

March 2017



ALTA Surveys

New Property Descriptions on ALTA Surveys

Regarding property descriptions, the [2016 Minimum Standard Detail Requirements for ALTA Surveys](#) cite in Section 6.B.ii that the surveyor now has additional responsibilities when presenting a NEW “As-Surveyed” property description on the face of the survey. It is at the surveyor’s discretion, based upon their professional opinion, whether the observations made in the field and/or a review and reconciliation of record information warrants a new description. In some states, the statutes for the practice of land surveying may dictate a new description.

The additional responsibility in the new Minimum Standards now requires the following; “Except in the case of an original survey, if a new description is prepared, a note shall be provided stating (a) that the new description describes the same real estate as the record description or, if it does not, (b) how the new description differs from the record description.” Typically this information is provided in a notation at the end of the new description or in a general note on the survey allowing all parties to gain comfort with how the new description relates to the current or record description.

It is often the title company that is most concerned with the issue of new descriptions, particularly in cases when they are asked to issue a “SAME AS” survey endorsement. If the surveyor states that the property described in the new description is one and the same as the property described in the record description, the title company gains the needed assurance. It is then understood that the variances between the two descriptions are differing opinions of the prior surveyor who prepared the record description versus the new surveyor. However, if the surveyor cannot state that the descriptions are one and the same, it may reveal errors in the record description or gaps or overlaps with adjoining properties that could cause title problems.

Depending on the transaction and parties involved, decisions need to be made with regard to what description is to be cited moving forward. From the title company’s perspective, they need assurance that the property is conveyed in

the exact same way the current owner took title (the record description). However, it is important to recognize the new surveyor's opinion in the new description as all parties are relying on what is shown and reported on the survey.

Call us at 800-787-8397 or check out our [survey page](#) for more information.

Environmental

Reporting Requirements: Who's Responsible



A [Phase I ESA](#) is a common due diligence requirement in a commercial real estate transaction. The Phase I can identify if a Recognized Environmental Condition (REC) is present. If the presence of a REC is confirmed, a [Phase II](#) Subsurface Investigation is typically needed to provide information regarding the subsurface condition of the subject property. The conclusions of the Phase II may depict analytical results that are over acceptable reporting limits giving those involved in the transaction, including the potential purchaser, vital information pertaining to ownership of the property.

Unfortunately, this can complicate matters related to the transaction going forward as current legislation is unclear in assigning who, if anyone, is responsible for disclosing that there is an impact above reporting limits. The legal responsibility varies from state to state. However, pending legislation is currently being discussed to eliminate this variance and clarify the chain of reporting.

Until there is a legislative standard in place, it is most commonly conceded that when exceedance(s) are found while conducting a Phase II Investigation, upon receipt of said knowledge, the responsibility to notify interested parties falls to the owner of the property. Owners sometimes insulate themselves from this requirement by engaging counsel representation (attorney-client privilege). If engaged, the only instance in which reporting could be required by the consultant would be in a situation where the findings are considered an imminent danger to life/safety/health (i.e. discovery of a potential explosive plume), which should be reported according to the professional codes of ethics.

It is anticipated that future legislation will address the state-by-state variance in reporting practices and eliminate the uncertainty and confusion that currently exists.

Bock & Clark News and Upcoming Events

- Jim Brown, Director, will be a featured speaker on the "Panel of Experts" at the upcoming [Greater Tampa Commercial Realtors Alliance](#) to be held in Tampa, Fla. on April 12.
- Bock & Clark is a featured sponsor at [Bisnow's upcoming Lodging & Innovation Series](#) (BLIS West), to be held at the LA Hotel Downtown in Los Angeles on April 21. Stop by our table to say "hello" to Jim and Tim and enter our gift card drawing.

- Bock & Clark will again be a sponsor of the Dallas CASA Classic. The Classic is an invitational golf tournament benefiting Dallas CASA – a non-profit organization of volunteers who are voices for abused children in court www.dallascasaclassic.com.
- Jim Brown, Director, will be a featured speaker at NBI's Ultimate Guide to Commercial Real Estate Law course to take place April 26 -27, 2017 at the Fairfield Inn & Suites Columbus Polaris in Columbus, Ohio. Jim will be speaking on the topic of Land Surveys and Legal Descriptions in Commercial Real Estate Transactions. To register, visit www.nbi-sems.com.
- Tim Kidd will be attending the [Crittenden National Real Estate Conference](#) in Costa Mesa, Calif. on April 26-27.
- Bock & Clark is a proud national sponsor of CREW Network and a local chapter sponsor of CREW Cleveland, CREW-LA, CREW Philadelphia, CREW Dallas, CREW Atlanta and CREW DC. Thank you to all who support CREW Network and CREW Foundation. For more information visit www.crewnetwork.org.

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