NEW ALTA SURVEY STANDARDS TO TAKE EFFECT FEBRUARY 23, 2021

February 2, 2021

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Effective February 23, 2021, the Minimum Standard Detail Requirements of the American Land Title Association (ALTA) and the National Society of Professional Surveyors (NSPS) for Land Title Surveys are changing. ALTA/NSPS recently adopted revised Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, which, when effective, will supersede the existing standards introduced in 2016. Among other changes, the new standards clarify the role of the surveyor, revise the measurement standards, and narrow the scope of the survey to matters that are survey related. Listed below are some of the notable changes to the 2021 Standards:

References to "Shall"

In the 1995 U.S. Supreme Court case of *Gutierrez de Martinez v. Lamagno*, the Court found that the word "shall" is a false imperative that actually means "may." As a result, various references to the word "shall" in the minimum standards were replaced with "must" to indicate an obligation or imperative.

Utilities

Sections 5.E.ii., iii. and iv. were revised to clarify that the surveyor must only note observed evidence of easements, servitudes and other uses which are "on or across" the surveyed property instead of those which affect the surveyed property. Utility poles on or within 10 feet of the surveyed property were added as an example of evidence of possible easements or servitudes burdening the surveyed property. In addition, utility locate markings found by the surveyor on the surveyed property must be shown on the survey, including the source of the markings or a note if the source is unknown.

Table A item 11 regarding underground utilities has been simplified. This item now includes two choices with respect to sources of additional evidence of underground utilities to be included in addition to the observed evidence pursuant to Section 5.E.iv. A client may select either (a) plans and/or reports provided by the client, or (b) markings coordinated by the surveyor pursuant to a private utility locate request. There is no longer an option for markings requested by the surveyor pursuant to 811 utility locate requests.

Title Documents

Section 6.C.ii was revised to limit the items shown on Schedule B of a Title Commitment on the face of the survey. As revised, a surveyor is only required to include a summary of all rights of way, easements and other "survey-related" matters burdening or benefiting the surveyed property and identified on the title evidence provided to the surveyor. As a result, the surveyor may omit matters of record that are not survey related, whether or not they affect the property from a title perspective, and those items listed as "standard" or pre-printed exceptions in a title commitment, or exceptions that are not survey-related matters, such as general mineral rights exceptions are not required to be listed.

Recorded Easements

Section 6.C.viii was added to outline a surveyor's responsibility when the surveyor becomes aware of a recorded easement that is not included in the title evidence provided. In such a case, the surveyor must advise the title company, and if evidence of a release of such easement is not provided, the easement must be

shown on the survey or its existence otherwise explained on the face of the survey, as well as a note that the title company has been advised.

Table A

The introductory paragraph of Table A now clarifies that the wording of a Table A item may be negotiated, in addition to whether the item will be included and the associated fee. Any negotiated changes to the wording of an item (and any additional negotiated items) must be explained with a note.

Items 6(a) and (b) have been modified to clarify that zoning information specific to the surveyed property must be provided to the surveyor.

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Item 18, which required the surveyor to depict the location of any wetland delineation markers observed at the property only if a field delineation had been conducted by a qualified specialist hired by the client, was deleted in its entirety. If a wetlands delineation is required to be shown on the survey, it will need to be negotiated as an additional Table A item 20.

Item 19 was revised so, if selected, offsite easements (which are typically included as easement parcels in Schedule A of the title commitment) will be surveyed as if they are fee parcels (except that they will not be monumented).

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