

NDDDS

National Due Diligence Services

A Division of American Surveying & Mapping, Inc.

Common Endorsements for Commercial Transactions

David Herrin, National Marketing Director

Cindy Jared, SVP, Major Accounts

Service Provider to the
Fidelity National Title Group
Family of Companies

Thank You

Thank You

- Thank you to Jeremy Yohe and ALTA for the opportunity to present to you today
- My name is David Herrin the National Marketing Director for National Due Diligence Services (NDDS)
- NDDS is a Division of American Surveying & Mapping, Inc.
- We are a national land surveying and professional due diligence firm
- Established in 1992 with over 25 years of service
- One of the nation's largest, private sector, survey firms
- Staff of 150 dedicated & experienced professionals



Subject Matter Experts

David Herrin, National Marketing Director, NDDS

Mr. Herrin offers over 35 years real estate experience including 10 years as a Georgia licensed Real Estate Broker (prior GRS & CCIM designates), regional manager for a national title insurance company & qualified MCLE instructor in multiple states.

Ms. Stephanie Bang, Esq., Underwriting Counsel, Fidelity National Title Group

Ms. Bang is an attorney admitted to the State Bar of California in 2006 and currently with the Fidelity National Title Group based in Los Angeles. She is an active member of the California Land Title Association (CLTA) and a member of the Claims Committee for CLTA.

Ms. Cindy Jared, SVP, National Accounts, NDDS

Ms. Jared offers 27 years of multi-state experience in the title insurance and real estate industry. Her areas of expertise include twenty-two years of title & escrow operations, merger and acquisitions, regulatory compliance and due diligence for national title insurers.

Brett Moscovitz, President, ASM & NDDS

Mr. Moscovitz is the Owner & President of ASM & NDDS. Began his land surveying career in 1983 and incorporated American Surveying & Mapping, Inc. in 1992. ASM is now one of the largest privately owned surveying & mapping companies in the country. Having worked on thousands of residential and complex commercial surveys through the years, he has been instrumental in creating and establishing many of the best business practices for streamlining the land surveying & due diligence services business for a national platform.



WHAT WE WILL COVER TODAY

Common Commercial Title Endorsements

- Role of Title Insurance
- ALTA & Endorsements
- Purpose of an Endorsement
- State Regulations
 - Promulgated
 - Filed
- Types of Endorsements
- Discussion of specific Endorsements
- ALTA Land Survey/Title related Endorsements



Role of Title Policy

Role of Title and Purpose of an Endorsement

A **Title Insurance Policy** is composed of three main parts:

- **Insuring Clauses**
- **Exclusions from Coverage**
- **Conditions**

A contract where the Title Company indemnifies the Insured against events covered under the Insuring Clauses, subject to Exclusions as well as any stated Conditions.

A **title insurance Endorsement** is an amendment, change, alteration, deletion, or other deviation from the standard stated coverage, accomplished by deleting or amending an exclusion or condition, or by providing coverage over what would otherwise be an exception to title, and therefore a non covered matter.

There are still two primary types of Policies; **Loan Policy** to protect the Lender's investment and an **Owners Policy** to protect the Buyer/Owner of any future discovery of ownership issues.

ALTA & Endorsements

Relationship between ALTA & Endorsements

- **American Land Title Association (ALTA) is not a State or Federal Regulator**, but rather a trade association representing the Title Insurance industry. ALTA simply promulgates endorsement forms, but no one is obligated to use them.
- **Most States use the ALTA forms (or a variation of)** but several promulgate title insurance rates, i.e., Florida, CA, Texas, and New Mexico. Some are identical or similar to the ALTA forms, but perhaps more diversity of versions. All States do not provide all Title Policy Endorsements. (Ex: Florida does not provide Zoning or Access Endorsements)
- **McCarran-Ferguson Act** provides that State Law shall govern the regulation of insurance under the various state insurance departments. Some are “filed-form” states where the endorsement forms must be filed and approved by the state insurance department. Most use ALTA forms as a standard and others vary.

Promulgate Definition: Promote or make widely known; proclaim or put into effect.

Title & Survey

Title & Survey Must Work Together

- **Survey Exceptions**
 - Purpose of Title is to exclude from coverage issues that would be revealed NOT by a search of the public records, but ONLY by an accurate survey
 - Exception when no survey coverage is given
 - Detailed exceptions for specific matters shown on the survey
- **Survey Review – Pay particular attention to:**
 - Make sure Survey utilizes the most recent ALTA/NSPS Survey Standards
 - Assure the Survey Legal description matches Title description
 - All possible Encroachments into easements, setbacks & boundary lines
 - Depict all Easements
 - Depict all Improvements
 - Zoning Matters – conformance, setbacks, parking, height, sq. footage, signage, etc.

2016 ALTA Standards

ALTA/NSPS Standards

1. **Purpose** – Members of the American Land Title Association (ALTA) have specific needs unique to the title insurance matters, **when asked to insure title to land without exception as to the many matters which might be discoverable from survey and inspection, and which are not evidenced by public records.**

For a survey of real property, and the plat, map or record of such survey, **to be acceptable to a title insurance company for the purpose of insuring title to said real property free and clear of survey matters** (except those matters disclosed by the survey and indicated on the plat or map), certain specific and pertinent information must be presented for the distinct and clear understanding between the insured, the client (if different from the insured), the title insurance company (insurer), the lender, and the surveyor professionally responsible for the survey.

MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS (Effective February 23, 2016)

NOTE - Attention is directed to the fact that the National Society of Professional Surveyors, Inc. (NSPS) is the legal successor organization to the American Congress on Surveying and Mapping (ACSM) and that these 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys are the next version of the former Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys.

1. **Purpose** - Members of the American Land Title Association® (ALTA®) have specific needs, unique to title insurance matters, when asked to insure title to land without exception as to the many matters which might be discoverable from survey and inspection, and which are not evidenced by the public records.

For a survey of real property, and the plat, map or record of such survey, to be acceptable to a title insurance company for the purpose of insuring title to said real property free and clear of survey matters (except those matters disclosed by the survey and indicated on the plat or map), certain specific and pertinent information must be presented for the distinct and clear understanding between the insured, the client (if different from the insured), the title insurance company (insurer), the lender, and the surveyor professionally responsible for the survey.

In order to meet such needs, clients, insurers, insureds, and lenders are entitled to rely on surveyors to conduct surveys and prepare associated plats or maps that are of a professional quality and appropriately uniform, complete, and accurate. To that end, and in the interests of the general public, the surveying profession, title insurers, and abstractors, the ALTA and the NSPS jointly promulgate the within details and criteria setting forth a minimum standard of performance for ALTA/NSPS Land Title Surveys. A complete 2018 ALTA/NSPS Land Title Survey includes:

- (i) the on-site fieldwork required pursuant to Section 5,
- (ii) the preparation of a plat or map pursuant to Section 6 showing the results of the fieldwork and its relationship to documents provided to or obtained by the surveyor pursuant to Section 4,
- (iii) any information from Table A items requested by the client, and
- (iv) the certification outlined in Section 7.

2. **Request for Survey** - The client shall request the survey, or arrange for the survey to be requested, and shall provide a written authorization to proceed from the person or entity responsible for paying for the survey. Unless specifically authorized in writing by the insurer, the insurer shall not be responsible for any costs associated with the preparation of the survey. The request shall specify that an "ALTA/NSPS LAND TITLE SURVEY" is required and which of the optional items listed in Table A, if any, are to be incorporated. Certain properties or interests in real properties may present issues outside those normally encountered on an ALTA/NSPS Land Title Survey (e.g., marinas, campgrounds, trailer parks; easements, leases, other non-fee simple interests). The scope of work related to surveys of such properties or interests in real properties should be discussed with the client, lender, and insurer, and agreed upon in writing prior to commencing work on the survey. The client may need to secure permission for the surveyor to enter upon the property to be surveyed, adjoining properties, or offsite easements.

Standardized Solutions for Your Business

Possible Encroachments

Title Commitment

Schedule B-II Items

Legal Description

Easements, Access, ROW

Survey Notes & Certification

ALTA/ACSM AND TRIT SURVEY IDENTIFICATION TABLE

ALTA/ACSM		TRIT SURVEY	
1. TITLE INFORMATION	1. SURVEYOR'S NAME	1. TRACT DESCRIPTION	1. TYPE OF SURVEY
2. TITLE DESCRIPTION	2. DATE OF SURVEY	2. FUTURE ACQUISITION	2. TYPE OF SURVEY
3. SURVEYOR'S NOTES	3. DATE OF SURVEY	3. FUTURE ACQUISITION	3. TYPE OF SURVEY
4. LEGEND & ABBREVIATIONS	4. DATE OF SURVEY	4. FUTURE ACQUISITION	4. TYPE OF SURVEY
5. FLOOD INFORMATION	5. DATE OF SURVEY	5. FUTURE ACQUISITION	5. TYPE OF SURVEY
6. SCHEDULE B-II ITEMS	6. DATE OF SURVEY	6. FUTURE ACQUISITION	6. TYPE OF SURVEY

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Owners Policy *Endorsements*

Common Endorsements – Related to the ALTA Survey

- **ALTA 9 Series** - Restrictions, Encroachments, Minerals - “Comprehensive”
Originally the ALTA 9 Series which ultimately formed 2 additional endorsements:
 - **ALTA 28** (Easements & Encroachments)
 - **ALTA 35** (Minerals & Subsurface Substances)
- **ALTA 25** - Survey coverage
- **ALTA 17** – Access
- **ALTA 3** – Zoning
- **ALTA 19** – Contiguity

There are many other Endorsements available, however, our primary discussion today will expand upon the Title & ALTA Survey relationship and the owners Endorsements.

Endorsements

Common Endorsements

Comprehensive Endorsements are the most commonly requested

Originally combined several common Endorsements into a single Endorsement

- **Coverage for Encroachments**
- **Violations of CCR's** (Covenants, Conditions & Restrictions)
- **Damages for mineral production**

ALTA ultimately revised the ALTA 9 into 6 separate sections to define coverage more clearly, once done, this then required 2 additional Endorsement series to be formed; ALTA 28 (Encroachments) & ALTA 35 (Enforced removal for Mineral production)

ALTA 9

ALTA 9 Series of Endorsements

- ALTA 9.1 – Unimproved Land-CCR’s - Owners
- ALTA 9.2 – Improved Land-CCR’s – Owners
- ALTA 9.3 – CCR’s – Loan Policy
 - **Above 3 Endorsements relate to CC&R’s**
- ALTA 9.6 – Particular “private rights”, CCR’s – Loan Policy
 - **Certain rights like first right of refusal or transfer restrictions**
- ALTA 9.7 – CCR’s, encroachments, minerals, property under development – Loan Policy
- ALTA 9.8 - CCR’s, encroachments, minerals, property under development – Owner’s Policy
 - **Generally in connection with Construction**

Previous ALTA 9.4 and ALTA 9.5 were withdrawn

ALTA 28 & ALTA 35

Two Additional Endorsement Groups were Formed

ALTA 28 for Encroachments into Setback lines, Easements, and boundaries

- ALTA 28 – Encroachment into Easements
- ALTA 28.1 – Encroachment into Easements, setback lines & boundary lines

ALTA 35 to protect against damages to improvements from Mineral development

- ALTA 35 – Enforced removal of buildings for mineral production.
- ALTA 35.1 – Enforced removal of “improvements” as defined.
- ALTA 35.2 – Enforced removal of specifically listed improvements.
- ALTA 35.3 – Enforced removal of improvements under construction.

Same as Survey – ALTA 25

Same as Survey

Make sure the survey contains a statement that the survey is the same property described in the title commitment.

- ALTA 25-06 – Same As Survey Endorsement – Must match title description.
- ALTA 25.1-06 - If applicable, request the 25.1-06 (Same as Portion of Survey) Endorsement

Access – ALTA 17

Access

Under the title policy, legal access is insured, but the location and quality of the access is not. Owner's and Lenders often request additional Access coverage. The ALTA 17 series is used for Access coverage

- 17-06 - Access and Entry (access by way of a public road). Provides coverage that the land abuts and has actual pedestrian and vehicular access to a designated public road
- 17.1-06 – Indirect Access and Entry (access by easement).

NOTE: SURVEY IS KEY TO ACCESS COVERAGE – OBSERVE THE TYPE OF ACCESS AND REQUEST AN ACCESS STATEMENT AND MAKE SURE THE SURVEY SHOWS ALL ACCESS POINTS AND CURB CUTS

Contiguity – ALTA 19

Contiguity

Often the owner and lender want to be sure that 2 parcels they own or are taking a mortgage against are contiguous, with **no gaps, gores or overlaps.**

- ALTA 19-06 - Used where both parcels are insured under the policy
- ALTA 19.1-06 - Used where the insured wants to have coverage that a parcel that is insured by the policy is contiguous to a parcel that is not being insured under the policy

Request that the survey contain a statement that the parcels are contiguous to obtain title coverage.

Title & Survey for Your Business

What is a Gore?

- In modern land law and surveying, a gore is a strip of land, usually triangular in shape, as might be left between surveys that do not close.
- Historically, gores were generally the result of errors when the land was first surveyed and the towns laid out. A gore would lie in an area between two (supposedly abutting) towns but would technically be in neither.

Good example of a “Gore”:

Driving in the gore can occur when you are **exiting or entering an exit ramp**. It is usually a triangle shaped area created by white areas. Gray Car is in “no man’s land” !!!



Zoning – ALTA 3

Zoning

Coverage in the event the property is not properly zoned as stated on the Endorsement and insures the present use is permitted under current zoning ordinances.

- ALTA 3 – Unimproved Land
- ALTA 3.1 – Improved Land
- ALTA 3.2 – Land Under Development

Issuance of these Endorsements typically requires an independent Zoning Report, zoning verification letter or other assurances from the Planning Department.

Request your surveyor add Table A, Item 6(a) & 6(b).

Loan Policy *Endorsements*

Loan Policy - Common Endorsements

- **ALTA 20** – First Loss – In the event the Lender believes he has become under secured.
- **ALTA 22** – Location – Coverage to a Lender (or Owner) against loss suffered if the property does not have identifiable improvements located on it or the address is incorrect.
- **ALTA 27** – Usury – Insures there will be no loss of priority for the insured lien.
- **ALTA 29** – Interest Rate SWAP - insures against loss or damage sustained by the Insured by reason of the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as security for the payment of the Swap Obligation at Date of Endorsement
- **ALTA 6** – Variable Rate – Covers damages resulting from the loss of priority of the mortgage simply due to an interest rate change.
- **ALTA 18** – Tax Lot – Insures that the insured property has it's own tax parcel ID & is not part of another parcel.

Thank You

Closing Remarks