



ALTA/NSPS Question!

NSPS

Has there ever been any discussion about having the Title Company certify its report to the Surveyor? It is obvious, at least to me, that if a Surveyor certifies a survey to a title company, it ends up paying a claim because it insured an erroneous condition depicted on the survey, and the title company would have a claim. The certification, it seems to me, is merely a statement that the Surveyor provides "pre-acknowledging" its liability to the Title Company if an error on the survey causes a loss to the title company.

Given that, isn't the reciprocal situation a perfect analogy? What if a Surveyor misses an easement because it was not disclosed in the title report? What if that omission turns into a claim, and worse, a judgment against the Surveyor? Doesn't the title company have a responsibility to the Surveyor? I expect they will say NO, but it does not make sense. Shouldn't the title company "pre-acknowledge" its responsibility to the Surveyor?

Our company conducted an ALTA/NSPS survey a number of years ago where it appeared to me that the deed did not convey the land that everyone thought (and said they knew) was included in the pending transfer. The intention was to include all of the land, but there was an exception paragraph that made it at least muddy and, to my reading, actually excluded a significant portion of the property. I called the title company and was told, somewhat summarily, that I was wrong and that I should proceed with surveying what everyone thought should be included. When I asked for that to be put in writing, my request was refused. I, of course, noted my concern on the map and the deal closed. This is not exactly on point, but it shows that the a title company can be dictatorial in its approach.

Anyway, it seems to me that Surveyors should have the same comfort level about how they may rely on the title report, as the title company has on the survey.

Response:

Interesting premise, but I'm afraid it doesn't work for several reasons.

First, a title commitment is not a statement as to the condition of title. In other words, it is not an abstract of title. It is merely an offer to provide insurance under certain conditions, and subject to certain exceptions. Title companies routinely insure over certain conditions that they might prefer to keep as exceptions because of pressure from lenders and market pressures. That may have been the source of their response to your request.

Secondly, the title company's client is the lender and/or buyer, and they are providing insurance, not guaranteeing the status of the title or even of the contents of the commitment. They don't certify their commitment/policy to the lender or buyer; it is simply an insurance contract.

Surveyors are expected to, and entitled to, rely on the title commitment per the ALTA/NSPS Standards. Title companies know that.

If the title company misses something or insures over it, that is their problem, with only one exception. I understand that there are perhaps a couple of states that require Surveyors to do their own easement research. Those states have chosen to burden their Surveyors with responsibility for easements regardless of what the title company provides. So “woe to the Surveyor” who relies on the title commitment for their easement information because, as stated above, the title company may have purposely not included all easements in the commitment.

I love the thought that went into your note, though!