Frequently Asked Questions
and
other guidance for
ALTA/NSPS Land Title Surveys

(03/05/21 vers.)

What about the transition period leading up to and immediately after February 23, 2021?

With a couple of possible exceptions explained below, if a contract to perform a Land Title Survey is executed on or after February 23, 2021, the survey must be performed pursuant to the 2021 Standards.

During the transition period, surveyors may encounter situations whereby they have entered into a contract to perform an ALTA/NSPS Land Title Survey prior to the effective date of the 2021 Standards (February 23, 2021), but the survey is not anticipated to be completed until after February 23, 2021. In such cases, the surveyor may discuss this with the client, title company and lender and include an appropriate clause in the contract, viz., "*This survey will be prepared using the 2016 Minimum Standard Detail Requirements for Land Title Surveys as established by ALTA and NSPS since said standards are still currently in effect at the time of this contract. It is understood and accepted by all parties involved that said standards may no longer be current upon completion of the survey, but will still be used for the purpose of this survey.*"

How about HUD survey requirements?

There might be some exceptions to the effective date related to HUD surveys. In the past, it was difficult to anticipate when the HUD Multifamily and HUD Lean 232 survey requirements would be updated to reflect new ALTA/NSPS Standards. NSPS will strive to keep surveyors informed as to developments in that regard, but if the attorney insists that the survey must be completed using the 2016 Standards until HUD recognizes the 2021 Standards, surveyors may have to comply.

What about the transition period as related to "updates" of previous surveys?

As an aside, notwithstanding the innocuous-sounding word "update," there is actually no such thing. An "update" is a new survey – the surveyor is certifying that the survey reflects the current conditions on the property and that it was performed pursuant to all of the requirements in the current standards. The only difference is that the surveyor happens to have surveyed the property previously, so the client might realize a reduced fee or quicker turnaround depending on a number of factors (e.g., how long has it been since the initial survey? How many changes have affected the property since?).

In any event, if the contract to conduct the "update" is executed after February 23, 2021, it must be performed pursuant to the 2021 Standards. However, if the "update" is simply a follow-up on a survey related to a conveyance that had been anticipated to close before February 23rd, but was

perhaps unexpectedly delayed for a fairly short time until after February 23rd, the surveyor could arguably conduct the "update" pursuant to the 2016 Standards. This does not extend to "updates" unrelated to the initial conveyance or "updates" that take place substantially after February 23rd.

Providing professional guidance to the client

When deemed appropriate, surveyors might want to consider suggesting to their clients that the advice of a wetlands, flood plain, environmental, archeological or other appropriate expert might be beneficial.

Section 4 - What if the required research information is not provided to the surveyor?

Surveyors may encounter situations whereby the title company is unable or unwilling to provide the research otherwise required pursuant to Section 4. In that case, surveyors must perform their research pursuant to their state's requirements, and if their state has no standards in that regard, it is advised that they be familiar with the normal standard of care in their area regarding research. Notwithstanding that, some form of title work is required to perform a Land Title Survey (see below).

Section 4 - What constitutes satisfactory title evidence?

Starting in 2016, the ALTA/NSPS Standards state that the surveyor needs to be provided with the most recent title commitment "or other title evidence satisfactory to the title insurer." Why not simply require a title commitment?

Title companies have other products that are sometimes requested by clients that fall short of commitments and policies, but that - for a variety of reasons - are acceptable to clients in some circumstances. In addition, in some cases, abstracts are still used. Since the ALTA/NSPS Standards were developed expressly to address title company needs, the Standards – starting in 2011 – required that title evidence be provided to the surveyor. But sometimes, the title company may accept or produce something less than a title commitment, so the Standards need to reflect that fact.

Section 5.B.ii. - How do we treat sidewalks and trails along the street/road

It is not unusual that streets and roads are found to have sidewalks or trails running adjacent to them or with a grass strip between the two. Likewise, walking/biking trails are sometimes found adjacent to the street/road - even as part of the paved way in some cases. Section 5.B.ii. calls for locating the "travelled way" to be located and, of course, shown on the survey. The question of whether such sidewalks/trails should also be located and shown is answered by Section 5.B.iv. which requires that "*The location and character of vehicular, pedestrian, or other forms of access by other than the apparent occupants of the surveyed property to or across the surveyed property observed in the process of conducting the fieldwork (e.g., driveways, alleys, private roads, railroads, railroad sidings and spurs, sidewalks, footpaths)"* be located and shown.

Section 5.E. - Easements and Utilities

The 2021 ALTA/NSPS Standards now require that utility locate markings (typically paint or wire flags) be located and shown as evidence of easements and utilities. For those surveyors concerned about locating and showing what may or may not be actual utility locate markings because they do not have any information regarding the locate request or source of the markings, they might consider developing an appropriate note such as "*Paint markings found on the ground and shown hereon as evidence of possible (or probable) underground utilities are consistent with typical utility markings. However, no utility report was provided to authenticate these markings - their source is unknown. The user of this plat/map should rely upon such markings at their own risk.*"

Section 5.E.iv. - Why did locating and showing 'observed evidence of utilities' become mandatory in 2016, rather than optional as it was in Table A item 11(a) of the 2011 Standards?

This change was made to address a conundrum. Prior to the 2016 Standards, if a client did not request Table A item 11(a) or 11(b), the surveyor had no responsibility to locate and show evidence of utilities. But if that utility evidence could be considered evidence of an easement, the surveyor *did* need to locate and show it pursuant to Sections 5.E.i. through iv.

The committees felt that most evidence of utilities could also be considered evidence of easements, so to eliminate future problems and questions in that regard, locating and showing observed evidence of utilities was made mandatory starting in 2016.

Section 6.B.i.a. - What if the record description does not match the Schedule A description?

This section requires that on a survey of an existing parcel, the record description of the parcel being surveyed shall appear of the face of the plat/map.

The description of the real property being insured (contained in Schedule A of the title commitment) is typically (and ideally) identical to the record description. In cases where the two descriptions differ, the surveyor may wish to inquire of the title company as to the origin of the Schedule A description. In cases where the title company insists that it will be insuring the description in Schedule A even though it does not match the record, the surveyor may need to show both descriptions on the face of the plat/map.

It is certain that the parties will require that the description being insured appear on the face of the plat/map, and 6.B.i.(a) requires that the record description be shown. The surveyor might consider providing a note explaining how the two descriptions differ.

Section 6.B.vi. - Water boundaries and caveat

This section calls for a caveat to be noted regarding the nature of water boundaries. Surveyors might consider developing their own such note, but it could be formulated on the order of, "*Where the property being surveyed includes a water boundary, the parties relying on the survey should be aware that, (1) laws regarding the delineation between the ownership of the bed of*

navigable waters and the upland owner differ from state to state, (2) water boundaries are typically subject to change due to natural causes, and (3) as a result, the boundary shown hereon may or may not represent the actual location of the limit of title. The *[e.g., bank, edge of water, high-water mark, ordinary high-water mark, low-water mark, ordinary low-water mark, center of stream]* *shown hereon* *[was/were]* *located on* *[Date]*."

Section 6.B.vii. - contiguity, gaps and overlaps

This section requires that the surveyor disclose any gaps or overlaps with adjoiners or between interior parcels where the property being surveyed is comprised of multiple parcels. This can be done not only with notes on the graphic portion of the plat/map, but also with textual notes drawing attention to the condition(s). Such information is critically important to the title company so that such issues can be disclosed to the parties and appropriate exceptions to coverage can be written.

Where no gaps or overlaps exist, surveyors should consider assuring that the parties understand that fact by providing an affirmative statement to that effect.

Section 6.C.i. - Dealing with easements that burden vs. easements that benefit the property

Offsite easements that benefit the surveyed property (i.e., appurtenant easements) are typically identified as insured parcels in Schedule A of the title commitment. Such easements may be included as part of the survey - treating them as a fee parcel rather than simply graphically showing them - pursuant to optional Table A item 18. But be wary of, for example, cross-parking and access easements that may cover large areas.

Easements that burden the surveyed property are identified as exceptions to title insurance coverage in Schedule BII of the title commitment.

It is possible that an easement could *both* benefit *and* burden a property in which case, it might be listed both in Schedule A and Schedule BII.

In addition, sometimes a title company may inadvertently list a beneficial easement in Schedule BII as an *exception* to coverage, rather than identifying it in Schedule A as one that *benefits* the surveyed property - or vice versa.

Surveyors should communicate with the title company when they believe there is a discrepancy between their opinion as to the effect of an easement and how the title commitment reports it.

Section 6.C.ii. - How do I deal with revisions to the title commitment?

Often in the course of the surveyor preparing the survey and often even after the plat/map has been completed and delivered, there will be revisions made to the title commitment that the surveyor will need to address. Surveyors should assure that they are appropriately compensated for any work that they believe represents additional services. This could be accomplished by carefully spelling out in the contract how many lender/client/title company comment letters will be ad-

dressed, how many client/lender/title company-driven revisions will be made to the survey, and over what period of time.

Section 6.C.viii. - How does the surveyor address easements found, but not listed in title commitment?

This will most commonly happen when the surveyor, (a) by some means or other, becomes aware of an easement not listed in the title commitment or (b) an easement that appeared in an earlier version of the commitment has been removed from a subsequent version.

In this events, typically one of three things has occurred. (1) the title company simply inadvertently missed an easement, (2) the title company is aware - but the surveyor is not - that the easement has been released, vacated or abandoned, or (3) the title company has decided to insure over the easement.

New Section 6.C.viii. in the 2021 Standards states *"If in the process of preparing the survey the surveyor becomes aware of a recorded easement not otherwise listed in the title evidence provided, the surveyor must advise the insurer prior to delivery of the plat or map and, unless the insurer provides evidence of a release of that easement, show or otherwise explain it on the face of the plat or map, with a note that the insurer has been advised."*

Such a note might be formatted similar to:

> *The 20 foot gas-line easement recorded as Instrument number 64-12345 and shown hereon is not listed in the title commitment; however, no evidence of a release, vacation or abandonment has been provided. The title company has been advised.*

Section 7 - Certified parties?

Surveyors are often told they need to certify to multiple parties above and beyond the client, lender and insurer as identified in Section 7 and they need to recognize that more certified parties may equate to more liability. They may wish to consider specifically listing in the contract those parties that they will certify to and that "*additional parties may be certified to for an additional fee.*" If the specific parties are not yet known, they could specify that they will certify to the lender, client and insurer.

Often a request is made or direction given to certify to "ATIMA" and/or "ISAOA." These are acronyms that mean "*as their interests may appear*" and "*its successors and/or assigns.*" The loan policy defines "insured" in a way that should remove the need for such wording, but if the lender demands that the title company put those in the policy, the title company will likely want to surveyor to certify to the same. Surveyors should seek guidance from their attorneys on the desirability of certifying in this matter; however, in any event, they may want to avoid certifying to successors and assigns of the client/buyer.

Section 7 - The date of the fieldwork is obvious, but what is the date of the Plat or Map?

That is the date by which the survey will be identified. Many surveyors date the plat or map as of the date they signed it. Others backdate it to the date of the fieldwork. The committees feel this decision is best left to the surveyor. In some states, the date of the plat/map may need to be the same as the date of the fieldwork.

Table A - What can I modify in Table A?

The introductory paragraph to Table A has been revised to make it clear - as was always intended - that not only is the very selection of a Table A item negotiable, but the exact wording of the item is also negotiable, as is - of course - the fee. It is permissible for the surveyor and client/ lender to negotiate a modification to the wording of any item. Any such modification, however, must be explained in a note placed on the face of the plat/map pursuant to Section 6.D.ii.(g). Of course, surveyors need to decide for themselves what fee to attach to any given Table A item.

Table A, item 11 - What about underground utilities?

Item 11 has been re-written for 2021 in order to better address the realities of underground utility locations. The best thing surveyors can do to help manage expectations in this regard is to reiterate the "Note" following this item in Table A, viz.,

> *Note to the client, insurer, and lender – With regard to Table A, item 11, information from the sources checked above will be combined with observed evidence of utilities pursuant to Section 5.E.iv. to develop a view of the underground utilities. However, lacking excavation, the exact location of underground features cannot be accurately, completely, and reliably depicted. In addition, in some jurisdictions, 811 or other similar utility locate requests from surveyors may be ignored or result in an incomplete response, in which case the surveyor shall note on the plat or map how this affected the surveyor's assessment of the location of the utilities. Where additional or more detailed information is required, the client is advised that excavation may be necessary.*

Does item 11(b) require an 811 locate request or a Level B SUE investigation?

No, neither!

Because in many, if not most, parts of the country an 811 locate request from a surveyor is an exercise in frustration and futility, the Joint ALTA/NSPS Committee dropped reference to 811 locate requests and added the "private locate request" as 11(b).

The intent of 11(b) is to hire a private locator, rather than making an 811 locate request or hiring someone to do a Level B SUE investigation.

If item 11(b) is checked, the surveyor needs to discuss with the client who will make the locate request and who will paying for it. Obviously, if the surveyor is paying, the associated fee would be added to the survey costs.

Keep in mind, however, that the wording of Table A items is always negotiable, so if in your area, an 811 locate request is actually fruitful - or if the client insists on a Level B SUE investiga-

tion - the wording of 11(b) can be negotiated, modified and the word “private” replaced with “811” or “Level B SUE investigation.”