

Dear Stewart Partners,

We hope you are finding some relief with the somewhat warmer temperatures as we head into March. In this week's Mid-Week Update, we are providing a few key points related to ALTA surveys and survey coverage, as it is a topic that often comes up when answering underwriting questions. We also have a review of recently enacted Rhode Island Title Standards relating to legal descriptions. We hope this information proves useful and, as always, we are happy to answer any questions you may have on these topics.



What is an Alta Land Title Survey and When is one necessary? By:
Sarah Ticson, Connecticut Underwriter

Title insurers have distinct requirements when it comes to insuring title to land without certain established standard exceptions, particularly regarding matters not found in public records but which would be disclosed by an accurate survey of the property. To ensure clarity and reliability, a survey of real property must meet specific criteria to be acceptable to a title insurance company for the purpose of insuring title without exception for survey matters (except those matters disclosed by the survey). The American Land Title Association (ALTA) and the National Society of Professional Surveyors (NSPS) have established national standards for an ALTA/NSPS survey. An ALTA/NSPS survey has the highest level of detail and is a popular request for commercial transactions.

Clients, insurers, insureds, and lenders rely on surveyors to provide high quality, uniform, complete and accurate surveys. Key elements required on land surveys include, but are not limited to, boundary lines, setbacks, monumentation, rights of way, forms of access to and from the property, improvements, encroachments, easements, and utilities (both underground and overhead).

For most commercial land transactions, an ALTA/NSPS survey is necessary. These surveys ensure that all stakeholders have comprehensive information regarding title to the property as well as the physical condition of the property. Further, they satisfy issuing requirements for many common endorsements that are requested in a commercial transaction. When relying on a survey to delete the survey exception and/or issue survey-related endorsements, the surveyor must include a statement on the face of the survey certifying the survey to Stewart Title Guaranty Company. The certification should generally also run to the buyer/borrower and sometimes to the lender as well.

Survey Related Coverage: The phrase “survey coverage” is something that is often used in the title industry. We are not actually insuring the survey. Rather, we are insuring against loss or damage from certain title defects or encumbrances which would be disclosed by an accurate survey. It is important to remember that simply removing a standard survey exception doesn’t necessarily provide coverage for all survey related matters, as coverage is found within the coverage provisions of the policy as modified by the exclusions from coverage found in the jacket and the exceptions from coverage as set forth in the schedules. By obtaining an appropriate survey, certain survey related coverage is achieved by removing the general survey exception and providing various survey related endorsements, such as endorsements in the ALTA 9 series, ALTA 17 series, and the ALTA 28 series, to name a few. When an ALTA/NSPS survey is obtained, it is also generally necessary to include a specific exception detailing those matters disclosed by a new or existing survey (i.e., the neighbor’s fence or other structure encroaches onto the property, or a structure is built over an easement).

Survey Related Coverage With/Without a Survey: We are often asked if we need a survey to omit the general survey exception from a policy. The answer to this question varies depending on the type of transaction.

Owner’s Policies – A survey is not required to omit the general survey exception in the extended coverage ALTA Homeowner’s Policies, however, depending on the jurisdiction, a certified plot plan may be required. In all standard ALTA Owner’s Policies, including Owner’s Policies covering commercial properties, omitting the general survey exception typically requires a survey of greater detail (such as an ALTA/NSPS survey - please contact your local underwriter for approval to delete the standard survey exception and/or provide endorsement coverage with other types of surveys with lesser detail). As always, if you have state specific or transaction specific coverage questions or policy issuing questions, please reach out to your local underwriter for guidance.

Loan Policies – For residential properties, a survey is generally not required to omit the general survey exception from Loan Policies. Please note that this is only applicable to residential loan policies. For commercial transactions, please contact your local underwriter for approval to delete the standard survey exception or provide survey related endorsements without an ALTA/NSPS survey.

It is important to remember that in all instances Stewart’s form Title/Owner’s Affidavit must be provided. Any matters actually known or revealed by affidavit (such as specific encroachments) must be shown as exceptions on the policies.

For additional information as to survey coverage or should you have any questions on these or other underwriting requirements, please reach out to your local underwriting counsel.



Recently Enacted Rhode Island Title and Practice Standards By:
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The Rhode Island Bar Association's Committee on Real Estate Title Standards and Practices has recently enacted new title and practice standards regarding ineffective legal descriptions in deeds that should prove to help practitioners with sticky legal description issues. They include standards 3.19, 8.2, and 3.20.

Standard 3.19, entitled "Description by Reference to Assessor's Plat and Lot," sets forth that since a tax assessor's plat is not part of a city or town's land evidence records, and since the numbering of the plat and the lots shown thereon are subject to change at the discretion of the tax assessor, a parcel of land should not be described for conveyancing purposes solely by use of the parcel's current assessor's plat and lot designation. There is, however, an exception for a Collector's Deed resulting from a sale conducted by an entity holding a lien for unpaid taxes, water or sewer charges to describe the parcel sold at the sale and conveyed by that deed solely by reference to the parcel's assessor's plat and lot designation.

This standard guides the practitioner prospectively to not use Assessor's Plat and Lots as legal descriptions. It also sets the stage for Standard 8.2 which provides for curative actions for deeds with these descriptions.

Practice Standard 8.2, entitled "Correcting a Conveyance That Uses an Assessor's Plat and Lot Reference as the Legal Description," offers several distinct methods to cure the defective deed in the case where it is not possible to have the original grantor or that grantor's heirs, devisees, or legal representatives execute and record a corrective deed.

The first option to address the questionable legal description is with the use of an affidavit from the tax assessor. This option is available if the parcel consists of a lot on a recorded plat, and the depiction of that lot on the recorded plat substantially corresponds to the depiction of the lot on the assessor's plat in use on the date of the defective deed, or if the deed includes a reference to the book and page of the deed vesting title in the grantor, and the metes and bounds description in that vesting deed substantially corresponds to the depiction of the lot on the assessor's plat in use on the date of the defective deed. In either of these cases, a practitioner may obtain and record an affidavit from the tax assessor stating that he/she has attached a true and genuine copy of the portion of the assessor's plat map showing the lot as it existed on the date of the deed.

The practice standard also provides for a self-curing method if certain elements are present in the deed. Specifically, if, in addition to the assessor's plat and lot reference, the deed states that it is the intention of the grantor to convey all of grantor's land located in the city or town to the grantee, the description in the deed will not be deemed defective because of the use of the assessor's plat and lot reference.

Lastly, the practice standard provides for the use of an attorney's affidavit when a deed uses only the assessor's plat and lot reference if the following are true: (a) the grantor's vesting deed used the correct legal description, (b) the grantor owned no other land in the city or town on the date of execution of the deed, and (c) more than ten years have passed since the defective deed was recorded. In this case, an attorney's affidavit, given by a Rhode Island licensed attorney, can be recorded stating that a search meeting the requirements of Title Standard No. 2.1 (50 year search) was conducted, and that the only parcel of land to which grantor held title on the date of the defective deed was the same

land described in the grantor's vesting deed. With the affidavit, the description will be cured.

Finally, standard 3.20, entitled "Effect of Deed Recorded Without a Property Description," provides validity to a deed recorded for 10 years or more where the recording of a purchase money mortgage occurred immediately after recording of the subject deed and it contained the correct legal description. Additionally, it must be shown that the grantor of such deed owned no other real property within the City or Town where said deed was recorded and 10 years have elapsed since the deed was recorded and there is no record evidence of a challenge to the validity of the deed.

These standards promise to assist practitioners in avoiding the often protracted procedures required when faced with deeds without adequate legal descriptions, especially when they are far back in the chain of title and many of the players are no longer available to cure these defects.

The complete Rhode Island Title Standards including Practice Standards and Practice Forms are available to all RI Bar members on the Bar Association website, <https://ribar.com> in "Fastcase".



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