

UNDERSTANDING ENCROACHMENT



DEFINITION OF ENCROACHMENTS:

Structures (such as decks, garages, outbuildings, retaining walls, or fences) that illegally encroach upon the property of another.

HOW ARE ENCROACHMENTS DISCOVERED?

- Property inspections: A title company may send someone to inspect the property to look for possible encroachments and other matters.
- Surveys: A survey may already be recorded that discloses encroachments. A buyer may also obtain a survey, at buyer's expense, which will disclose encroachments and other matters. In either case, if the title company is aware of the survey prior to closing, the matters disclosed in the survey will be shown as exceptions in the title policy.
- Seller or neighbor disclosures: The seller or a neighbor may disclose encroachments onto or off of the land.

HOW ARE ENCROACHMENTS CORRECTED?

- Removal: Remove the encroaching improvement with the consent of all parties.
- Create an easement: Reach an agreement with the neighbor, correctly draft and execute a deed creating an easement and have the easement recorded in the county land records.
- Boundary line adjustment: Acquire a portion of the neighbor's land and complete a boundary line adjustment to conform.
- Quiet title action: If no agreement can be reached, a quiet title action might be filed to obtain title by adverse possession. Before filing a lawsuit, be sure to consult a real estate attorney to determine the likelihood of success.

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