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New 2016 ALTA/NSPS Land Title Survey Standards Effective Today

By Gary Kent

Two years of concentrated effort by their committees of the American Land Title Association and National Society of Professional Surveyors culminated in the adoption of the new 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys. The new standards go into effect Feb. 23. The standards can be found at www.alta.org/forms (under “Most Requested”). The following is a brief overview of what title professionals and surveyors will likely see as the most significant changes.

General Comments

The title of the standards has changed to “ALTA/NSPS” from “ALTA/ACSM” in order to acknowledge the merger of ACSM and NSPS. The committees also made wording consistent throughout the standards (with one exception) when referring to the surveyor’s obligation to locate certain objects and features (*“observed in the process of conducting the fieldwork”*).

Section 2 – Request for Survey

The list of atypical properties or interests in real property that can be the subject of an ALTA/NSPS Land Title Survey has been expanded so that it clearly includes easements.

Section 4 – Records Research

In recognition of the purpose of an ALTA/NSPS Land Title Survey, the surveyor must be provided with the most recent title commitment. However, if a title commitment is not made available, title evidence satisfactory to the title insurer—which might include an abstract of title, a title opinion, an old title policy or one of the various other types of products that title companies produce—is acceptable.

Some of the documents referred to in the 2011 (and earlier) standards as “Record Documents” were not actually documents recorded in the office of public record, thus the 2016 standards have abandoned the term “Record Documents” throughout, in favor of merely referencing those documents that are *“to be provided to the surveyor.”*

In several sections of the standards, content previously presented as lists in paragraph form has been restructured into annotated lists for ease of reading. One example of this is in Section 4. This list of documents to be provided to the surveyor now includes *“records established under state statutes for the purpose of imparting constructive notice of matters relating to real property (public records)”* (e.g., deeds, copies of easements), and any unrecorded documents that affect the property and to which the client wishes the surveyor make reference.

The most important change to Section 4 is the last paragraph. All versions of the standards—dating back to 1962—avoided outlining exactly who was responsible for obtaining other necessary documents. That stance likely had its origins in trying to adapt widely varying state standards and standards of practice to a national standard. Regardless of the reason, it was past time for the standards to address the issue.

The 2016 standards direct the surveyor to look to his or her jurisdictional standards, whether statutory (as they are in a few states) or administrative/regulatory (as they are in most states) when either

- the documents that were to be provided by virtue of Section 4 are not forthcoming, or
- the surveyor needs other documents to complete the survey.

For those states that have no jurisdictional standards, (California and a few others) surveyors need to be familiar with the normal standard of care as referred to in Section 3.D. Given the variations across the country (and the fact that surveyors must comply with the laws and the normal standard of care in their areas), the committees felt this was the most logical and viable approach to this.

Section 5 – Fieldwork

The introductory sentences to Section 5 address precision when locating the various features in the field. This issue had also been ignored since 1962 and, again, it was past time to address it. The degree of precision pursuant to the 2016 standards is to be based on the surveyor's professional judgment when taking into account “(a) *the planned use of the property, if reported in writing to the surveyor by the client, lender, or insurer, or (b) the existing use, if the planned use is not so reported*”

A number of fairly minor but important modifications were made to Section 5; however, one major change is in subsection 5.E.iv. Essentially, what used to be Table A Item 11(a) has now been made a required part of an ALTA/NSPS Land Title Survey.

This will eliminate the conundrum caused by the dynamic between former Table A item 11(a) (evidence of utilities) and Sections 5.E.i. and ii. (observed evidence of easements) in the 2011 standards. If Table A item 11a (or 11b) was not checked, the surveyor did not need to locate any observed evidence of utilities. However, if that utility evidence fell within an easement for which documentation was provided, or if that utility evidence represented the possibility of a prescriptive easement, the evidence did need to be located. Thus, there was confusion over whether or not utility evidence needed to be located; and if the wrong decision was made in that regard, there could be a very serious problem for the surveyor. (Readers who have attended one of the author's ALTA/ACSM educational programs have heard mention of a million-dollar lawsuit against a surveyor revolving around this very issue.)

Section 6 – Plat or Map

Section 6 now addresses the issue of dimensioning—leaving it to the judgment of the surveyor based on the planned use of the property as reported (or not). When the surveyor decides it is appropriate to prepare a new description based on the results of his or her survey, Section 6.B.ii. now requires a note explaining how the new description relates to the record description (i.e., if it describes the same property and, if not, how it differs).

Subsection 5.E.ii. requires a summary of the plottable easements and servitudes listed in Schedule B2 of the title commitment, and a statement as to whether or not each item is shown. This will help eliminate unnecessary calls to surveyors from reviewers of the survey who have trouble interpreting or finding certain items. If a Table A item has been negotiated or qualified in a manner that differs from how it was spelled out in the standards, Section 6.D.g. requires an explanation. It also requires that any additional Table A items negotiated with the client all be identified as item 21; if there are multiple additional items, they shall be identified as 21(a), 21(b), etc.

Table A

Table A Item 6 now requires that a report or letter containing the zoning information that the client or lender wants identified on the plat/map *be provided to the surveyor by the client*. This addresses the problem identified after adoption of the 2011 standards whereby title companies were to provide this information, but—due primarily to liability issues—they often declined to do so. Significantly, Item 6(b) also relieves the surveyor from having to graphically depict setback lines if doing so requires an interpretation on the part of the surveyor.

Item 8 now includes “*substantial areas of refuse,*” which was necessary in exchange for the elimination of former Table A Item 18 (“Observed evidence of site use as a solid waste dump, sump or sanitary landfill”).

Item 11 (utilities) has been a difficult item for surveyors since day one and it continues to become even more problematic over time. Main concerns revolve around client expectations, difficulty in getting responses to one-call locate requests and difficulty in obtaining plans. All of this revolves around the question of who is supposed to order all of that in the first place. Keeping in mind that what was 11(a) in 2011 has, in 2016, been included in 5.E.iv., Item 11 now only involves what had been 11(b)—what might be referred to as a “*utility investigation*.”

The responsibility for trying to obtain utility plans and for ordering utility locate services now clearly lies with the surveyor. However, there is nothing whatsoever to prevent surveyors from qualifying or spelling out what they will and will not do in that regard in their contract (yet another reason to use a written contract). Also, the wording in the “Note” following Item 11 has been modified and expanded to more accurately describe what surveyors may actually be able to accomplish with regard to utilities. A similar note could—and probably should—be part of the surveyor’s contract and should also appear on the face of the plat or map with information related to the actual results of the specific investigation.

One of the biggest problems that came out of the 2011 standards was the pervasive lack of understanding of Item 18 (wetlands) on the part of clients, lenders and, to some extent, surveyors. For 2016, this item now says exactly what it should say (and what was intended in 2011), and the new wording should make it clear that surveyors are not responsible for delineating wetlands.

Former Table A Item 18 (evidence of site use as a solid waste dump, sump or sanitary landfill) has been eliminated. Such matters are properly the subject of a Phase One Environmental Assessment, not a survey.

What had been Item 19(b) in the 2011 standards has also been eliminated because it was determined that setting monuments on someone else’s property could be problematic and could constitute a trespass.

Item 20 now states that information related to professional liability insurance shall not appear on the face of the plat or map. This is in response to those attorneys who have sometimes made the outrageous demand that surveyors identify the extent of their professional liability coverage on the face of the plat/map.

Summary

Each modification in the 2016 standards has its own purpose. There are many more changes besides those outlined above. Virtually every change will either directly or indirectly assist surveyors, while importantly, not diminishing the value of the product for the ultimate user—title insurers. As has been the case ever since the author became involved with the standards in 1988, the NSPS and ALTA committees work closely to maintain a standard that will result in surveys that meet the needs of the title industry, while keeping the requirements clear, realistic and achievable for surveyors.

The Work of Two Committees

A debt of gratitude is owed to members of the ALTA and NSPS committees who participated in the process and to others who offered suggestions and comments. The joint committee was comprised of the ALTA Liaison Committee with the NSPS and the NSPS Subcommittee on the ALTA/NSPS Standards. The following participated in the joint committee work:

Chair

- Gary Kent, Schneider Corp., Indianapolis

ALTA Members

- Richard F. Bales, Chicago Title, Aurora, Ill.
- Daneece M. Berge, Old Republic National Title Insurance Company, Plano, Texas
- Todd D. D’Amico PLS, First American Mortgage Solutions LLC, Norman, Okla.
- Justin L. Earley, First American Title Insurance Company, Santa Ana, Calif.
- James L. Gosdin, Stewart Title Guaranty Company, Houston
- Paul J. McNamara, Pabian & Russell LLC, Boston

- Michael F. Waiwood, North American Title Insurance Company, Elyria, Ohio
- Jack R. Zachow, Old Republic National Title Insurance Company, Tampa, Fla.

NSPS Members

- Judy G. Beale LS, Woolpert, Chesapeake, Va.
- Paul Burn PLS, GCW Engineers Surveyors, Las Vegas
- Todd E. Rakstad PLS, SR/WA, Salt River Project, Phoenix
- Malcolm Shaw, Erlandsen Crowell & Shaw, LLP, New Hyde Park, N.Y.
- Curtis Sumner LS, National Society of Professional Surveyors, Gaithersburg, Md.

The joint committee notes with sadness the untimely passing of two key contributors to the 2016 standard. Paul McNamara and Malcolm Shaw were valued members of the committee reviewing and updating the survey standard for 2016. McNamara was a long-time member and supporter of ALTA, serving as a member of the Liaison Committee with the NSPS and the International Development Committee. (Read McNamara's obituary [here](#).) Shaw was an experienced surveyor from New York and participated in the process through ALTA's liaison with NSPS. (Read Shaw's obituary [here](#).)

Questions about the 2016 standards may be directed to ALTA staff liaison Kelly Romeo at kromeo@alta.org.

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- See more at: <https://www.alta.org/news/news.cfm?newsID=30391&eID=0#sthash.KuVU2Hvl.dpuf>

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