

7 Hidden Property Risks That Can Derail a Commercial Real Estate Transaction:

A practical guide for real estate professionals, brokers, and transaction professionals

Every real estate transaction carries risk.

Some risks are obvious. Others remain hidden until after closing—when they become far more expensive to resolve.

For real estate attorneys, one of the most important responsibilities is identifying potential problems before they become claims, disputes, delays, or litigation. While title reports, legal documents, and due diligence investigations all play important roles, surveyors provide a unique perspective that often reveals issues no one else can see.

A survey does more than locate property boundaries.

It helps attorneys understand how legal rights, title documents, improvements, and physical conditions interact in the real world.

Why Transaction Risk Often Goes Undetected

Property records tell part of the story.

The land itself tells another.

Many transaction risks arise because what exists on paper does not match what exists on the ground.

For example:

- A fence may cross a property line.
- A driveway may rely on undocumented access.
- A building addition may encroach into an easement.
- A utility line may conflict with future development plans.
- Occupation lines may differ from legal descriptions.

These issues frequently remain undiscovered until a survey is performed.

How Surveyors Reduce Risk Before Closing

1. Identifying Boundary Issues

Boundary disputes can become expensive legal problems after closing.

Surveyors analyze:

- Legal descriptions
- Historical records
- Existing monuments
- Physical evidence on the property

This work helps identify discrepancies before ownership changes hands.

For attorneys, early discovery creates options.

After closing, those options often become much more limited and expensive.

2. Revealing Encroachments

Encroachments are among the most common sources of post-closing disputes.

Examples include:

- Fences crossing property lines
- Retaining walls extending onto neighboring land
- Buildings constructed within setbacks
- Parking improvements extending beyond ownership limits

A survey helps determine whether these conditions exist and allows attorneys to address them before they become legal conflicts.

3. Clarifying Easement Rights

Many commercial properties are affected by:

- Utility easements
- Access easements
- Drainage easements
- Reciprocal easement agreements

The existence of an easement may be documented in title records, but understanding its practical impact often requires survey analysis.

Surveyors help attorneys visualize where easements affect the property and whether they interfere with intended use.

4. Confirming Access

A property may appear accessible while lacking legally documented access rights.

This can create serious concerns for:

- Buyers
- Lenders
- Title insurers
- Developers

Surveyors help verify whether legal access exists and whether access routes align with recorded rights.

Addressing these issues before closing can prevent significant complications later.

5. Supporting Title Review

Title commitments contain valuable information, but the documents they reference are often difficult to interpret, making it challenging to determine where they apply and how they affect property.

Surveyors help translate title exceptions into something easier to understand: a map.

This visual representation allows attorneys to quickly identify:

- Easements
- Rights-of-way
- Access restrictions
- Boundary concerns
- Potential conflicts

By connecting legal documents to physical locations, surveyors help transaction teams make better-informed decisions.

6. Identifying Development Constraints

Many buyers intend to improve, subdivide, refinance, or redevelop property after acquisition.

Surveyors can identify issues that may affect future plans, including:

- Setback restrictions
- Building encroachments
- Access limitations
- Easement conflicts
- Parcel configuration concerns

Identifying these constraints during due diligence helps clients avoid costly surprises after purchase.

Why Communication Matters

One of the biggest frustrations attorneys report is not understanding what is happening during the survey process.

The most effective surveyors reduce risk not only by collecting data but also by communicating clearly.

Attorneys need answers to questions such as:

- What was discovered?
- Does it create risk?
- How significant is the issue?
- What options are available?
- Does this affect closing?

When surveyors communicate clearly and proactively, attorneys can make informed decisions with confidence.

Surveyors as Part of the Due Diligence Team

The most successful transactions occur when surveyors are involved early.

Rather than treating surveying as a box to check before closing, experienced attorneys view surveyors as part of the due diligence team.

Early involvement helps:

- Identify issues sooner
- Reduce closing delays
- Improve coordination with title companies
- Support lender requirements

- Protect client interests

Most importantly, it creates certainty.

Final Thoughts

Real estate attorneys are hired to manage risk.

Surveyors provide critical information that helps uncover risks that may not appear in title reports, legal descriptions, or transaction documents alone.

By identifying boundary issues, encroachments, easement conflicts, access concerns, and development constraints before closing, surveyors help attorneys protect their clients, reduce liability exposure, and keep transactions moving forward.

Successful transactions are not the ones without problems; they are the ones where problems are identified early enough to solve.