

Gary Kent quotation excerpt from ACSM Bulletin, dated 07/06

Question -

The lender's attorney has told me I must use the certificate they sent me on my ALTA/ACSM Land Title Survey, but it's two pages long and full of clauses that worry me. What should I do?

Answer –

Lenders write and use their own certificates because, although they specify the ALTA/ACSM Minimum Standards in their survey requirements, they often have never read the ALTA/ACSM requirements and therefore do not know what they actually say. So, they write their own requirements and certificates. In some cases, they also apparently don't understand what title insurance companies need from surveyors in order to provide coverage and the various endorsements, which is one reason they ask for such outrageous certifications from surveyors.

Lenders' certifications are usually chock full of express guarantees and warranties. Examples include clauses like:

- "All utilities necessary for operation of the premises are available at the property lines through public rights of way or dedicated easements."
- "There are no encroachments either way across the boundary lines of the property."
- "There are no violations of the zoning setback requirements."

Signing on to clauses like these will invalidate the surveyor's errors and omissions insurance with respect to those certifications. Given that the surveyor is not armed with the knowledge to make such definitive statements, and that his or her insurance won't cover them anyway, it seems somewhat self-defeating for the lender to ask for them, doesn't it?

Surveyors should take it upon themselves to be educated as to these issues and to pass that understanding on to lender's attorneys.

For example: Whether a building "violates" a zoning setback is not a matter of survey – it is a legal or jurisdictional matter ... When the surveyor provides a blanket certification that there are "no encroachments," that includes sub-surface features that are not even visible ... A certification that "all utilities have been shown" is simply ridiculous; unless the entire site is excavated, the surveyor should never make such a statement.

ALTA and NSPS agree that a survey that does not use the required short-form ALTA/ACSM certification specified in the standards cannot even be called an ALTA/ACSM Land Title Survey!

As an alternative to spending time and energy dealing with lenders on these certificates, the surveyor should start off by specifying in a written contract that the standard and required (by paragraph 2) certificate will be provided. Educate yourself so you can converse confidently with the attorney. Be able to point to where each of the clauses in their certificate is already covered in the ALTA/ACSM standards, and therefore by the short-form certificate. (And if the standards do not address a particular clause, it is likely that you should not be certifying to it anyway!)

There are many surveyors across the country who do not sign lenders' certificates and have not lost business because of it. If surveyors would collectively rise up and refuse to sign these unnecessary certificates, they will go away.

Provided courtesy of:



Corporate Office:

5419 County Road 427
Suite C

Auburn, Indiana 46706

Tel: (260) 925-2020

Fax: (260) 925-1212