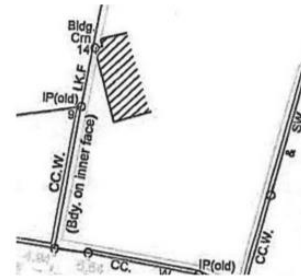


## Boundary Breach on your Survey Report

You have received a surveyor's identification report showing that your house is flush on the eastern boundary when the covenant prescribes a setback of 5 feet between the building and the boundary. You are seeking to use your title to get a loan. You urgently need the loan.

The implications are that with the breach the loan application will not be approved.

Where the building is directly on the boundary the financial institution will require that the breach be remedied on the ground. Typically, an application for modification of covenant through the courts cannot remedy such a breach.



This article seeks to explore one possible solution.

In those circumstances provided you are on good terms with your adjoining neighbour you could acquire a strip of his land to meet the setback required by the restrictive covenant.

A part of land transfer for boundary rectification can then be done to rectify the boundary. This means that your surveyor will have to guide you on the precise minimal area you will need to acquire from your neighbour's title to satisfy the restrictive covenant. Thereafter the surveyor will do the necessary survey to then produce a plan. This plan will then be lodged at the Survey Department to obtain a pre-checked survey diagram. This plan must also include a notation that the land comprised in the plan will be held as one parcel with the reference for what would be your title.

That plan will then be used to ground the Part of land transfer of the strip of land from your neighbour to yourself. The part of land transfer will need to be signed by your neighbour and yourself. The Part of land Transfer will need to be stamped at the Stamp Office and a Transfer Tax Certificate obtained. It is likely that the cost in transfer Tax and stamp duty would be nominal because the value of the strip of land would also be nominal.

When the part of land transfer is stamped with transfer tax and stamp duty, the next step is that the part of land transfer along with the titles for both lots would both need to be submitted to the title's office. The titles office will then issue a new title for the area being transferred. It will make a notation of the transfer along with the area on the title from which the strip of land is coming and that title, when issued

would then be endorsed in the name of the transferee.

The title for the strip of land will be endorsed with a one holding clause indicating that this title is held as one parcel with your original title. Your title will have a similar clause reflecting it is held as one parcel with the land comprised in the new title issue for the strip of land.

Ownership of this strip will mean that the setback in relation to that specific boundary would be satisfied and the breach would be no more.

This approach is accepted by the Registrar of Titles for boundary rectification without subdivision approval because the area being transferred is minimal, and as a consequence cannot satisfy the size of a lot for an application for subdivision approval from any municipality.



This negligible size of the strip of land being transferred, usually will help to solidify the fact that the part of land transfer is being done, merely for boundary rectification.

This is another option in the arsenal of property owners when faced with a boundary breach on their survey report. This scenario is to be distinguished from one where your fence or building is encroaching on your neighbour's lot.

This scenario also underscores the need to live good with your neighbour.