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# An Introduction to the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys

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# **An Introduction to the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys**

## **Introduction**

The ALTA/NSPS Liaison Committee (consisting of both the American Land Title Association and the National Society of Professional Surveyors) has approved modifications to the 2011 version of the Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys. The new version will be referred to as the 2016 Standards.

These standards will be effective on February 23, 2016. Why was this date chosen? In ancient Roman religion, Terminus was the god who protected boundary markers. The name “Terminus” was the Latin word for a boundary marker. On February 23<sup>rd</sup>, Roman landowners celebrated a festival called the “Terminalia” in honor of Terminus.

This article is intended to provide a broad overview of those changes to the land title survey standards that will be of the most significance to the title insurance industry and real estate practitioners.

A complete copy of the 2016 Standards can be found at [www.dcnscs.fntic.com](http://www.dcnscs.fntic.com)

It is suggested that you print out a copy and follow along as the sections are discussed below:

## **Section 5 Fieldwork**

Section 5 of the 2016 Standards generally concerns the fieldwork of the surveyor.

### **Section 5.B.ii. Rights of Way and Access**

Section 5.B.ii. of the 2011 Standards imposed a duty on the surveyor to show the “width and location of the traveled way.” Under the 2016 Standards, this amended section now requires the land surveyor to also show “the location of each edge of the traveled way” unless there is no access from the land to said traveled way. In addition, the 2016 Standards include a reference to divided streets and highways.

The term “traveled way” is a term of art, used in many court decisions. It has been defined as “the portion of the roadway used for movement of through traffic.”

In other words, although a plat of a residential subdivision may indicate that the dedicated roads have a width of 50 feet, the distance from one edge of the surface of the asphalt to the opposite edge of the asphalt may be only 29 feet. The land surveyor will have to show both widths—the width of the dedicated road and also the width of the asphalt—on the plat of survey.

This additional information should be helpful to those trying to determine access to a particular parcel of land, including curb cuts.

Section 5.B.ii. of the 2016 Standards is as follows. The italicized words are new.

The name of any street, highway or other public or private way abutting the surveyed property, together with the width of the traveled way *and the location of each edge of the traveled way including on divided streets and highways. If the documents provided to or obtained by the surveyor pursuant to Section 4 indicate no access from the surveyed property to the abutting street or highway, the width and location of the traveled way need not be located.*

### **Section 5.C.ii. - Improvements Located Along the Boundary Line**

The land title survey standards have traditionally required the surveyor to show the nature of the improvements on the land within five feet of each side of the boundary line of the property. Section 5.C.ii. of the 2016 Standards now includes a caveat, stating that the surveyor will show these improvements “unless physical access is restricted” by neighbors or physical impediments. Also, the drafters wanted to make it clear that generally speaking, the surveyor did not have to show trees and bushes on the plat of survey unless the vegetation represented evidence of possession, such as a tree line.

### **Section 5E. - Utilities v. Easements**

Section 5.E. of the 2011 Standards imposed a duty on the surveyor to show observable evidence of utility *easements*. Item 11 of the optional Table A of the 2011 Standards, on the other hand, gave the surveyor the option of showing evidence of *utilities* on the plat of survey. This fine-line distinction resulted in at least one court proceeding where the surveyor was held liable for failing to show evidence of a utility on his plat of survey. This surveyor thought that he didn't have to show evidence of utilities on his survey because item 11 of Table A was not checked off, but the court felt otherwise. Section 5.E. of the 2011 Standards refers to utility *easements*, and item 11 of Table A of the 2011 Standards refers simply to *utilities*.

This distinction has been eliminated in the 2016 Standards. The surveyor should show all observable evidence of *both easements and utilities* on his plat of

survey. Section 5.E. of the 2016 Standards requires this. (Table A of the 2016 Standards is discussed later.)

### **Section 5.G.i. - Water Features**

Previously the Standards provided that the location of springs, ponds, lakes, streams and rivers bordering or running through the property had to be shown.

The surveyor now has the obligation to show those and, in addition, *canals, ditches, marshes and swamps* if any are “running through, **or outside**, *but within five feet of the perimeter boundary of the surveyed property*” [emphasis added].

### **Section 6.A. - Notes**

Section 6 begins by stating that the plat or map “shall show the following information.” In Section 6.A. of the 2011 Standards, the surveyor merely had to show “the evidence and locations gathered during the field work as outlined in Section 5 above.” This concept is now greatly expanded in the 2016 Standards; Section 6.A. encourages the surveyor to include notes on the plat of survey.

The text of Section 6.A. appears below; the italicized words are new.

The evidence and locations gathered, *and the monuments and lines located during the fieldwork pursuant to Section 5 above, with accompanying notes if deemed necessary by the surveyor or as otherwise required as specified below.*

### **Section 6.B.ii. - A New Legal Description**

As property gets combined and re-divided, the customer often thinks it would be easier to get a new perimeter description rather than the historical descriptions. The “Section---except \_\_, except\_\_\_\_, except \_\_\_\_” is often the best description because under most state law, if drafted correctly, it cannot cause an overlap. The title company may have difficulty insuring a new description depending upon how it has been monumented to neighboring descriptions, the historical descriptions of surrounding parcels and the state law determining requirements for the use of historical descriptions, not to mention the tax assessors or other subdivision laws.

If the surveyor prepares a new legal description that is not an original description, the surveyor under the 2016 Standards now **must** include a note stating that the new description describes the same real estate as the record description, or if it does not, then the surveyor has to explain how the new description differs from the record description. This section cautions the surveyor that the “*preparation of a new legal description should be avoided unless deemed necessary or appropriate by the surveyor and insurer.*”

### **Section 6.B.vii. - Gaps and Overlaps**

This section has been amended to make it clear that the surveyor is not responsible for determining how to resolve the problem of gaps or overlaps between land parcels. See below; the italicized words are new to the 2016 Standards. The lined out words appeared in the 2011 Standards but have been omitted from the 2016 Standards.

Where gaps or overlaps are identified, the surveyor shall, prior to *or upon delivery* of the final plat or map, disclose this to the insurer and client. ~~for determination of a course of action concerning junior/senior rights.~~

### **Section 6.B.xi. - Restricted Access**

As noted above, Section 5.C.ii. of the 2016 Standards requires the surveyor to show “the character and location of all walls, buildings, fences, and other improvements within five feet of each side of the boundary lines,” *unless physical access is restricted*. This concept is then carried forward to new paragraph 6.B.xi., requiring the surveyor to indicate such restricted lands on the survey.

The text of paragraph 6.B.xi. reads as follows:

*A note on the face of the plat or map identifying areas, if any, on the boundaries of the surveyed property, to which physical access within five feet was restricted (See Section 5.C.ii.).*

### **Section 6.C.ii. - A Summary of Rights of Way, Easements, and Servitudes**

Section 6 of the 2016 Standards is prefaced by the words, “A plat or map of an ALTA/NSPS Land Title Survey shall show the following information.” Section 6.C.ii. has been substantially amended. Note that the section is now in a list format. See below; the italicized words are new to the 2016 Standards:

*A summary of all rights of way, easements and servitudes burdening the property surveyed and identified in the title evidence provided to or obtained by the surveyor pursuant to Section 4. Such summary shall include the record information of each such right of way, easement or servitude, a statement indicating whether or not it is shown on the plat or map, and a related note if:*

- (a) the location cannot be determined from the record document;
- (b) there was no observed evidence at the time of the *fieldwork*;
- (c) it is a blanket easement;
- (d) it is not on, or does not touch, the surveyed property;
- (e) it limits access to an otherwise abutting right of way;

- (f) *the documents are illegible; or*
- (g) *the surveyor has information indicating that it may have been released or otherwise terminated.*

*In cases where the surveyed property is composed of multiple parcels, indicate which of such parcels the various rights of way, easements, and servitudes cross or touch.*

### **Section 6.D. - Presentation**

Section 6.D. concerns the format of the plat of survey such as size and legibility. The committee added two new items to this section; these new additions encourage the surveyor to add explanatory notes or supplemental diagrams to his plat of survey:

6.D.ii. *The plat or map shall include:...*

(f) *Supplementary or detail diagrams when necessary.*

(g) *Notes explaining any modifications to Table A items and the nature of any additional Table A items (e.g., 21(a), 21(b), 21(c)) that were negotiated between the surveyor and client.*

### **Table A**

Table A is the list of “Optional Survey Responsibilities and Specifications.” This is where the customer indicates what it needs the survey to include to comply with possible title insurance company underwriting for survey based coverages, including zoning. Those readers that deal with HUD or other governmental programs should familiarize themselves with any specific survey requirements of that or any other lender. Of these survey additions, Item 6 of Table A is by far the most important change that affects the title company.

### **Item 6, Table A - Zoning**

Item 6 in the old 2011 Standards referred to the “current zoning classification, as *provided by the insurer.*” These highlighted words proved to be problematic to title companies, who, citing liability concerns, were reluctant to furnish this information.

#### **Item 6, Table A, 2011 Standards**

(a) Current zoning classification, as provided by the insurer.

(b) Current zoning classification and building setback requirements, height and floor space area restrictions as set forth in that classification, as provided by the insurer. If none, so state.

Accordingly, paragraph (a) has been rewritten so that the title company does not furnish the zoning information. Furthermore, the surveyor is not responsible for obtaining the information, either. Rather, the client has to furnish the surveyor the zoning information. In addition, the surveyor has the option of *listing* the setback requirements

Title company reluctance and concern was an issue in both paragraph (a) and paragraph (b) of the 2011 Standards. But there was also a bigger issue that concerned paragraph (b) which required the surveyor to show the setback requirements in the zoning classification. Note that when the committee originally wrote paragraph (b), it failed to state *how* the building setback information should be shown on the plat of survey. Should the building setback information be shown on the plat of survey as a written statement, word for word, directly as it is written in the zoning ordinance? Or should the information be shown *graphically* on the plat of survey? The 2011 Standards, regretfully, offered no guidance.

In the last few years, surveyors have been getting increased pressure from lenders to show building setback information *graphically* on their plats of survey. Unfortunately, this information is not always easy to decipher. The information is sometimes subject to interpretation. It is easy when the surveyor only has to recite the setback information, word for word, on the plat of survey. But it can sometimes be difficult for the surveyor to take this information and graphically show it on his plat of survey. What if the surveyor makes a mistake, a mistake due solely to a misinterpretation of an ambiguous setback provision in a zoning ordinance?

The committee was faced with two directives—it had to somehow rewrite paragraph (b) so that the surveyor would be charged with graphically depicting the building setback information on the plat of survey. But it also had to protect the surveyor from the consequences of being instructed to graphically depict ambiguous information.

Paragraph (b) of Item 6 of the 2016 Standards accomplishes both objectives, as shown below. The client has to furnish the surveyor the zoning information. But in addition, Item 6 protects the surveyor. Per paragraph (b), the surveyor must graphically depict the building setback. However, the surveyor must do this, only if the setback requirements “*do not require an interpretation by the surveyor.*” (See the italicized words below of Item 6 of the 2016 Standards.)

Again, note that in paragraph (a) the surveyor “lists” the zoning setback requirements, but in paragraph (b) the surveyor “graphically depicts” the zoning setback requirements. This is an important distinction for the land surveyor. If the surveyor feels that he cannot graphically *depict* the setback requirements pursuant to paragraph (b), perhaps he can offer to *list* them pursuant to paragraph (a).

### Item 6, Table A, 2016 Standards

(a) *If set forth in a zoning report or letter provided to the surveyor by the client, list the current zoning classification, setback requirements, the height and floor space area restrictions, and parking requirements. Identify the date and source of the report or letter.*

(b) *If the zoning setback requirements are set forth in a zoning report or letter provided to the surveyor by the client, and if those requirements do not require an interpretation by the surveyor, graphically depict the building setback requirements. Identify the date and source of the report or letter.*

### **Item 9, Table A- Parking Spaces**

This item, concerning “parking spaces,” has been clarified. The surveyor now has two duties. One, to set forth the number and type of parking spaces “on surface parking areas, lots and *in parking* structures.”

And two, to set forth the striping of “clearly identifiable” parking spaces on “surface parking areas and lots.”

The complete text of Item 9 of the 2016 Standards reads as follows:

Number and type (e.g. disabled, motorcycle, regular and other marked specialized types) of clearly identifiable parking spaces on surface parking areas, lots and in parking structures. Striping of clearly identifiable parking spaces on surface parking areas and lots.

### **Item 11, Table A - Easements**

As noted above, section 5.E. of the 2011 Standards imposed a duty on the surveyor to show observable evidence of utility *easements*. Item 11 of Table A of the 2011 Standards, on the other hand, required the surveyor to show evidence of *utilities*.

But this issue has now been clarified with the 2016 Standards. Paragraph 5.E.iv. of the 2016 Standards requires the surveyor to show “evidence on or above the surface of the surveyed property observed in the process of conducting the fieldwork, which evidence may indicate utilities located on, over or beneath the surveyed property.”

Item 11 of Table A now expands this requirement. Under Item 11, the surveyor is required to show not only observed evidence of utilities, “existing on *or serving* the surveyed property,” but also other evidence of utilities, as noted on utility company plans or as noted by utility locating companies that many utility companies use. Note that under Item 11, the surveyor has the obligation to call the utility locating company.

### **Summary of Section 5.E.iv. and Item 11 of Table A**

- Section 5.E.iv. of the 2016 Standards requires the surveyor to disclose observed evidence of utilities on or above the surface of the surveyed property.
- Item 11 of Table A of the 2016 Standards requires the surveyor to disclose observed evidence of utilities on the surveyed property *and also observed evidence of utilities serving the surveyed property*. Under Item 11 of Table A of the 2016 Standards, the surveyor also has to disclose evidence of utilities on or serving the surveyed property, as disclosed by utility company plans and a utility locating company.
- Pursuant to Item 11 of Table A of the 2016 Standards, the surveyor has the duty to call the utility locating company. But the final note of Item 11 points out that if the locating company ignores the surveyor, or performs an incomplete locating job, the surveyor shall indicate on the plat of survey how this inadequate response affected the surveyor’s assessment of the location of the utilities.

### **Item 13, Table A - Names of Adjoining Owners**

Item 13 of the 2011 Standards required the surveyor to show the “names of adjoining owners of platted lands according to current public records.”

But this would require the surveyor to either perform a title search or have a title company perform the search, and so Item 13 has been changed to the “names of adjoining owners according to current *tax* records.” The 2011 Standards referred to the “names of adjoining owners of **platted** lands.” This has been expanded in the 2016 Standards to the “names of adjoining owners” platted or otherwise.

### **Item 18, Table A - Wetlands**

The term ‘wetlands’ is a term of art. The wetlands instructions to the surveyor in the 2011 Standards were somewhat vague, and so the committee revised this item to more clearly define the role of the surveyor. For example:

- The client has to hire a qualified specialist.

- The surveyor does not have to look for cattails and bull rushes or other vegetation that he feels is suggestive of a wetland. Rather, the surveyor’s obligation is to merely locate observed “delineation markers.”
- If there are no such markers, the surveyor should state this on his plat of survey.

The text of Item 18 of the 2016 Standards reads as follows:

*If there has been a field delineation of wetlands conducted by a qualified specialist hired by the client, the surveyor shall locate any delineation markers observed in the process of conducting the fieldwork and show them on the face of the plat or map. If no markers were observed, the surveyor shall so state.*

### **Item 19, Table A - Off-Site Easements**

The 2011 standards introduced what was then Item 20—the request of the surveyor to survey off-site easements benefiting the land.

Example: If the land being sold in 2012 was lot 1, and lot 1 had no direct access, but an access easement was created 15 years earlier over the west 10 feet of lot 2, the surveyor might have been asked in 2012 to survey lot 1 and also the west 10 feet of lot 2. The surveyor might even have been asked in 2012 to place monuments at the major corners of the easement parcel.

This item (now Item 19 in the 2016 Standards) has been refined in the following ways:

- The easement is now further defined as being “appurtenant,” or benefiting, the fee simple land being surveyed.
- The easement is to be surveyed in the same manner as the fee simple land being otherwise surveyed.
- The option to place monuments at the major corners of the easement parcel has been deleted from the 2016 Standards. This was an unfortunate addition to the 2011 Standards. This option was deleted because a surveyor who has not been hired by the fee simple owner of the servient easement parcel should not be placing monuments at the lot corners of the easement parcel.

## **Item 20, Table A - Liability Insurance**

The 2011 Standards introduced a new concept—the option of the surveyor obtaining a professional liability insurance policy. This option has been carried forward as Item 20 of the 2016 Standards, but with an added statement.

Item 20, Table A, of the 2016 Standards appears below. The “added statement” that is referred to above appears in italics.

Professional Liability Insurance policy obtained by the surveyor in the minimum amount of \$\_\_\_\_\_ to be in effect throughout the contract term. Certificate of Insurance to be furnished upon request, *but this item shall not be addressed on the face of the plat or map.*

## **Conclusion**

There are dozens of other changes and clarifications to the new **Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys**. Those changes described above should be some of the most relevant to parties to the transaction and the title insurance industry. We encourage you to review the new standards before you celebrate ***Terminalia*** on February 23, 2016!

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