

SUMMARY OF ENRIGHT V. LUBOW

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by

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Note: The principles discussed may not apply to all states. The reader is encouraged to research the law in their own state.

This case involves surveyor negligence and liability. The facts of the case are the following: In the summer of 1978 the Plaintiffs bought a home in New Jersey. Their attorney ordered a title insurance policy and also ordered a survey of the property from a surveyor. The property was traversed by a utility easement. Instead of plotting a metes and bounds description to locate the easement on the survey, the surveyor merely protracted the utility easement from a previously filed map. (The surveyor claimed, without opposing argument, that the proper location of the easement would have required several hours of work if not days because of the lack of tie-in information between the easement records and property boundaries.) The easement was incorrectly plotted on the original map and the mistake was reproduced on the new survey. It is this error which gave rise to the present litigation. Plaintiffs seek compensation under their title insurance policy for the lost value. The Title Insurance Company seeks indemnification from the surveyor for compensation amounting to \$22,000 plus interest paid to defendants. The result of the court's decision was to hold the Title Company liable to the Plaintiffs by virtue of its contractual obligation under the policy. Because the obligation of the Title Company stems solely from the error made by the surveyor, the Title Company is entitled to full indemnity from the surveyor for damages together with interest.

This case has discussed several subjects that practicing surveyors should find interesting:

1. Survey Exception Excluded: The survey exception normally found in a title insurance policy is excluded when a survey map or sketch of the insured property is attached to a title insurance policy (e.g. when a "mortgage survey" is attached to a title insurance policy for a bank's mortgage).
2. Indemnification to the Title Company: When a title insurance company is found contractually liable for errors or omissions that an accurate survey or inspection should have disclosed but did not, the insurer can seek compensation from the surveyor for the damages paid on the policy.
3. Corporate Protection: A surveyor who has signed his or her plan using their name rather than their corporate name and has not properly moved to substitute the corporation in their stead may be found personally liable, even though they

performed the professional services on behalf of the company. (In most cases, the proper way to sign a survey document prepared for a company is demonstrated by the following example: I.M. Surveyor Company /s/ *I.M. Surveyor*, President.)

4. Easement and Improvement Location: Surveyors generally have an obligation to locate the record location of an easement and determine if visible improvements meant to be located within the easement are actually located outside of the easement. If the visible improvements fall outside of the easement's record location, the surveyor should note the facts and the possible significance for their client.