



BY MARY SHACKLETT

In many cases, defining yourself as a surveyor and not trying to get into the realm of the law is a difficult line to walk. Nevertheless, it is a necessary line to abide by for surveyors, who must stick to the facts of what they are surveying, and be careful to avoid any legal interpretations about property or boundaries that their clients or others might wish them to make.

In law, there is a course that all future attorneys are required to take. The course is called "professional responsibility." This course outlines what the proper standards of practice and behavior for attorneys. There are also professional responsibility standards that surveyors must adhere to. One major difference is that surveyors are expected to deal with questions of fact, not law.

When a surveyor is surveying a parcel of land, the goals are to identify property boundaries, set corners, verify locations and reference the work on the parcel that was performed by previous surveyors.

As surveyors do this work, they can come across potential boundary disputes or questions which they present to their clients. When this happens, it's not unusual for clients to "push" their surveyors into rendering a conclusion about one or several discrepancies or potentials for dispute—but the job of the surveyor is to remain steadfast and confine himself/herself simply to identifying any anomalies or questions. He or she should not attempt to resolve them. If a resolution or interpretation becomes necessary, it is time for surveyor to recommend to their client that they seek the legal opinion of a property attorney.

In these respects, the professional responsibilities of surveyors are not unlike what they are for attorneys. Both professions are expected to function ethically, and within the boundaries of their authorities and expertise. Here are two common examples of how surveying and law can intersect.

Example One: Adverse Possession

According to [Lexico.com](#), adverse possession is "the occupation of land to which another person has title with the intention of possessing it as one's own."

In one case, a lake property owner was concerned the adjoining neighbor was encroaching upon her property. She hired a surveyor to survey her property, find or install corner hubs, and stake the lines.

According to the property's legal description in county records, the surveyor discovered that the plat map for the lake subdivision in which the client's property was located in had been developed over 100 years ago. The plat map showed that each lakefront property had lake frontage of 100 feet. When the surveyor staked his client's property, he found that the adjoining neighbor had apparently encroached on five waterfront feet of his client's property, giving his client 95 feet of lakefront and the neighbor 105 lakefront feet.

The surveyor's client was livid. She wanted the surveyor to talk to the neighbor. Instead, the surveyor advised his client that she had paid for the survey, which documented the facts of the legal boundaries of her property according to the legal description of the property that was filed with the county.

The surveyor recommended to his client that she take any property question of dispute with her neighbor to her attorney so she could obtain a legal opinion. He reiterated that his job as surveyor was to document



Example 2: Timber Trespass and Triple Damages

According to [Chenoweth Law Group](#) in Portland, Oregon, "Individuals and businesses can find themselves involved in a timber trespass claim in Oregon or Washington. Timber trespass arises when someone cuts trees or shrubs belonging to someone else. Sometimes timber trespass results from actual theft of commercial timber or the intentional killing of trees standing in the way of a neighbor's scenic view, but, more often, it is the result of a dispute over who owns the property on which the timber sits."

In one case, a surveyor was hired by a timber company in Washington State to survey a 300-acre tract of land. The southern boundary of the parcel abutted a 75-acre private forest that was owned by another party.

The surveyor set the corners, flagged and staked the lines—and then he did something else. He set a line that was 30 feet inside of the timber company's property that indicated where the tree cutting was to stop.

The surveyor then contacted the owner of the 75-acre private forest that bordered the 300 acres. Both surveyor and the private landowner physically inspected the boundary line between the two parcels, as well as the 30-foot setback line that had been designated as a separate boundary line for timber cutting.

All parties agreed on the boundary line between the two properties, and also on the 30-foot setback for tree cutting.

In this case, it was accepted local practice for the surveyor to set the tree cutting line as well as the property line. The surveyor had brought all parties together to ensure that they would be in legal agreement as to where tree cutting would occur.

Drawing the "fine line" between surveying and law

The above two use cases illustrate that the "line" between surveying and law can bend, depending upon the job the surveyor is performing. It is therefore up to the surveyor to know when to stick to the facts of surveying land (example 1), and when it is permissible and even expected to know enough about the law so you can advise and/or protect your client from overstepping it and incurring penalties (example 2).

Here are three examples of where surveyors and the law bump up against each other, and how they handle the "fine line."

Property Legal Description

Typically, a property legal description is a work product coming from a surveyor after they survey a plot of land by using either a metes and bounds survey, a rectangular survey, or a lot number block survey.

The surveyor reviews county records of the property and also performs physical field work to define the property boundaries. He or she develops a survey map of the property for his/her client that shows relevant markings and boundaries, and that also is accompanied by a written legal description of the same that can be kept by the client and filed with the county.

Of course, surveys are expensive—so there are times when individuals other than a surveyor are asked to develop property legal descriptions without physically surveying the property. These individuals might be lawyers or title companies. They go to the county records to see what is available that describes the property and its environs, and they then develop a legal description without physically visiting or surveying the land. The risk is that the legal property descriptions they develop might be inaccurate.

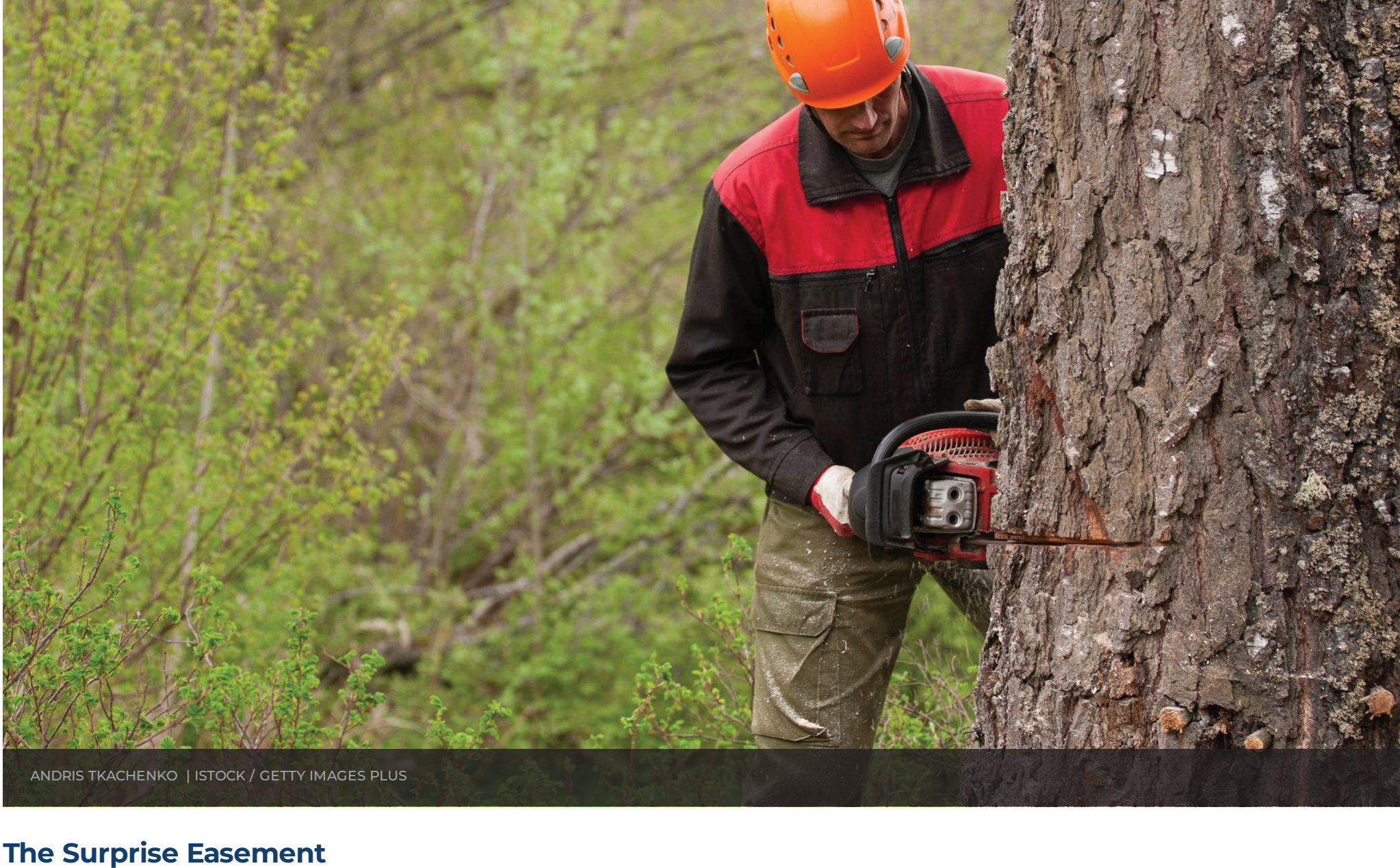
Here is an example:

An individual buys what he believes to be a 40-acre parcel and he asks his family attorney to develop a property legal description. The attorney's expertise isn't in property law, but the task seems straightforward. The attorney researches the property documentation at the county office. Using the documentation, the attorney develops a written legal description for the property. Ten years later, the original buyer decides to sell the north half of his 40-acre property, which is 20 acres. His purchaser insists upon a survey, and a new legal description for the north 20 acres. The original buyer/owner and his new purchaser agree to hire a surveyor. The surveyor researches county documentation on the property, and also performs a field survey to accurately identify property lines. The surveyor discovers that the entire 40-acre property is really only 38 acres. This makes the northern half of the property only 18 acres, and not 20 acres. The new purchaser thought he was making his good faith offer for 20 acres, not 18, so now there is a dispute between buyer and seller.

At this point, the surveyor has done his job. He has surveyed the property, produced a survey map with legal descriptions, and flagged and staked boundaries and corners.

If there is a dispute, this is the time for the surveyor to turn over his completed work to the disputing parties, and for those parties to seek attorneys and/or other means of legal recourse to resolve the dispute. The surveyor is out of the loop.

What are the takeaways from this example? That the surveyor is the best source of a factually accurate legal description of property, and that once there is a dispute or a need for interpretation of a legal dispute, it is time to get an attorney involved.



The Surprise Easement

A surveyor is hired by a buyer to survey an 80-acre property as a pre-condition of sale. The surveyor performs the physical field survey, and he also researches the property records at the county office.

This is a surprise to the buyer, whose aim was to develop the 80-acre tract of land into a subdivision, and to site homes in the area that is traversed by the easement. The owner says he was aware of an old dirt road that, to his best knowledge, had been used as a logging road 50 years ago, but that road since has been largely overgrown with grass and trees.

Nevertheless, there is a legal issue. Can the easement be found to be legally abandoned—or could the county argue that it is still in effect and that, in an emergency, the county can legally traverse the property over the easement to get to the gravel pit?

This is an area of legal interpretation. If the buyer wants to remove the easement as a pre-condition of sale, it is likely up to the owner to meet with the county to get a written release from the easement. In terms of advisement, this becomes a job for an attorney, not a surveyor.

A Case of Unclaimed Land

A property owner wants to build a driveway to access a county road. The driveway routes across a small triangle of land that encompasses approximately 500 square feet. When the property owner looks at his property map, it appears that this minuscule triangle of land is part of the property owner's property, because his property boundary borders the county road and the small triangle of land is on his side of the road. However, the property owner's survey map shows that there is a section line that borders the north side of the owner's property. This section line ends about 15 feet short of the border of the county road, and does not include this very small triangle of land that the property owner wants to cross with his driveway.

The property owner goes to the county Assessor's office. He wants to know who owns this small piece of land. The county assessor tells him that there is no tax record of anyone owning the land, that it is too small to even assess, and that, as far as the assessor is concerned, it makes the most sense that the property owner should own the land, since it is on his side of the road. The assessor then advises the property owner to check with the county recorder to see if there is any more information.

The property owner visits the recorder's office. The recorder's records show that all of the land on the north side of the owner's property that is in the other section belongs to the State. Since the 500 square foot triangle of land is north of the section line, it is state property.

The property owner wonders if he can just claim this land under the legal doctrine of Adverse Possession, since he has maintained it for 25 years, and the state has never done anything with it. He is thinking that he should just go ahead and build a driveway over the land, but he first calls the surveyor who performed his original land survey.

The surveyor confirms what survey bears out: that the property owner's land ends at the section line, and that the property owner does not own this very small triangle of land.

The property owner explains to his surveyor that his intent is to build a driveway to the county road that traverses that 500 square foot triangle of land anyway, that he found out that the land technically belongs to the State, but that it is so small that there really isn't anything the State could do with it.

At this point, the surveyor could opt to tell his client to see an attorney, and he does so. Additionally, the surveyor also has actual field experience with state land that he is comfortable in sharing anecdotally with his client, although he makes it clear he is not an attorney.

This client had been with the surveyor for many years, so there was a modicum of trust that has built up between them.

"This is unclaimed and I am not an attorney, whom I advise you to see if you are interested in pursuing the driveway," the surveyor says to his client. "You can contact the state to

to see if the state will grant you an easement, and you can contact the county to see if they will give you a right of way—but I can tell you from past experience, that dealing with the state on matters like this can be costly and time-consuming. In one case, I had a client who had constructed a septic system on part of what ended up to be state land. He tried to get a waiver, but the state was unsympathetic. The amount of red tape he encountered showed him that it would be years until he secured permission, if he secured permission at all. He ended up having to build an entirely new septic system that was entirely on his own land because that was the cheaper route."

Int this case, because the surveyor and his client had a longstanding, good faith relationship, the surveyor felt he could freely share from his own experience and by so doing, suggest to his client that going ahead with the driveway project would likely not be in the client's best interest. At the same time, the surveyor made it clear to his client that he as a surveyor was not advising his client on legal matters. If the client chose to go ahead with the driveway project, the surveyor recommended that his client consult a property attorney.

This is an example of a surveyor who knew how to render advice to a trusted client, while at the same time maintaining awareness that he did not "cross the line" into legal matters that are the proper domain of a property attorney.



Protecting yourself from legal liability

Even if a surveyor is well-versed in drawing the line between factual survey matters and interpretive legal matters about property, there is always the **possibility of litigation** if a client feels that he has been misled by his surveyor.

How do you protect yourself if something like this happens? Liability insurance.

Professional liability insurance protects you from errors and omissions in your work, and provides coverage for negligence, bodily injury and property injury. It can also cover your legal defense costs.

General Liability Insurance protects you from claims of property damage, bodily injury and any associated medical costs. Although there is some overlap between these two insurances, it is wise to have both in place, as both protect you from liability arising from lawsuits.

Summary

The job of a surveyor is to discover and document everything. These elements are learned about boundaries, characteristics and histories of the properties they survey. These elements are documented in formal surveys and reports they relay to clients.

When the facts uncover a hidden easement or an inaccurate boundary, an opening is created for a potential legal dispute. This is the "fine line" that the surveyor must stop at, and the point where a property attorney should get involved.

The professional responsibility of the surveyor is to be continuously mindful of this fine line as he does his work, and to also be aware of special circumstances that may allow him to cross that line. For example, if the surveyor is surveying a large parcel of land for timber cutting, it is likely that his client also expects him to know about a local ordinance that prohibits the cutting of trees too close to a boundary line.

In the great majority of cases, legal interpretations should stay with attorneys and surveyors should stick to the facts. This is a fundamental guideline, and it has kept many surveyors out of legal hot water as they perform the important task of documenting each property they survey.

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