

Analysis of Boundary and Title Issues in residential properties of the Greater Toronto Area

An examination of land survey plans for 415 residential properties

Prepared by Krcmar Surveyors Ltd

for

Protect Your Boundaries Inc.

September 2014

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Executive Summary

In July of 2014 Protect Your Boundaries Inc. (PYB) embarked upon a study to determine the prevalence of property boundary issues and property title issues in the Greater Toronto Area. This study followed two years of anecdotal evidence that suggested a sharp increase in the number of boundary disputes between neighbours in the region, many of which were escalating to full legal action.

PYB sought to quantify and qualify the boundary issue phenomenon and attempt to understand its implications on our communities and the real estate, surveying, legal and insurance industries.

A boundary issue exists when a fence, hedge or wall (property delineation features) is displaced from the property boundary by a margin significant enough to potentially provoke a dispute between neighbours. A boundary issue also exists when a physical feature (such as an addition, garage, shed, deck or pool) on one property encroaches on (crosses over) the boundary to the neighbour's property

Similarly a title issue exists when what is physically present on the property is not reflected accurately on the property's title records. An example of this is when a hydro easement exists but is not registered as such.

PYB commissioned a study of 415 randomly selected residential properties in the Greater Toronto Area to determine the prevalence and nature of boundary and title issues. To achieve this the research team selected and studied existing land survey plans of these properties.

A land survey plan, prepared by an Ontario Land Surveyor, offers the single most comprehensive view of a property at the time of the plan's creation. Crucially it shows all physical features (buildings, fences, sheds, decks, pools and other structures) within and immediately adjacent to the property boundary. As such it can be considered the "gold standard" of evidence of boundary and title issues for the purpose of this study.

The study found that 49% of residential properties in the GTA have one or more Boundary Issues.

Boundary issues were most prevalent in Halton (63%) followed by Toronto (58%), Durham (49%), Peel (42%) and York (34%).

A segmentation of the types of boundary issue suggests that the majority of these boundary issues, 88.5%, would likely not be covered by a title insurance policy.

The study also found that 15% of residential properties in the GTA have one or more Title Issues.

The findings are significant to all stakeholders in real estate - the homebuyer and seller, lender, real estate agent, broker, lawyer, title insurance company and surveyor – because it indicates that almost half of the approximately 90,000 residential properties sold in the GTA each year carry with them one or more boundary issues that have gone undetected or been ignored since the introduction of title insurance in the mid-1990's.

These boundary issues are most likely to flare into disputes upon the change of ownership of a subject or neighbouring property, initiating a sequence of actions that, in an increasing number of cases, result in costly outcomes for all stakeholders.

1. Introduction

In the early 1990's title insurance was introduced to the Canadian real estate market, offering lenders, lawyers and homebuyers insurance against title defects, off-title building code infractions, mortgage and title fraud, as well as many boundary defects that would have otherwise been revealed in an up-to-date survey.

In doing so, title insurance made it possible for real estate transactions to close without an up-to-date survey plan, allowing buyers and sellers to complete their transactions faster and lenders and lawyers to facilitate the closing with far less due diligence than previously required.

Since then, residential real estate transactions have largely proceeded without an examination of the property's physical features - buildings, garages, sheds, fences, walls, decks, etc. - relative to the property's boundary, thereby denying the homebuyer the critical awareness of any encroachments on their new property or construction that violates municipal by-laws.

Anecdotal evidence gathered over the past five years by Krcmar Surveyors Ltd. suggested that boundary disputes were on the rise among residential homeowners in the Greater Toronto Area. It was believed that, in the absence of the examination of an up-to-date survey each time a property was bought and sold, there would be a widespread deterioration of the average homeowner's awareness of where their official boundaries are.

A lack of such awareness, it was believed, would lead more homeowners to undertake outdoor construction projects without a keen appreciation of their property's boundary location. This would result in unwitting encroachments such as fences, hedges, walkways, driveways and retaining walls being off the property boundary; sheds, decks, garages, patios and other structures being built partially over the boundary; and neighbouring property structures encroaching onto a homeowner's property.

Similar issues relating to a property's title, such as easement issues, deed/survey inconsistencies and by-law infractions were also believed to have increased from the pre-title insurance era.

In 2014 Protect Your Boundaries Inc. (PYB) sought to determine the prevalence of boundary and title issues in the Greater Toronto Area. It wished to definitively quantify the percentage of residential properties in the region that had, over time, developed boundary and title issues that were significant enough that homeowners may enter into disputes over them.

PYB engaged Ian Mosley Data Strategy (IMDS) and Krcmar Surveyors Ltd. to design and execute a formal research project that would examine the survey plans of a significantly relevant sample of properties across the GTA region to determine how many of these properties had Boundary Issues and Title Issues, either of which held the potential to lead to boundary disputes.

The key finding of this study was that **49% of residential properties in the GTA have one or more such Boundary Issues** that have the potential to flare into a boundary dispute. This was significantly higher than expected.

The results of this study are a wake-up call to all professionals involved in the residential real estate transaction – agents, lawyers and lenders – as they offer insight into a new boundary reality that exists following twenty years of title insurance usurping the need for the land survey in the real estate transaction.

It also is of value to those in the survey industry as it provides clear evidence that the very instrument which, twenty years ago, destroyed the residential resale segment of their industry has created a new environment in which surveyors, and the land survey plan, have a renewed and vital role to play in helping home buyers, home sellers and the professionals that facilitate and finance their transaction, protect their interests.

2. Oversight

Given the number of properties in each Land Registry Division, and requiring a 90% confidence limit, a sample of 83 plans from each Land Registry Division is required. The plans are randomly sampled from within their Land Registry Division to remove any false trends. No stratification of the samples is performed – such would require *a priori* research of correlation between plan and structure types (and even dates); this is preliminary research, random selection is sufficient for directional conclusions.

3. General Approach

A legal survey plan (Surveyor's Real Property Report), created by an Ontario Land Surveyor, is a graphical representation of a property's boundary, buildings and other physical features, and the underlying legal land fabric, all in spatial relation to each other. As such the survey plan offers the most comprehensive and reliable evidence of encroachments on any property boundary as well as other issues relating to the extent of title.

It was determined that the most effective way to assess the true prevalence of boundary and title issues on properties in the GTA was to study their existing survey plans to identify and tabulate specific features and issues according to predetermined criteria.

4. Study Sample Selection

Krcmar Surveyors Ltd was commissioned to select the survey plans for this study and perform the subsequent examination of these plans. The Krcmar Surveyors database of survey plans contains over 420,000 unique survey plans created by forty-four different land survey firms.

The researchers randomly selected 83 survey plans from each of the five Land Registry Divisions in the Greater Toronto Area – Halton, Peel, York, Durham and Toronto – totalling 415 survey plans.

This was achieved by extracting a list of the survey plans from the database, each identified by a sequential, unique number. A random number generator computer program was then used to identify the 83 plans that were to be selected for each region.

The survey plans selected were limited to those created since 1971 as plan standards prior to that time were far less uniform and most pre-1971 plans do not show the comprehensive information required for the purpose of this study.

The plans were classified according to three time periods that are significant to the evolution of surveying technology and practice:

1971-1982 - Building Location Surveys (BLS)

Less stringent regulatory standards than today. Survey plans were routinely acquired by clients in real estate transactions. Deed numbers were shown as PINs did not yet exist.

1983 - 1998 - Surveyor's Real Property Reports (SRPR)

More stringent regulatory standards than prior period; Real estate transactions almost always required a survey plan. This is the period just prior to the introduction of title insurance in Ontario.

1998 – Present - Surveyor's Real Property Reports (SRPR)

The title insurance era. Title insurance usurps need for survey in the real estate transaction. Surveys now only occasionally requested for transactions.

Ensuring that all three time periods were represented equally in the sample allowed the research team to further mine the data to determine if there is a correlation between the introduction of title insurance and an increase in boundary and title issues identified on survey plans.

Survey plans of new residential construction, where buildings were labelled “Dwelling Under Construction”, were omitted from the study because they predate occupancy and property improvement, and as such are not a useful indicator of what property owners have constructed on their property.

5. Methodology

The examination of the 415 survey plans was performed by an Ontario Land Surveyor at Krcmar Surveyors Ltd. The findings were peer-reviewed by a second OLS for verification and validation.

The examination was done according to a strict methodology, the design of which was overseen by IMDS.

Each plan's date, Land Registry Office, municipal address, legal description and surveyor were recorded. Each plan was then examined for instances of nine Boundary Issue criteria and seven Title Issue criteria that comprised the study:

Boundary Issue Criteria

1. Rear fence displaced from property line;
2. Side fence displaced from property line;
3. Hedge displaced from property line;
4. Retaining wall displaced from property line;
5. Exterior structure encroaching on neighbouring property;
6. Exterior structure encroaching onto subject property;
7. Driveway encroachment onto neighbour's or subject property;
8. Fence encroachment onto public road, public boulevard or lane;
9. Multiple fences.

Title Issue Criteria

1. Significant dimension discrepancies between deed and survey plan;
2. House or garage encroaching on abutting property;
3. Eaves overhanging the boundary;
4. Unregistered utility easement;
5. Mutual driveway discrepancies;
6. Encroachments on easement or mutual driveway;
7. Road access issues.

Each instance of a Boundary Issue and Title Issue was recorded on a hard copy of the survey plan, and tabulated in a spreadsheet. Tabulation was made by individual criteria and then summarized to provide the overall Boundary Issue and Title Issue prevalence by Land Registry Office (region) and for the Greater Toronto Area at large.

A single instance of a Boundary Issue on a property classified that property as having a Boundary Issue. Multiple Boundary Issues on a single property did not alter this classification. For the purpose of this study a property either had Boundary Issues or did not.

A single instance of a Title Issue on a property classified that property as having a Title Issue. Multiple Title Issues on a single property did not alter this classification. For the purpose of this study a property either had Title Issues or did not.

6. Plan Evaluation/Scoring

Each plan was examined for nine Boundary Issue criteria and seven Title Issue criteria:

Boundary Issue Criteria

- 1) Rear Fence displaced from property line;**
 - a) 30 cm (12 inches) or more – classified as a Boundary Issue.
- 2) Side Fence displaced from property line;**
 - a) On “small” properties with frontage less than 12 metres (40 feet).
 - i) Displacement of 20 cm (8 inches) or more – classified as a Boundary Issue.
 - b) On “large” properties with frontage greater than 12 metres (40 feet).
 - i) Displacement of 30 cm (12 inches) or more – classified as a Boundary Issue.
- 3) Hedge displaced from property line;**
 - a) On “small” properties with frontage less than 12 metres (40 feet).
 - i) Displacement of centre-line of hedge of 20 cm (8 inches) or more – classified as a Boundary Issue.
 - b) On “large” properties with frontage greater than 12 metres (40 feet).
 - i) Displacement of centre-line of hedge of 30 cm (12 inches) or more – classified as a Boundary Issue.
- 4) Retaining Wall displaced from property line;**
 - a) On “small” properties with frontage less than 12 metres (40 feet).
 - i) Displacement of 20 cm (8 inches) or more – classified as a Boundary Issue.
 - b) On “large” properties with frontage greater than 12 metres (40 feet).
 - i) Displacement of 30 cm (12 inches) or more – classified as a Boundary Issue.
- 5) Exterior Structure (excluding house and garage) encroaching on neighbouring property;**
 - a) On “small” properties with frontage less than 12 metres (40 feet).
 - i) Encroachment of 20 cm (8 inches) or more – classified as a Boundary Issue.
 - b) On “large” properties with frontage greater than 12 metres (40 feet).
 - i) Encroachment of 30 cm (12 inches) or more – classified as a Boundary Issue.
 - c) Technically speaking a house encroaching on a neighbouring property is a Boundary Issue. However, the research team deemed this to be more of a Title Issue as, in most cases, a court would not order that the wall be removed to remedy the encroachment, but rather that the owners enter into a registered encroachment agreement or convey ownership of that portion of land to the encroaching owner. This determination is supported by case law.
- 6) Exterior Structure encroaching onto subject property;**
 - a) On “small” properties with frontage less than 12 metres (40 feet).
 - i) Encroachment of 20 cm (8 inches) or more – classified as a Boundary Issue.
 - b) On “large” properties with frontage greater than 12 metres (40 feet).
 - i) Encroachment of 30 cm (12 inches) or more – classified as a Boundary Issue.
- 7) Driveway encroachment onto neighbour’s or subject property;**
 - a) On “small” properties with frontage less than 12 metres (40 feet).
 - i) Encroachment of 20 cm (8 inches) or more – classified as a Boundary Issue.
 - b) On “large” properties with frontage greater than 12 metres (40 feet).
 - i) Encroachment of 30 cm (12 inches) or more – classified as a Boundary Issue.
- 8) Fence encroachment onto a public road or boulevard;**
 - a) On “small” properties with frontage less than 12 metres (40 feet).

- i) Encroachment of 20 cm (8 inches) or more – classified as a Boundary Issue.
- b) On “large” properties with frontage greater than 12 metres (40 feet).
 - i) Encroachment of 30 cm (12 inches) or more – classified as a Boundary Issue.

9) Multiple Fences.

- a) Any instance of multiple fences was classified as a Boundary Issue.

Title Issue Criteria

1) Significant dimension discrepancies between deed and survey plan;

- a) Most properties have dimension discrepancies between their deeds and survey plans, even if they are only a centimetre or two. For the purpose of this study only discrepancies deemed to be significant were counted.
- b) On “small” properties with frontage less than 12 metres (40 feet).
 - i) Discrepancy of 20 cm (8 inches) or more – classified as a Title Issue.
- c) On “large” properties with frontage greater than 12 metres (40 feet).
 - i) Discrepancy of 30 cm (12 inches) or more – classified as a Title Issue.

2) House Encroachments on abutting property;

- a) Any level of encroachment was classified as a Title Issue. Technically speaking a house encroaching on a neighbouring property is a Boundary Issue. However, the research team deemed this to be more of a Title Issue as, in most cases, a court would not generally order that the wall be removed to remedy the encroachment, but rather that the owners enter into a registered encroachment agreement or convey ownership of that portion of land to the encroaching owner. This, therefore, falls into a Title Issue classification.

3) Eaves overhanging the boundary;

- a) Any encroachment was classified as a Title Issue.

4) Unregistered Utility Easement;

- a) Stub line crossing over subject property to service multiple “upstream” properties. If easement was unregistered, then this was classified as a Title Issue.

5) Mutual Driveways

- a) The following conditions were classified as a Title Issue.
 - i) The extent of the registered right-of-way does not permit full legal access by one or both owners.
 - ii) There is no mutual right-of-way on title but land is being used as such.
 - iii) Use of right-of-way is limited by obstruction (e.g. building addition, fence, AC unit).

6) Encroachments on Easement;

- a) Any such encroachment was classified as a Title Issue, including those onto rights-of-way and easements.

7) Road Access;

- a) Any situation where a parcel of land did not have legal public road access was classified as a Title Issue.

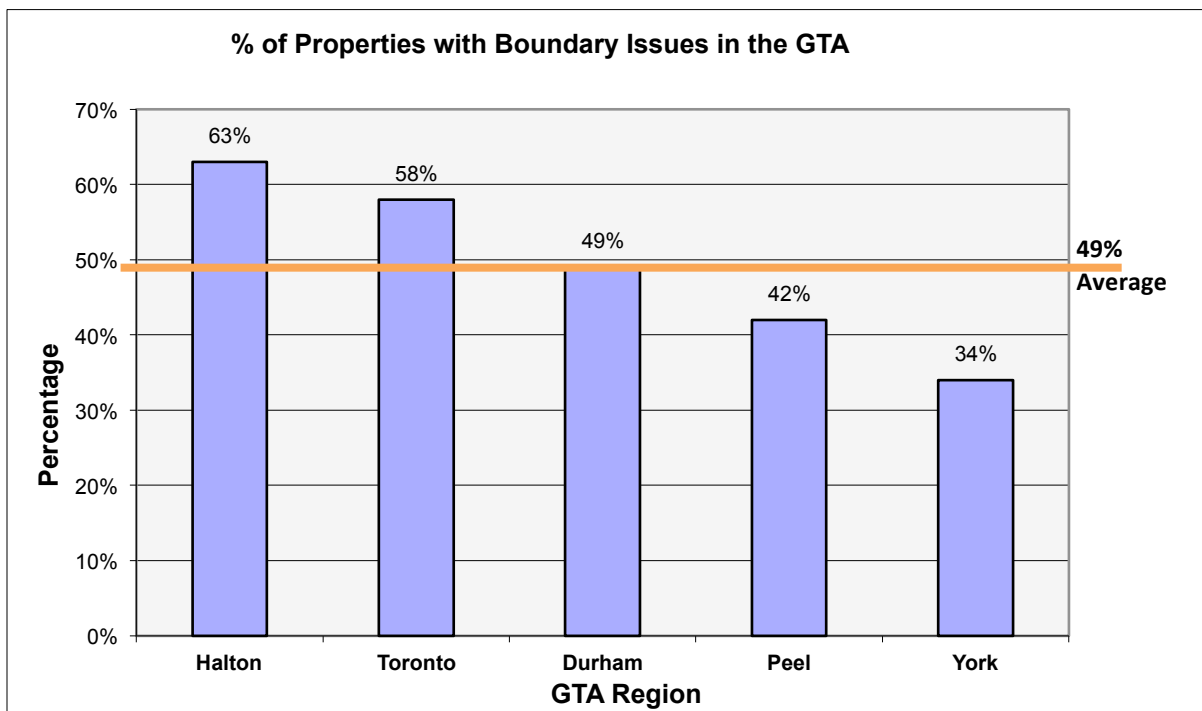
7. Findings

Boundary Issues

1. Potential Boundary Disputes exist for 49% of properties in the GTA.

Of the 415 GTA properties reviewed, 204 (49%) had at least one Boundary Issue. The breakdown and percentages for each region are shown on Figure 1.

Figure 1: Occurrences of Boundary Issues in the GTA



2. 43% of properties have Boundary Issues that would generally be excluded from Title Insurance Coverage.

While 49% of properties in the study were found to have one or more Boundary Issues, 88.5% of these, or 43% of total properties in the GTA, have Boundary Issues that are typically excluded from title insurance coverage as they involve fences, hedges and other structures used to enclose a property.

3. Boundary Issues are most common for properties in Halton and least common in York.

Of the survey plans examined for Halton properties, 63% had one or more Boundary Issues. This was followed closely by Toronto at 58%. York was lowest at 34%.

4. Fences displaced from the boundary constitute the most prevalent boundary issue facing GTA homeowners.

Fence displacements from the property line account for 79% of total Boundary Issues in the GTA.

Figure 2: Total Boundary Issue incidents enumerated in each region

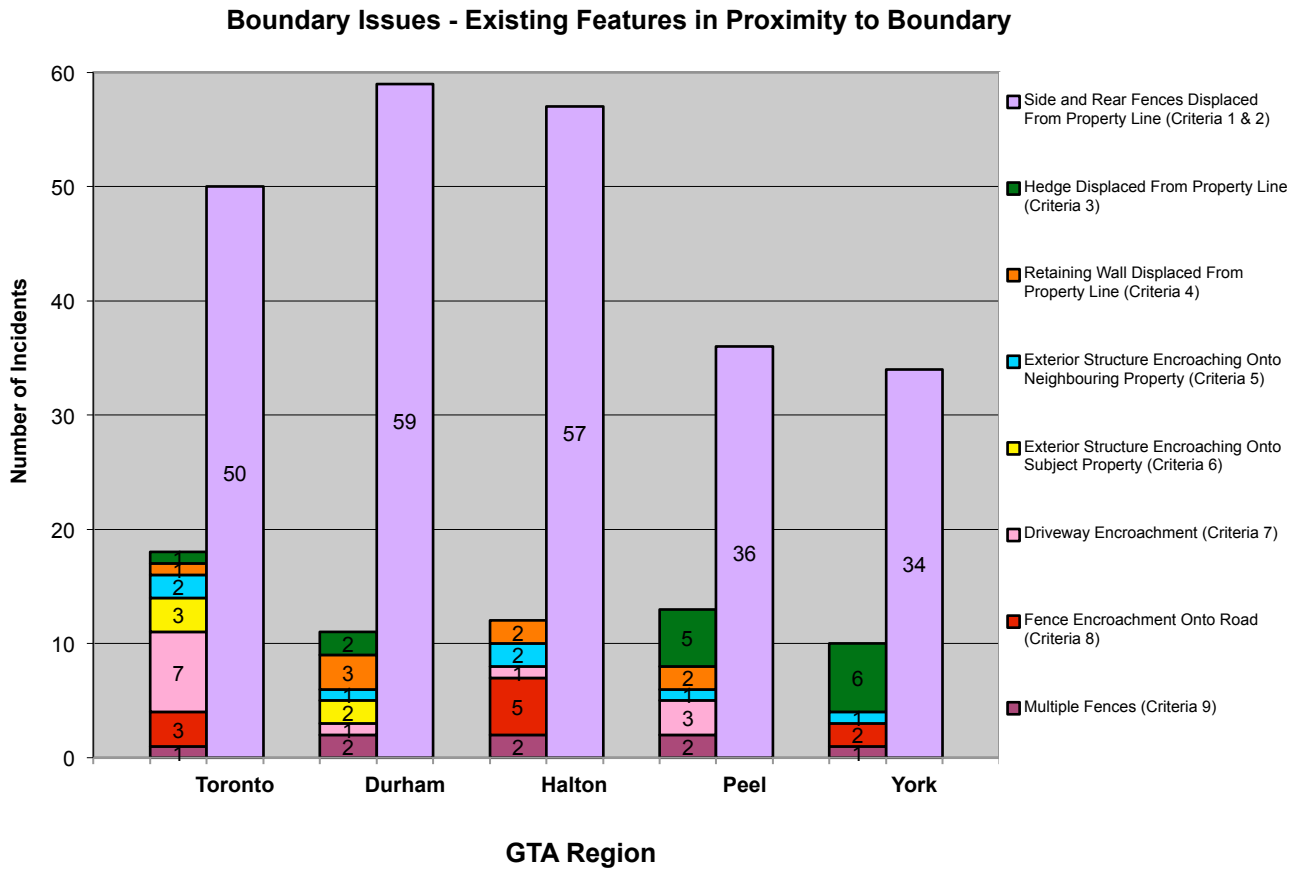


Figure 3: Table showing prevalence of each type of Boundary Issue.

Boundary Issue	Number of Instances Found on 415 Properties	Percentage of Total
Fences displaced from property line (1 & 2*)	236	79%
Hedge displaced from property line (3*)	14	5.5%
Driveway encroachments (7*)	12	4%
Fence encroaches on public road or lane (8*)	10	3%
Multiple fences in proximity to boundary (9*)	8	2.5%
Retaining wall displaced from property line (4*)	8	2.5%
Exterior structure encroaches onto neighbouring property (5*)	7	2%
Exterior structure encroaches onto subject property (6*)	5	1.5%
Total Boundary Issues on 415 Properties	300	100%

* Boundary Issue criteria listed on Page 7.

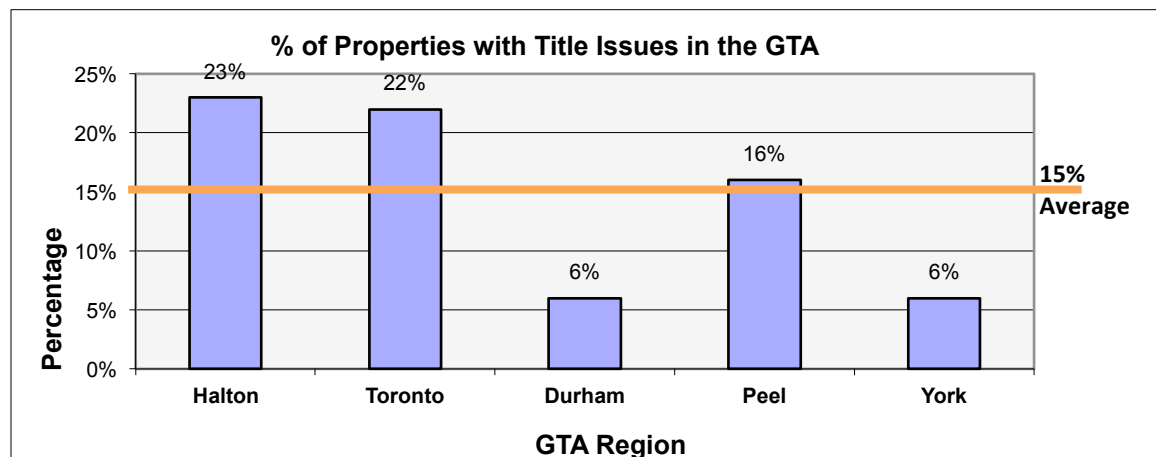
Title Issues

1. Title Issues exist for 15% of properties in the GTA.

Title Issues are a significant occurrence on GTA properties, although far less prevalent than Boundary Issues. 60 (15%) of the 415 plans reviewed had one or more Title Issues.

The relationship between Boundary Issues and Title Issues should be noted. The regions in which survey plans demonstrated a higher percentage of properties with Boundary Issues have a higher percentage of Title Issues as well.

Figure 4: Occurrences of Title Issues in the GTA



2. Title Issues are most common for properties in Halton and least common in York.

23% of the plans examined in Halton had one or more Title Issues. Toronto followed closely at 22%. Peel had 16% and only 6% of properties in both York and Durham had Title Issues.

3. Deed discrepancies are the most common title issue facing GTA homeowners.

Unregistered utility easements were the most common title issue found in the study (28.3%). This was followed closely (27.3%) by discrepancies in property dimensions between what the survey plan and the deed show.

Figure 5: Table showing prevalence of each type of Title Issue.

Title Issue	Count	%
Unregistered Utility Easement	28	28.3%
Dimension Discrepancy between Deed and Survey Plan	27	27.3%
House Encroaches on Abutting Property	20	20.2%
Encroachment onto Easement	12	12.1%
Mutual Driveways	9	9.1%
Road Access	3	3.0%
Total	99	100%

8. Resources

For further information please contact Protect Your Boundaries at info@protectyourboundaries.ca.