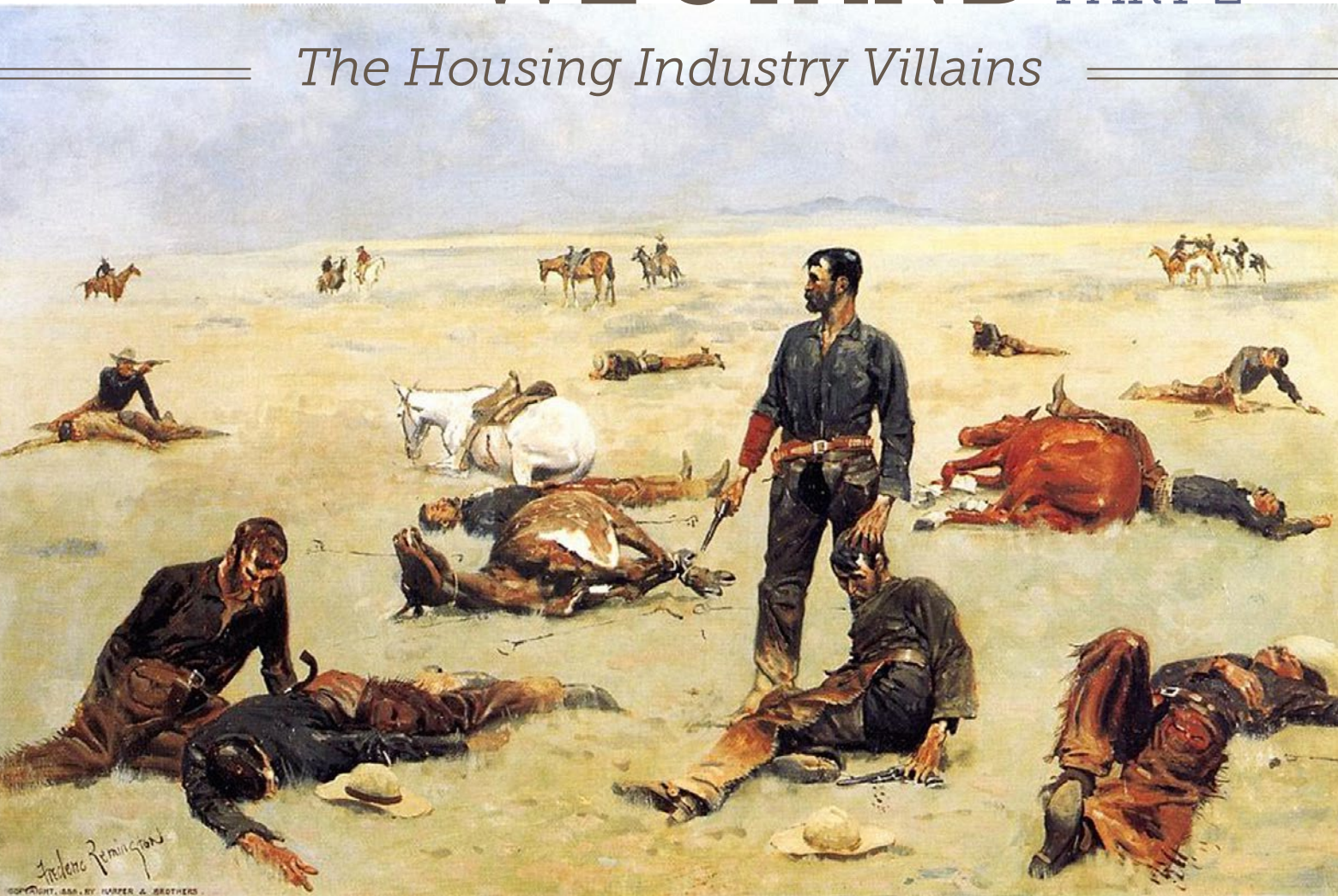


# SUB/ DIVIDED

## WE STAND PART 2

### *The Housing Industry Villains*



Land Boundary Dispute circa 1895.

"What an unbranded cow has cost."

by Fredrick Remington

#### The Pseudo Land Boundary Surveyor as the Villain

A surveyor who re-stakes a lot corner by coordinates, without research and a thorough field search for the original monument, will inevitably cause boundary disputes in the neighborhoods where he surveys. How long will it be before the populous realizes that the real problem is the resurveyor himself? The decreased opportunities for surveyors in a country where the vast majority of properties lack one or more corner monuments is indicative of the fact that the populace has indeed "wised-up."

» CHAD & LINDA ERICKSON



**Laboring Long & Hard-Alaska 1899.**  
Library of Congress

## Title Companies

Besides bad surveyors, are there other villains in the housing industry? How about Title Companies who trample their clients by failing to consider “location” as an essential element of “good title”, hiding their non-performance behind footnotes, exclusions and signed waivers. (We know about signed waivers. We once ran a canoe livery out of our home in Anchorage, Alaska. It was fun but those footnotes, exclusions and signed waivers were not bulletproof, heck they were not even waterproof.)

## Banks

How about lending institutions that collect fees for as-built surveys but fail to have them performed?

William E. McGrath, PS New Jersey, reports that banks and mortgage companies are using and charging for a product called Express Aerial Map which apparently is a satellite image overlaid with the pertinent subdivision lines. These are then used and billed for, in lieu of as-built surveys.

We only know that in Idaho & Arizona no one knows, no one cares, our profession dwindles and lot lines and corners are shot to hell, with no maintenance in sight.

## Ole Olson Had A Survey

Things have certainly changed since our entry into the profession in 1970, when we first heard this story of Ole Olson:

**Ole Olson to Loan Officer:** “I’d like to buy a house.”

**Officer at Bank A:** “Can you see the corner monuments?”

**Ole:** “No.”

**Officer at Bank A:** “You better have a survey performed first.”

**Ole:** “Vell, ta seller says I don’t need a survey. Ta title Company don’t need a survey. Ta Real Estate Agent says I don’t need a survey. I ain’t goin ta get no survey don’t ya know.”

**Officer at Bank B:** “You should have a survey performed first.”

**Ole:** “Vat ta Lutefisk for. Ta Title Company don’t require a survey. Ta Real Estate Agent says I don’t need a survey. I ain’t going ta get no survey!”

**Whereupon Officer B** grabbed Ole by the hair, banged his head on the counter six times and repeated, “You should have a survey performed first.”

**Some time later Ole boasted to Officer A:** “Bank B yust gave me ta loan!” “Did you have a survey performed?” “Yah, sure.” “How come you had a survey for them but not for us?”

**Ole:** “Vell, over there they explained it to me.”

*(Vell, did Linda get a kick out of dis one! The lady laugheth too much me tinks.)*

## Real Estate Agents:

It used to be said that “Real Estate Agents always represent the Seller and the Buyer beware”. According to what we have read, at some time in the mid 1990’s the fiduciary responsibilities of Real Estate Agents were split between those who represent the seller and those who represent the buyer.

Fiduciary responsibilities, as should be held by Real Estate agents, are often labeled “candor, loyalty and good faith”; *Meinhard v. Salmon*, 164 N.E. 545 (N.Y. 1928).

It can honestly be said that few Real Estate Agents demonstrate candor, loyalty and good faith to the buyer and thus many are guilty of constructive fraud. How can one honestly sell property to another when neither know where it is located? For gosh sakes, how many times can the Brooklyn Bridge be sold?

We have found that not even the Real Estate agencies labeled “buyer’s only” give a fig about property corners; quite the contrary.

## No One Knows, No One Cares, Our Profession Dwindles and Lot Lines and Corners are Shot to Hell.

### How to Vanquish the Villains:

1. Lobbying for rules that protect the buyer would be a good start.
2. Our state survey societies joining suits of fraud on the side of buyers would be another.

3. A less confrontational approach would be presentations to local real estate groups at their continuing education seminars. To quote Daniel Bevelhymmer, “Been there, done that, got the belt buckle!” At seminars that we have presented to Real Estate Agents, the common response, given with a snarl, was, “Property Corners! Why would we want to open that can of worms?” Not that we should give up on this approach, it is just that most Real Estate agents see this subject as a potential delay or death to their sales. Which could be true, but so much for looking out for the interests of the buyer.

Here are some other responses that we have heard:

- a. “Property Corners. Oh, we don’t have anything to do with property corners. You should go see the H.O.A.s” (from an agent at a very large real estate firm).
- b. “Property Corners? Oh, our members aren’t interested in that” (Home Owners’ Association [H.O.A.] president).
- c. “Property Corners? Oh, we just measure from the backs of the curb” (H.O.A. Architecture Committee president, and this in a subdivision where the asphalt centerline averaged 1.5’ from the centerline monuments).

**Question:** If a home owner drags out the H.O.A. Architecture Committee president to find his lot lines, they measure from the back of the curbs and the homeowner’s contractor consequently builds a brick wall cornering three feet from an original buried iron pin and two feet onto the neighbor’s



San Francisco, California, June 22, 1851. Where are the wooden lot corner stakes now?

Library of Congress call number: DAG no. 1331

## The Fledgling Cowbird\* Surveyor & Backyard Time Bombs

Sonny, why can't you perform a survey without upsetting the neighborhood?

Aw, Ma! I use GPS coordinates and the BLM Manual!



PHOTO COURTESY OF SUE CHAPLIN, RETIRED PROFESSOR OF BIOLOGY AT THE UNIVERSITY OF ST. THOMAS IN ST. PAUL, MN.

\***Cowbird:** The Cowbird is a brood parasite, meaning that it lays its eggs in nests of other species. The cowbird surveyor sneaks in from out of town, sets up his coordinate system and supplants the original monuments with some of its own. When the eggs hatch, voilà, a pseudo-survey.

property, where are the property lines and corners? How about in ten, twenty or thirty years? According to the court's "lot exception" the property corners for a city lot are probably right where the pins are, though the pins have been buried ever since the first owner performed his landscaping.

4. Here is an action by a State Board that would greatly benefit our profession: Compose a letter stating that "It has come to our attention that some H.O.A Architecture committee persons have been marking lot lines by measuring from the back of curbs." Then explain that street improvements seldom conform to true right-of-way lines. Further, define "land boundary surveying", the penalties of doing so without a license, and the possible criminal and civil liabilities. Then send this to each and every H.O.A. in that state.
5. Word of mouth is slow, but free press is fast. Approach your local newspaper for space for a column titled "The Survey Corner". If you run the above Ole Olson humor in one of your local newspapers, no buyer who reads it will close a land sale without first eye-balling the corner monuments.

To labor long and hard, as our conscience requires, for the small fees that our short-cutting competitors are able to charge is not what one would call "great opportunity". Enter public awareness and public esteem. The ethical surveyor enjoys satisfying remarks from his clients, such as this one we received last Spring, in response to a local newspaper article, "I have been waiting a long time to find someone like you that could help me." Faith and gratitude like that makes you want to jump on a white stallion and charge all of hell, brother. Well, do it! Be a champion to your communities, let them see and hear of your good works.

Afraid you might offend someone? The housing industry hasn't had any qualms about stomping the life out of our profession or the profit out of your business.

### Old Subdivisions

Can you imagine the errors and horrors that could be caused at Portsmouth Square in San Francisco if a present surveyor ignored old building lines and pinned lot corners using spooky actions from street intersections at a mile's distance?

### Modern Subdivisions

In a modern subdivision what should the agents and officers in a land transaction insist upon as the evidence of property location? Obviously it is the corner monuments themselves. In Idaho we use the "lot exception" within *ROARK v. BENTLEY*, 139 Idaho 793 (2004) 86 P.3d 507 to show that an adverse occupant cannot claim to have paid the taxes on his encroachment onto an adjoining city lot. Thus in a modern subdivision with iron pins it is usually the original pins themselves that determine property corners, brick walls not excepted.

## The housing industry hasn't had any qualms about stomping the life out of our profession, or the profit out of your business.

We and property owners have been meek and silent while being trampled upon by bankers, on-line mortgage lenders, title companies, real estate agents and cowbird surveyors; in short, trampled by a housing industry that ignores the true location of properties. Good surveyors may be the champions of land boundary locations but we appears most like the Lone Ranger. ■

Next month we are going to discuss ways to start a survey business, or rather how to increase our client base, and we would appreciate your experience/thoughts on the subject. [ericksonlandsurveys@gmail.com](mailto:ericksonlandsurveys@gmail.com)