for lot surveys. These clients have survey companies they regularly use and give a lot of repeat business to. They usually use the loan survey mills who specialize in this kind of survey and may do little else. Sometimes they use surveying companies that specialize in creating residential subdivisions and who will provide all of the lot surveys in a particular subdivision. Secondly, there are the lot surveys ordered by homeowners who are either experiencing a boundary line problem or want their lines marked for a proposed fence or house addition. They usually will find a smaller survey company that commonly performs several kinds of surveying including lot surveys. (The larger firms with five or more field crews will usually not take on this kind of work.) The average cost per survey for the first category is around \$425. A homeowner who independently chooses their own surveyor can expect to pay about \$200 more. This may make one think that using the loan survey mills is the obvious choice. But there may be some of the quality issues mentioned above, and many homeowners find out that it's difficult to get the loan survey mills to take them on as a client. These companies operate on volume and thus have their work flows and billing processes firmly set. They often find it unprofitable to cater to an individual homeowner client. It is my recommendation for the individual homeowner to seek out a smaller, full-service land surveying company, preferably one in which the licensed land surveyor is hands-on involved in the work.

As mentioned above, the days of the red-hot market for lot surveys is gone and not coming back. Or is it? I wonder if there isn't a way to get public awareness to the point to where home buyers would become the driving force behind a new demand for lot surveys. It is up to surveyors to help them to understand that just because the banks and title insurers may not need a survey to process the closing of a sale, this doesn't mean that the homeowner doesn't need one. And that a survey is the best and cheapest form of insurance for a variety of possible problems for their property.

I propose that if contacted to do a lot survey, then a little consumer education is in order. Explain to them that while you can get a lot survey for as low as \$400 but what you are getting may not be a true boundary survey. Explain to them the value of a boundary survey for a lot in a subdivision; explain to them the

value of knowing where your boundaries and corners are; if your house is located in a flood plain; if you have any easements on your property; if your neighbors shed encroaches two feet into your property. Then I suggest that you perform a survey to the level of care that you feel comfortable with that would allow you to stamp and sign a "boundary survey" and not have to disclaim anything. You will have to charge accordingly. Sell the value. I don't see a tidal wave of demand for this service, but surely some people will come to realize the very real benefits of a true boundary survey of what may be the biggest investment they own.

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