

# **ALTA/NSPS Land Title Survey Standard Training Series**

## **Sections 6 & 7**

Medora: All right. Thanks again everyone for joining. I have now started the recording, and Gary, I will turn it over to you.

Gary Kent: Thank you. And good afternoon everyone to this second session on the Alta NPS Land Title Survey Standards. Today we are primarily going to cover items in section and seven. This is, again, as it was yesterday, a program presented by American Land Title Association, ALTA, and the National Society of Professional Surveyors. And we appreciate being hosted by the US Department of Housing and Urban Development. Medora?

Medora: Thanks, Gary. And same as yesterday, all attendees are currently on mute. If you do have any questions please ask them in the Q&A box, which can be found on the right hand side of your screen. If you do not see the Q&A box, look to the bottom right-hand corner, select the button with three dots and click on the Q&A icon.

The Q&A box will then appear in the panel to the right of your screen. If you do experience any technical issues, please submit your questions via the chat box to me, the host, and I will work with you directly to resolve those issues. This webinar is being recorded and it will be posted on the HUD Exchange. Now I would like to turn it back to Gary.

Gary Kent: Thank you. Our speakers today are, again, same as yesterday, myself. I am a surveyor in Indiana, past chair of the survey work group with ALTA and NSPS since 1995 up until this year, and Todd D'Amico, who is in Oklahoma. Welcome Todd.

Todd D'Amico: Thank you, Gary. Thank you all for attending again today and we look forward to this presentation. Again, I'm with the First American Commercial Due Diligence Services, and I'm the current chair of the NSPS/ALTA land survey work group and been working with Gary Kent now for around 10 years in the ALTA standards. So Gary, back to you.

Gary Kent: All right. Thank you, Todd. Our agenda today, we're going to talk first about measurement standards and, I'm not going to bore you much with this but I think it's important to just touch on this so that people have an understanding. And we actually touched a little bit on it yesterday, we get just a hair more into it today but not dwell on it.

Then we're going to jump into section six, and this is where we are preparing the plat or the map of the ALTA/NSPS land title survey. And for those who wonder why throughout the standards we talk about plat or map, that document that gets drawn up as a function of the survey and provided to the client, the name of that document actually varies across the country.

In my area, and I think in Todd's area, we call it a plat. In some states it's called a map, in some states it's called the survey plan, in some states it's the survey drawing. For purposes of these standards we have just chosen to go with plat or map. We are going to go down through section six. This is preparing.

This is all of the stuff that goes into preparing that document that's going to be provided to the client, to the title company, to the lender, to HUD for their review. So there's a lot that goes into

that. We're going to talk a little bit about section seven, the certification and the HUD surveyors report.

And throughout we may bounce back and tie this stuff back to what we talked about yesterday, which was the standard survey exception, the various endorsements and the title commitment. And there may be some comments that we tie back into some of these earlier sections in the standards.

So I had this slide up here yesterday, and again, I just want to reiterate that there is a difference between precision and accuracy. On the left we have highly precise measurements but they're not accurate. On the right we have highly precise and accurate. And the point being, again to reiterate what I said yesterday.

We can have a very precisely measured survey that is junk because it's in the wrong place, poor decisions were made related to resolving the boundary. There's all kind of things that can go wrong and yet the measurements can be very precise. So it's an important point to discern between the two of those.

In the measurement standards, the measurement standard is called relative positional precision. And basically it's an acknowledgment. There is no such thing as a perfect measurement in surveying. It's no different from when they make ball bearings or anything. There is a tolerance related to any measurement.

The tolerance on a land title survey between any two points on the boundary, and this is what we're talking about, is the precision of the boundary measurements, that tolerance is two centimeters, which is about seven eighths of an inch plus 50 parts per million. And that sounds kind of funny, but what that amounts to is an eighth of an inch for every 200 feet.

And the reason it is shown this way is because there are two components to precision in measurement. One of them is just flat the ability of the person making the measurement, the ability of the precision of the instrument, there is a limit on what that is. And there is a statistical basis for this measurement standard, but it's that two centimeters, seven eighths of an inch.

But there's also another component in that with survey measurements the further we measure, the more error gets introduced. And I'm discerning between error and mistakes, right? This is just a random error in measurements. So the further we measure as a component of the equipment, the more error gets introduced.

So we have this flat precision of seven eighths of an inch, and then we have additional random error that comes in at the rate of one eighth of an inch for every 200 feet. So what that means is if we showed a boundary on our property that was 1,000 feet long, well, I've got that seven eighths of an inch, and then 1,000 feet would be five pieces of 200, so it'd be five more eighths. So it would be 12 eighths of an inch, which is an inch and a half.

So what that means is that there is an inch and a half of allowable measurement uncertainty in a thousand-foot course. And then we have to throw in this statistical thing that we can't -- the way

statistics works is we can't assure something 100 percent of the time, and there is always a compromise between what's an acceptable error at what percentage of the time.

I could give you 99.7 percent of the time, but the amount of error would be greater. I could make a very small allowable error, but it's only going to be maybe 50 percent of the time. So there's this compromise, and 95 percent is actually two standard deviations. So I mentioned a second ago these two centimeters is a function of simply the capabilities of the equipment.

Though there is equipment that will measure more accurately, it costs more. I can also measure more accurately by making more measurements. So there's a time component, right? We can measure just about as precisely as you would like, but it takes more time and more expensive equipment.

And so we have this set of compromise which is probably a function of a kind of a compromise between economics and a normal standard of care, you know, what are people willing to pay for and what is an acceptable amount of uncertainty in those measurements? And again, we're talking about random errors.

They're not mistakes, they're not blunders, these are just things that exist in the measuring world, whether it's surveying or any other measurement. Right. Having briefly touched on that, I didn't want to spend any more time on that than we had to, we'll get into section six. And again, this is the preparation of the plat or map.

There are only four subsections, 6A through 6D, but there are a lot of things that go into this. So we're going to look at each of those today just so that you are kind of introduced to what goes in and why. So 6A is simply a very short section that says all that stuff we talked about yesterday, all the things we locate in the field, those have to be shown on the plat or map.

And that only makes sense because otherwise why did we go to the trouble to locate it? So 6A merely says all that stuff that you located pursuant to section five, that goes on the plat or map. So that's a very brief section there. And by the way, I mentioned yesterday and I neglected to mention now the handout that was provided is that 35 pages, I think.

And it has a red line version at the front, which is the changes that have taken place between 2016, 2021, and then the next one in there is the clean 2021 version. So if there's something would be helpful for you, you might want to have that there and kind of follow along that way if you would like.

So we're in now section 6B, and this covers a tremendous variety of things. We talk about the boundary, the descriptions, really, those are probably the main things that we're dealing with in this section. The descriptions of boundary, the dimensioning. And so I'm going to let Todd take over from here. Todd?

Todd D'Amico: Gary, thank you. So if you have the red line version or set of the ALTA standards up, this section is written very well and explains this in great detail. So we have a few

items here on the slide, but we'll start with item 6.B.i, and it says the record description is to be shown.

In the ALTA standards it says the current record description of the surveyed property. And the majority of the time that description should be on the face of the survey. That should be contained in the title commitment under schedule A, and it should be listed and graphically depicted on the survey as well.

So there's another section that we really dig kind of deep into in the standards, and that's 6.B.ii, anytime a new description is prepared it's to be shown. Now, in the standards themselves we talk about, well, a surveyor might prepare one. And then what happens if a surveyor prepares one? Well, there's a sentence that says that including a statement explaining why the new description was prepared.

So a surveyor should explain why they had to create one. As Gary and I have talked in the past, sometimes in certain states, Ohio being one, if a new description is prepared it might have to go through a process of being reviewed at the county by the county engineer or surveyor. So there may be another step that has to take place, but the surveyor should always identify why one was prepared.

You also should see the difference as to how it relates to the record description. And what I mean by that is on the face of the survey, let's take that thousand-foot boundary call that Gary talked about earlier, there should be the record bearing and distance, and there should be the measured or described bearing and distance from the survey description that's prepared.

Now, in that section, if you have that still up, that section of 6.B.ii, it talks about, well, when should we prepare one? You know, should just every survey have a record description and should every survey have another description prepared by the surveyor? The answer to that is no. If a property is a lot and block description, then we shouldn't be preparing a meets and bounds description of that.

Unless there's some error in that plat that needs to be restated with a description, and that would be a case by case basis. But in the standards, it also says that preparation of a new description should be avoided unless deemed necessary or appropriate by two individuals. And those individuals in the transaction are the surveyor and the insurer.

So if the title company has an issue with the descriptions, maybe there's an error in them, there's a Scribner error or there's a reason to combine three older descriptions in New Jersey into one description to clearly identify the property from an insurance standpoint, that may be something that is requested by the title insurer.

Or in the case of a survey that I just finished today, there's three tracks and they don't have clear explanations of how they all relate together. So from a surveying standpoint, I wrote and asked survey description to combine those tracks and state the property clearly on the face of the survey.

So again, it should have a note as to why, and the only two parties that are allowed to make or appropriate to make that determination are the surveyor and the title insurer. So let's go the next slide. 6.B.iii talks about showing the measured versus the calculated or the record when deemed significant.

And you might say, what does calculated mean? Measured I've seen on a survey and record I understand. I see that M&R on a survey all the time. Calculated might be a distance or bearing that's calculated by the surveyor. Maybe that point of the boundary is inaccessible, can't get to it due to terrain, or maybe it falls into water boundary or something and there's no way to set that point.

But those calls and distances information for the boundary and the legal description should be clearly identifiable on the face of the survey. We say show all distances and directions in both record and in a new description on the face of a survey. So if you're receiving an accurate ALTA survey, as we've talked about what that looks like yesterday.

And we're trying to create a set of standards that gives a tremendous amount of information, then the record description and what the surveyor finds in the field should be identified. Now, Gary mentioned the tolerances today, right? And you may run across a survey where you have a 200 by 100-foot rectangle, and the surveyor may determine that between those two points, it's within an acceptable tolerance.

So he's not going to show you 100.001 as that. He may call the 100 the record and the measured because it falls within that tolerance. So in some cases you may only have one bearing and distance, and in other cases you may have a bearing and distance for record and a bearing and distance for measure.

Gary Kent: And Todd, I might add that some surveyors will show that 100.001 as you well know. We kind of discourage that because it really is implying the measurements are better than what they are. So you may see that, but it really doesn't make much sense.

Todd D'Amico: Correct. It just kind of proves that surveyors are expert measures in some cases, right? We get away from creating that boundary opinion that we're charged with. So section 6.B.iv, the direction, distance and curve data necessary to compute the mathematical closure of the survey boundary.

All of that information, I've talked about the distances, the bearings, the curve data, which should be in multiple parts, all of that information should be on the face of the survey so it's easily mathematically figured so that we can determine is that a closed figure and does it make a math closed shape?

In some cases, you may see a title company ask a surveyor or a law firm ask a surveyor to make sure that that happens, and there may be a statement on the face of the survey that it does form a mathematically closed figure. Also if there's an issue, let's say we have a legal description that doesn't close, doesn't come back to the point of beginning and let's say it's grossly off by 30 feet.

Well, in that case, there should be a description on the survey, a note on the survey from the surveyor saying that that doesn't close. They may have to run some other deed descriptions and survey some additional property to determine where the error is in the original description, and that may constitute an additional description in that regard where there's an ad survey description on the face of the survey.

The basis of varying and where it differs from the record and the difference. So what we've written into the standards is the surveyor should identify the basis of the bearings that they utilized for the survey. And you may say, well, what does that mean to me? Well, it really means something to the next surveyor, if I'm doing the first survey and Gary's following behind me two years later.

What that allows Gary to do is understand what I set my coordinate system on and what I established my bearings on. So that's important for us to stay in alignment with each other in the profession, but it's also important if the surveyor doesn't utilize the record bearing, then you'll see differences in that bearing along the property lines. And the reason for that would be a different basis for the bearings. The surveyor should have a note to that effect on the survey as to how they determine that, what basis they used. So that's also written in the body of the standards.

Gary Kent: Yeah. And one other thing that Todd and I talked, this concept of basis of bearings is a really kind of esoteric thing in the survey world. And the net result of it can be that we've got two different surveys with different bearings around the property but they describe exactly the same property. And sometimes I just have to say to people, you know what, you're just going to have to trust me on this, because it's a very difficult concept to explain to a non-surveyor.

Todd D'Amico: Absolutely. Gary, I think back to you.

Gary Kent: Yeah. Thanks Todd. On section 6.B.v, this is a requirement when we're doing -- usually the term would be an original survey. There are two types of surveys. There's an original survey, which is when we are doing a survey, pardon me, of a parcel that has not been transferred before, right?

So this is, probably to use a lay term, this is a cutout out of a larger parcel. So we're doing a survey of that, or maybe it's a retracement survey, which is the other type of boundary survey, which is a survey of a parcel that does already exist. If it's an original survey, it's maybe two acres being cut out of 10 acres, the standards would require that I show you where is that 10 acres and where does these two acres sit inside that 10 acres?

Understanding we're not serving the 10 acres, and we don't even have to draw it at the same scale. It could be kind of like just a little diagram, a little vicinity map sort of thing, but it provides context so that someone can understand, ah, yeah. Here's the 10 and here's the piece that's being cut out.

On a retracement survey you don't have that same scenario, but certainly there are a lot of descriptions written that are part of some larger piece. And so it can be helpful to show the larger piece, again, just for context. So that's what's addressed under 6.B.v. Under 6.B.vi, we address

water boundaries, and we talked about yesterday in the field what we need to do on water boundaries.

You know, locating the appropriate features and understanding where the delineation is between the state's ownership and navigable waters, if in fact they owned the navigable waters in that state and the Upland owner. And in 6.B.vi there is a requirement that there be a caveat written as a note on the survey that simply is really not meaning to educate people, but to aware them that number one, water boundaries are subject to change either through erosion, accretion, reliction, and what we're showing may or may not be the actual boundary.

If I'm in a state where the property sits up against navigable waters and the state owns those navigable waters but the delineation line between the state's ownership and the private owner is the ordinary low watermark, in normal times that mark, that line is actually in the water. And so it really is just a caveat to aware people about various things that may impact the boundary.

On 6.B.vii, surveyors are required to identify the gaps and overlaps that may be taking place either on the perimeter boundary of a parcel, or if it's a survey that involves more than one parcel. You know, we're surveying three parcels that are going to be combined into one, we need to be showing those relationships interior to those three parcels.

Obviously, overlaps aren't that important interior, they're probably going to pay two for the same one foot, but if that's a one-foot gap that could be a huge, big concern to a bunch of people. On a perimeter, typically the gap is less of a concern but the overlap is what really would be the concern because the insurer's going to want to know if there's a five-foot overlap with the neighbor because they probably are going to want to take exception to that, or we can all go back through the records and try and figure out what's going on and what caused that. But this is a really important point on land title survey.

Todd D'Amico: Gary, good point there. If I could add on gaps and overlaps for just a second.

Gary Kent: Please.

Todd D'Amico: Yeah. We added into the standards, not this last version but prior, a note that says when a gap or overlap is identified, that the surveyor is -- that they must prior to delivery disclose this information to the title insurer and the client. And I would even go so far as to say if they know HUD is involved, that it should really be all the parties involved in the transaction, HUD included.

That in some cases when we're calculating a boundary, we're analyzing that and making that determination, we may identify that before we have the map done. And if that's the case, and we've written that into the standards, that if we can do that, that that's so important that there's an issue, that if we've identified that, that we need to communicate that and report that to everyone.

So that's at the very end there of that section 6.B.vi or vii, and I just wanted to point that out. So if you see a red flag come across from your surveyor and it talks about overlaps and gaps, that's something to immediately communicate back with and start to have discussions. You may not



have a survey to look at yet, but that's what we've asked everyone to do as quickly as possible, to identify those things so they can either be resolved or they can be negotiated.

Gary Kent: Yeah. And I think the requirement says prior to or upon delivery. So prior to is helpful, but the point about upon delivery is that gaps or overlaps need to be patently clear on the face of the survey, right? If it's a little tiny gap overlap it may be hard to show it graphically, but there has to be a note. If it's big enough then it can just be shown graphically, but that information preferably is communicated ahead of time. But either way, it has to be clear on there. Otherwise we haven't done our job for everyone.

Todd D'Amico: That's right. Yep.

Gary Kent: On 6.B.viii, this is just kind of a catch all that we know that if I do a survey and for some reason there's a course that says it's 230 feet long, but in the process of doing the survey I conclude that that's actually not 230 feet, it's 285 feet, right, it's 55 feet longer than what the record says, I think we can safely assume that someone is going to wonder what the heck is going on with that.

And so we -- you know, this is where the results of the survey differ significantly from the record. Normally a surveyor will be able to figure out exactly what happened. Not always, but typically we'll be able to figure out what has gone wrong here, and then we can make a note to that effect.

The other thing is that sometimes boundaries, and I talked yesterday about how boundaries are a function of evidence and law, not so much a function of measurement, sometimes we are really plumbing the depths of the evidence and really need to get into the law to understand what is the applicable boundary law principle here.

And those thoughts and those decisions and those considerations are not typically clearly reflected on the survey, and yet they can be very important. And so this requires a note related to that. On 6.B.ix, simply the perimeter of any buildings that we located on section five, those need to be shown, and we already had to show it because of 6A we talked about that.

But here we're going to show the distance to the appropriate sideline of the boundary. And what appropriate really means is might this building be impacted by a setback? So we don't say you have to dimension it to every boundary because if it's 80 acres and there's a building sitting tucked way down in the Southeast corner, nobody really cares that it's 2,073 feet to the north line.

They want to know that it's 75 feet to the south line. So there is some subjectiveness there. And if a user, if somebody, a consumer of the survey is curious about those, they should just ask the surveyor. They'll be able to make that computation. 6.B.x is merely acknowledging the fact, and we talked about the measurement precision a few minutes ago.

But there will be situations where there simply cannot achieve that two centimeters and 50 parts per million. It might be related to vegetation. It might be related to the improvements on the

property. It might be related to the relief, how much up and down there is on the property, that it simply does not allow us to make the measurements as precisely as what we would like and as precisely as what the standards want.

And if that's the case, we simply need to put a note on the survey that says, here's what was going on that prevented this. You know a lot of people ask, well, ask us you, oh, are you using GPS, like that's some magic thing. GPS is, in fact, not always the appropriate measurement equipment to use, and in fact, in some cases it will not work for us. And so we have to use other equipment.

So this is just an acknowledgment that sometimes conditions can be such that we're just simply not going to be able to achieve the precision that we would like. On 6.B.xi, if you remember in the field in section five yesterday, we talked about locating features within five feet of the boundary.

Well, sometimes you may not know what is within five feet on the boundary, particularly on the outside, on the neighbor's property. Maybe there's a high brick wall or a tall fence, or you can't get access, you can't see in there. Maybe there's a building. And the assumption here under 6.B.xi is if we don't show something, you all are going to assume there's nothing there.

Well, the reality might be that we didn't show it because we couldn't see over there, and there might be something that's of concern. So we need to put a note on the survey that says, hey, in this area right here we could not see you know, five feet off the property. So that's what that one is. I think this is the last item under 6B, and this is simply a note requiring that we identify the source of title.

So typically it's almost always a title commitment. And so we're going to say this is the ABC title commitment number one, two, three, four, five, with an effective date of, you know, January 26th, 2022. So that is helpful to everyone so that the consumer of the survey knows, yeah. They had the right title commitment and they relied on the right information.

It's also helpful for the surveyor if some question comes up later about, well, you didn't show something. It's like, well, this is the information that I had. So that's an important note. That brings us to, let's see. In fact, actually, Todd, you want to jump in here? I think I walked over you there. So on 6.C.ii.

Todd D'Amico: Yeah. Thanks, Gary. Now we're into 6.C.ii which are easements, servitudes, rights of way, access and documents to be provided to the surveyor. As Gary mentioned, we want to reference that title commitment because the information in that commitment is reflected on the ALTA survey.

As you know, the schedule B.ii listing is what the surveyor's charge is in reviewing those items. So what we've done in this section is we've identified some key areas for surveyors to have maybe some additional benefit. For example, if it's a survey related item or not, do they benefit or burden the subject property and if evidence was provided to, or obtained by the surveyor and if they lie across the survey property in a related note.

So what does that look like in the standards? Well, in the standards in 2021, we, you'll see on the red line, really reword some of this section to help everyone. To help the surveyors give more detail and to give the clients and the end users more information on how to make decisions on these items.

Not only does the title company need a statement to these items so they can determine whether they stay in or they remove them, but all the other parties just like HUD needs an answer from the surveyor as to how they affect the property. So we have things in the standards now that say its location is shown or its location can't be determined from the record information.

So as we go through this section, we've kind of crafted items to help the survey and everyone. There's a section that says, is it a blanket easement? So those things are in the standards there as a guide. In some cases, if an easement or access document or something is very difficult, the surveyor may write more than that.

So as you see on this slide, we talk about the different descriptions that can be used as kind of guardrails for the surveying community to give you information about those documents. The location is shown, can't be determined from record. That's one that sometimes needs a conversation, right? Maybe the exhibit isn't attached.

Maybe the legal description isn't clear. Maybe the document's illegible, if we go down to G. Many times documents get scanned and over the course of the years they become illegible or they were scanned in illegible. But these are statements that surveyors can use to help guide you through those documents.

Maybe something hasn't been released, a surveyor has information on an easement that has been released or terminated. In some cases, surveyors have copies of easements or they know of easements that aren't released, and maybe they're not listed in the schedule B listing. So that's important also for a surveyor to disclose what they know and provide that information.

So here you'll see this, and you'll see this in section 6.C.ii, you'll see how we've crafted those items. And these items line up with that in the standards that you have. It's important to know that in some cases a surveyor may interpret and review the legal description contained in an easement document and to the best of their ability have to make a statement like D here on this slide.

That it's blanket, that the easement itself is blanket over the subject property. If that's a pipeline easement or a power line or something, that may not be the best answer for the transaction, but that may be what the document shows today. So maybe there's discussions down the road that that easement needs to be -- they need to reach out to that company and see if it can be reduced, see if it can be identified or recrafted in a width instead of a blanket easement area. So let's go to the next slide, Gary.

Gary Kent: Yeah. I might just touch on a couple things, Todd. I'm going to back up one. On this summary that Todd's just been talking about, we're talking about the survey related items. I know

that surveyors get involved and you all get involved in conveyances where there are 52 items listed in schedule B.ii.

Well, you know, this is a survey, so it needs to deal simply with the survey related items. The easements, the things that can be plotted. There's no benefit provided on the survey for me to say that this property is subject to certain taxes, for example. So we're trying to focus on survey related issues.

The other thing, which is a change from 2016, on E here we always focus on, I think I said yesterday, factual objective statements and observations. But there are a lot of people who like the word affect. They want the surveyor to say does the easement affect the property? And I've always shied away from that because whether it affects the property is a twofold question.

Does it plot on, or does it touch the property, but is it even a valid easement, right? And surveyors don't run the chain of title to check to see if it's a valid easement, and yet people want us to say that. So I could have an easement that plots on the property, but if it's not a valid easement from 1924 because all of the owners didn't sign it or whatever reason, then it technically doesn't affect the property.

But we know people are interested in that word, and so we kind of compromised and said we will, you know, we'll talk about if it affects or does not affect the property, but we are using that word in the context of location, not validity of the documents. So I just wanted to point this out.

Todd D'Amico: Very good point there. And we did add in, in 2021, that language in E does not affect. And we had multiple conversations in the committee meetings and within NSPS, and what our intent there for does not affect is to tie back to the title insurer. You know, the surveyor's charge is to identify what's appropriate and what's not, and what they can identify on the survey.

So something simply is a 50-foot easement and it's two lots away, but it was picked up in the title search. The surveyor has the ability to say that that easement does not affect the property. And from that standpoint, when the surveyor does that it allows the title company then to remove that from their listing of schedule B items. So we've talked about that at great length, that from a does not affect statement is based on what a surveyor can review out of that document.

And like you said, Gary, we can review legal descriptions, we can't interpret the document or the purpose of the document or the validity of the document. And that goes into other items. We don't have an item I on here, but sometimes you have mineral rights shown in a listing and you have a request for a surveyor to make a statement about mineral rights.

The legal description contained in that document might be able to be reviewed by the land surveyor, but the mineral right document itself is not a survey matter. You'll see on the face of a survey; a lot of times you'll see the schedule B listing start with items one through eight. And the survey off to the side will say, not survey matters because those are all the things that Gary mentioned too, you know, taxes or something that's not appropriate.

But there are some things surveyors can do to assist, but we're trying to clarify what we should be doing as surveyors and what should be shown on the survey. Again, Gary gave a point on effects. We had a long conversation about that through the years.

Gary Kent: Yeah. Yes. We did. All right. So that gets us to sections 6.C.iii and iv. iii has a do with access, and we talked yesterday. We know access is a really important issue and you can get insurance for physical access, insurance for legal access. And this is focusing on the physical access.

And if you remember in section five we said the surveyor needs to show the visible evidence of physical access. Again, this is kind of like the five feet on the other side of a wall. If there was no physical access to a budding street highway or other public or private way, then we need to point that out.

On 6.C.vii, this is getting to the point I mentioned yesterday, how often rights of way are undefined. So what we're doing here is we are going to tell you, here's the location of the right of way lines, here's the width of the right of way line, if we have that information, right? If we can get it from controlling jurisdiction, or if it's identified in the title documents.

Otherwise we may all be, you know, in the dark. I have been hired several times to try and figure out what the width of an old road is, and I usually tell people we're going to do it T&M because we may spend three days looking for it and not actually ever find anything. So that is a little bit problematic.

Now, if it's a big development, typically the jurisdiction is going to require additional right of way be dedicated anyway. So it probably doesn't, you know, play as heavily as it might when there's going to be development going on. Let's see. In 6.C.vi, a new item here is tax parcel number.

This was requested by ALTA. But what we're doing is when the adjoining property is not platted, right, it's not lots in the platted subdivision, we are going to provide the recording data for that, the instrument number for the current owner and the tax parcel number to public record. 6.C.vii requires that we show platted setback or building restriction line, those that appear on a subdivision plat, or if those are spelled out in a document that is in schedule B.ii, we're going to show that. Now, we're not talking about zoning setbacks.

We'll talk about those tomorrow in table A. These are setbacks that are clearly delineated, either in a recorded document that was provided to the surveyor, or in a subdivision plat. Maybe it's a commercial subdivision and there are setback lines shown on there. Those are very easy to show and required here. So that's what that item is. Just 25, I think, Todd?

Todd D'Amico: Yeah, Gary. So this is a section that we crafted to talk about easements again, that if we're preparing a survey and a surveyor becomes aware of an easement that's recorded but it's not listed in the title information they've been provided. So what that means is we have a title commitment.

We have a schedule B listing, we have 45 easements and exceptions, and for whatever reason, maybe the surveyor is a surveyor record, maybe they're aware of the property, maybe there's a survey with data on it, the surveyor becomes aware of an easement that is not listed in the title work.

Well, at that point the surveyor must advise the title insurer, and we say here prior to delivery of the map. And a reason for that, and I'm going to stop there before we get further in the statement, is that we want to communicate. You know, as surveyors, and Gary and I have talked about this, we want to make sure that we are part of being a team with the title insurer and the parties in the transaction.

That means being partners with the title office and the title company, being partners with HUD, sharing information that we know. Our charge is to share this information in the beginning. If there's something we can do to help fix something later, well, let's disclose it and then let's go on and work out a solution.

In this case, if we run across a recorded document, book 1,000 page one, and it's a 20-foot easement that runs along the west side of the property, and it's not listed in the title work well, I need to provide that to the title company. I probably want to provide that to everyone in the transaction and say, hey, I know of this. It's going to be on the survey, is it going to be included in the title work?

Or here's the question that comes that comes out of that, was there a release was there an abandonment, was there a vacation document? What is there? Was there a merger of ownership that possibly that easement now is not in effect? And maybe there's a reason for that, right? But if that's the case, then that easement then won't be included, but if it is, we've all been made aware of it.

So we are to show or otherwise explain it on the face of the platter map also with a note saying, hey, I've told the title insurer about this. I have run across this not very often, but we do. And what this area is intended in the standards again is to communicate. We want to make sure that if we know something, we're sharing it. So Gary, you want to add a little to that?

Gary Kent: Yeah. I think we know that lenders are not going to like this. Lenders do not like to see easements that are not listed in the title commitment. But I think everybody needs to understand that surveyors are being put in a liability situation where we know that there is an easement but we are not showing it on the survey.

And most likely the situation is that the title company is ensuring over it. You know, maybe it's really old, nothing has ever been there, and the lender is convinced the title company that the risk is very low and so they're ensuring over it. But of course, just because the title company ensures over it did not extinguish the easement.

And it puts the surveyor in a position of knowing that there is a recorded easement and yet not showing it on the survey. And that really is not an acceptable scenario for a surveyor. So that's why this was crafted. Obviously ALTA was involved in this and they supported this. And I

would be happy to had -- you know, with a note that the insurer has been advised and that this easement is not listed in schedule B.ii, something to that effect.

Todd D'Amico: That's right.

Gary Kent: That's where that came from.

Todd D'Amico: That's right. And again, communicating, and maybe it's a case where the search for the title company missed it, and that, you know, in that case they'll be very thankful that the surveyor identified these things, it gets added as the next number, 46, 47, whatever number might be. And then the surveyor can update the listing and the survey based on a new commitment that's provided.

So again, there are a couple of different scenarios that can happen from that, but we thought, and the committee, that it was important that if a surveyor knows of something to share that, so, yep. Gary, next slide. So the presentation of the survey, we spend some time in the standards talking about what that should be, the boundary of the survey property, right?

We should clearly identify the boundary. We've talked about how accurate things should be, we've talked about the calls and distances around that things should be able to be traced and calculated in a mathematical closure. That should be identified on the survey so that it's distinguished from other lines.

Certain companies do that with a thick darker line, and some companies do it with a color, but should be able to be found on the survey. And we want to point that out so that everyone in the transaction can go to that area of the survey and identify it. Other areas of presentation, it's important as a surveyor, like Gary said, if we don't show something on the survey, you don't know if there's something there or not.

Well, if there are no buildings on the property, we should say no. Building's observed. You would hope that if you prepare a survey that doesn't have anything that the surveyor didn't miss a building, right? But it is prudent to just say this particular property doesn't have any buildings. There should also be a legend of symbols and abbreviations. And from a surveying standpoint I might know what all these things are, but the public doesn't know them, the lender doesn't know them.

And maybe in some cases a surveyor's using a symbol that is a little different than what we're all used to. So maybe when it's going through the HUD review you don't know what that item is. You know, most of us know maybe what a manhole looks like, but all those symbols should be listed in a legend on the face of the survey.

That way as you're reviewing the survey you can rely on that legend to tell you exactly what that is. It may be something that the title company wants to take an exception to so they need to know how to list it, but it may be something in your review at HUD that you want to know exactly what is, maybe it's close to something that's an issue.

So also a vicinity map showing the surveyed property in reference to nearby highways and major street and intersections allows us to place the property kind of in the world, so to speak, but allows some more information as to where this surveyed property is. Those things, as far as presentation, are important.

The layout of the survey is given some, some grace to the surveying company as to how they want to lay those things out, but these items should be clearly found on the face of the survey when you're going through your review. So Gary, next slide. So also in the presentation, if there's an area of the survey, and in some cases we draw surveys to a scale that maybe a certain area of the property needs to be a little more clearly defined.

Maybe there's a retaining wall really close to the property line and another adjacent building that's only a foot off the property and the survey scale is so large that that area of the property deems a supplemental detail, right? And so you may see a surveyor take that section and enlarge that on the page of the survey.

That way they can show, okay well, how this building really isn't crossing the line. It's only 1.2 feet away from the property line, but it isn't over the line, things like that. So that's an area that you might be mindful in your review, that if you see other areas blown up on the survey or, or enlarged on the survey and detailed diagrams, that those are areas to pay special attention to.

The surveyor's calling that out for a reason to show a better representation of that area for you. Also, any notes explaining modifications to table A items, and we'll get into the whole table A listing tomorrow, but if something was negotiated, if there as a special standard the client asked for, an item that was negotiated or something that needs to be clearly identified on the survey, the surveyor's notes section should identify what that is.

So in the ALTA standards, 20 A can be something -- it's a blank item. So we can identify what you want surveyed in that item or identified on the survey. Well, no one else in the transaction knows what that item is. Let's say the surveyor and the client negotiate that piece. Well, once it gets into the HUD review, if there's something extra on the survey and in the surveyor certification 20 A is there but the surveyor doesn't disclose what was the negotiated, then you don't know what that is.

So this area says, okay, well, anything can be added between the surveyor and a client and whatever was negotiated, but we need to list what that is. We need to explain what that is so other parties in the transaction have a clear understanding of what was asked to be done and what else might be on the survey. So again, with presentation we have some, what I call housekeeping items, but you'd be surprised sometimes this information doesn't get listed on the survey.

And the last one there also is one item. So we try to, in the standards what we've done is identify these things and make it very clear that the surveyors need to have this on the face of the survey. The surveyors project number, if they have one, the name, registration, license number, all of the information for the surveying firm should be there along with an email address. That way you have the contact information for the firm that did the survey.



You need to reach out, you need to have a conversation about let's say a gap or an overlap or an easement description, something like that, that it's clearly on this survey so we can have those lines of communication opened up. That information should be there, obviously their license number, all the information about their firm. Also we've added the date or dates of any revisions made by the surveyor and sometimes out the world and in and out transaction there are many parties using this survey and relying on it.

So there may be a comment and an addition and a revision. For one party there may be a revision based on the HUD review. And so that section of the survey should be updated frequently and should have dates. The survey may go for a period of time through the review process. Maybe it's not signed and dated, and we'll get into the certification where we say data platter map, but a revision date on the survey itself is helpful for everyone, number one, to keep version control of things as different versions of the surveys go out, but also so everyone knows that they are reviewing the most recent survey.

So we have that as far as it's in the presentation section, but it's appropriate to be on the face of the survey. Gary, next slide. So when recordation or the filing of a plat map is required, what this section is saying, we are preparing an ALTA survey, and in some states they require that a record of survey be filed, or a plat map be filed in addition to the ALTA survey being prepared.

So if that state requires that, that state statute or local ordinance requires that to be done, then that should be produced in accordance with that particular state and it should be handled appropriately and recorded in that same process. So here we wanted to acknowledge that this document may not be all there is, or this document may be filed and reported in a certain state, you take Washington.

So that's what this section is saying, is that not only is the ALTA survey used in the commercial transaction, but if it's appropriate in your state to file a plat map as well, then that needs to be done in accordance to the local statutes.

Gary Kent: All right. Thank you, Todd. And that gets us to section seven, which deals with the certification. I think it was in 2011 we put wording in that only this unaltered certification may be used. What was happening was that lenders often had their own certification, which sometimes was a page or two long or more.

And virtually every one of them included express guarantees or warranties, there are no encroachments, I showed all the easements, those sorts of things that a surveyor simply cannot say because it's above and beyond what a surveyor's knowledge is. And so to get out from under those problems, the only certification that can go on the face of the survey is the one that in section seven.

Now, if a lender has their own certificate that they want, the surveyor can still do that, it's just going to have to be put on a separate piece of paper. It can be cross referenced to the survey, but it can't appear on the survey. The other comment that I would have is, and I put this in my contract, that if the lender does want their own certification, the wording of that is going to have to end up being acceptable to me.

I can't give legal opinions; I can't give express guarantees or warranties because that will be excluded from coverage on my professional liability policy. There's all kinds of things. In addition to the fact that if I certified of things like that I am most likely violating statute in my state by certifying to things that I don't have actual personal knowledge of.

So that's a consideration there. You notice this says accept as may be required pursuant to section 3B. And I think I may have touched on this yesterday, although maybe not. There are some states that require that a surveyor use certain wording in a certification. My state of Indiana does, I believe Tennessee does.

There are other states that say a certification has to have certain wording. Well, if that's the case, that's the law in that state. And so I will use this unaltered certification from section seven, but I may have to add a sentence or a paragraph in order to comply with the law in my state. And that's what we're talking about here.

Todd D'Amico: Gary, that's a good point. If I could add a little to that, we still see today lender certifications that are prior to 2016 that ask surveyors to certify that the property is served by utilities, and that the surveyor can certify to the drainage of the property and those things. So we still receive on occasion certifications that are not the ALTA certification per the standards, and that conversation just has to happen between the surveyor and the lender or the surveyor and the client and the lender.

And again, like Gary says, this is the only certification, unless there's another state certification, that should be on the face of an ALTA survey. So Gary worked tirelessly for many years educating in that regard. And it really points back, the way this is crafted, it really points all of the table A items and includes the body of the standards. So this certification is actually more stringent than something anyone else could write and ask us to put on there according to the standards.

Gary Kent: Yeah. And what people need to understand is that when I use this certification I am stating that I completed the survey pursuant to all of those requirements that we were looking at. So it's kind of redundant for me to put a certification that says I did X, Y, Z versus why don't I just say I surveyed it according to the standards which includes X, Y, Z?

It's much easier and cleaner that way. Now, we have a bunch of questions that we're going to get to here in a minute. We'll end up this section with just this kind of a rhetorical question, and I know I talked with some folks in HUD years ago, or probably almost 20 years ago about the surveyor's report that it's really a certification that is separate.

And the reason we ask the rhetorical question, and it's probably something for HUD to consider, is virtually everything in that surveyor's report is stuff that's already required to be included by virtue of the land title survey standards. So when I certified that I made the survey that way, I've really covered almost everything that's in the surveyor's report.

Now, we've talked about understanding probably why there are reason HUD may want this. But we would also be more than happy to discuss it and see if there's a way to not have to have that, because it is additional work for everyone and all that. But it's just a kind of an aside comment. We're going to get to questions here in a second.

But there are some resources I mentioned these yesterday, the minimum standard detail requirements for 2021, what we've been talking about, you can find them on the ALTA website. You can also find them on the NSPS website. There are also FAQs and archives. If you want to see every set of standards back to 1962, we have those on the NSPS website.

And again, these slide shows will be available afterwards. So let's get into the questions. I saw there were a bunch of good ones, and we've got is a new description of the property required, is there a measured distance that differs from the record by an amount that is deemed significant? A new description is not required under the standards.

It may be appropriate or deemed appropriate or necessary, but is there a deed versus measure distance that would trigger that, that would say, oh, that's too much? And the answer is no. I could give you an example. If I have a description goes to an iron pipe marking a boundary corner, and I find that iron pipe and it's there, it hasn't been disturbed.

And then it goes north to the center line of a road, and the road is there and we can identify where the center line is, but it goes north and it says north 235 feet to the center of the road. I do my measurement and I find it to be 231 feet, right? Well, that's a significant amount. It's four feet, but the call in the description to the center of the road overrides the distance call.

So there's actually nothing wrong with that description. It's just it's a little imprecise in telling me what is the length of that course? Now, some surveyors, and certainly there are lenders who want surveyors to write a new description if it varies by, we talked earlier, a hundredth or something. I think a surveyor is probably generally in the best position to say, you know, this isn't significant. It's really not necessary.

But there's not an amount that would trigger that. And hopefully that answers that question. There is usually a difference between the survey and whatever's recorded in the tax record. Why is the title company not required to share that information with the corresponding jurisdiction? That sounds like a question for ALTA. Difference between the survey and whatever's recorded and tax record. Maybe that's probably area, perhaps we're talking about there, and if it is we can and clarify that.

But title companies are typically not ensuring area, and that may be one reason that that doesn't get put on there. Sometimes an exception document will provide for an above ground easement that will be placed within a certain area of the property without providing legal description of the easement area.

If the easement should be observable, that is the facilities related to the easement are above ground, could we still require that the surveyor depict the easement on the survey? Yeah. I think

you can, but the surveyor may qualify that because I certainly, I can pull up on the screen here, have seen a graphic drawing in an easement.

Says this is a telephone easement as shown on the attached, and the attached literally looks like it's a very small drawing and it looks like somebody took a marker and just, you know, drew some lines on there. I can show that stuff, but I am going to qualify it.

Now, if the easement is described as, let's say it's an easement for this electrical transformer, and they don't describe it, they don't define it very well, but the transformer is there, I will probably draw a box around that and say, you know, there appears to be an easement associated with this transformer.

However, the exact location and side of the easement is not explained in the easement document. So I think the answer there is if there is some evidence of the easement, then surveyor can probably provide you some information but they're probably going to qualify it because if the document is unclear, then the surveyor, him or herself, cannot make it clear.

Todd D'Amico: Yeah. Gary, you make a good point there. And I think if the document itself doesn't create a defined easement width E well, let's say it -- let's go back to the facilities. Like Brandon was saying, if the facilities are there, two power polls, and maybe they have poll numbers and the document identifies the poll numbers and the surveyor can identify those, well then I can then identify that's the center line of the easement possibly.

Does the document give us any type of width between those utilities? It may. If it does, then if those utilities are clearly identifiable above ground, then I should be able to give a width and associate that if I can go between two manholes or two power poles or something like that. Or like you said, a transformer, or there's an exhibit, maybe there's an exhibit with, like you said, a thick black line on it.

But I'm going to rely on something in the document that maybe determines a width. Maybe the document itself leads off with a -- it says a 20-foot sewer easement, and that's the only place that says it in the heading. But there's no description, but then I can identify two manholes that crossed the property or on the property. So it, again, is what can we find, like you said, Gary, and then again, what's the document really?

What does it contain or what does it not contain, right? And then, like you said, you qualify that with a statement. And I think from a title insurance standpoint, the goal there is for the title company to -- for us to identify whether it should stay with the property. If we can at least get to the place where it does go with the property but you can't clearly identify the easement, then that's a benefit to the title company as well.

Gary Kent: Yeah. Good, good. Another question who contracts the surveyor? Virtually, 100 percent of the time it's either the buyer or the seller. The exception to that would be when we have these middlemen, and we have a question on this coming up. when there is some national firm that a client may hire them to reach out and hire surveyors around the country because they have some large portfolio deal they're doing.

In that case, the surveyor may be contracting with that middleman, but in the normal conveyance we are contracting with either the buyer or the seller, which creates an interesting situation, I think I mentioned yesterday, which is the buyer or the seller, you know, wants the lowest cost survey they can have.

And yet we may know the lender and HUD in particular are going to want additional information and it's better off if we address that up front then later. What obligations does the sever have to disclose the information? I'm not sure what information there, but they may be talking about when we were talking about easements that we find in our own research.

And Todd talked about this, if we find this easement and it's not listed in the title commitment I need to contact the title copy and say, hey, you know, I found this easement. And in the standards, that is a requirement now that I have to contact them. And if they say, well, it's been released or it's been vacated, or, you know, it's been extinguished by this document or by merger of title, then I don't need to address it because it doesn't exist anymore.

But if they can't, if it's just simply that they are ensuring over it, then I do need to address that. Now, the next question, why is it recorded if the easement no longer exists? Well, if the easement may have been created in 1924 and I stumble across it, if it has been extinguished or terminated by virtue of a written document, like a release or there's a vacation or there's some sort of official abandonment, then there will be a subsequent document hopefully recorded.

We would have the document that created the easement, and then sometime in the future we have the document that extinguished the easement, or that terminated the easement. However, there are ways that easements can get extinguished that are by unwritten means. I just was talking with an attorney this morning about a doctrine called impossibility of use, which is there may be a valid easement, it was recorded and it exists.

But if it's impossible to use it, then it is extinguished by common law. And there will be no document that does that same thing with merger of title. That if the easement existed, I had an easement over your property, and then I end up buying your property, now I own the property and I own the easement, I don't need an easement over my own property. And so that easement will be extinguished by the merger doctrine.

And there is no document other than the deed to indicate that I bought the property. There is no document that would be recorded to indicate it doesn't exist anymore. So I'm not sure if that answered those questions. If not, we can follow up and then we'll try and catch those. You mentioned the surveyors want to be part of the transaction team, which I've always found to be the case except when we use one of the national middleman platforms, such as Bach and Clark or others, and there are plenty others.

They typically don't let me speak directly to the survey who is the person on the ground. Can you give any insight? I would only say that as a surveyor I would like to be able to talk and answer questions directly from the client. I have seen problems that occur because people call me all the time with things.

I had a big knockdown drag out a year or so ago that I was hearing about and it turned out it was simply a miscommunication because they insisted that they go through the middle man and not talk directly to the surveyor. So I think that's a disservice to everyone of involved.

Personally I think it's a disservice to everyone involved when the rest of the team cannot talk to the surveyor.

Todd D'Amico: Yeah. Gary, I can add to that too. We're a national part of First American and we're licensed in many states ourselves, but we have, and I think that goes back to answer that question, that is just company policy, that they will or will not let you talk to that surveyor. From my experience in the industry, I've heard that certain companies have policies that they won't allow you to talk to the surveyor.

We have a policy here that we want to get the surveyor on the phone with everyone, if it's not our own group. And in doing that, then it, like you said, Gary, it just resolves things usually faster. The challenge with some of that is, and the comment makes a good point, the person on the ground, it's important sometimes to have the person who is your eyes and ears on the property on the phone ask questions. But with that comes, sometimes those surveyors are out in the field frequently.

And from that standpoint it may be a case where that call can't happen in the next 30 minutes, but it can happen, but it needs to be scheduled. Because in today's day and age, we have all types of surveying companies from really large firms all across the board, but everyone today is jumping in with all the things we're all struggling with.

And you may have a land surveyor that's out in the field four days a week actually surveying on properties and he is only in the office on Fridays. So again, that's just a communication. Or maybe he can carve out time, right, for 30 minutes, to pull off a job site and do something. But that really is a company preference and in most cases we want the surveyors to communicate directly. I would say, in my opinion, all cases. So I'm sorry that you're having that issue, but Gary, go ahead.

Gary Kent: Yeah. I agree. A follow up there, can you ever create at ALTA a land title survey based on a proforma or do you need to use a title commitment? What the standards say is that the surveyor needs to be provided the most recent evidence of title. A proforma in a sense is going to be more current than the title commitment, because we know what the proforma represents.

I tell surveyors it's perfect, really fine to use a proforma if that satisfies the insurer, the title company, which it probably would. So the short answer is, yes. You could use a proforma. On the other hand, you could use a policy that's five years old, if that's the most recent information available.

Todd D'Amico: Yeah. And Gary, that's a good point. And the progression of a commitment or preliminary report into a proforma, that's a graduation of that commitment into a proforma. And generally the surveyor's involved in the survey and has been provided a commitment at some point.

And then as the transaction progresses, a proforma is generated. At that point, what generally happens is on the proforma the commitment number is removed and a lot of times there's not a date. Or there's a reference number but there's not a date of the commitment like we have. So as we talked about in the standards, that we should reference the commitment number and the date of the commitment and those things, sometimes that information when it goes to proforma is lacking.

So it's okay, like Gary says, to reference and utilize that. And another item is sometimes a schedule B listing gets totally renumbered when it graduates from a commitment to a proforma, which then again may create some mislabeling from the survey to the proforma. But it can be utilized if it's the first document utilized, that's okay.

But just know a surveyor may need to craft some additional notes if that's what is being asked to use in standard courses in a transaction if we're using a commitment all the way through. Hopefully the survey's in a final form before the proforma's issued. So there's a little more color out from the title side too.

Gary Kent: Yeah. Thank you, Todd. A question, will all this great survey information, will this training be available to get a refresher or reflect back on midyear? Will it be memorialized? Yes. These slides will be put on the HUD exchange website along with the recording of the program. And those will be up there within about three weeks and they will include not only today's program but also yesterday's program and tomorrow's program.

So yes. This information will be out there. A comment, we need the surveyor's report every time only due to HUD's requirement. And I certainly, I am in underwriting with a multifamily HUD lender. Yeah. We recognize this as a HUD requirement and it's just something I guess we'd like to explore a little bit if we have the opportunity, and say, you know, is there something besides this?

A last comment or question said it's easier to convey and answer the questions in the surveyor's report than to search for them in the survey map I believe. I totally understand that. I absolutely understand. On the other hand, from a surveyor standpoint, it causes me to, in a sense have to interpret the survey.

You know, I end up having to decide, well, is this important enough to list or not, which is really above and beyond my obligation. My obligation is perform the survey, provide the drawing, make sure I showed all of this stuff, I located all the things that had to be located. I showed all the things that had to be shown. I had all the appropriate notes.

What ends up happening is, and this is very common with lender certificates also, is the burden gets put on me to interpret the survey and decide what's important and what's not. And that really gets to the crux of the concern there. But we, as I said earlier, I think we've talked at length about that surveyor's report.

And we understand why HUD likes it, why lenders like it, but, you know, I guess it's just something that is in our mind that we wouldn't mind exploring a little bit more sometime. That is the end of the questions, unless there are some others coming up, which I don't see. So I am going to turn this back over to our host and hopefully we'll see you all tomorrow.

Medora: All right. Everyone. Thank you for attending today's training. Please join us tomorrow, Thursday, January 27th, at 1:00 p.m. Eastern time for the third and final training of this three-part training series on the ALTA NSPS Land Title Survey Standard called understanding the optional items of table A. Today's training has now ended.

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