

2015 WLTA Education Seminar
Saturday, October 17, 2015
Lynwood, WA Convention Center

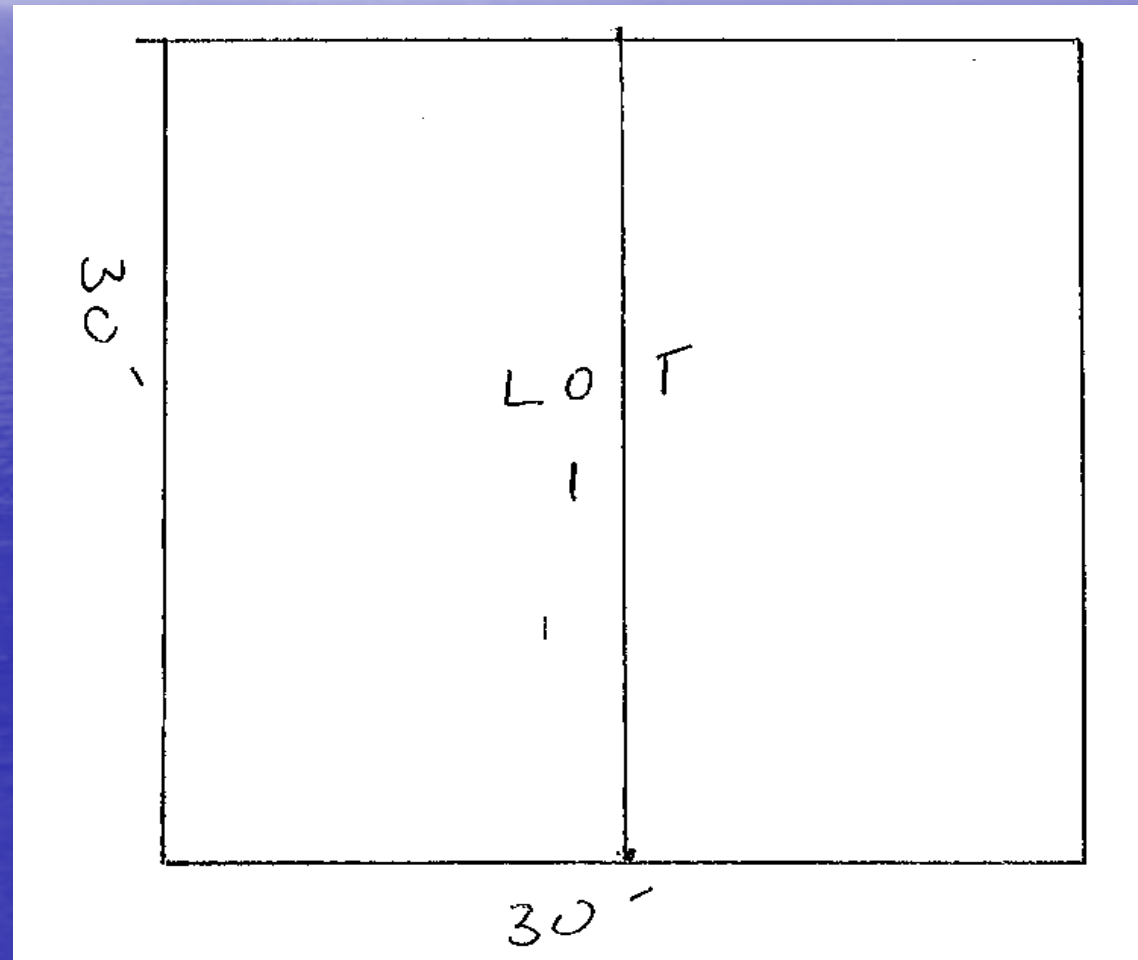
LEGAL DESCRIPTION AND SURVEY ISSUES

Presented by Shawn A. Elpel
Stewart Title Guaranty Company

Distinguishing between legal description issue and survey issue

Legal Description Issues: A common misconception is that any boundary line issues is excepted from coverage under the general exceptions listed on a standard coverage title insurance policy. Whether that is true depends on nature of the claim, and specifically whether the issue arises out of legal description issue or an actual survey issue.

Example of this legal description concern is illustrated below where example Lot 1 is divided in half:



Problem Legal Descriptions

Example 2:

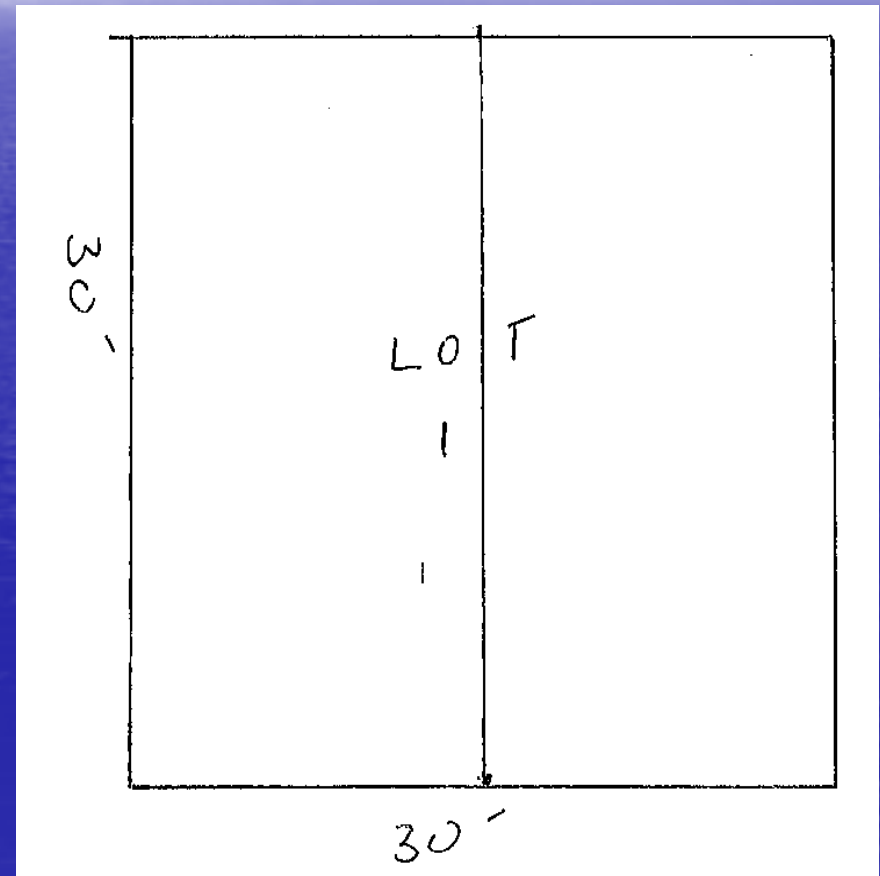
Beginning at the SE Corner of Lot 1; thence West 15 feet; Thence North 30 feet, Thence East 15 feet, thence South 30 feet to the point of beginning.

and

Beginning at the NW Corner of Lot 1; thence East 15 feet; Thence South feet, Thence west 15 feet, thence North 30 feet to the point of beginning.

Example 1:

The West 15 feet of Lot 1; and
The East 15 feet of Lot 1



Example 3

Replacement Legal Descriptions

The West 15 feet of Lot 1;

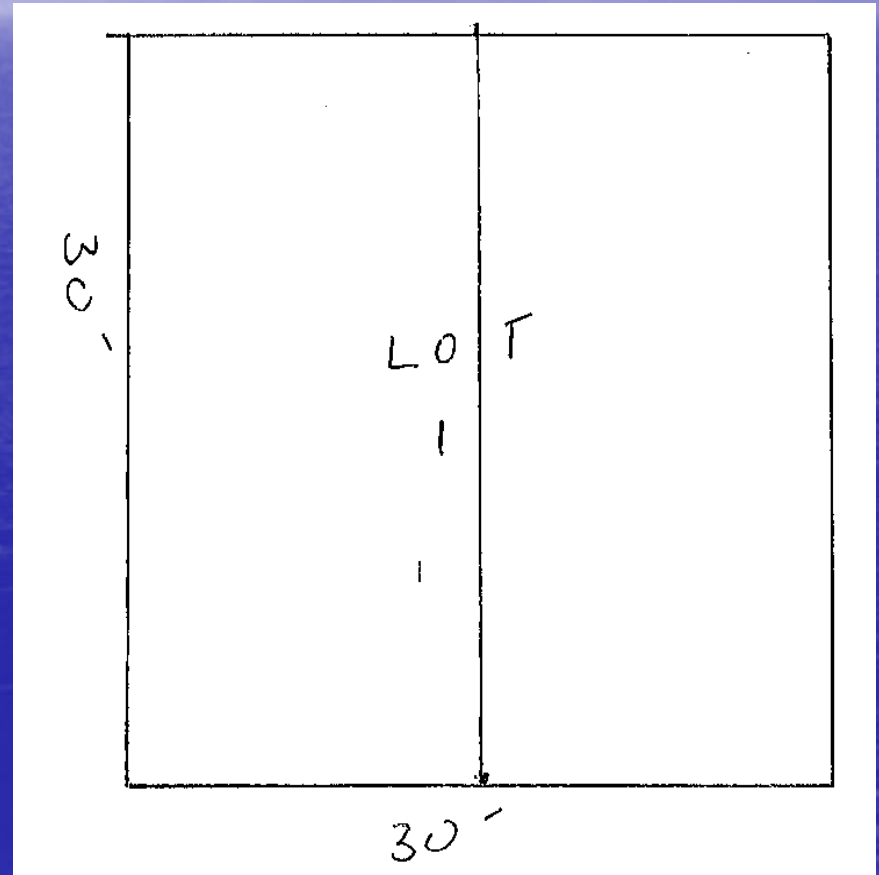
and

Lot 1, Except the West 15 feet;

Or

The West Half of Lot 1;
and

the East Half of Lot 1



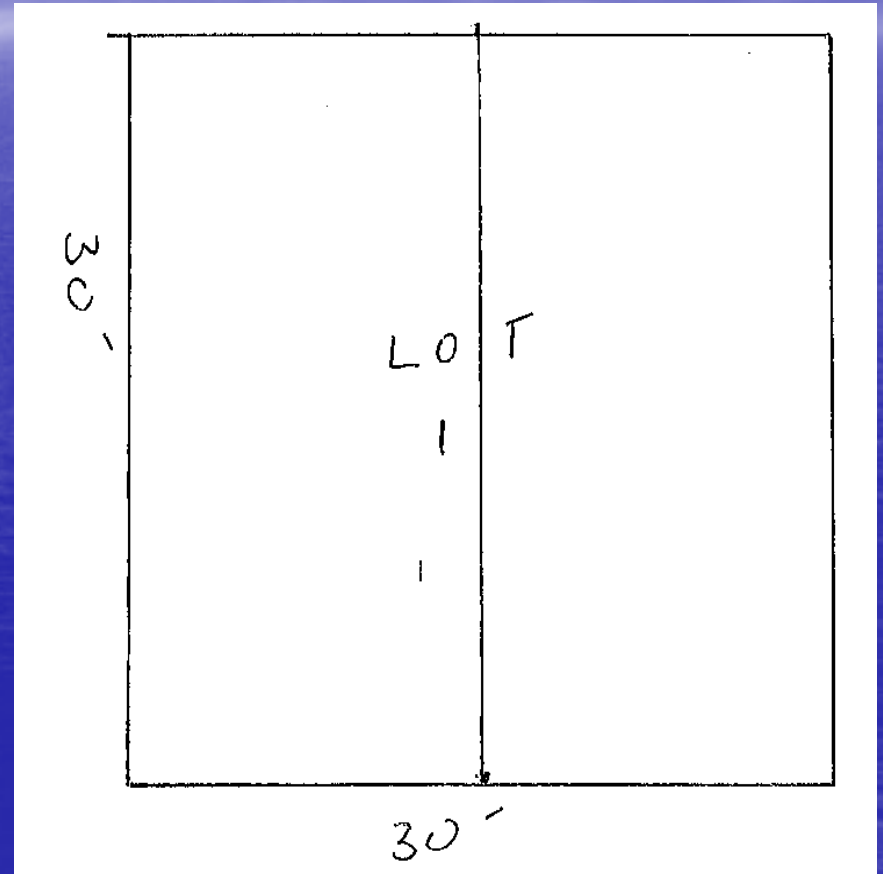
Example 4

Replacement Legal Descriptions

Beginning at the SE Corner of Lot 1; thence West 15 feet to the east line of the west half of lot 14; thence North along said east line 30 feet to the North line Lot 1; Thence East 15 feet, to the east line of Lot 1; thence South along east line 30 feet to the point of beginning; and

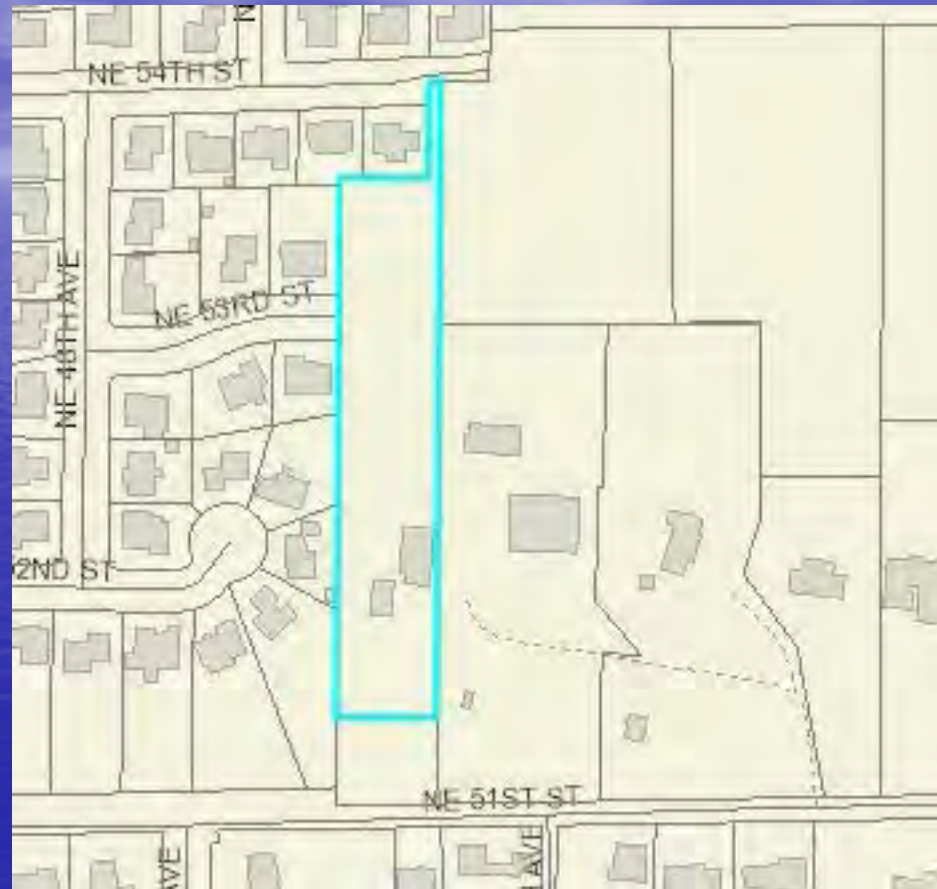
Lot 1, except that portion described as follows:

Beginning at the SE Corner of Lot 1; thence West 15 feet to the east line of the west half of lot 14; thence North along said east line 30 feet to the North line Lot 1; Thence East 15 feet, to the east line of Lot 1; thence South 30 feet to the point of beginning.



Title Claim Situation: Conflicting Legal Descriptions

- 1977 WLTA Policy
- Claim made 35 years after policy issuance
- Hard copy of policy was lost
- Legal descriptions for adjoining parcels had different points of beginning
- Claims also involved access issue



The Takeaway

Confirm legal descriptions of record tie-in to designated points/lines and identify and call up possible overlaps and gaps.

Survey Issues

Covered risk No. 2:

2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from . . .

(c) **Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.** The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.

Extended Coverage Exceptions

- Rights or claims of parties in possession not shown by the public records.
- Easements, claims of easement or encumbrances which are not shown by the public records.
- **Encroachments, overlaps, boundary line disputes, or other matters which would be disclosed by an accurate survey and inspection of the premises and which are not shown by the public records.**
- Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished imposed by law and not shown by the public records.

Comparing Covered Risk 2(c) v. Standard Survey Exception

Covered Risk

2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from . . .

. . . (c) Any encroachment, encumbrance, violation, variation, or **adverse circumstance** affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment "includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.

Standard Survey Exception

Encroachments, overlaps, boundary line disputes, **or other matters** which would be disclosed by an accurate survey and inspection of the premises and which are not shown by the public records.

Questions

- Does the standard survey exception except from coverage all the covered risks afforded in 2(c)?
- Does the term “other matters” = “encumbrance, violation, variation, or adverse circumstance”?
- How broad is the term “adverse circumstances”?

Matters disclosed on survey – A specific exception

- Will replace standard exception
- Shows matters which fall within the insuring provision 2(c);
- Write exception disclosed on survey with “matters you are trying to exclude from coverage in mind.
Eg. Instead of “fence located on west boundary” possibly use “adjoining property’s fence lying over and across west boundary line and rights of ownership arising therefrom;”
- Improvements located in Easement areas, to show or not to show?

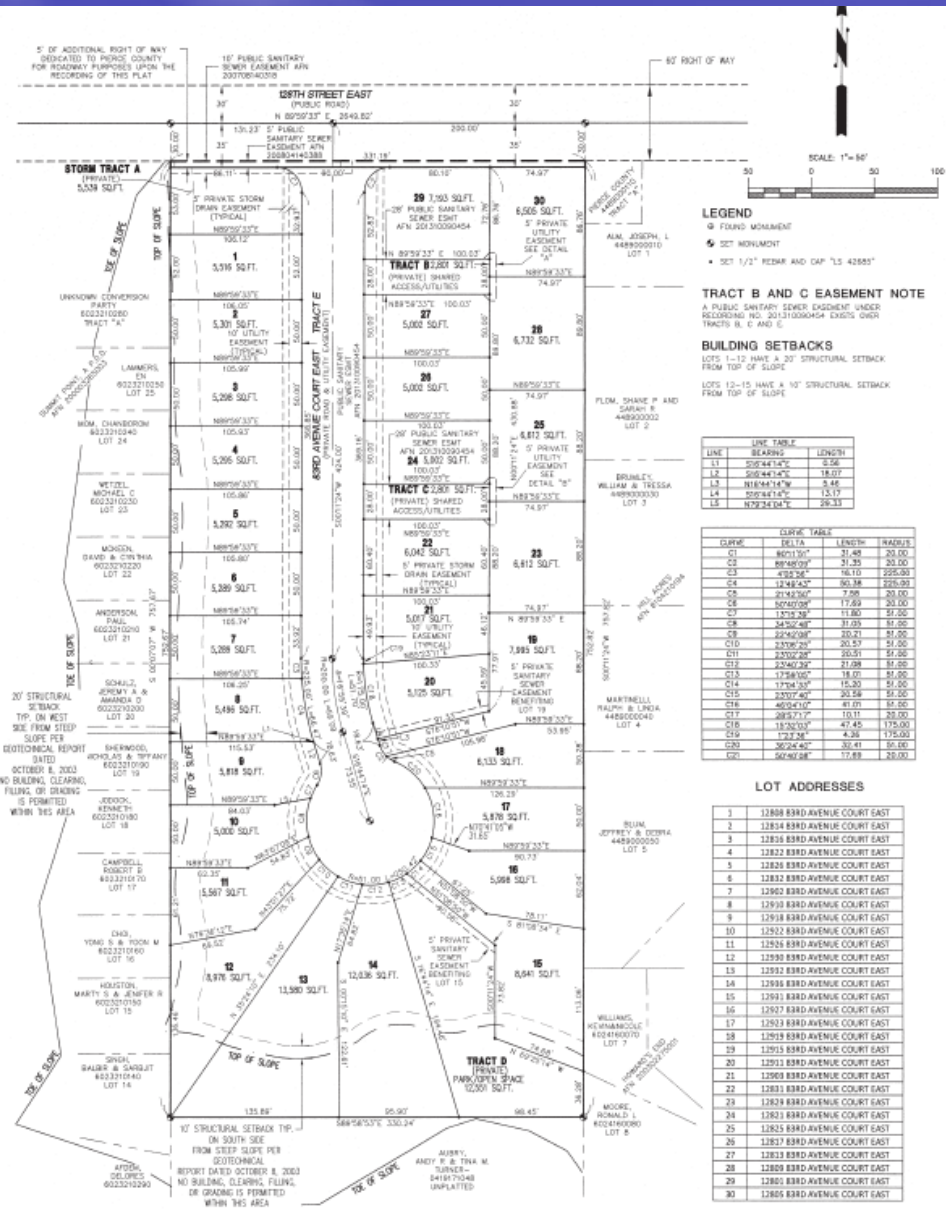
Deleting Survey Exception without ALTA Survey

- Lender's policy - Does lender require survey
- Owner's policy
 - ALTA Survey Typically Required
 - Old Survey
 - Vacant Property – Is a survey needed?

Recently platted vacated property

Question:

Is this recent plat of vacant lots a suitable replacement for an ALTA survey and to remove the survey exception?



Recently platted vacated property



Endorsements relating to survey and Extended Coverage

ALTA 25-06 (Same as Survey): The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land as described in Schedule A to be the same as that identified on the survey made by _____ dated _____, and designated Job No. _____.

Endorsements relating to survey and Extended Coverage

ALTA 9.2 – Section 3.b. Enforced removal of an Improvement as a result of a violation, at Date of Policy, of a building setback line shown on a plat of subdivision recorded or filed in the Public Records, unless an exception in Schedule B of the policy identifies the violation;

Endorsements relating to survey and Extended Coverage

ALTA 28 The Company insures against loss or damage sustained by the Insured if the exercise of the granted or reserved rights to use or maintain the easement(s) referred to in Exception(s)

_____ of Schedule B results in:

- (1) damage to an existing building located on the Land, or
- (2) enforced removal or alteration of an existing building located on the Land .

Endorsements relating to survey and Extended Coverage

ALTA 28.1

2. For purposes of this endorsement only, "Improvement" means an existing building, located on either the Land or adjoining land at Date of Policy and that by law constitutes real property.
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. An encroachment of any Improvement located on the Land onto adjoining land or onto that portion of the Land subject to an easement, unless an exception in Schedule B of the policy identifies the encroachment;
 - b. An encroachment of any Improvement located on adjoining land onto the Land at Date of Policy, unless an exception in Schedule B of the policy identifies the encroachment;
 - c. Enforced removal of any Improvement located on the Land as a result of an encroachment by the Improvement onto any portion of the Land subject to any easement, in the event that the owners of the easement shall, for the purpose of exercising the right of use or maintenance of the easement, compel removal or relocation of the encroaching Improvement; or
 - d. Enforced removal of any Improvement located on the Land that encroaches onto adjoining land.

Shawn A. Elpel

Commercial Services – Seattle, WA

Stewart Title Guaranty

shawn.elpel@stewart.com.com