



ALTA/ACSM Standards

Please send questions/comments you may have about the standards to NSPS Executive Director Curt Sumner via email at curtis.sumner@nsp.us.com. Responses will be posted in NSPS News and Views.

Question:

I have a general question regarding the preparation of ALTA/ACSM Land Title Surveys that always concerned me. What is considered a “current” title binder? All of my contracts state that the client will provide me with a current title binder with the supportive referenced documents, prior to the completion and issuance of the survey. Even though I engage in doing my own research for the project as well, I will not issue the final survey until I can review the title binder being prepared for the closing.

In the past, some clients will send me what I consider to be an out of date binder (more than 6 months since it was issued), to which I will always request an update to, or a letter from the title company, stating that the binder is still in force and that there have been no updates or additions to it since its last issuance. Some clients have sent me 6, 8, or 10 year old title binders and insisted that this is what is to be used for the preparation of the current ALTA/ACSM Land Title survey.

Of course I object and then the question always comes up as to “what is considered a current title binder?” Is there some language that ALTA/ACSM has that defines that? If so, can you please share same?

Answer:

The standards do not address what is “current” and do not need to because they refer to the “most current,” not “current.”

I personally suggest that surveyors should take what the client provides as “most current” (which is what the standards call for, not “current”) regardless of how old it is. I do not think it is up to surveyors to tell clients that they have to get new title work, although if the title work is “old” (whatever that means to the individual surveyor), the surveyor should advise the client that there may be burdens on the property that (1) might not be reported in old title work; (2) could adversely affect use of the property; and (3) will not be reflected by their survey.

The surveyor isn’t responsible to be concerned about whether the binder is still in force, it is not their issue. Pursuant to the ALTA/ACSM Standards, the survey needs to reflect the name of the title company, commitment (binder) number, and the date of the commitment; this protects the surveyor from burdens/easements that may affect the property that were not reported in the title work provided. I think the date of the title work and whether or not it is still in force is a title insurance issue between the lender, the client, and the title company.

Lastly, other than in some New England states where surveyors are required to do their own easement research, I personally don't think surveyors should undertake easement research themselves. It seems to me that they may be taking on liability that does not belong to them. If title work is old, I think surveyors would be well-advised to limit their comments to advising the client that they should consider getting an up-to-date commitment.

As an aside, I do find it funny when a client provides old title work and says that they will not be ordering any new title work. I always laugh to myself and think "At least not until the lender insists on it!"