

WHY LAND SURVEYORS GET SUED and How to Avoid It

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Introduction

Why Lawsuits?

Why? and How to Avoid it?

- I. Why - What Basis for the Lawsuit?
 - A. Contract Claims
 - B. Negligence Claims

- II. Ways to Avoid Lawsuits
 - A. Legal Defenses
 - B. Proactive Actions

I. Why Sued?

Two Types of Claims

- A. Contractual

- B. Tort – Negligence

Minnesota Supreme Court

“[i]t is a matter of common knowledge that surveys made by different surveyors seldom, if ever, completely agree and, that more than likely, the greater the number of surveys the greater the number of differences.”

Erickson v. Turnquist, 77 N.W.2d 740, 743 (Minn. 1956)

A. Contractual Claims

- What did you promise?
- Did you deliver?
- Was the lawsuit brought in time?
- What defenses do you have?

Example 1 – Contract Claim

<http://forum.freeadvice.com/construction-renovation-41/land-survey-wrong-275972.html>
09-15-2005, 08:05 AM

Land Survey Wrong

We are adding an addition to our home. Using the survey that we had obtained when we purchased home (2004), we had plans drawn up and approved by city. Once foundation was put in a question was raised as to location of new foundation and the property line.

New survey shows the 2004 survey misplaced the existing house by 12 feet. This mistake has lead to the new foundation being 9 feet too close to property line for city setback law. Due to this mistake we will need to have a portion of the foundation re-poured and the addition will be smaller than we intended.

Can we sue the land surveyor (IL licensed professional) for our costs to make modifications to our addition?

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Example 2 – Contract Lawsuit

Christensen v. Bonnema,

395 N.W.2d 440 (Minn. Ct. App. 1986)

- ❑ Contract claim is a question of fact for the jury
- ❑ What were the terms of the contract, and did he perform them?

B. Tort Claims

- Negligence

- Third parties – Purchaser of land brings action against prior owner's surveyor

Example 1 – Tort Claim

http://counsel.net/chatboards/plaintiffs_attorneys/topic9/5.15.07.14.56.17.html#.TxTFxPqxNds.mallta

Re: Lawsuit against land surveyor Posted by JEFF on 5/15/07

On 4/19/07, Maria wrote:

I have a question about whether I can sue or not. The property next to mine is 10 acres and was subdivided 2 years ago. When the surveyor surveyed the land the description contained a typo giving the property owner 100 feet of my property.

The only reason I found out about this was because I am refinancing and the title company found the error. Now, the surveyor has admitted the error and corrected the problem, but the owner doesn't want to sign the quit claim deed.

This is causing me to have to hire an attorney to do a quiet title and I'm also having to pay money to extend my interest rate. Would suing the surveyor be an option? What are my options?

Example 2 – Tort Lawsuit

Cook Consultants, Inc. v. Larson, 700
S.W.2d 231 (Tx. Ct. App. 1985)

- ❑ Policy
- ❑ Who intended to benefit? Foreseeable?
- ❑ Nexus between conduct and injury?
- ❑ Is liability limited?

II. How to avoid lawsuits – Legal Defenses

- ❑ Statute of limitations – Minn. Stat. §
541.052 (2 years)
- ❑ Statute of Repose (10 years)

Lovejoy v. County of Dakota, No. CX-00-
348, WL 1468208 (Minn. Ct. App. 2000).

B. Notes Regarding Limitation Defenses

- Fraud Exception
- Discovery Rule
- Duty/Breach/Causation

- Granlund v. Lumley, 2007 WL 1412910
(unpublished) (Minn. Ct. App. May 15, 2007).

II. How to avoid Lawsuits - Proactive Measures

1. Know your client
 - ✓ Past experience? References?
 - ✓ Financial resources/solvent? Slow payments?
 - ✓ Reasonable expectations?
 - ✓ Contingent fee arrangement?

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2. Use written contracts

- ✓ What is the scope of services?
- ✓ Negotiate fees in advance
- ✓ Formally identify expectations, costs, limitations
- ✓ Shift risk of loss if possible
- ✓ Avoid warranties or performance guarantees

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3. Perform your job and maintain training

- ✓ If you perform, you will minimize potential for disputes
- ✓ Avoid conflicts of interest or the appearance of impropriety
- ✓ Encourage continuing professional education
- ✓ Support and encourage membership in professional associations

4. Recognize and resolve potential problems early

- ✓ Try to recognize and resolve immediately when they arise and before they develop into a dispute
- ✓ Promote good relationships with mutual respect, rapport and open communications
- ✓ Bill monthly
- ✓ Discuss monthly payment problems promptly

5. Document your files

- ✓ Note significant events when they occur
- ✓ Notations of all file activity is preferred
- ✓ Keep clients informed with periodic status reports
- ✓ Email is fine

6. Procure Professional Liability (E&O)

Insurance

- ✓ Will provide legal support
- ✓ Will provide risk management programs
- ✓ Will review contracts, provide seminars

THANK YOU

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