

A PRACTICAL GUIDE TO SURVEY REVIEW (WITH CHECKLIST)

By Shannon J. Skinner
Preston, Gates & Ellis
Seattle, Washington

Part of your job is making sure the survey does its job.

Land surveys are an integral part of most real estate transactions, but many aspects of them mystify non-surveyors, including attorneys. Yet you are often the only person involved in a real estate transaction who reviews the survey on behalf of your client. This article will describe some practical tips for reviewing surveys from a lawyer's viewpoint. In addition, the checklist attached as Appendix A to this article may be a useful starting point for survey re-views.

TYPES OF SURVEYS AND SURVEY REQUIREMENTS

The first task in reviewing a survey is to determine the type of survey presented, compared to the type of survey required. "Survey" is commonly used to refer to the survey map, although the word "survey" more accurately refers to the whole of the surveying activities including the field measurements, written field notes, physical field evidence, and the surveyor's review of the evidence and formation of opinions about boundary lines and other matters. For convenience, however, this article will use the term "survey" to refer to the map or drawing representing the culmination of these surveying activities.

The Type of Survey Presented

There are many different kinds of surveys, and the type should be indicated on the survey. Common in real estate transactions are:

- Boundary or land surveys, which locate boundary lines between privately owned parcels of land, but not necessarily improvements on the land;
- As-built surveys, which are used to show the relationship of new construction, as built, to the plans but may not address tide or boundary issues; and
 - The American Land Tide Association ("ALTA") survey – prepared according to the ALTA/American Congress on Surveying and Mapping ("ACSM") standards — which shows tide and boundary matters as well as improvements.

The ALTA survey is generally the most complete for real estate transactions, but is also more expensive. Different types of surveys are prepared according to different standards and all are not appropriate for the client's needs.

The Type of Survey Required

After determining the type of survey presented, the next step is to determine the type of survey required. This is not always easy. For example, if the client is a major financial institution regularly engaged in real estate lending, the client is likely to require an ALTA survey and to have a multi-page list of requirements in addition (a sample of which is attached as Appendix B).

In contrast, the client could be a small local bank (which often waives the survey requirement to reduce costs for its borrower) or an individual purchasing property (who knows that a survey should be obtained, but does not know what kind would be best).

Persuading the Client To Get a Survey

Clients who are less sophisticated in real estate transactions often ask why they should obtain a survey. They may learn from the title company that a survey will not be required for the title insurer to issue an ALTA extended coverage lender's policy (although this is rarely true for ALIA extended owner's policies) and view the survey as a needless expense.

The client may want to rely on the plat done for a subdivision, or a five-year old survey, or a mortgage map not prepared from on-the-ground measurements. The answer is that there are many important matters not covered by title insurance that can be ascertained from a survey. Obtaining ALTA extended title coverage on the survey issue only removes the general exception from coverage for "encroachments or questions of location, boundary and area, which an accurate survey may disclose" and for unrecorded easements.

ALTA extended title coverage does not disclose the location of improvements and utilities, the relationship of record lines to occupied lines, the relationship with adjoining owners, and many unrecorded matters affecting the land. Without a survey, you do not know what the legal description used in the title policy; and thus in the legal documents, really looks like on the land, and that the legal description can be satisfactorily used to actually locate that property on the ground.

Tell the Horror Stories

If the client needs to be convinced that a survey is essential, you may need to tell your horror stories about deals in which no survey was obtained. Favorite stories include the one about the house in the new subdivision that was built over the boundary between two lots. Or the one about the two parcels that were not contiguous because the title officer had crafted the legal description assuming that all sections in a township are perfectly square, forgetting that the earth is round. Or the story about the lots in downtown Anchorage that were all off by six inches as a result of the 1960s earthquake. Or the one about the overlap that resulted with an adjacent property because different surveyors had located the reference monument in different places.

Affirmative title insurance coverage may have been available for some of these problems, assuming you thought to ask for it without a survey to raise the particular issue, but the client

would have been better served by knowing of them before closing.

Selecting the Type of Survey

If the client asks your advice about the type of survey to obtain, the most useful for the majority of real estate transactions is the ALTA survey. This is one that is prepared according to the ALTA/ACSM standards (Appendix C), which specify the matters to be addressed by an ALTA survey.

The standards were developed jointly by the title insurers and surveyors for the type of survey that would allow title insurers to remove the survey exception from ALTA extended coverage title policies. The standards have been revised to address lawyers' desires to have additional information shown on the survey that is of interest to their clients but not required by the title insurers. As a result, the ALTA/ACSM standards contain a Table A checklist of many items that the surveyor may be asked to show on the survey map in addition to the basic ALTA/ACSM requirements. The more items that are checked, the more expensive the survey, but the more complete the picture of the property. The ALTA/ACSM standards were last revised in 1992 and a surveyor's certification to these standards should now refer to the ALTA/ACSM 1992 standards.

Information Client Must Provide

As a preliminary matter when ordering a survey, note that the ALTA/ACSM standards require the client to provide the surveyor with:

- The record legal description for the property;
- The current title commitment;
- Copies of all record easements, servitudes, and covenants affecting the property;
- Copies of any appurtenant easements;
- Names and deed data of all adjacent owners; and
- “[A]ll pertinent information affecting the property being surveyed.” For example, if set-back lines are required to be shown, the appropriate code section should be provided because the surveyor otherwise need only show building lines of record. The surveyor has no obligation to search the record for these matters or research adjacent property boundaries; the quality of information shown on the survey depends on providing complete and accurate information to the surveyor.

Provide Required Form of Certification

Note also that when ordering a survey you should provide the required form of certification to the surveyor at the outset. This should help avoid negotiation and complaints after the survey has been prepared for a fee that may not have included work necessary to give the required certification.

HOW TO REVIEW THE SURVEY

Assuming that the appropriate survey has been obtained, how do you review the survey? Armed with the current title commitment or report, several colored pens (marking up the survey is entirely appropriate; clean copies should be requested for the client or closing binders), a survey checklist (the client's or a personal favorite) and a large, uncluttered work surface, you should look for or review the following:

Survey Keys

Before getting to the heart of the survey review, a brief check is in order to see that the survey contains the keys telling you the basics on which the drawing was made:

- What scale was used?
- Is a north arrow shown?
- Is there a legend describing the symbols used?
- What date is shown — was the survey done recently or was an old survey updated?
- Is the surveyor's seal attached and the survey signed (or is it a preliminary draft)?

Although the north arrow is always shown except on the sloppiest of surveys, legends are often omitted. One can often puzzle through a survey review without a legend describing the "---ss---" as a sanitary sewer line, but it is appropriate to request that the survey be revised to add these matters if they have been omitted.

Legal Description

The first task in the more substantive review is to review the legal description and the boundary of the property. Locate the boundary on the survey all around the property to closure (with a highlighter, if you prefer). Notes by the boundary line should show where monuments were found, corners were set and iron pins placed at deflection (course change) points. Then locate the record legal description of the property, which should be printed on the survey.

Metes and Bounds

If the description is in metes and bounds, trace each course and distance around the boundary from the "point of beginning" or "true point of beginning," which is the point on the property at which the description starts; the "point of commencement" describes how to arrive at the point of beginning. Follow the boundaries until you return "to the point of beginning" (the legal description should contain this phrase at the end to ensure closure). Lack of sufficient information on the survey to do this may be a sign of a deficient survey.

Platted Lots

If the description consists of platted lots, locate the lot numbers and plat recording information on the survey. Even with platted lots, it is preferable to have the metes and bounds shown on