

# TitleTalk

## NEWS YOU CAN USE



**Dear Agents and valued customers,**

This month we take a look at understanding survey encroachments and setback violations in plain, simple English, and explain typical solutions to those issues.

Sincerely,  
Laura Bowers, Managing Director



**An easement** is a type of right-of-way over another person's land and is commonly used for; access roads, walkways, utilities, drainage and so on.

**An encroachment**, which is most often unintentional, means to intrude on a person's territory or rights. Through the construction of a shed, fence or a home improvement many people misjudge the boundaries of the property and end up encroaching into an easement or onto an adjoining lot.

Typical Types of Encroachments	Frequency	Typical Solutions
Pool, pool cage, deck or home in violation of DEVELOPER IMPOSED setbacks as stated in Subdivision Restrictions.	90%	<ul style="list-style-type: none"> <li>Obtain variance from Association.</li> <li>In cases where no active association, Form 9* and 9.2* coverage may be available. (Dependent upon severity and how long violation has existed.)</li> </ul>
Wood, chain link or PVC fence into utility and drainage easement.	80%	<ul style="list-style-type: none"> <li>Very common, minor and generally buyers/sellers leave alone.</li> <li>Sometimes moving fence back within bounds is requested, but rarely.</li> <li>Form 9* Coverage typically provided.</li> </ul>
Wood, chain link or PVC fence, concrete wall onto adjoining property owner's lot.	10%	<ul style="list-style-type: none"> <li>Encroachment agreement between parties that runs with the land.</li> <li>Move fence/wall.</li> <li>Form 9* coverage is rarely an option unless encroachment is very minor.</li> </ul>
Pool deck, wood deck, screened cage into utility and drainage easement.	10%	<ul style="list-style-type: none"> <li>Vacation of easement. This can be done AFTER closing provided there is no lender involved. No guarantee county will grant.</li> <li>Deed from Board of County Commissions – 8 weeks. (At county's discretion.)</li> <li>Removal of portion of encroachment.</li> <li>Form 9* and/or 9.2* coverage insuring over forced removal may be provided.</li> </ul>

*\*Form 9: This is coverage ALL LENDERS require. This insures against the forced removal of the encroachment or setback violation on the lenders policy. ALTA Endorsements 9.2 or 5.0 may be available to a buyer if approved by the Title Insurance Underwriter. Each case must be reviewed to determine if this coverage is available.*



Building setbacks are depicted in Homeowners' Association restrictions. This means the home or other structures must sit back from the lot lines by a specified number of feet. Typically if a developer puts setbacks in their deed restrictions, they are stricter than the County regulations. They would not be able to make them less restrictive.

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## Note:

While MSC Title's main job AND objective is to handle clearing these types of matters prior to closing, a buyer may choose to close subject to these issues with or without coverage against forced removal and may seek a permanent remedy/cure after closing. We ALWAYS explain these options to your clients.

No title insurance policy provides coverage over county imposed setbacks. To verify county setbacks contact the local zoning division of the county where the property is located.

In all cases, the seller is responsible for any costs associated with encroachments or setback violations. IN ALL CASES, YOU SHOULD INSIST YOUR BUYER PURCHASE A NEW SURVEY. While existing surveys provided by a seller are permitted, the buyer would not be covered and would have no remedy against the surveyor if there was an error on that existing survey. Existing surveys are ONLY permitted IF the seller has made absolutely no changes to the exterior of the property as of the date of that survey. PLEASE be sure to confirm this FIRST before telling a buyer that an existing survey may be used.

**Michael Saunders & Company**  
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