

TEN THINGS EVERY ATTORNEY SHOULD DO WHEN DEPOSING A CALIFORNIA PROFESSIONAL LAND SURVEYOR

By Licensed Surveyor Stanley T. Grey
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1. Establish the effect of a record of survey. Attorneys and lay people often do not understand the effect of recording a survey. The fact is that while a record of Survey imparts constructive notice since it is recorded it does not establish a boundary line. A record of survey is simply the opinion of the Surveyor who created it and it is recorded at his request with little or no input as to whether it is correct. Recording a record of survey ahead of another record of survey does not give it more weight. An incorrect opinion is just that, an incorrect opinion.

2. Know the effect of licensure on competency. It is important to realize that licensure simply means that the Surveyor has met the minimum standards established by Board of Registration for Professional Engineers and Land Surveyors to practice. It does not mean that the Surveyor is infallible or that their opinion is fact. To quote several people each person is entitled to his own opinion but not his own set of facts. It is your task to grasp the facts in the case to discern why you have two disparate opinions on the same Title issue. A licensed land surveyor who does not fully understand the rules of retracement and independent surveys can do more harm than good as his opinion may be relied upon and taken as fact by his client simply because he is licensed.

3. Evaluate the reasonableness of the surveyor. It is reasonable for a Surveyor to state that his opinion may change if additional evidence (typically unrecorded) is brought to light that sheds more light on a situation. This is a good question to ask a surveyor because it can reveal the extent of the bias if a surveyor refuses to reconsider his opinion. Beware the Surveyor who will not consider additional information and reconsider their opinion.

4. Analyze the basis for the Surveyor's opinion. There are Surveyors who, when confronted with a different opinion, will simply dig in their heels and state they are right regardless of the facts. When you run into that type of Surveyor you have the obvious task of separating facts from fiction because you will have two opposing experts and you want to avoid having the experts cancel each other out. In the case of Surveyors who operate without Professional Liability Insurance you may find that they are doubly unwilling to admit a mistake due to lack of coverage.

It is not uncommon to depose an expert PLS who won't budge from their stated opinions out of simple fear of liability or they may truly believe they are correct due to lack of education or understanding on how to retrace a survey. A Surveyor may really believe they are right even if they are completely wrong so it is up to you to work around that fixed opinion and dissect the facts. A Surveyor covering up a mistake may rely on the fact that it is hard for a judge or jury to discern the real reason behind their mistake. They won't admit their mistake for fear of liability and Board action. Admitting a mistake opens up a can of worms so they may rely upon misdirection or simply state that they followed what someone else did before them. In the absence of clear evidence following what previous Surveyors have done may be the only solution but that approach is not good enough by itself if other evidence to the contrary exists.

5. Evaluate whether the surveyor arrived at his opinion independently. A common mistake by Surveyors is to simply follow what a predecessor Surveyor has done without following the intent of the deed language the Title Company insured. Simply repeating the error of a previous surveyor does not relieve the Surveyor of their responsibility to perform a true and correct survey to the standard of practice. In fact, simply following a previous Surveyor without observing the intent of the deed opens them up to liability claims. The Standard of Practice requires them to start with the deed and move forward independent of the assumptions made previously assigning proper weight only to those items that support the deed.

6. Get more than simple background information. Focus not only on the usual background information (education, experience, date of licensure, amount of expert witness fee) but also ask about Citations by Board of Registration for Professional Engineers and Land Surveyors and the number of cases the surveyor has handled specific to the issue in the litigation.

7. Get all the documents you need. Request copies of all files and correspondence in both hardcopy and electronic format. The best document request I ever saw asked me to produce all digital data on cd, all correspondence, emails, phone memorandums, and notes, hardcopy printout of raw data, coordinate data, adjustment data, final coordinates, autocad .dwg(s), photos, emails, handwritten notes, field books, record maps, unrecorded maps.

8. Make sure the surveyor did the field work, it's the law. Ask whether the licensed land surveyor who is testifying actually did the field survey.

9. Ask about methodology. Provide instrument specifications including copy of last instrument calibration report from

qualified repair service – should be current within one year. Also inquire whether the surveyor performed thorough research of the public records and quasi-public records publicly available. Another good question to ask is whether the surveyor work chronologically from the oldest records forward? (make sure they did not blindly accept recent work without consideration for the intent of the deed and the historical records).

10. **Consult with your surveyor for deposition questions.** The attorney should pre-consult with his/her Surveyor to make sure that the right questions are answered to present the true facts of the case.

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