



ALTA/ACSM Land Title Surveys— Schedule B covenants

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Q On an ALTA/ACSM Land Title Survey, to what extent should the surveyor get involved with any covenants included in Schedule B of the title commitment? Sometimes, they are in a three-inch binder! Do we just list the covenants with the table of documents as not locatable, or do we read every single page and show every pavement, shrub, building and utility setback line on the survey? They are often not clear and sometimes you do not even know which controls, the plat or the covenants. To make things worse sometimes covenants make reference as to, for example, the width of the easements being dependent on the height of the buildings, zoning requirements, or “whichever is greater.” Would you mind clarifying this issue? I have discussed it with other surveyors and have received different answers.

A I think the only issues within the covenants that the surveyor needs to deal with are those that are plottable and do not require an interpretation. Under the current ALTA/ACSM Standards (2005), surveyors do not need to address zoning setbacks unless Table A item 6 is selected, and even then, they only need to list the setbacks on the face of the survey (straight from the ordinance). However, setbacks that are contained within a recorded document (covenants, in your case) are a different issue. Under the standards, surveyors would be obligated to show those; but that will be limited by the surveyor’s ability to logically interpret them and apply them to the real estate in question.

When applicable, there should always be a note on the survey that the property is subject to the covenants, but what is logically possible to plot should be plotted. Which lines are, in fact, plotted and which are not (and why not) should be carefully noted on the survey. When not plotted, for example, it might be because of the surveyor’s inability to

logically interpret or apply the setback to the property.

In some areas, PUD’s have setbacks, but they are whatever is shown on the approved plan. So, there is no definitive setback “line” that can be plotted. The applicable setbacks for a building (or parking or landscaping, as is often the case) are merely where those improvements are shown on the approved plan—it is pretty much impossible to plot those.

When the setbacks are dependent on building heights, the surveyor needs direction on how the building height is to be determined (i.e., measured at what point on the ground—in the case of sloping land) and to what point on the building (peak of roof, AC unit, etc.). This may be explained in the zoning ordinance or covenants but often it is not. If not, it is a classic example of the surveyor needing to make an interpretation—and surveyors cannot issue certifications on that basis.

When the covenants include a “whichever is greater” clause that ties back to a zoning requirement, that puts the surveyor right back into dealing with a zoning setback which is not required by the standards in the first place.

If there are questions, the best approach—as is often the case—is to have conversation with the attorney. Make sure you are talking to a person who can make the ultimate decision, which is often not the person you have been talking to. Explain the issues and ask what they are expecting; and be prepared for that unhelpful response “all of it” or “I don’t know, that’s your job.” The surveyor has to be ready to calmly and confidently explain what can and cannot be done. They should, at the same time, be assured that you do want to be certain that they ultimately get what they need.

It would be helpful to have someone knowledgeable from the title company in on such a conversation to see what they need. Typically, the lender/attorney is not aware of what the title company actually needs from the surveyor in order to provide the zoning coverages the lender wants (typically a 3.1 zoning endorsement). As a result, the attorney makes assumptions as to what the surveyor needs to do in order to secure that coverage; and there is often a big disconnect between what the attorney thinks the surveyor needs to do, and what the title company truly needs.

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