



that the Mars once played host to salty seas. This Mars Ex

# COURSE NOTES

**BOUNDARYWISE**<sup>™</sup>  
PROFESSIONAL EDUCATION

Designed by  
Certified Land and Boundary  
Professionals for Ontario Realtors.

[BoundaryWise.ca](http://BoundaryWise.ca)

# 1. SURVIVING AND THRIVING IN THE NEW BOUNDARY REALITY



## A. THE NEW BOUNDARY REALITY – 6 INPUTS

1. Title Insurance confusion (doesn't cover "everything");
2. Real Estate Lawyers (their business model encourages willful blindness);
3. Widespread Boundary Issues (PYB research – the 49%);
4. New technology (avoid getting flamed online!);
5. Uncertain housing market;
6. Lack of Education (no one is teaching you this stuff).

## B. RESEARCH FINDINGS

**2015 Research by PYB and KRCMAR Surveyors shows that:**

- ▶ 49% of residential properties in the GTA have hidden boundary issues;
- ▶ Most (85%) of these issues are excluded from title insurance coverage;
- ▶ The event that most often causes these to become boundary disputes = sale/purchase of home.

## C. TITLE INSURANCE

**2015 Research by PYB and KRCMAR Surveyors shows that:**

- ▶ Covers:
- ▶ Defects in title;
- ▶ Some boundary issues;
- ▶ Some off-title issues;
- ▶ Title fraud;
- ▶ and more...

### **EXCEPT IF PRIOR KNOWLEDGE EXISTS.**

If you knew about an issue prior to closing, it is excluded from coverage. This encourages "willful blindness" or "turning a blind eye" to problems



## D. BOUNDARYWISE REALTOR'S PLAYBOOK

### 1. Have "the talk"

Understand clients' tolerance to risk.

Low tolerance = more boundary due diligence (eg. Young, cash strapped couple).

High Tolerance = less boundary due diligence.

### 2. Build a Risk-Busting Offer/Listing

**Listing:** use full legal description from new parcel register, attach PR, Instruments & Survey, cite your sources, disclose boundary issues up front.

**Buying:** Do your boundary due diligence before bidding = cleaner offers. Ensure the client's intended use of land isn't going to be compromised by a hidden issue.

### 3. Do a Boundary Inspection

Use survey plan to get measurements, approximate the boundary location, look for encroachments and easements call a surveyor (expert) if you suspect issues.

### 4. Get the Docs

Parcel Register, Legal Instruments, Survey Plan.

### 5. Be ready to Face a Judge

Develop and stick to a process, journal all your discussions.



## KEY RESOURCES

**ProtectYourBoundaries.ca:** Parcel Registers, Instruments, Buyer's Reports, Seller's Reports, Survey Plans.

**GeoWarehouse:** Parcel Registers, Instruments, Property Information.



## 2A. HOW TO IDENTIFY A SURVEY PLAN

### A. PLAN TYPES

#### Plans you CAN use

- ✓ Surveyor's Real Property Report (SRPR)
  - ✓ Plan of Survey
  - ✓ Building Location Survey (Pre-1990)
- \*ALWAYS LOOK FOR BUILDINGS!

#### Plans you SHOULD NOT use

- ✗ Plan of Subdivision (no buildings)
- ✗ Reference Plan (no buildings)
- ✗ Registered Plan (no buildings)
- ✗ Topographic Plan
- ✗ Grading Plan
- ✗ Architectural Drawing
- ✗ Engineering Drawing/Plan
- ✗ Landscape Drawing
- ✗ Site Plan

### B. IDENTIFY THE PLAN

1. Title Box (find plan type)
2. Surveyor and Plan
3. Survey Firm
4. AOLS Sticker (post-1990)

### C. HOW TO READ A SURVEY PLAN

1. Survey Monuments
2. Boundaries and Dimensions
3. Encroachments
4. Buildings, Structures & Ties
5. Fences, Hedges & Walls
6. Easements

### D. HOW TO USE A SURVEY PLAN

#### PART 1: STUDY THE PLAN

1. Orientation: Plan type? Address? Scale?
2. Trace the boundary.
3. Identify the streets and buildings.
4. Identify fences, hedges o the boundary.
5. Is one owner using the other's land?
6. Identify encroachments on the boundary.
7. Is one owner using the other's land?
8. Look for easements and rights-of-ways.
9. Do you see obstructions?
10. Look for encroachments on city land/roads.

#### PART 2: EXAMINE THE PROPERTY

1. Approximate the boundary location using the ties (measurements).
2. Is the fence on the line?
3. Any suspected encroachments?
4. Are any neighbouring structures encroaching
5. on the property.
6. Approximate the rights-of-way location.
7. Is it clear, obstructed or encroached on?
8. Can you see encroachments on city property?



Only an Ontario Land Surveyor can provide an official opinion on the location of a boundary.

Use **Protect Your Boundaries**

([www.protectyourboundaries.ca](http://www.protectyourboundaries.ca)) as your survey and boundary strategy partner.

## 2B. HOW TO READ A SURVEY PLAN



### A. HOW TO READ A SURVEY PLAN

1. Survey Monuments
2. Boundaries and Dimensions
3. Encroachments
4. Buildings, Structures & Ties
5. Fences, Hedges & Walls
6. Easements

### B. HOW TO USE A SURVEY PLAN

#### PART 1: STUDY THE PLAN

1. Orientation: Plan type? Address? Scale?
2. Trace the boundary.
3. Identify the streets and buildings.
4. Identify fences, hedges off the boundary.
5. Is one owner using the other's land?
6. Identify encroachments on the boundary.
7. Is one owner using the other's land?
8. Look for easements and rights-of-ways.
9. Do you see obstructions?
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### KEY RESOURCES

**ProtectYourBoundaries.ca:** Survey plans, new surveys, talk to a surveyor

**Only an Ontario Land Surveyor can provide an official opinion on the location of a boundary.**

## 3. THE A TO Z OF TITLE INSURANCE



### A. TITLE INSURANCE COMPANIES IN ONTARIO

- ▶ Title PLUS (Canadian provider)
- ▶ Stewart Title
- ▶ First Canadian Title
- ▶ Chicago Title
- ▶ Traveller's

#### Coverage Types:

- ▶ Residential, Commercial, Existing Owner.
- ▶ One-time fee for ownership lifetime.

### B. COVERAGE

#### COVERED

- ✓ Defects in Title;
  - ✓ Compliance Issues;
  - ✓ Access and other Rights and Defects;
  - ✓ Some of what an up-to-date survey would show;
  - ✓ Title Fraud.
- ... **Unless buyer had prior knowledge of issue**

#### NOT COVERED

- ✗ Property enclosures (fences, walls, hedges);
- ✗ Environmental hazards;
- ✗ Zoning violations caused by new owner;
- ✗ Buyer's ability to change use of land;
- ✗ Problems buyer agreed to assume but didn't inform title insurance firm of;
- ✗ Native land claims;
- ✗ Certain government rights (e.g. expropriation).

### C. SPECTRUM OF CLAIM RESPONSES BY TITLE INSURERS

1. Pay the Claim;
2. Repair, replace or relocate the building, structure or improvement;
3. Prosecute or defend a legal proceeding;
4. Negotiate a settlement;
5. Remove and pay the diminution value, if any;
6. Pay amount required per policy (sub-limits);
7. Take other action which protects the insured;
8. Cancel the policy;
9. Deny the Claim.

### D. REAL ESTATE PROFESSIONALS

#### PITFALLS OF TITLE INSURANCE

- ✗ Assuming that nothing has changed;
- ✗ Over-reliance on Title Insurance;
- ✗ Title insurance fixes "everything";
- ✗ "This has nothing to do with me";
- ✗ "I don't need a survey plan";
- ✗ Foregoing good due diligence.

#### BEST PRACTICES - SELLER

- ✓ Always provide a Survey in selling package.

#### BEST PRACTICES - BUYER

- ✓ Always demand a survey from the seller;
- ✓ Don't forego thorough due diligence;
- ✓ Don't trust that TI will fix future client problems.

### BEST PRACTICE #1:

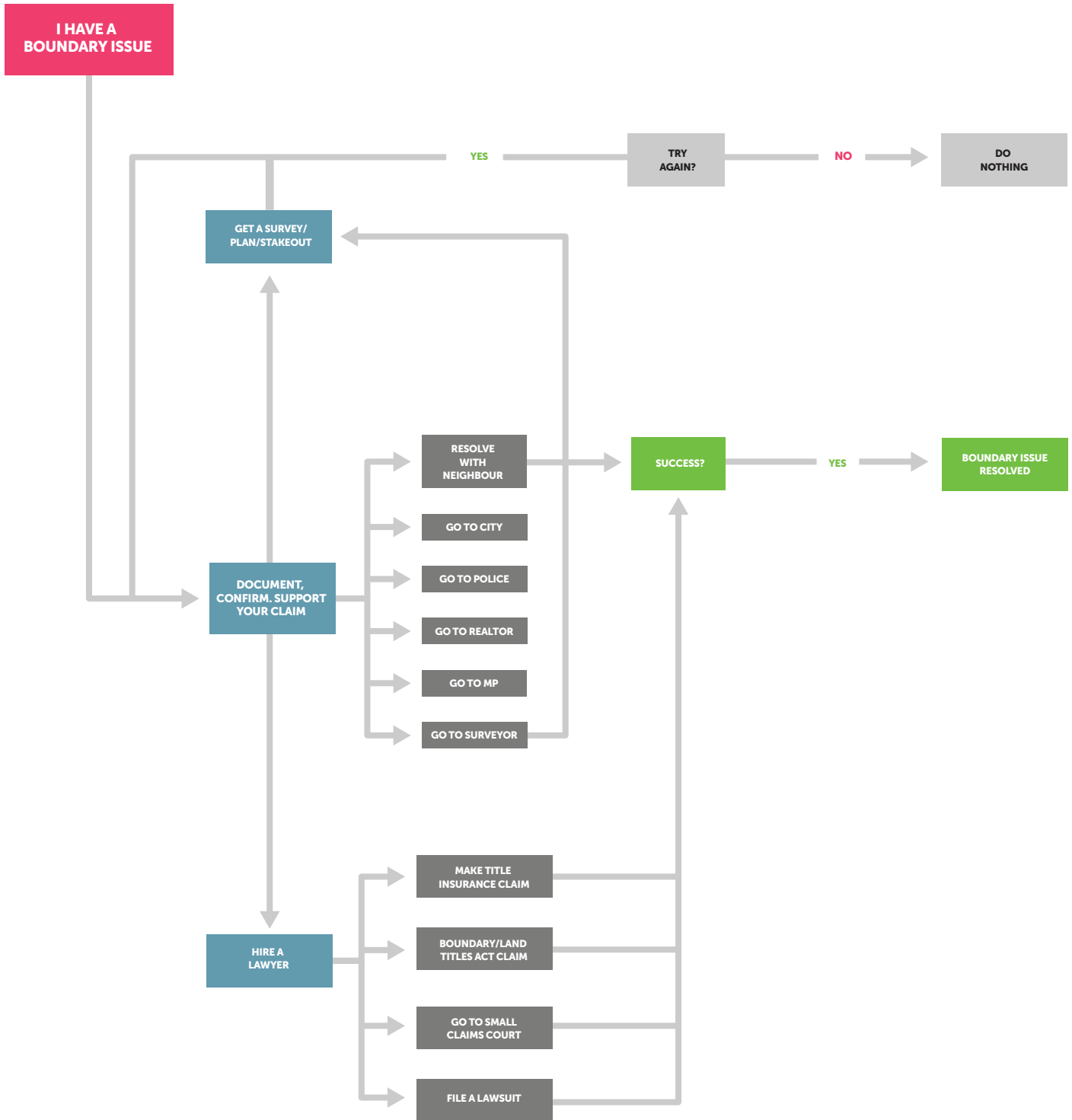
Always do Boundary Due Diligence and get a survey plan AND title insurance. It's THE willing combination to reduce risk and maximize peace of mind.

Title Insurance is NOT a replacement for Boundary Due Diligence and a Survey Plan!

# 4. REALTOR'S GUIDE TO BOUNDARY DISPUTES



## ANATOMY OF A BOUNDARY DISPUTE





## 5. EASEMENTS AND RIGHT-OF-WAYS

### A. DEFINITION

An **Easement** is a non-possessory right to use the property of another

### B. PARTIES TO AN EASEMENT

**Servient Tenement** (gives up the right) & **Dominant Tenement** (gains the right).

### C. EASEMENT CLASSIFICATION & TYPES

#### EASEMENT OWNERSHIP

- a. **Appurtenant Easement** - benefits adjoining/other Land.
- b. **Gross Easement** - benefits another Individual or Corporation.

#### EASEMENT TYPE

- a. **Affirmative** – allows for something to be done (e.g. Access on a right of way).
- b. **Negative** – stops from something being done (e.g. Building up into a flight path).

### D. COMMON EASEMENT #1:

#### THE RIGHT-OF-WAY EASEMENT

- ▶ Is usually Appurtenant and Affirmative;
- ▶ Allows one property to access portions of another;
- ▶ Laneways, mutual driveways, maintenance/repair access etc.;
- ▶ Cannot be blocked or obstructed;
- ▶ On property sale the easement right/obligation automatically transfers to new owners.

### E. COMMON EASEMENT #2:

#### THE UTILITY EASEMENT

- ▶ Is usually a Gross Easement and Affirmative;
- ▶ Allows utility corporations to access a property to repair/maintain their assets;

- ▶ Surface, underground and overhead;
- ▶ Can be sold without notice to or consent from the property owner;
- ▶ Occasionally unregistered (not on title). If you think there is one, get a lawyer to check it out.

### F. EASEMENT DOCUMENTATION

1. The Parcel Register – what easements affect a property.
2. The Legal Instruments – the details of those easements.
3. The Survey Plan – graphically depicts the easement relative to boundaries and buildings.

### G. DETECTING EASEMENTS

#### FROM THE LEGAL DESCRIPTION (ON THE PARCEL REGISTER):

- ▶ “S/T” or “Subject To” = the property is the Servient Tenement in an easement.
- ▶ “T/W” or “Together With” = the property is the Dominant Tenement in an easement.
- ▶ “S/T and T/W” = likely a mutual/shared driveway.

### H. COMMON TRAPS

- ▶ Always get the current legal description off a New Parcel Register.
- ▶ Get the instruments to understand the details (or a Seller’s Report from Protect Your Boundaries).
- ▶ Use a Survey to locate the easement on the ground.
- ▶ Shared Driveway Easements: Watch for structures, cars, fences etc. obstructing the easement.
- ▶ Rear Laneway Easements: Has anyone built a fence through it, or a structure on it?
- ▶ Utility Easements: Has anything been built on it?



## BEST PRACTICES FOR LISTING AGENT

Look for easements on the property and check for encroachments;  
Disclose: using the Parcel Register, Instruments and Survey Plan.

## BEST PRACTICES FOR BUYING AGENT

Investigate presence of easements on a New Parcel Register.  
Get the instruments to understand the details (or a Buyer's Report from Protect Your Boundaries).  
Insist on a survey that shows the location of the easement on the ground (if unclear from the other docs).



## 6. CONDOS 101



### A. DEFINITION

A condominium is a collection of legal entities within a larger entity that share common interest in both land and physical features of the building.

### B. CONDOMINIUMS VS. FREEHOLD KEY DIFFERENCES

#### CONDOMINIUMS

- ▶ Your walls are your boundaries.
- ▶ Additional "land" is not connected (parking, locker).
- ▶ You share rights over other parts of the land/building (common elements).
- ▶ Activities restricted by Condo Declaration and other condo corporation docs.
- ▶ You share costs of maintaining the building with others though condo fees.

#### FREEHOLD

- ▶ Your land is your boundary.
- ▶ Everything is (usually) inside the land parcel.
- ▶ You don't share rights with others (except for easements).
- ▶ You are not restricted by anything other than municipal bylaws and the law.
- ▶ You take care of your own property maintenance.

### C. CONDO NUMBERING

#### UNITS

- ▶ The Condo's legal unit number (on the legal description).
- ▶ Numerically sequenced by floor and unit number.
- ▶ In the Condo Declaration and Condo Plan.

#### SUITES

- ▶ Doorplate number or "municipal address" number. Can be different from Unit #.

- ▶ Can skip level and suite numbers for superstitious reasons.
- ▶ Cross reference made in the Condo Declaration Schedule D.

**i** Don't confuse the door plate with the unit number. Always check that you're buying or selling the right unit by the unit number – in schedule D.

### D. CONDOMINIUM AREAS

#### SALEABLE AREA

- ▶ Largest.
- ▶ Tarion Bulleting 22 – the SF you market and sell.

#### CONDO BOUNDARY

- ▶ Smaller.
- ▶ The legal boundary of the unit. Doesn't include to exterior of exterior and common element walls.

#### LIVEABLE / USEABLE AREA

- ▶ Smallest.
- ▶ The area you actually can use. Drywall surface from floor to ceiling.

**i** The Liveable Area can be 7% to 16% SMALLER than the Saleable area (what is being promoted and sold).

### E. KEY REALTOR DOCS FOR CONDOMINIUM TRANSACTIONS

- ▶ The Condo Plan: Shows exact location of Unit, Locker and Parking Unit.
- ▶ Schedule C: Unit Boundaries defined.
- ▶ Schedule D: Unit Number, Suite Number, % Contribution to common expenses, % ownership of common areas.



## 7. DECIPHERING THE LEGAL DESCRIPTION

### A. DEFINITION

A Legal Description is a written description of a land that delineates a specific piece of real property. It is the official, universal identifier for all forms of land records and transactions.

### B. WHERE WILL YOU SEE THE LEGAL DESCRIPTION?

- ▶ Deed
- ▶ Parcel Register
- ▶ Other conveyance docs
- ▶ Survey plans
- ▶ APS
- ▶ Tax Assessment Notice

### C. COMMON ABBREVIATIONS IN THE LEGAL DESCRIPTION

- ▶ LT – Lot
- ▶ CON – Concession
- ▶ PCL – Parcel
- ▶ SEC – Section
- ▶ PT(S) – Part(s)
- ▶ LT – Lot
- ▶ BLK - Block
- ▶ PL – Plan RT – Right of Way
- ▶ ROW – Right of Way
- ▶ S/T – Subject To
- ▶ T/W – Together With
- ▶ TWP - Township

### D. PARTS TO A LEGAL DESCRIPTION

1

PLAN (LOCATION)  
REFERENCE

2

ENCUMBRANCES  
(EASEMENTS)

3

MUNICIPALITY /  
REGISTRY OFFICE

LT 25 , PL 3936 ,  
S/T EB133974 ; E  
TOBICOKE , CITY OF TORONTO



Watch for: Subject to Execution ###-####.  
Means there is a charge against this property that may not have been discharged yet. You could be underwater on the deal before you list it.



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