

TITLE ISSUES

THE 1992 ALTA/ACSM LAND TITLE SURVEY STANDARDS

By Richard F. Bales

In 1991 and 1992, members of the ALTA/ACSM Liaison Committee met in order to discuss the rewriting of the 1988 land title survey standards. The committee's goal was to take the concerns and views of various surveyors, lawyers, and title insurers relative to these standards and create a revised and superior survey standard.

The 1992 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/ACSM LAND TITLE SURVEYS were adopted by the American Land Title Association in October of 1992. The following month the American Congress on Surveying and Mapping adopted them. The purpose of this article is to point out the salient features of these new standards, highlighting the differences between the new standards and the old 1988 version.

The first introductory paragraph has been rewritten, simplifying the language, making it less stilted.

There are just a few minor changes to the second introductory paragraph.

Each set of standards seems to be identified by a major change specific to the standards. The 1986 standards were, of course, a major rewrite of the old 1962 standards; the 1986 version introduced, for the first time, the four classes of surveys and, of course, "Table 2." The 1988 standards brought us the infamous "Table 3." Paragraph #1 of the 1992 standards notes what is no doubt two of the three major differences between these standards and the 1988 version.

The first difference is the redefining of the four survey classes. In 1988 the four classes of surveys were A, B, C, and D. These were, of course, defined in Table 1, respectfully, as Urban, Suburban, Rural, and, Mountain and Marshland surveys. Nonetheless, more than a few people nationwide would order a class "A" survey, thinking that "A" is better than "B, C, or D," when in reality the type of land being surveyed did not merit a

class "A" survey. The ALTA/ACSM Liaison Committee, hoping to halt this practice, chose to eliminate the letter designations, deciding instead to call each class by its descriptive name.

The second major change involves the accuracy table of requirements; this was formerly known as "Table 2" in the 1988 standards. The first paragraph of the new standards includes the statement: "The request [of the survey] shall specify that an Urban, Suburban, Rural or Mountain and Marshland 'ALTA/ACSM LAND TITLE SURVEY' is required, meeting the then-current accuracy standards jointly adopted by ALTA and ACSM." It was the intent of the Liaison Committee that the accuracy requirements would not be adopted into a static set of standards, to remain unchanged as long as the standards themselves were not changed. This first paragraph notes the rather revolutionary concept that the accuracy requirements are designed to be amended from time to time as technology changes; the text of the balance of the standards, however, can remain, if desired, unchanged. (Note that for now, however, these accuracy requirements remain unchanged from the 1988 standards).

In addition, this first paragraph now requires that the client shall provide the surveyor with a written authorization to proceed with the survey.

Paragraph two of the new standards requires, among other things, that the plat of survey contain the name, address, telephone number, and signature of the surveyor who made the survey. It remains unchanged from the 1988 version.

The one change to paragraph three reflects the fact that the survey should reflect the *then-current* accuracy requirements.

Item 2 of Table 3 of the 1988 standards concerned a "legend of all symbols and abbreviations used." This has been reworded slightly, and placed in paragraph four of the new standards as a requirement, and not as something optional.

Paragraph 5(a) of the 1988 standards noted the requirement that the plat of survey had to contain the length, radius, chord, and chord bearing of a curve depicted on said plat. The 1992 version merely requires the length and radius of a curve, “together with elements necessary to mathematically define each curve.” The Liaison Committee felt that this change would eliminate the superfluousness of this paragraph.

There are no changes to paragraph 5(b).

Paragraph 5(c) has been clarified:

1988 standards: “Access (or lack thereof) to such abutting streets or highways shall be indicated. Private roads shall be so indicated.”

1992 standards: “Observable evidence of access (or lack thereof) to such abutting streets or highways shall be indicated. Observable evidence of private roads shall be so indicated. Streets abutting the premises, which have been described in Record Documents, but not physically opened, shall be shown and so noted.”

Note that a portion of this new paragraph 5(c) used to be the basis of the 1988 paragraph 5(k); the Liaison Committee felt that paragraph 5(c), which dealt with access, was the proper location.

In paragraph 5(d), the types of maps to which the land title survey should make reference has been expanded to include right of way maps. Recording data that should appear on the survey has been clarified and simplified. Setback information has also been clarified.

“Old” paragraph 5(e) dealt with two issues, monumentation and evidence of possession. “New” paragraph 5(e) is now concerned only with monumentation; those concepts relative to possession now appear in paragraph 5(f).

Note that a redundancy concerning evidence of monuments has been eliminated from the 1992 version of paragraph 5(e).

Under the 1988 standards, at the very least, it was questionable as to whether or not a surveyor was responsible for showing *all* evidence of possession, or, just possession along the boundary lines. At the very most, it appeared that the surveyor was obligated to show on his survey only evidence of possession along the boundary lines. “New” paragraph 5(f) eliminates all ambiguity, making it clear that this paragraph is intended to require the surveyor to show *all* evidence of possession throughout the surveyed property, and not just evidence of possession along the boundary lines. Indeed, discussions at meetings of the Liaison Committee made it clear that this was the intent of both the 1988 and the 1992 standards.

“Old” paragraph 5(f) dealt with two issues, the location of buildings on the surveyor’s plat of survey, and, the location of easements on said plat. These issues were moved, without change, to paragraphs 5(g) and 5(h), respectively, of the 1992 standards.

“New” paragraph 5(i) is essentially “old” paragraph 5(g). This has, however, been drastically changed. In 1988, paragraph 5(g) stated that “the character and location of all walls, buildings, or fences within two feet of either side of the boundary lines shall be noted.” In 1992 paragraph 5(i) states that “the character and location of all walls, buildings, fences, *and other visible improvements within five feet of each side of the boundary lines* shall be noted” (emphasis added).

Paragraph 5(j) constitutes 1988 paragraph 5(h). This paragraph, dealing with driveways and alleys on or crossing the property, has been clarified. The 1988 standards referred to the surveyor’s “plan” or “plans;” the 1992 standards refer to the surveyor’s “plat” or “map.”

Paragraph 5(k) has been completely rewritten; this paragraph, dealing with cemeteries and burial grounds, has been greatly clarified; furthermore, the redundant reference in Table 3 has been eliminated:

1988 paragraph 5(i): “Cemeteries and burial grounds disclosed in the process of surveying or searching the title to the premises shall be shown by actual location if known.”

1988 Table 3, item 13: “Observable evidence of cemeteries.”

1992 paragraph 5(k): “As accurately as the evidence permits, the location of cemeteries and burial grounds (i) disclosed in the process of researching title to the premises or (ii) observed in the process of performing the field work for the survey, shall be shown.”

1992 paragraph 5(l), which was 1988 paragraph 5(j), dealt with ponds, lakes, springs, or rivers. It has been clarified slightly, eliminating a redundancy.

Paragraph 6 deals with requirements concerning the finished plat of survey. It remains unchanged from the 1988 paragraph 6.

Paragraph 7 has been expanded in order to note with more particularity the problems relative to surveying lands adjacent to waters:

1988 version: Water boundaries are subject to change due to erosion or accretion by tidal action or the flow of rivers and streams. A realignment of water bodies may also occur due to many reasons such as deliberate cutting and

filing of bordering lands or by evulsion [sic]. Recorded surveys of natural water boundaries are not relied upon by title insurers for location of title.

When a property to be surveyed for title insurance purposes contains a natural water boundary, the surveyor shall measure the location of the boundary according to appropriate surveying methods and note on the plan the date of the measurement and the caveat that the boundary is subject to change due to natural causes and that it may or may not represent the actual location of the limit of title.

1992 version: Water boundaries necessarily are subject to change due to erosion or accretion by tidal action or the flow of rivers and streams. A realignment of water bodies may also occur due to many reasons such as deliberate cutting and filling of bordering lands or by avulsion. Recorded surveys of natural water boundaries are not relied upon by title insurers for location of title.

When a property to be surveyed for title insurance purposes contains a natural water boundary, the surveyor shall measure the location of the boundary according to appropriate surveying methods and note on the plat or map the date of the measurement and the caveat that the boundary is subject to change due to natural causes and that it may or may not represent the actual location of the limit of title. When the surveyor is aware of changes in such boundaries, the extent of those changes shall be identified.

Paragraph 8 deals with the type of certification to be given to the land title survey. This has been amended, reflecting the above two major changes to the standards. The certification now specifically notes the names of all of the four survey classes, and, requires the surveyor to certify that the survey was made in accordance with the accuracy requirements “*in effect on the date of this certification*” (emphasis added).

The introduction to the accuracy requirements has been greatly expanded. Both the 1988 and the 1992 standards stated that the degree of precision and accuracy necessary for a particular survey should be based on the intended use of the land, without regard to the present use, provided the surveyor has knowledge of the intended use. However, the 1992 standards go further and state that “if the surveyor has no such knowledge, the degree of precision may be based on the present use of the land.”

As noted earlier, the 1992 standards now refer to the survey classes by name only, and not by letter. The definitions of Urban, Suburban, Rural, and, Mountain and Marshland surveys remain unchanged since 1988. However, after these definitions, the 1992 standards include this additional caveat: “Should these

above cited specifications be in conflict with state laws, rules or regulations, the more stringent requirements must be followed.”

Both the 1988 standards and the 1992 standards refer to “a combination of survey closure and specified procedures for a particular survey class.” The Liaison Committee, listening to the concerns of some surveyors who felt that at times these accuracy requirements were impractical, added the following statement: “The surveyor shall employ, in his or her judgement, proper field procedures, instrumentation and adequate survey personnel in order to achieve accuracies comparable to those adopted by ACSM for a designated class of survey.”

What was formerly “Table 3 – Additional Survey Requirements” is now, in 1992, known as “Table A – Optional Survey Responsibilities and Specifications.” It was noted, earlier in this article, that there were three major differences between the 1988 standards and the 1992 standards. Two differences have already been discussed. In the author’s opinion, the third major difference is the clarifying of this Table A. (Note that this clarification included the elimination of two Table A items, which resulted in the renumbering of the rest). Indeed, even the title of this table makes it clear that these items are merely *optional*, and not a requirement for the production of a land title survey. The old title, referring to *additional* survey requirements, did not denote the true optional nature of this table.

Item 1 has been greatly clarified:

1988 version: “Monuments placed (or a reference monument) at all major corners of the boundary of the property.”

1992 version: “Monuments placed (or a reference monument or witness to the corner) at all major corners of the boundary of the property, unless already marked or referenced by an existing monument or witness to the corner.”

As noted earlier, old item 2, dealing with a legend, has been removed from this table.

Item 2: This item, concerning a vicinity map, was item 3 in the 1988 standards; there is no change to this item.

Item 3 has been narrowed and clarified:

1988 version: “Flood zone designation.”

1992 version: “Flood zone designation (with proper annotation based on Federal Flood Insurance Rate Maps or the state or local equivalent, by scaled map location and graphic plotting only.”

Item 4, described as item 5 in the 1988 standards, merely referred to “Land area” in the earlier survey standard. Now this

item has been more specifically described as “Land area as specified by the client,” thus making it clear that the client has the option of specifying gross land area or net land area.

Item 5 has been similarly made more specific. In 1988 this was merely noted as “Contours.” Four years later this is now described as “Contours and the datum of the elevations.”

In the past Item 6 has been the subject of some controversy. This previously required the surveyor to show “Setback, height and bulk restrictions of record.” Now, at least, the surveyor is asked to “identify, and *show if possible*, setback, height and bulk restrictions of record...” (emphasis added).

Item 7 has been expanded and clarified enormously. In the 1988 standards, what was then item 8 only required the surveyor to show the “square footage of all buildings.” The 1992 standards, in what is now item 7, require that the surveyor show the following:

- (a) Exterior dimensions of all buildings at ground level.
- (b) Square footage of:
 - (1) exterior footprint of all buildings, or gross floor area of all buildings, at ground level.
 - (2) other areas to be defined by the client.
- (c) Height of all buildings above grade at a defined location.

What was “old” item 8 referred to “all improvements (in addition to buildings, such as signs, parking areas or structures, swimming pools, etc.). The 1992 version now refers to “substantial, visible improvements (in addition to buildings) such as signs, parking areas or structures, swimming pools, etc.”

In the 1988 standards, what is now item 9 referred to parking areas. This item was concerned with parking striping and the number of parking spaces. Now, however, under the 1992 standards, the surveyor is also required by item 9 to show the types of parking spaces (e.g., handicapped, motorcycle, regular, etc.).

Item 10 in Table A deals with indication of access to a public way; it remains unchanged.

Item 11 in the “new” standards is concerned with the location of utilities. This item includes one main paragraph and four subparagraphs. The four latter paragraphs remain virtually unchanged. However, the main paragraph has been greatly expanded:

Old version: “Location of all utilities serving the property, including without limitation....”

New version: “Location of utilities serving or existing on the property as evidenced by on-site observation or as determined by records provided by client, utility companies and other appropriate sources (with reference as to the source of information)....”

As noted earlier, item 13 of the 1988 standards, which dealt with “observable evidence of cemeteries,” has been omitted from the 1992 standards.

Item 12 in the new standards deals with possible requirements of a governmental agency. Clearly the 1992 version is more succinct:

Old version: “Governmental Agency Requirements:
Department of Housing and Urban Development
Veteran’s Administration
Other”

New version: “Governmental Agency survey-related requirements as specified by the client.”

Item 13, the last listing of Table A, remains unchanged from the 1988 survey standards: “Significant observations not otherwise disclosed.”

It should be clear to virtually all real estate lawyers, title insurers, and surveyors that the 1992 ALTA/ACSM land title survey standards are vastly superior to their 1988 counterpart. This is not to say, however, that the new standards are immune from criticism. For example, paragraph 5(c) refers to “observable evidence of access....” On the other hand, item 10 of Table A refers to “indication of access to a public way such as curb cuts, driveways marked.” This seems to be an inconsistency; how can the former be in the main text of the standards, and the latter be an “optional survey responsibility and specification?” Aren’t they both “observable evidence of access?”

Similarly, paragraph 5(h) of the main text of the standards makes reference to “observable evidence of easements and/or servitudes of all kinds....” At the same time, item 11 of Table A refers to the “location of utilities serving or existing on the property as evidenced by on-site observation....” Again, is there not an inconsistency?

As noted earlier, the accuracy requirements are designed to be changed, without modifying the balance of the standards. Will this prove troublesome to surveyors? That is, will they be reluctant to sign a certification, affirming that the survey was completed in accordance with the accuracy requirements then in effect, when there is a possibility that the requirements might actually have changed? (On the other hand, from a practical standpoint, is this really a viable concern?)

And, speaking of the accuracy requirements and things practical

– is a linear closure ratio of 1:15,000, even for an urban survey, practical?

Finally, if, pursuant to paragraph 5(f), the surveyor is to show “the character of any and all evidence of possession....” on his plat of survey, why, then, are “substantial, visible improvements (in addition to buildings) such as signs....” shown as optional item 8 in Table 3? Are not signs evidence of possession? Should not the showing of “substantial, visible improvements” on a plat of

survey be a requirement noted in the main text of the standards?

However, matters such as these appear almost insignificant when compared to the overall tenor of the new standards. Despite these above issues, which may or may not be deficiencies, the 1992 standards are still a marked improvement over the 1988 version, as the new standards, with clarity and conciseness, appear to adequately address the individual needs of the real estate lawyer, the title insurer, and the surveyor.

To obtain copies of these 1992 Survey Standards write Pat Canfield, NSPS Coordinator, NSPS, 5410 Grosvenor Lane, Bethesda, MD 20814-2122 or The American Land Title Association, 1828 L Street, N.W., Washington, D.C. 20036.

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