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A Quick Review of the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys

March 2016

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On February 23, 2016, the revised Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys (the “2016 Standards”) issued by the American Land Title Association (ALTA) and the National Society of Professional Surveyors went into effect.¹ This revision is the latest since the 2011 changes to the minimum standards (the “2011 Standards”). As most real estate professionals are aware, the purpose of the 2016 Standards is to allow the production of a survey acceptable to a title company to insure title to real property free and clear of survey matters other than those shown by the survey. As such, these standards go to the heart of any purchaser’s due diligence when purchasing real property.

While not a complete overhaul of the 2011 standards, the 2016 Standards contain some important changes which surveyors, title professionals, attorneys and others involved in real estate matters should note. First, the 2011 Standards were known as the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys. The 2016 Standards substituted ALTA/ACSM for ALTA/NSPS as the National Society of Professional Surveyors, Inc. (“NSPS”) is the legal successor organization to the American Congress on Surveying and Mapping (“ACSM”). Many of the revisions in the 2016 Standards merely reflect this change.

However, some of the larger revisions include changes to Sections 4, 5, 6 and & Table A of the 2011 Standards governing records research, fieldwork, plat/maps and survey specifications, respectively. In the 2011 Standards, Section 4 stated that certain Record Documents², documents of record referred to in the Record Documents, documents necessary to determine junior/senior

¹ This article is based on the redline of the 2016 Standards to the 2011 Standards found at http://c.ymcdn.com/sites/www.nsp.us.com/resource/resmgr/ALTA_Standards/2016_Standards_REDLINE_20151.pdf.

² The 2011 Standards defined “Record Documents” as complete copies of the most recent title commitment, the current record description, the current record descriptions of adjoining, any record easements benefiting the property, record easements or servitudes and covenants burdening the property.

rights and other documents which affect the property being surveyed shall be provided to the surveyor. The 2016 Standards clarify the documents which must be provided to a surveyor in order to complete an ALTA/NSPS Land Title Survey. While recorded documents must be provided to the surveyor, unrecorded documents affecting the property being surveyed may only be provided if so desired by the client. If recorded documents or unrecorded documents are not provided to the surveyor or if non-public or quasi-public documents are required to complete the survey, the surveyor is only required to research if it is required by the state's statutory or administrative requirements and if such research has been previously negotiated between the surveyor and the client. While the changes with regards to Section 4 do not seem to be that great, they do clarify what documents are necessarily required and what research, if any, a surveyor is required to perform.

The revisions to Section 5 of the 2016 Standards similarly make certain clarifications to the 2011 Standards. For instance, pursuant to the 2016 Standards, the surveyor is to determine the appropriate degree of precision based on the planned use of the property only if such planned use is reported in writing to the surveyor by the client. If the planned use is not reported in writing, the surveyor is to determine the appropriate degree of precision based on the existing use of the property. Additionally, the revisions clarify that trees, bushes, shrubs and other natural vegetation do not need to be located on the survey unless required by the contract or unless such natural vegetation is deemed to be evidence of possession by occupants or adjoining. Further, the revisions clarify that water features running outside the property must only be identified if they are within five (5) feet of the perimeter boundary of the surveyed property.

One of the most notable changes in the 2016 revisions is in Section 6 regarding the preparation of a new description for the surveyed property. As with the 2011 Standards, the 2016 Standards generally disfavor the preparation of a new description except in the case of an original survey. However, the 2016 Standards go further and make clear that if a new description is prepared, the surveyor is to make a note on the map or plat stating that the new description describes the same real estate as the record description or, if it does not, then how the new description differs from the record description. This is specifically helpful because new descriptions are often created as the ability to measure distances has become more precise. Further, such notes on the map or plat will greatly assist attorneys and title insurers in determining whether to use older record legal descriptions or newly prepared legal descriptions when both are listed on the plat or map.

Finally, two of the bigger changes with regards to Table A of the 2016 standards revolve around zoning and identification of utilities. Item #6 in Table A has been revised to provide that a surveyor must only list the current zoning classification, setback requirements, the height and floor space area restrictions and parking requirements if the client provides the surveyor with a zoning report or letter. The 2011 Standards only required a surveyor to list the zoning classification if provided by the insurer. Additionally, if the client desires the surveyor to graphically depict such building setback requirements, the surveyor is only required to do so if the client provides a zoning report or letter and such requirements do not involve an interpretation by the surveyor. Item # 11 in Table A was revised in 2016 to recognize that calls to 811 or other

similar utility locate requests from surveyors may be ignored or result in an incomplete response. If this happens, the surveyor is now required to note whether such utility locate request was ignored or incomplete and how it affected the surveyor's assessment of utility location.

While the 2016 Standards do not provide a whole host of revisions from the 2011 standards, title professionals, attorneys and purchasers should review them to understand exactly what information they will receive from a surveyor. Some of the revisions now require different information be provided to the surveyor or certain items to be negotiated in the contract between the surveyor and client. Without reviewing the 2016 Standards, clients or other real estate professionals may not get the information they received in the past.