



ALTA/ACSM Land Title Survey corner

—by Gary Kent

More on Lender's Certificates

For those who have attended one of my ALTA/ACSM Land Title Survey seminars, or who have been following my comments on lender's certificates, you know that I strongly promote engaging the lender's attorney with confidence, knowledge, patience, an understanding of their issues, and an insistence of using the short-form certificate contained in the standards.

This approach will reap rewards when you take the time to have a dialogue about their certificate. Scarcely a day goes by that I do not receive encouraging correspondence from surveyors who have taken my advice. Following is a series of emails documenting one of these success stories ...

Initial email received from surveyor...

I had recently attended your ALTA seminar. In that seminar you stated that if we were not using the certification from the 2005 standards on our plats, then we could not call the survey an ALTA survey. I have attached the certification that [unnamed mortgage company] is requiring me to use. Based upon what you stated in your seminar, and after reviewing their certificate, I do not get that warm fuzzy feeling in

my gut. I was wondering if you would have an opportunity to comment on their certificate so I can educate them on the use of the proper certification. I have started preparing an email stating that I wasn't comfortable using their certification and I had also thrown your name in there and your comments from the seminar, but I haven't sent it yet.

My comments and suggestions... It sounds like you are on the right track, and if you aren't getting a warm fuzzy feeling, I'm sure you're right. What I would do is this:

1. Match up their requirements with what is already in the standards (and/or in Table A). Remember, the required certificate says you did the survey in accordance with the standards.
2. Look for clauses that you cannot certify to (e.g. No violations of zoning requirements) and be adamant about not certifying to those. If you have errors and omissions insurance, get input from your agent.
3. Be respectful and understanding of the lender's position, but be knowledgeable about the standards and, most important, be confident in your position.

Subsequent email received ...
Gary, see below my comments to the lender certification that I had sent. I'll let you know [how they respond]....

I have compared the lender's certificate with the 2005 ALTA/ACSM Land Title Survey certificate and cannot use their certification for these surveys. I can respect the lender's position in that they want a quality product and that they want assurances on items they state in their certification. The lender's certificate includes liability issues, which are not consistent with the ALTA certificate and, therefore, would not be prudent for use by my firm and myself, being a Registered Land Surveyor in this state. The required ALTA certificate by default indicates that we did perform this survey in accordance with the standards. The following are comparisons of statements in your certification with that of the 2005 ALTA/ACSM Land Title Survey Standards.

* *Unnamed mortgage company clause: "...was actually made upon the ground and that it and the information, courses, and distances shown thereon are correct:"*

ALTA: *Requirement Item 5, "The survey shall be performed on the ground"*

These surveys will be prepared as required under Title 865 of the Indiana Administrative Code 1-12 and the 2005 ALTA/ACSM Land Title Minimum Standard Requirements.

ALTA, p. 28, 1 and 2nd col.

- * *Unnamed mortgage company clause: "that the title line and lines of actual possession are the same."*
ALTA: Requirement Item 5(f): "The character of any and all evidence of possession shall be stated and the location of such evidence carefully given in relation to both the measured boundary lines and those established by the record. An absence of notation on the survey shall be presumptive of no observable evidence of possession."
- * *Unnamed mortgage company clause: "that the size, location, and type of buildings and improvements are as shown and all are within the boundary lines of the property."*
ALTA: Table A Items No. 7(a) and No. 9 address these issues.
- * *Unnamed mortgage company clause: "that there are no violations of zoning ordinances, restrictions, or other rules and regulations with reference to the location of said buildings and improvements."*
ALTA: Table A Item No. 6 pertains to zoning. Per Table A note: "...in reference to item 6 there may be a need for an interpretation or a restriction. The surveyor cannot make a certification on the basis and interpretation or opinion of another party." The issue of whether or not there are zoning violations is a legal or administrative matter not a survey matter. Since there is a need for interpretation, I will not certify that there are no violations.
- * *Unnamed mortgage company clause: "that there are no easements, encroach-*

ments, or uses affecting this property appearing from a careful physical inspection of the same, other than those shown and depicted thereon."

ALTA: Requirement Item 5h pertains to easements.

- * *Unnamed mortgage company clause: "that the parcels described hereon do not lie within flood hazard areas in accordance with maps of the Federal Emergency Management Agency and the Department of Housing and Urban Development."*

ALTA: Table A Item No. 3 pertains to flood zone designation.

As far as certifying to the maps of the Department of Housing and Urban Development, I have never done that before nor have I ever seen these maps. If the lender would care to provide the information for these maps, I would be happy to review them to see if I can in fact certify to them.

Based upon my review of each certification, it is apparent to me that the ALTA/ACSM standards and certification should satisfy the concerns cited in the lender's certification. Therefore, in order for me to sign and seal these ALTA surveys, I must use the certification as stated in the ALTA standards. I have also attached a copy of the 2005 ALTA standards for your review."

Follow-up email received from surveyor 3 days later...
Justice Prevails! Thanks again for your help.

Need we say more on this topic?

NCEES Issues List of Calculators Permitted in Examination Room

The National Council of Examiners for Engineering and Surveying (NCEES) has approved a list of calculators for the April and October 2007 exam administrations. The following models are the only calculators that will be permitted in the examination room for the 2007 exam administrations:



Hewlett Packard—HP 33S
Casio—FX115MS or FX115MSPlus
Texas Instruments—TI 30X IIS
Texas Instruments—TI 36X Solar

Each year, NCEES will

review and revise the approved calculator list and announce the updated list by November 15.

For more information, see the Calculator Policy at www.ncees.org or call NCEES headquarters at 864-654-6824.

NCEES develops licensing examinations for the engineering and surveying professions. These examinations are used by engineering and surveying licensing boards across the United States as part of their candidate assessment process. NCEES also provides examination scoring and administration services to licensing boards, as well as a variety of other products and services to engineering and surveying professionals. NCEES headquarters is located in Clemson, S.C.