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ALTA/ACSM Land Title Surveys: Leveraging the Feasibility Assessment Tool for Land Development Deals

THURSDAY, FEBRUARY 27, 2014

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

Curtis W. (Curt) Sumner, Executive Director, National Society of Professional Surveyors, Herndon, Va.

Gary R. Kent, L.S., Director of Surveying, Schneider, Indianapolis

Earl Morriss, Principal, Land Law Washington, Everett, Wash.

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ALTA/ACSM Land Title Surveys

~ Current Issues ~

Strafford Publications Webinar

February 27, 2014

Presented by: Curtis M. Sumner, P.S.
Gary R. Kent, P.S.
Earl Morriss, Esq.



2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys

Section 1 - Purpose

Section 2 - Request for Survey

Section 3 - Surveying Standards &
Standards of Care

Section 4 - Records Research

Section 5 - Field work

Section 6 - Plat or Map

Section 7 - Certification

Section 8 - Deliverables

Table A - Optional/Negotiable Items

Section 2 - Request for Survey

Requirement: Written authorization to be provided

Issues:

- Pushback from the person placing order because they are not the paying client

Section 2 - Request for Survey

Requirement: Request shall include desired Table A items

Issues:

- Often not included with the request
- "All of them"
- "Whatever you normally do"

Section 2 - Request for Survey

Requirement: Discuss scope of work on atypical properties (trailer parks, lease areas, golf courses, etc.)

Issue: Surveyors are sometimes told "they should know" what to do

Section 4 - Records Research

Requirement: Order to include record description of property being surveyed or of the parent parcel if the survey is an original survey

Issue: Deed/description is not forthcoming

Section 4 - Records Research

Requirement: Adjoiner descriptions to be provided

Issue: Title companies often do not want to provide adjoiner descriptions even though these are title documents required by the surveyor in order to complete the survey (liability; not easy to find)

Section 6.B.i. - Boundaries, etc.

Requirement: Avoid writing new descriptions unless deemed appropriate and necessary. Avoid new descriptions on platted lots.

Issue: Lenders often want metes and bounds descriptions prepared when it is unnecessary and/or creates confusion in the title

Section 6.B.vii. - Boundaries, etc.

Requirement: Disclose gaps and overlaps to client and title company

Issues:

- Gaps and overlaps are title issues, not matters of survey
- Only the two affected owners can "resolve" a title issue
- By agreement or in court

Section 3.A. - Presentation

Requirement: As of February 23, 2011, Land Title Survey must be completed to the 2011 standards

Issues:

- Clients "only" need "update" using earlier standards
- Lenders want the surveyor to merely show a new lender and date

Section 7 - Certification

Requirement: Survey may include only the unaltered Section 7 certification, except pursuant to Section 3.B.

Issues:

- Lenders may want their own cert.
- HUD attorneys may insist Section 3.B. requires that the surveyor put their cert on the face of the survey

Section 7 - Certification

HUD

HUD's own webpage states that their certificate may be on a separate sheet (e.g., company letterhead)

http://portal.hud.gov/hudportal/HUD?src=/program_offices/general_counsel/mffaq/surveys

Section 7 - Certification

Private lenders (including banks)

Section 7 does not allow lenders' certificates on the face of the survey.

Section 3.B. does not allow HUD to require its certificate on the face of the survey (HUD does not "regulate the practice of surveying" pursuant to 3.B.)

Section 7 - Certification

Private lenders (including banks)

Every lender's certificate we have ever seen:

1. Required that the surveyor illegally practice law, and/or
2. Required that the surveyor illegally violate his/or surveyors state registration act, and/or
3. Invalidated the surveyors professional liability insurance coverage

Section 7 - Certification

Private lenders (including banks)

Lenders certificates are redundant and unnecessary

Lenders certificates merely reiterate what is already covered pursuant to the Section 7 certification

Section 7 - Certification

Private lenders (including banks)

Lenders "Notes"

All comments related to lenders' certificate apply to most lenders' "notes"

Table A Item 1 - Monuments

Are required pursuant to law in many states

Table A Item 6 - Zoning

Surveyors cannot make any certification or statement regarding compliance with or violations of zoning

These are legal determinations that constitute the practice of law

Table A Item 6 - Zoning

Many Surveyors will not graphically depict zoning setback lines on a survey

Requires interpretation of the zoning ordinance

Title companies do not need surveyors to depict setback lines or to make statement regarding compliance

Table A Item 11(b) - Utilities

Surveyors will combine source information from plans and markings with observed evidence of utilities to develop a view of underground utilities.

Lacking excavation, the exact location of underground features cannot be accurately, completely and reliably depicted.

Table A Item 19 - Wetlands

Surveyors are not wetlands biologists
or soil scientists

They cannot state whether or not
there are wetlands on a site

They can review the Wetlands
Inventory Map and report accordingly

They can locate wetlands delineations
placed by qualified persons

Table A Item 20 - Off-site Easements

Surveyors cannot provide a reliable proposal that includes Table A item 20 unless they have a title commitment in hand

Requiring Table A Item 20 on the survey of an outlot to a shopping mall may result in a survey of the entire mall

Table A Item 21 - E & O Insurance

Many surveyors do not carry professional liability insurance

How much should be required?

What is the potential impact of an error in the survey?

Of surveyors who carry it, how much coverage do they typically have?

Contact Information

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