What is an ALTA/NSPS Land Title Survey?

by Gary R, Kent, PS

In order to really understand what a Land Title Survey is about, one needs to understand the land tenure system in the United States and the role of title insurance. In that regard, the singular most important fact is that in the United States, there is no guarantee of ownership of real property. A deed is, in fact, *not proof* of your ownership of real property, it is only *evidence* that you *might* own it.

Overcoming this problem and being able to confidently buy real property, or to obtain a loan to buy or develop real property, requires some sort of assurance that one's investment is not at risk. That is accomplished in the United States with title insurance.

There is virtually no lender in the United States that will lend money to purchase or develop real property unless it is provided a title policy in order to ensure that its investment (the real property collateral) is protected. In addition, lenders universally require that one of the standard exceptions to the coverage afforded by a title insurance policy - the "standard survey exception" - be deleted from their policy.

The exact wording of the standard survey exception varies, but an example is: an exception for any *"Rights and claims of parties in possession, boundary line disputes, overlaps, encroachments and any other matters not shown by the public records which would be disclosed by an accurate survey and inspection of the property."*

This is a standard exception to title insurance coverage because of the myriad of potential problems that could be detrimental to the efficacy of a property's title, and that will otherwise remain completely unknown unless a Land Title Survey is performed.

When the title company is provided with an acceptable Land Title Survey, it will remove that "blanket" standard survey exception and write individual exceptions for any specific conditions shown on the Land Title Survey that the title company identifies as possible title defects. Those exceptions will then appear in the title commitment which puts the buyer and lender on notice as to the fact that the title company will not provide coverage over those issues.

In order for all of this to work seamlessly, the title industry must be confident that surveyors will provide a survey that will disclose all of those potential title problems (to the extent that they can be observed by the surveyor). Hence, the Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys were developed (first in 1962 and revised 8 times since - most recently effective February 23, 2016).

The standards are jointly developed and adopted by the American Land Title Association (ALTA) and the National Society of Professional Surveyors (NSPS). This joint effort is required to assure that the needs of the title industry are addressed while necessarily taking into account what it is possible to accomplish - at a reasonable cost and in an acceptable time frame - by surveying professionals.

A Land Title Survey is *first and foremost* a boundary survey. *A plot of the deeds is not a Land Title Survey.* In addition, there are many other requirements above and beyond just simply surveying the boundary. This is because of the need to identify all of those potential title problems otherwise excepted by virtue of the standard survey exception.

The ALTA/NSPS requirements are therefore almost all aimed at having the surveyor collect and document data from the records and on the ground in order to support the needs of title companies when they are asked to insure title without the standard survey exception.

Achieving that end is, from the survey standpoint, a multi-part, multi-dimensional exercise.

First, there must be extensive research both into the public records and into relevant private and quasi-public records.

If the survey is of an existing parcel, it is a "*retracement*" and the surveyor's job with respect to the boundary is to "*follow in the footsteps*" of the original surveyor of the parcel. Often, that original survey was decades or more in the past, and finding the relevant records may entail a lengthy search through public and quasi-public records, and what is sometimes a fruitless attempt to find information from other private surveyors relating to that original survey.

Once the necessary records have been located - or not - the survey process moves to the field investigation. A diligent search for original or subsequent survey markers is made including the controlling or reference corners and lines upon which the boundary lines and corners are dependent.

Except when the property is a lot in a platted subdivision (and even often in that case also) those reference corners and lines are typically some distance from the property. In many cases, they may be up to, or even more than, a mile away. In addition, those reference corners are very frequently buried anywhere from a few inches to several feet beneath roadway pavement or under or around trees, fences, walls or buildings. The relevant evidence may be very difficult to find and ascertain, like long-abandoned roads, railroads or canals (upon which the corners and lines of the boundary are dependent).

Finding the necessary evidence so the surveyor can develop a defensible opinion as to the boundary's location is typically the most difficult and time-consuming part of the survey.

Once the essential field evidence is located and documented, the analysis of that evidence begins. Almost never is the evidence perfectly consistent with what the records say, and the surveyor must then run through an extensive and iterative process of sorting through the evidence, weighing it, conducting calculations to test it, and finally applying the appropriate boundary law principles in order to arrive at what he or she believes best represents the boundary as established by the original surveyor.

In the process of collecting the field evidence of for boundary, the surveyor will also locate the many other features required by the ALTA/NSPS standards including, but not limited to,

building locations, access points, evidence of use of the property by others, possible encroachments, fences, drives, utility features, water features, and parking lots and spaces.

All of that fieldwork is conducted using a wide variety of tools at the disposal of the modern surveyor. Field conditions and other factors, like the size of the property, the amount and density of improvements, and extent of vegetation, will typically dictate the appropriate tools. They may include electronic total stations, robotic total stations, magnetic locators, GPS, ground-penetrating radar, utility locate technologies, aerial mapping, aerial photography, remote sensing, laser scanners and unmanned aerial vehicles (aka "drones"). More mundane tools like shovels and pick axes are usually required because the evidence that needs to be found and located is frequently, if not usually, beneath the surface.

After the boundary corners and lines have been retraced to the satisfaction of the surveyor, he or she will return to the field to set or reset any missing corner markers.

Then the plat/map of the survey is prepared to document those boundaries and all of the located features. The plat/map is prepared using any of a number of computed-aided drafting (CAD) programs or applications that are popular with surveyors. The drafting process can be automated to a great extent with metadata on field-collected features being used to automatically create line work, connect up the related points into lines, place the appropriate symbols, label boundary lines and even draw contour lines. Of course, presenting all of that data in a legible, readily understood form necessarily takes some manual adjustments of features like labelling locations, line types and text sizes.

The plat/map must also show any gaps or overlaps with adjoining properties as revealed in the records, and the location and extent of any easements identified in the title commitment. This provides the title company, the lender and the buyer with additional information on possible title conflicts or problems.

There are many notes required on a Land Title Survey such as those related to the depicted easements (e.g., recording information, whether shown, and, if not, why). Other notes include, but are not limited to, those identifying problems or ambiguities relating to the boundary, areas that were inaccessible, and water boundaries.

If the surveyor deems it appropriate to prepare a new property description based on the results of the survey, that effort must be undertaken with great care to not inadvertently create new title problems or confusion as to the boundaries and corners that did not exist before.

A new description may be written to indicate new corner markers that were set or to reflect higher precision in measurements and dimensioning than the old description (which may have been prepared decades or even over one hundred years earlier). It should be noted, however, that just because there are differences between measured and record dimensions, does not necessarily mean the old description is bad and needs to be rewritten. Like boundary locations, legal description interpretation is a function of legal principles, not mathematics.

Once the plat/map has been completed, and any and all issues related to boundaries and easements resolved (to the extent possible), it is sent out for review and comment by the interested parties (title company, lender and client/buyer). Any comments received will be reviewed and addressed if necessary, and the final plat/map then signed and sealed by the professional surveyor and sent to the interested parties.

It behooves surveyors and users of surveys alike to be intimately familiar with the purpose, requirements and contents of an ALTA/NSPS Land Title Survey. That way, there will be fewer surprises – which translates to happy clients, lenders, title companies … and surveyors.

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