



"WRITTEN MORTGAGE CERTIFICATES"

It appears that the "written mortgage certificate" is being misused in various parts of the Province by the legal and surveying profession.

An O.L.S. cannot and must not risk signing a certificate that will mislead both the owner and the mortgage company. The O.L.S. must first research, both title and survey fabric, and then undertake the proper survey, taking into account encroachment, easements, rights-of-way, fences, buildings, etc.

A "written certificate" cannot be provided on the basis of a visual inspection of the property or by reference to old records in either your own office or other offices.

Only if a full up-to-date survey of the property is available, or if the building is substantially distant from the property lines in the case of a rural property (the farm house distant some 100' from the farm limits) should the surveyor consider preparing a written certificate. In most cases a plan would be of more value to the owner.

We have been approached by two of the Mortgage Loan Institutions to clarify for them what they are receiving, and what they should request. It is quite apparent from our first discussions with them that

- 1) they have always assumed that a full survey preceded the certificate
- 2) they require assurance (that can only be provided by a full survey) that if they must take over the property they will have a clear and marketable title.

An O.L.S. signing a certificate simply stating that "the house is situated totally on the parcel as described", and not noting the presence of or the absence of encroachments, etc., does not necessarily relieve himself of the obligation or responsibility, if subsequently, such encroachments, etc. are noted, or if the land as described in the deed does not correspond to the property on the ground as re-established by means of survey. It is held that an O.L.S. would not sign such a certificate unless he was cognisant of all the facts regarding the present condition of the property.

MAKE SURE THAT YOUR PRACTICE IN REGARD TO WRITTEN CERTIFICATES IS PROPER AND THAT THEY ARE GENERALLY ONLY PROVIDED WHEN YOU HAVE UNDERTAKEN A RECENT FULL SURVEY OF THE PROPERTY, OR HAVE UP-DATED TO PRESENT DAY STANDARDS A SURVEY OF THE PROPERTY.