

# Law

## Uh, Your Living Room Is on My Property

### How to avoid lawsuits over survey and boundary disputes

A new owner moves into the neighborhood. She has a surveyor check that her rear fence is accurately on the property line before she replaces the old fence with a new one. The surveyor has some bad news: The fence is not on the property line at all. In fact, the property line cuts through the swimming pool and a corner of the family room. How could this happen on an estate property with a large piece of land, a pool, and a tennis court? It turns out that the property, located in Los Angeles, has a non-permitted pool and family room addition that were partially built in a city-owned 200-foot right-of-way. The buyer calls her attorney and sues the seller, agents, and title company.

If you think this is an isolated case, think again. Boundary disputes are a frequent cause of lawsuits, as are road rights-of-way and easement issues. Some states require that a property have a survey before the transaction closes; other states have no survey requirement. Agents are routinely warned by E&O insurance carriers, attorneys, and others not to point at fences or utility poles and say, "I think that is the boundary."

In a recent case, the seller's agent was asked by the buyer, "Can I add on to this one-level house to accommodate the needs of my ailing wife?" The seller's agent had sold this property to the current owner and professed to know it well. He said, "You have about 20 feet to expand here at the side yard until you get to the curb." It turned out that the corner property, with no sidewalks in an upscale neighborhood, had a 20-foot city right-of-way wrapping around the corner. The buyer had relied on the agent's representation due to his experience with the property. After the close, the buyer discovered he could not get a permit for an addition because of setback requirements from the city right-of-way. The broker and agent claimed they knew nothing about the city right-of-way for sidewalks and greenbelt, although this brokerage had sold many homes in the

area. The lesson: If you're going to offer guidance to buyers, you had better be familiar with city rights-of-way and rules on easements in the area.

Property owners cannot build structures in utility easements or easements allowing access by others. In one case, a buyer discovered the neighbor's property line ran through the home's living room. Does this mean the property owner has to remove the living room? Does the owner in the first example have to remove her swimming pool? It depends—on what the neighbor (or the city of Los Angeles in the first example) wants. Almost inevitably, these situations result in lawsuits against agents.

What can be done to prevent this type of suit? Agents should ask sellers if they have had a land survey, and if so, provide a copy to the buyer. If there is no survey available, buyers should be advised in writing to have a survey done. If the buyers decline to have a survey, they should also do so in writing.

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Buyers have also sued because they later found out the land was smaller than they were told or could not be subdivided as they had expected. Lot size may be a factor in building department regulations regarding the size of house that can be built and setback requirements. What other home owners have done in the area may not be a valid barometer as laws are changing and so is enforcement. Buyers of raw land should also have a survey to determine what they are allowed to do with the property. While land surveys can be quite expensive, depending on the size and topography of the land, they're not as expensive as the lawsuit that can result without one. ■



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