

PROTECT YOUR BOUNDARIES.ca

Understand Land™ Seminar Series for Real Estate Professionals
Seminar # 5

“Easements and Right-of-Ways”

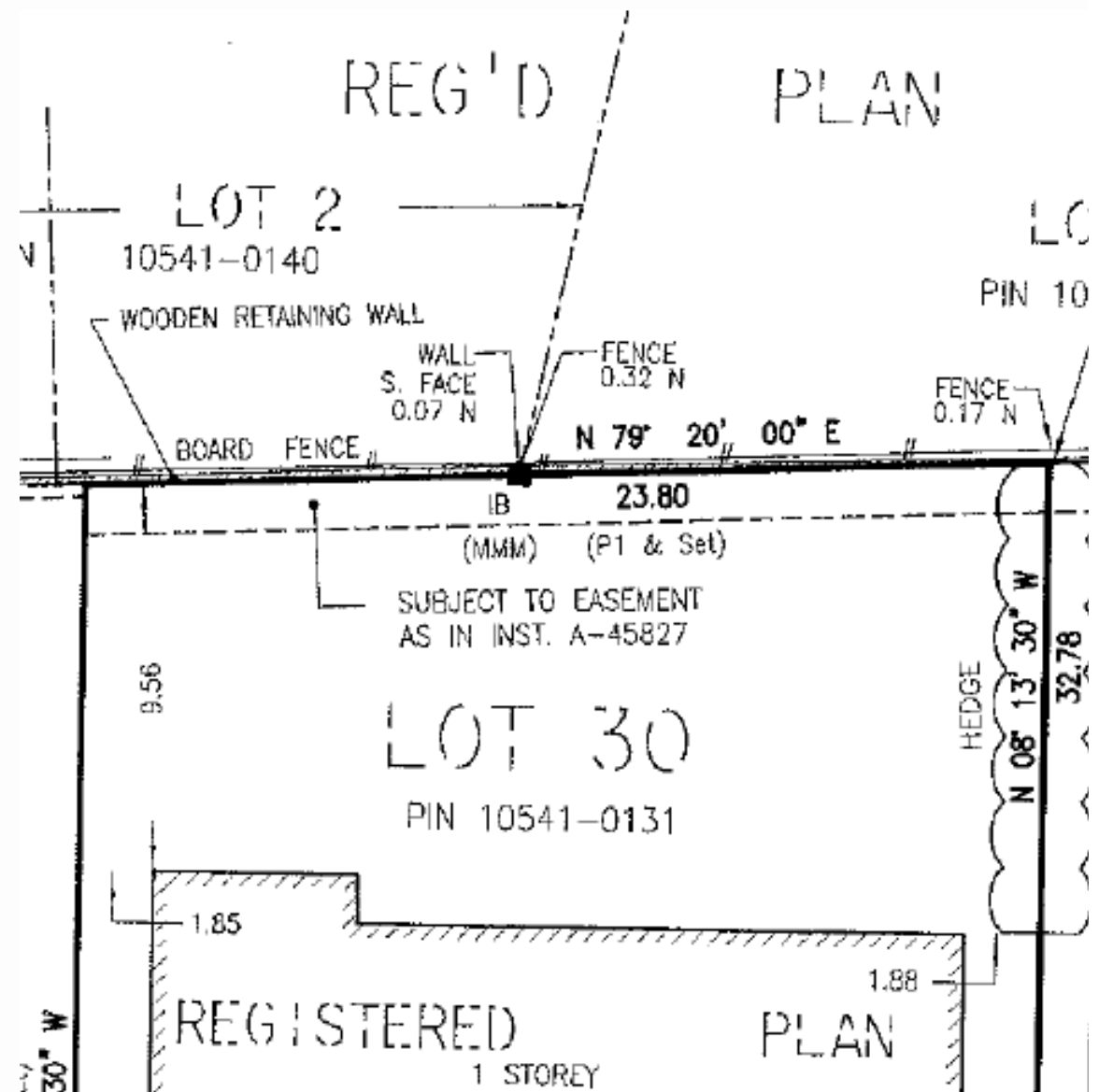
Chris Kamarianakis Executive Director, Protect Your Boundaries Inc.

Today's Program

- ✓ What is an easement?
- ✓ Types of easement?
- ✓ Where and how are they documented?
- ✓ Is there an easement on my property?
- ✓ When easements affect your real estate deal.
- ✓ Why do you care?
- ✓ Best practices.



What is an Easement?



Definition: Easement

“An easement is a right to use the property of another.”

- Non-possessory grant of rights to use another's land.
- Part of the bundle of rights that is Title.
- Granted by deed or contract.
- Remain on title in perpetuity except when granted for an explicit period.



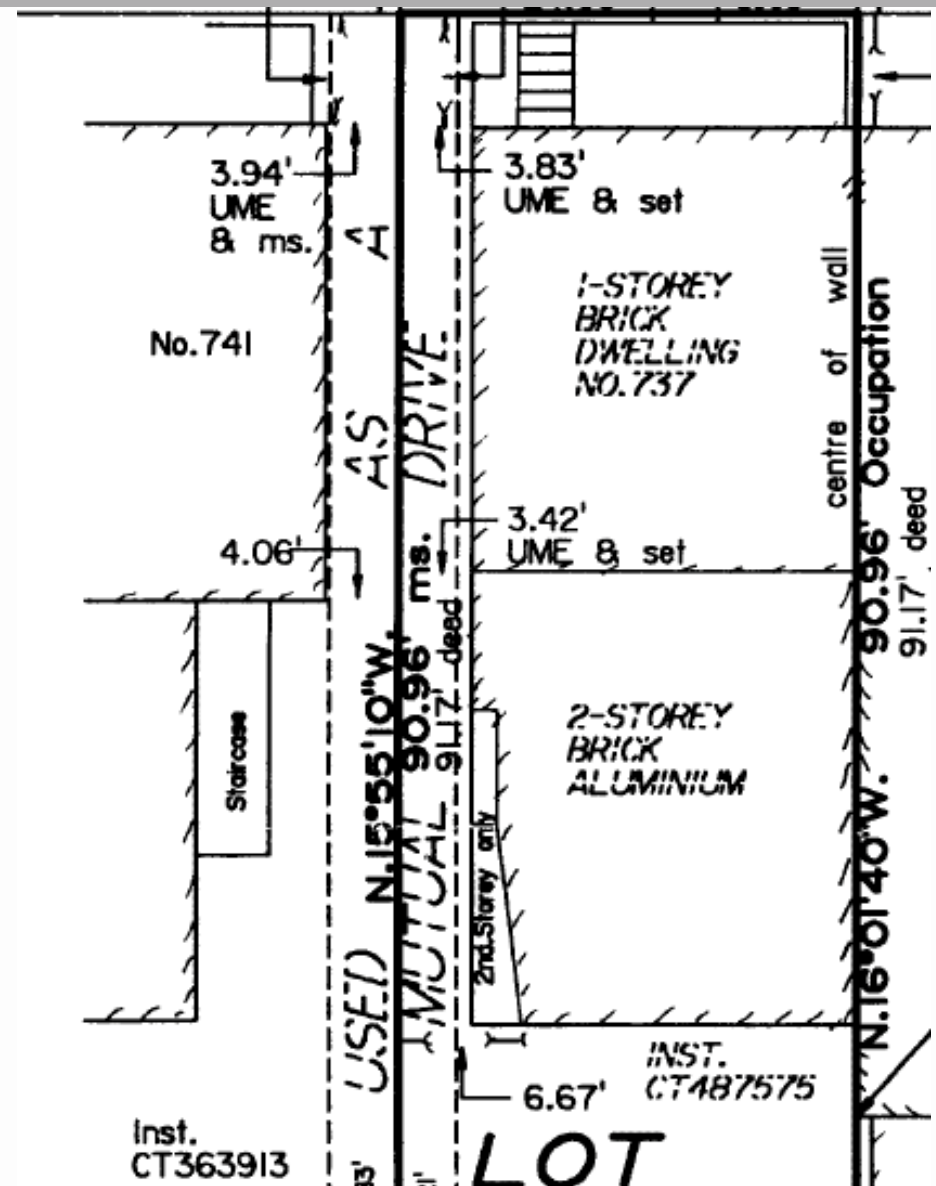
Parties in an Easement

Dominant Tenement

- The land/person who benefits from the right.
- E.g. Your neighbour's land has access rights over your land. His land is the *dominant tenement* of this easement.

Servient Tenement

- The land/person who is giving up the right.
- E.g. Your neighbour has a right to cross your land to get to his. Your land is the *servient tenement* of this easement.



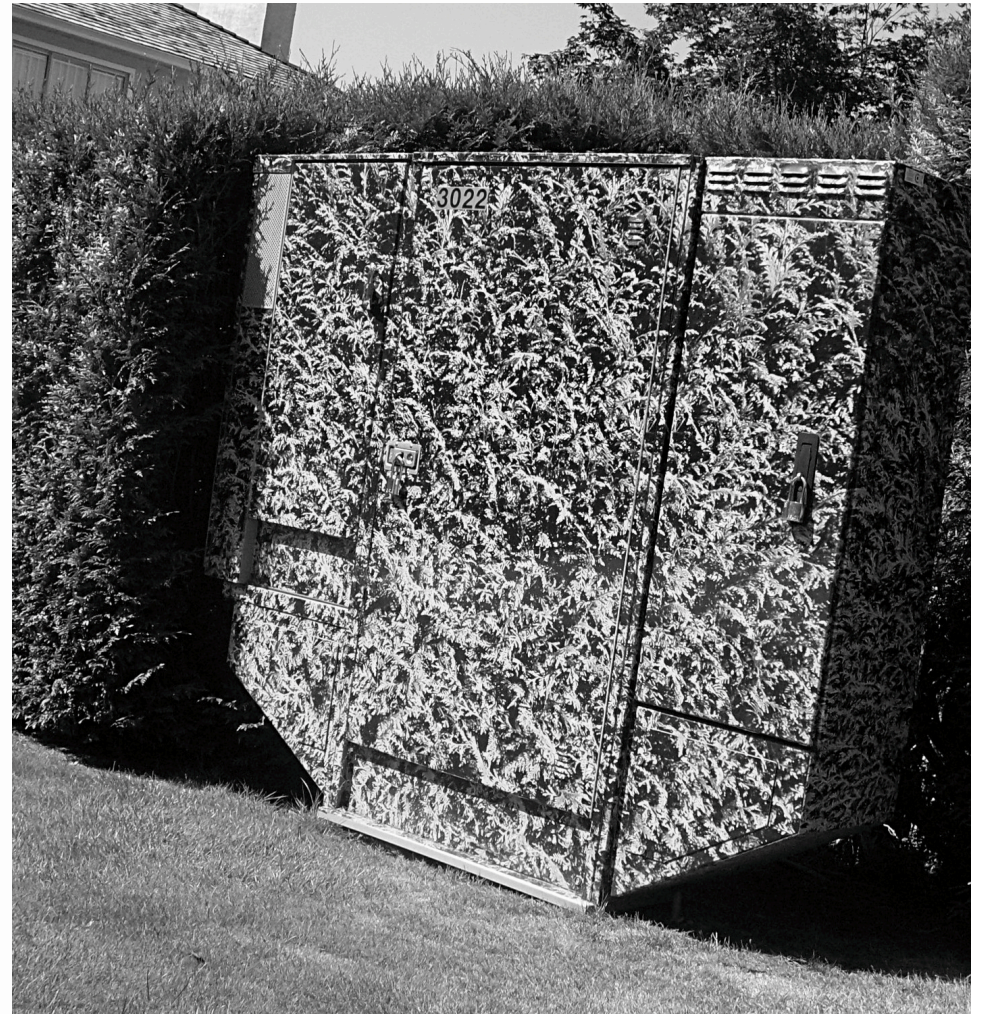
Who Owns the Easement?

Appurtenant Easement

- Benefits adjoining/other lands.
- E.g. Right-of-way, maintenance, construction, right-to-light, air rights.
- Consent to sell property not required.

Gross Easement

- Benefits another individual/corporation.
- E.g. Utility easements, Rogers & Bell.
- Can be transferred without notice to land owner.



Easement Categories

Affirmative Easement

- Allows holder to do something on another's land.
- E.g. Use driveway to access back yard.
- Most common type of easement.

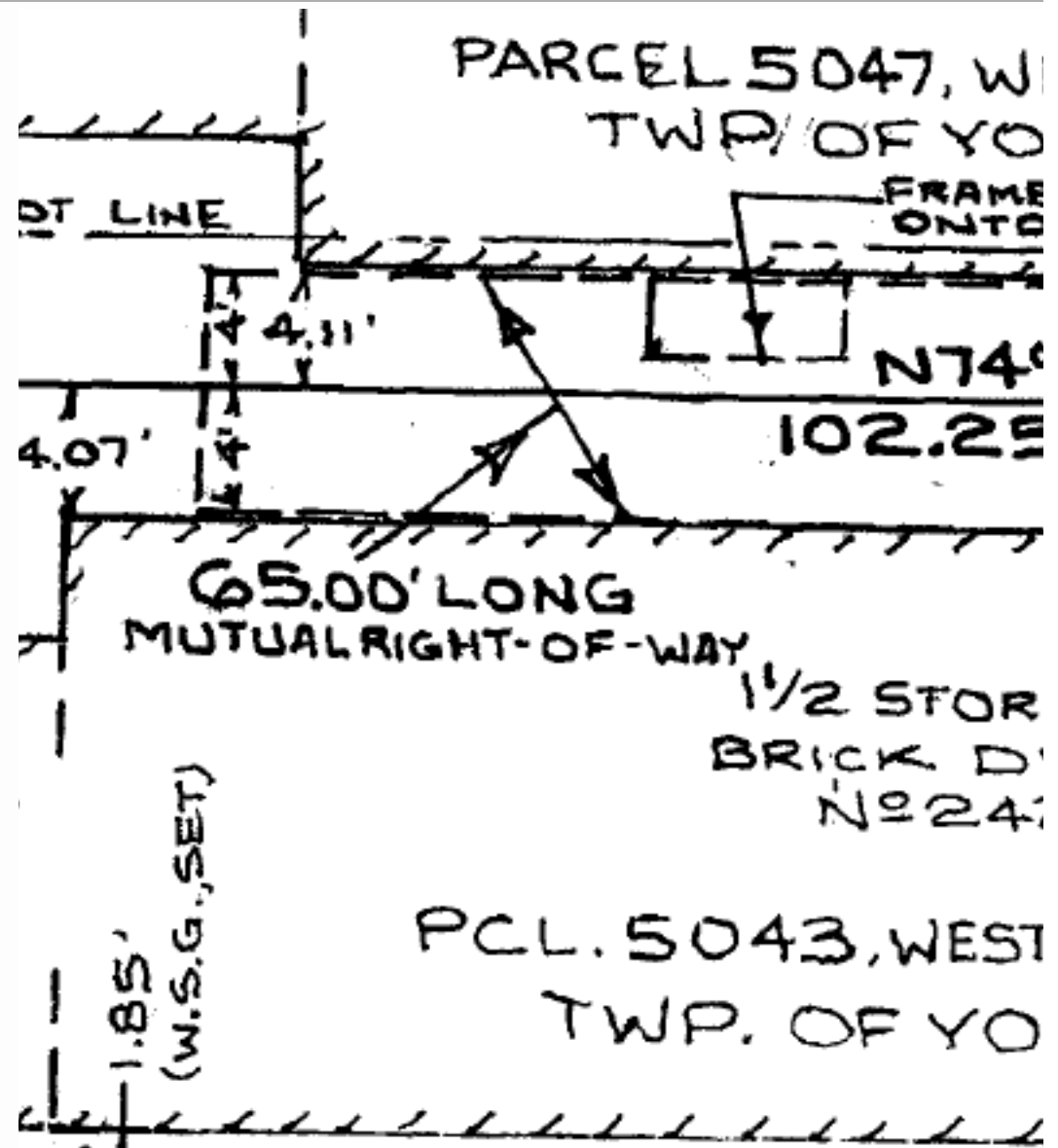
Negative Easement

- Prevents something from happening on a person's land.
- E.g. Prevent building a tall structure that blocks another building's view. Also limiting distance easements.



Types of Easement

- Right-of-Way
- Utility
- Support
- Maintenance & Repair
- Easements described in Condominium Declarations.
- Construction
- Conservation
- Right to light
- Time-limited access
- Air rights



Right-of-Way Easement

- ROW is a type of easement.
- Allows owner of one property to travel through/across another's property.
- Most common: road or path through.
- In Toronto: laneways, shared/mutual driveways.
- Cannot be blocked or obstructed.

Utility Easement

- Utility is a type of easement.
- Allows a utility corporation to access a property to maintain equipment/assets.
- Most common: surface, underground, overhead wires.
- Can be sold without property owner's consent.
- Beware the unregistered utility easement.



Easement Documentation

- Property Deed
- Parcel Register

How do you know there's an Easement on a Property?

Shown on a Survey Plan and in the Legal Description

E.G.: PCL 22-1 SEC 65M2693; LT 22 PL 65M2693; **S/T LT547200** ; MARKHAM

All reference the unique “instrument” (document) that created the easement.

Your Key Easement Documents are:

- Parcel Register
- Easement Instruments
- Survey Plan (The Coles Notes of easements!)



Parcel Register (known as a PIN)



Ontario

ServiceOntario

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND
REGISTRY
OFFICE #66

21244-0069 (LT)

PAGE 1 OF 1
PREPARED FOR 0335513
ON 2015/06/24 AT 20:09:00



* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

PROPERTY DESCRIPTION: PT LT 6 E/S STRACHAN AV PL ORDNANCE RESERVE TORONTO; PT FARMS LT BLK 1 ORDNANCE RESERVE (AKA LT 1 BLK Q MILITARY RESERVE) TORONTO AS IN CA540583 EXCEPT THE EASEMENT THEREIN; CITY OF TORONTO

PROPERTY REMARKS:

ESTATE/QUALIFIER:

FEE SIMPLE
LT CONVERSION QUALIFIED

RECENTLY:

FIRST CONVERSION FROM BOOK

PIN CREATION DATE:

2003/05/26

OWNERS' NAMES

LORUSSO, TERESA
LORUSSO, ANNE MARIE

CAPACITY SHARE

JTEN
JTEN

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
<p>** PRINTOUT INCLUDES ALL DOCUMENT TYPES (DELETED INSTRUMENTS NOT INCLUDED) **</p> <p>**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:</p> <p>** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES * AND ESCHEATS OR FORFEITURE TO THE CROWN.</p> <p>** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY CONVENTION.</p> <p>** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.</p> <p>**DATE OF CONVERSION TO LAND TITLES: 2003/05/26 **</p>						
AT3829825	2015/03/11	TRANSFER	\$700,000	CHOW, DIANE	LORUSSO, TERESA LORUSSO, ANNE MARIE	C
REMARKS: PLANNING ACT STATEMENTS.						
AT3829826	2015/03/11	CHARGE	\$325,000	LORUSSO, TERESA LORUSSO, ANNE MARIE	EQUITY FINANCIAL TRUST COMPANY	C



Easement Instrument/Deed

[illegible]

Identifying an Easement in the Legal Description

- S/T: Subject to (an easement)
- T/W: Together with (an easement)
- ROW: Right of Way (easement)



Ontario

ServiceOntario

PARCEL REGISTER

LAND

REGISTRY

OFFICE #43

* CERTIFIED IN ACCORDANCE WITH THE L

PROPERTY DESCRIPTION: PT LT 4, PL BR17 AS IN RO1154162; S/T & T/W RO1154162 ; BRAMPTON

PROPERTY REMARKS:

ESTATE/QUALIFIER:

FEE SIMPLE

LT CONVERSION QUALIFIED

RECENTLY:

RE-ENTRY FROM 14066-0292



Why do I
care?



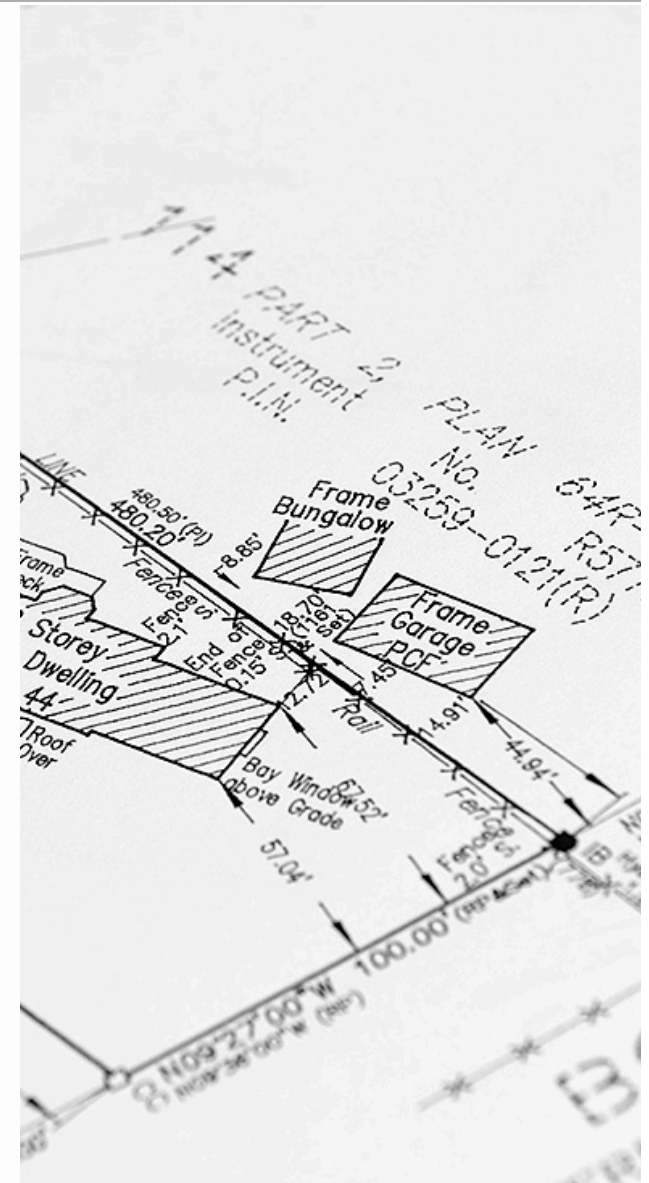
Unknown or Undisclosed Easements

- ✓ Seller and/or Buyer are unaware of easement.
- ✓ Seller is aware but does not disclose.

What Goes Wrong?

- ✓ Have to keep driveway clear – can't park
- ✓ Can't build the pool/deck/patio.
- ✓ Can't use the land as originally anticipated.
- Buyer can sue seller/agent for misrepresentation.
- Title insurance claim.
- Dissatisfied buyer and seller.

Result: Increased probability of blowback on Realtors.



What to Watch For...

Is the land being used as per the documentation?

- ✓ Shared driveways
 - ✓ Look for permanent structures on the shared driveway (A/C units, lean-to sheds, fences)
 - ✓ Check the survey to see if they are on the ROW.
 - ✓ Don't assume the boundary is centred between the houses, or that the ROW is the same distance either side of the boundary.
- ✓ Laneways
 - ✓ Is access free and clear? Has anyone built obstructions?
- ✓ Utility Easements on title
 - ✓ Has the pool/deck/patio/shed been built on it?
 - ✓ Do you see any evidence of telco/utility easements.



How to Protect Yourself and Your Client

Selling Side

- ✓ Look for easements on Plan & Legal Description.
- ✓ Provide the Survey Plan, Parcel Register and Instrument documents in the selling package.
- ✓ Disclose any issues/anomalies.

Buying Side

- ✓ Look for easements on Plan & Legal Description.
- ✓ Look for evidence of easements, registered or unregistered, on the ground.
- ✓ Insert a condition on the offer “on satisfactory boundary inspection”.
- ✓ Acquire the Survey Plan, Parcel Register and Instrument document.
- ✓ Discuss with surveyor if you suspect issues.



Result: Decreased likelihood of buyer's remorse and trailing liability.



Find your survey plan.

Search the largest database of existing survey plans for the Greater Toronto Area (GTA).

SEARCH

[Can't Find Your Plan?](#)

Buy your
Leica Disto
E7100i [here](#)



Real Estate Agents Centre



Marketing Materials
Brochures, buyer/seller package inserts, newsletters and more



Education Seminars
Book a session, get the handouts



PLANalert™ Subscription
We'll tell you when there's a plan for your listing



Industry News Updates



Boundaryboss Blog



Have a Question?

Q&A
FORUM

LANDPRO CONFERENCE 2016



Pre-register NOW to save 30%.
Use Code: PYB15 before Oct 30

- ✓ March 2, 2016
- ✓ 12 Speakers – 12 Critical Topics
- ✓ 1000 Agents and Brokers
- ✓ Focus on the trends and insights of the fundamentals of real estate and condo industry.
- ✓ \$299/\$199 per person



PROTECT YOUR B UNDARIES.ca

Blog for Realtors:
www.BoundaryBoss.com

Twitter: @BoundaryBoss

Chris Kamarianakis Executive Director, Protect Your Boundaries Inc.

PROTECT YOUR BOUNDARIES.ca



Thank You!