

USE OF EXISTING SURVEYS

Our clients often ask us whether we can accept the Seller's existing survey provided to the Buyer, and use such survey at Closing. Our answer is "it depends". First and foremost, we look to the contract that the parties entered into to determine whether a survey is required and who should pay for it. If the contract does not require one, and the Buyer is paying cash, we do not require a survey, although we always recommend one so the Buyer knows the footprint of the property they are buying. In a bank-financed transaction, however, the lender will almost always require a survey, but the Seller's existing survey may very well suffice. In general, the lender will accept the Seller's existing survey if: (a) it is completely legible, and (b) the Seller provides an affidavit at closing (the "Seller's Affidavit") stating that the Seller has not made any changes to the Property that would cause a new survey to differ from the existing one, such as moving a fence or building a new structure on the property, adding on to existing structures, etc.

Often, the Lender or an experienced Buyer will request us to add a "Survey Deletion Endorsement" (also known as "area and boundaries coverage") to their title policy. We *strongly advise* the Buyer and Lender to purchase this endorsement – it greatly increases the coverage under our title policy. One of our standard exceptions from coverage contained in our title commitment (number 2 on our Schedule B) ordinarily reads:

"2. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements."

At no cost to the Lender, or at a cost equal to 5% of the base premium (15% for non-residential transactions) to the Buyer, the Lender or Buyer can have the exception language reduced to the following:

"2. Any shortages in area."

Carving back the standard exception from coverage as shown above greatly expands the coverage of our title policy. In order for Infinity Title to be able to provide this endorsement to the Buyer or Lender, the same two criteria described in the first paragraph must be met. Paragraph 6.C. of the standard Earnest Money Contract states that the Buyer must pay for the cost of the Survey Deletion Endorsement, not the Seller. AGAIN, WE STRONGLY ENCOURAGE ALL BUYERS AND LENDERS TO REQUEST THAT THIS ENDORSEMENT IS ADDED TO THEIR TITLE POLICIES.

Who Pays for New Surveys? Occasionally a dispute arises between the Buyer and Seller regarding which party has to pay for the cost of a new survey, if a new one is required by the lender or title company. The standard Earnest Money Contract states, in Section 6.C. (when the first box is checked by the parties) that the Seller must provide his/her existing survey and the Seller's Affidavit within a certain timeframe, but once that survey and the Seller's Affidavit are produced, and the lender or title company require a new one, the box that is checked in the contract determines who must pay for the new one – we generally see the Buyer's box checked more often, but this point is negotiable. If the Seller fails to furnish his/her existing copy and the Seller's Affidavit within the specified timeframe, however, the Seller will be charged for the cost of the new survey, regardless of which boxed was checked in the previous sentence of the contract.