

survey affidavit of no change

Many professional land surveyors know all too well about the survey affidavit of no change, its negative effects on the surveying profession, and the impact it has on the public. If a land surveyor's primary duty is to safeguard life, health, property and promote the public welfare, then perhaps an extensive education/information campaign is needed to make consumers aware of the positive benefits of obtaining a current, professionally-prepared boundary survey as opposed to the negative effects of using a survey affidavit of no change. For the nominal amount of money a purchaser saves by not getting a survey, the seller has to incur a liability that they should not and most likely *would* not if they knew the potential financial risk they impose upon themselves by simply signing a document in order to expedite a property

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>>> By Christopher M. Ernst, LS

SURVEY AFFIDAVIT

STATE OF NEW JERSEY

COUNTY OF _____

SS: _____

say(s) under oath:

- 1. Representations.** If only one person signs this Affidavit, the word "we" shall mean "I". The statements in this affidavit are true to the best of our knowledge, information and belief.
- 2. Property.** We are the present owners (or duly authorized officers, partners, or members of the present owner), of Property located at Encroachment City, N.J. Also known as Lot 0, Block 0 on the Tax Map of the City of Encroachment.(called this "Property")which we now Sell to:

- 3. Survey.** We have examined the attached survey of this Property dated _____ made by _____
- 4. No change.** The survey shows this Property in its present condition. There have been no changes in the boundary lines of this Property or in the buildings, fences or other improvements as shown on the survey. No buildings, fences or other improvements have been constructed on or next to this Property since the date of the survey, except, as follows:

- 5. Easements.** No other persons have any right to use this Property, except for the rights of utility companies to use this Property along the road or for the purpose of serving the Property. No other persons have the right of joint or separate use of any driveway, stairway, walk or path on or across the Property.
- 6. Reliance.** We are aware that the Buyer(s), the Mortgage Lender and Title Insurer (if any) rely on our truthfulness and the statements made in this Affidavit.

Signed and sworn to before me on _____

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sale or to give a small cash savings incentive to the buyers.

One way to inform consumers is by relating individual scenarios or "horror stories" of actual survey affidavit stories gone awry. The following true story was taken from the case files of our small land surveying firm. (For reasons of privacy, names have been changed.).

We received a phone call from "Ms. Smith", who had recently bought a home and wanted to get a survey with property corner markers. She purchased the home about nine months earlier without a survey because her attorney wanted to help her out by getting the previous homeowners, "the Jones", to sign a survey affidavit of no change based on their old survey from about 25 years earlier. After all it sounded good—Ms. Smith's lawyer supposedly saved her a couple of bucks and she could close on the property faster by skipping a whole new survey. Now the time had come for her to construct a fence. Since the town needed an up-to-date land survey for the permit to be issued, Ms. Smith hired our firm to do the work.

The survey turned out to be nothing out the ordinary; the property in question was in a well-monumented subdivision with no boundary issues. However, the survey revealed several problems that the grantors, their 25-year-old survey, and their signed survey affidavit of no change did not. There were two encroachments, a frame shed and an asphalt driveway with Belgian block curbing of 1 foot and 1.5 feet, respectively, on the adjacent property. Ms. Smith's attorney, while saving his client a "bundle" of cash (around 0.2% of the home price) on "an unnecessary document" commonly known as a survey, had in fact done his client a tremendous disservice. This attorney was now in a position to be taken to court himself along with Mr. and Mrs. Jones to absorb the costs of moving the encroachments off of the neighbor's property. The money that the lawyer had "saved" Ms. Smith on the new survey eventually had to be spent anyway. After getting the survey we prepared, Ms. Smith regretted not spending this money *before* she purchased this property, since our survey had brought to light issues that she now had to deal with.

Under the threat of litigation, the Joneses had to come back from their retirement paradise and purchase an

easement from their old neighbors for the encroachments they failed to mention in the affidavit of no change they signed. Considering the time, aggravation and money the Joneses spent on the easement, it would have been substantially less expensive if they not only didn't sign the survey affidavit but if they had just paid for the new survey for Ms. Smith. Between the costs of the easement, additional lawyer's fees and travel expenses back to this state, the Joneses wound up spending in excess \$ 4,000. Smith incurred costs that would have been equal to the cost of the survey initially, plus additional lawyer's fees in pressuring Jones to remedy the problem. At the time of the writing of this article Ms. Smith was also contemplating suing her attorney on that transaction, which would mean additional expenses in the hiring of another lawyer.

Some readers may say that this is just an extreme case and that it does not happen that often. Perhaps that is true, but why would a home seller who is not experienced with survey matters take even the slightest risk if they didn't have to?

The potential risk that goes along with the survey affidavit of no change is by no means worth saving the land surveyor's fee. In the case above, the buyer and sellers both sustained financial losses, and a land surveyor out there somewhere saw another piece of his expertise, along with the associated fee, fade away. Not only should these survey affidavit "horror stories" be shared with potential consumers of our services, but

Perhaps it should be made mandatory that a warning stamp be placed on the survey affidavit of no change form explaining the risk and potential implications of signing it. The seller is holding the cards when it comes to the affidavit; if they are made fully aware of what they are signing, then our services will probably be more in demand.


"The affidavit of no change is a losing proposition all the way around."

further protection should be given to the public. Home sellers need to be properly informed about this document, and how by signing it, they are essentially shifting the liability from the surveyor onto themselves. While many signers of the survey affidavit may believe that after the closing they are free and clear of any more liability, this is simply not the case.

The affidavit of no change is a losing proposition all the way around. It is neither in the best interest of the buyer and can be very detrimental, financially speaking, to the seller. Perhaps the surveying industry as a whole can push for legislation through our state and national professional societies to create this proposed consumer warning

SAMPLE WARNING LABEL:

By signing this form the sellers are transferring the liability normally incurred by a professional land surveyor performing a current survey from the surveyor to the seller. There may be survey issues with your property, including, but not limited to, encroachments you may not be aware of, evidence of easements, encroachments by adjoining property owners and undisclosed boundary line issues and/or errors that only a current land survey would reveal. Although the purchaser's mortgage company and/or title company may not need a current survey for this particular transaction that does not necessarily mean the purchasers do not. If the seller signs this form then an original signed and sealed survey must be attached. Copies are not permitted and may be an infringement of federal copyright law.

label that could be placed directly on the form at the top. The affidavit form would have to be given to the property sellers soon after the contract sale is signed, along with a requirement that an attorney explain the pros and cons of signing the no change form. This would give the purchasers time to order a survey in case the sellers did not want to sign the no change form. Because the pressure to just sign everything that comes across a desk at a closing table is enormous, I believe the timeline of the sellers receiving the affidavit form would be paramount to the success of this campaign. Hopefully professional land surveyors will agree on the importance of this for the consumer and themselves alike. I have included a sample "warning" at the end of this article; perhaps this will serve as a starting point for the surveying profession to launch an effective campaign of change in an effort to execute their statutory duty. 

Christopher Ernst has a degree in Engineering Technology from New Jersey Institute of Technology. He is a New Jersey Professional Land Surveyor and has been employed at a small family-owned surveying business for 12 years.