

## **Why Do You Need A Survey?**

Legal View

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A client was planning on building a garage, and to obtain a permit, a survey was required to establish setbacks. Unexpectedly, the survey revealed a problem unrelated to the new garage: the fence on the other side of the property was three feet inside the actual boundary line. When the client purchased the property 10 years prior, he did not obtain a survey because he felt it was unnecessary since it was an established neighborhood and all lots were the same size. Apparently, what had happened many years prior was fence lines were placed on presumed boundary lines as the lots were 50 feet wide. As the fences and boundary lines were laid out, they progressively became more inaccurate as they progressed down the block. We contacted the neighbor to resolve the problem, but they refused. Ultimately, a quiet title action was filed to regain the three feet and the fence was relocated. The rest of the “upstream” property owners either sought recovery from their adjoining property owner or let “sleeping dogs lie.” Unfortunately, when those owners eventually sold their properties, the same issue would be revealed by a survey.

## **Is an Improvement Location Certificate a Survey?**

Not really, an Improvement Location Certificate (ILC) is prepared by a surveyor to show where the improvements are located as they relate to a property line, but does not show precisely where the boundary lines are located. An ILC may reveal an encroachment by currently existing improvements, such as an existing driveway, deck or shed that may built on the subject property or an adjoining property. Issues revealed by an ILC many times reveal larger problems and thereby trigger the need for a full boundary survey. An ILC will not typically be sufficient for open land or unimproved acreages, and a “pin to pin” boundary survey will be required to positively identify boundary lines and other issues that may exist, such as encroaching fences, easements or other matters that may adversely impact a property.

## **How Can Boundary Problems Be Avoided?**

If you are purchasing a property, think twice about waiving a survey. Consult an attorney about the needs for a survey in your particular situation. The title insurance company will also review surveys and ILC’s to determine coverage issues and exclusions. Boundary line disputes are often excluded from title insurance coverage. One way to deal with these issues is to be proactive and avoid them in the first place. Using self-help after discovering a problem can result in a lawsuit or worse, if a person knowingly cuts down or damages a boundary tree, and then they can be charged with a misdemeanor. Another solution is to enter into an agreement with someone occupying a part of your land by a built fence that encloses a piece of your property, or your neighbor’s new hot tub that encroaches multiple feet onto your land. Such an agreement would preclude a claim of adverse possession at a later date or, by a subsequent owner.

As Robert Frost wrote, good fences make good neighbors — but they can also make angry ones if a fence appears in the wrong place.

Do you have a legal question? Send your inquiry to attorney Jeff Kelley (Jeff@klfpc.com). Appointments are available in both Black Hawk and Denver offices.

*Note: While every effort has been made to ensure the accuracy of this information, it is published for general information and not intended to provide specific legal advice as individual situations will differ and require full analysis by an attorney of the specific facts involved.*