ALTA/ACSM Land Title Surveys: What is Title Insurance and Why Should Surveyors Care?

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ALTA/ACSM Land Title Surveys: The Good, the Bad and the Ugly

• What is an ALTA/ACSM Land Title Survey?
• Who are ALTA, ACSM & NSPS?
• What is Land?
• What is Title?
• What is a Survey?
• A Working Definition

What is an ALTA/ACSM Land Title Survey?

• Who is ALTA?
  • American Land Title Association
  • National Trade Association for Title Insurance Industry
  • Founded in 1907
  • Membership
  • Nearly every Title Insurance Company
  • Over 4,500 Title Agents, Abstractors, and Title Companies
  • Associate Members include: Surveyors, Attorneys, Lenders, Builders and Developers

What is a Title Policy?
An insurance policy insuring the Title to Real Property issued for the protection of persons acquiring interests in real property either as owner, lender or lessee.

(Definitions of Surveying and Associated Terms, 2005)
What is an ALTA/ACSM Land Title Survey?

- Title Insurance:
  Insurance against loss due to any defect or hazard insured against in a Title Insurance Policy.

Who is ACSM?
- American Congress on Surveying & Mapping
- National Trade Association with Membership from all of the Americas
- Founded in 1941 as the National Congress on Surveying and Mapping
- Merged into the National Society of Professional Surveyors (NSPS)

What is Land?
- Real Property
- Fixed, Immoveable and Permanent
- The land, and generally whatever is erected, growing or affixed to the land

What is Title?
- The means by which a person has just possession of a property; it is the evidence of ownership

Written Conveyances of Title:
- Patents
- Deeds
- Wills / Decrees of Distribution
- Eminent Domain
- Quiet Title Action

Unwritten Conveyances of Title:
- Oral / Verbal Agreement or Contract
- Accretion or Inundation
- Adverse Possession or Prescriptive Rights
What is an ALTA/ACSM Land Title Survey?

- Constructive Notice
  - Notice Given by Public Records

- Color of Title
  - That giving the appearance of title

- How to obtain Color of Title

(Title Insurance and Trust Company, 1979)

What is an ALTA/ACSM Land Title Survey?

- Color of Title
  - Her Royal Majesty Queen Rose Mary J (for Jesus) Windsor
  - A “flaw” in the system, Los Angles Times 1987

What is an ALTA/ACSM Land Title Survey?

What is a survey?

Surveying:
The Science, Technology and Art of making the measurements necessary to determine the relative position of points on, above or below the surface of the earth, or to establish such points.

(Definitions of Surveying and Associated Terms, 2005)

What is an ALTA/ACSM Land Title Survey?

A Working Definition
A Graphical Representation (Map or Plat) Illustrating the status of Title (on and off Record) Of a piece of Real Property In accordance with the Technical Survey Standards of A.C.S.M. For the purpose of issuing a Title Insurance Policy

ALTA/ACSM Land Title Surveys: Technical Approach

- The Title Report
  - Preliminary Title Report
  - Commitment for Title Insurance
  - Pro-Forma Policy
  - Policy
  - Endorsements
ALTA/ACSM Land Title Surveys: Technical Approach

- The Title Report
  - Who is the owner
  - How is it owned
  - What is owned
  - Benefiting from Appurtenant Easements or Rights
  - Subject to encumbrances
  - As of the effective date
ALTA/ACSM Land Title Surveys: Technical Approach

- The Contract
  - Define the Scope of Work
  - Negotiate Table A items that are to be included

- The Survey
  - In accordance with your contract
  - The Title Report and Survey must be in harmony with each other
POSSIBLE ENCROACHMENTS:
(a) Mowing, grades and other trees on the side of the subject property, including trees, grass, flowers, and other trees, which are to be maintained by the owner of the property, and the owner of the property shall not be liable for any damages or injuries caused by any such encroachment.
(b) Building on the subject property, including the construction of a building, structure, or other encroachment, which is to be maintained by the owner of the property, and the owner of the property shall not be liable for any damages or injuries caused by any such encroachment.

SURVEYOR'S NOTES:
(1) The surveyor's notes are to be used in the legal description for the subject property. The surveyor's notes shall be in the form of a map, plan, or other drawing, which shall be approved by the owner of the property, and the owner of the property shall not be liable for any damages or injuries caused by any such encroachment.

(2) The surveyor's notes shall be in the form of a map, plan, or other drawing, which shall be approved by the owner of the property, and the owner of the property shall not be liable for any damages or injuries caused by any such encroachment.

(3) The surveyor's notes shall be in the form of a map, plan, or other drawing, which shall be approved by the owner of the property, and the owner of the property shall not be liable for any damages or injuries caused by any such encroachment.

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(5) The surveyor's notes shall be in the form of a map, plan, or other drawing, which shall be approved by the owner of the property, and the owner of the property shall not be liable for any damages or injuries caused by any such encroachment.

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THIS AREA HAS BEEN BORNE ON THIS SURVEY IN DETAIL.
SPokane County Title Company
Commitment No. 19023

Schedule A - Exception

1) Duval, Johnson & Smith Barns erected August 23, 1960
   Such structures are located on adjacent arts subject property, not platted.
   Building permit does not exist.

2) Bank of America mortgage recorded December 15, 1975 under
   Domer & Schields, does not affect subject property, not platted.

3) Zoning of mobile homes in the lots other than residential
   property, not platted, governed by rules.

4) Registered with Department of Automotive Vehicles.

5) Recorded, executed agreement registered August 23, 1960 under
   Sedgwick, Arendt, affects subject property, not platted, subject to heating.
To Certify or Not to Certify?
What is the Problem?

• Certify:
  • To authenticate or vouch for a thing in writing. To attest as being true or as represented.

• Certification:
  • The formal assertion in writing of some fact.

• Certificate:
  • A written assurance that some act has or has not been done.

(Black, 1979)
To Certify or Not to Certify?
What is the Problem?

Some Solutions:
• Confirm with your E&O Insurance if this is an issue with your policy.
• Negotiate the contract to exclude the word “Certify” and use “State” or some other terminology for third party certificate.
• Try the California Solution

California Solution
THE USE OF THE WORD “CERTIFY” OR “CERTIFICATION” WITHIN THIS SURVEY ONLY CONSTITUTES AN EXPRESSION OF PROFESSIONAL OPINION REGARDING THOSE FACTS AND FINDINGS SHOWN ON THIS SURVEY, AND DOES NOT CONSTITUTE A WARRANTY OR GUARANTEE, EITHER IMPLIED OR EXPRESSED.

Section 8770.6, California Business and Professions Code

Questions, Comments, Concerns and Problems with ALTA Surveys
Is your Survey Complete?
• Did you follow the Survey instructions word for word?
• Are encroachments clearly noted?
• Use a Checklist
• Be available to answer questions and to make timely revisions

Do you know your audience?
• Present your technical information in a format that non-technical types can understand
• The reader has a title report in one hand and your map in the other...keep it simple

• Label Parcels as they show on the Title Report
• Title Report Reference and effective date
• Number easements as listed in Title Report
• Point of Beginning clearly shown
• The legal description in the title report and map must agree
• The legend needs to be complete
• When in doubt, make it even more idiot proof
### Questions, Comments, Concerns and Problems with ALTA Surveys

What about those CAD files?

- What is the purpose of your survey?
  - For the issuance of a Title Insurance Policy?
  - For Design purposes?
- Who is going to use the CAD file and for what purpose?
- Make statements on the face of your map to protect yourself
  - Survey is for title insurance, not for design
  - Limit liability with use of CAD files by others

### Questions, Comments, Concerns and Problems with ALTA Surveys

Client / User Comments

- What are you looking for in selecting a surveyor to prepare an ALTA Survey?
- What have you been frustrated by with surveys prepared for you?
- What would you like to tell surveyors that prepare these types of surveys?

### Questions, Comments, Concerns and Problems with ALTA Surveys

What are you looking for in selecting a surveyor to prepare an ALTA Survey?

- Experience in ALTA Surveys
- Timeliness
- Quality of Work
- Communication
- Knowledge of the property
- Knowledge of client procedures & requirement
- Availability
- Responsiveness

### Questions, Comments, Concerns and Problems with ALTA Surveys

What have you been frustrated by with surveys prepared for you?

- Lack of Communication
- Lack of Quality of Initials Draft
- The use of sub-consultants
- Inability of the surveyor to work with the title, legal and lending team in working out title/survey issues.
- Lack of flexibility in making changes required by lender/title

### Questions, Comments, Concerns and Problems with ALTA Surveys

What would you like to tell surveyors that prepare these types of surveys?

- Communication is key – Direct with the surveyor
- Be responsive to comments and revisions
- Deadlines are real.
- Listen to you client and their needs
- Coordinate site visit/field survey with client
- Work with lender requirements
- Have quality project

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