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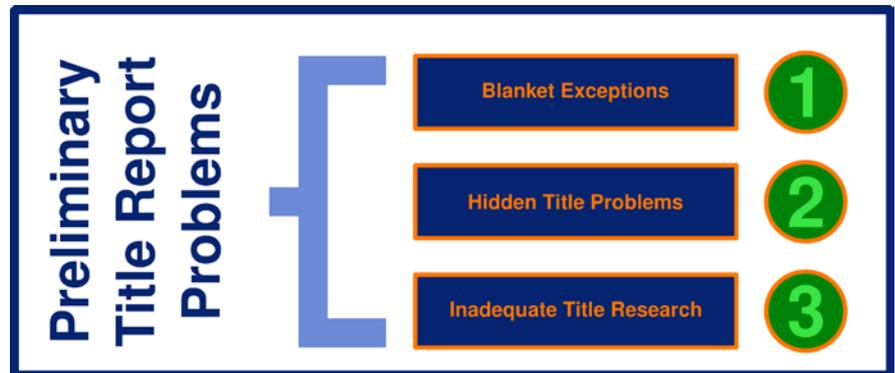
Title Industry Changes Affect Surveying, Part 2

Part One of this article focused on three major changes in the land title industry and what caused them. This article will focus on three areas in which those changes have impacted the boundary surveyor and how they can be mitigated.

Preliminary Title Reports

The poor quality of many preliminary title reports provided to the boundary surveyor today has been a growing problem. Frequently preliminary title reports are issued for a parcel without a thorough title search being conducted by the title company. This results in a multitude of "blanket exceptions" to insurance coverage that lack specific document references in the preliminary title report. According to Dan Dolan, during the boom times land title companies would often only search for matters impacting title to a parcel from the last date the parcel was insured. No search was performed prior to the date of the last preliminary title report. This is a practice that continues, which results the perpetuation of hidden land title issues.

In many cases, a boundary surveyor will ask the land title company that has issued a preliminary title report for assistance in locating a document that is related to an encumbrance on the property. Frustratingly, in many cases, the land title company's only response is often to issue a new preliminary title



report with a blanket exception for the encumbrance the land surveyor mentioned, with no reference to a specific document that would assist the surveyor.

In the past, a boundary surveyor could often call a land title officer with a local title plant and request assistance in locating a document related to a parcel of real property. The surveyor would frequently be provided with a recording reference for the document, or a copy of the document itself, for a very small cost or for no charge. This practice is on the decline, and is not likely to continue. In some cases, title companies refuse to search for and provide documents related to parcels of real property within a project site, even when they are offering their services to the same client the boundary surveyor is working for. The explanation typically provided to the boundary surveyor is, "We can't find what you need."

Junior-senior rights often come into play when attempting to resolve parcel

boundaries. The ability to properly determine junior-senior rights usually depends on the ability to define chain-of-title for the parcels involved. This typically requires a search for documents related to the parcels that can extend back several decades and sometimes all the way back to the time of patent. Whereas, in the past title companies could be relied upon to provide or assist with these chain-of-title searches, now the boundary surveyors must conduct such searches themselves, or seek the services of a third-party freelance land title consultant. This creates challenges, as title companies control the geographically indexed land title records that make these types of searches more efficient.

Mike Quartaroli, a land surveyor practicing for many years in the California Central Valley, summarizes some of the most important impacts of the changes in the land title industry on boundary surveyors. He explains that a land surveyor's relationships are with people,

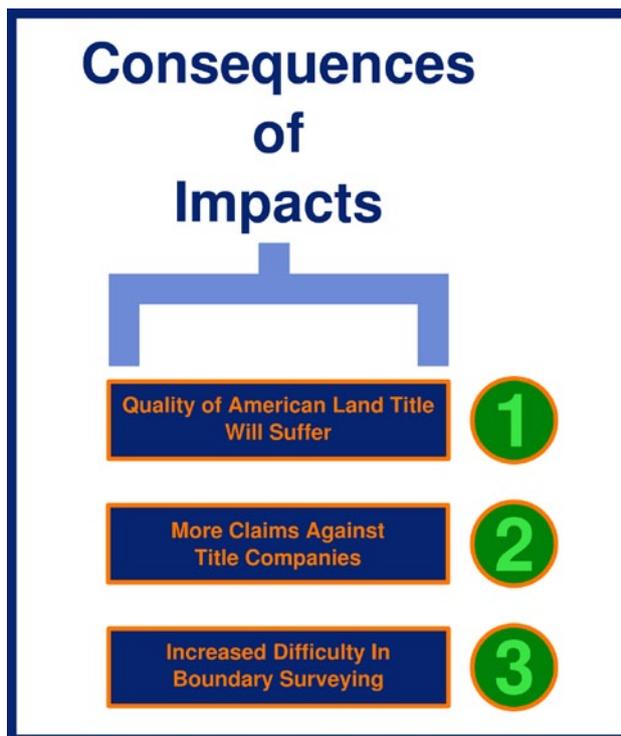
not with companies. In most cases the people in the land title industry with which land surveyors have established relationships are leaving (or being forced to leave) their profession. Another impact is a lack of attention to detail by title companies as they struggle to adapt to changing economic conditions.

Consequences of the Changes

There are several negative consequences of the land title industry changes on the land surveying community, title industry, and the public. The first is that the quality of land title in America will suffer over the long run. More land title problems will slip through the cracks, only to be buried by time and ignorance. Inevitably this will make the property American citizens and organizations own worth less, and will increase the cost of buying and selling property.

Secondly, more land title problems will result in more claims against the land title companies. This will drive the companies to further reduce costs, which impacts the quality of the services they provide. It will also drive them to avoid more and more liability when issuing title insurance on a parcel. This will result in more and more “blanket exceptions” to title insurance policies. The buyers of property will eventually be paying for title insurance that insures very little, even less than it does today.

The third negative consequence is for the boundary surveyor. The work of the boundary surveyor will become more difficult and more expensive. Despite their best efforts, some boundary surveyors will become entangled in the litigation that results when parcels are sold and land title problems are only discovered after the purchase.



Ways to Mitigate the Impacts

The situation with the decline in the title industry is not entirely hopeless. There are a number of ways that the boundary surveyor may mitigate, or at least minimize, the impacts. A few of these things involve individual efforts by the boundary surveyor, while others involve efforts by land surveyors as a profession and a community.

When it comes to doing a “deed search”, ask yourself the following:

How familiar am I with the local clerk and recorder’s office? When was the last time I personally looked for a transaction in a grantor/grantee index? What other historical property ownership

information is available in the area in which I practice?

Did I personally visit the site of the last parcel for which I performed a boundary survey, with the specific purpose of searching for and identifying potential land title issues like gaps, overlaps, encumbrances, and encroachments?

It would be prudent to take steps to start building your own collection of historical land title records by keeping digital copies of the maps and deeds obtained for each project. Organize the documents in a logical way and index them geographically. Maintain good relationships with local organizations that deal with these types of records, such as museums, historical societies, local land attorneys, utility companies, and government agencies. Keep all tools in the toolbox when land title conflicts are encountered, including the boundary line agreement, quitclaim deed, boundary line adjustment, easement, and license agreement. These tools only work when all parties to a land title conflict are willing to cooperate, but often a boundary surveyor can play a key role as mediator and problem solver in these situations.

Exercise discipline and maintain a realistic view of the land title industry. It is important to remember they are in business to make money selling



insurance, not to solve the boundary surveyor's problems.

Take steps to reduce liability and risk related to land title issues by keeping good notes and documenting the work done to research land title issues for each project. Clearly define what title research will be done under your scope of work and what steps can and will be taken when problems are found. Educate your client about the current state of the land title industry, informing them about the quality of the preliminary title reports and other title documents used to do your work. Provide them with a realistic view of what land title insurance is really worth and what protection it is providing.

Finally, there are steps that boundary surveyors can take together to reduce the impacts of the changes to the land title industry. It is possible for a group of boundary surveyors within an area of practice to collaborate on the collection and maintenance of historical land records. The same dynamics that make it easier for title companies to consolidate and offshore land title services make it easier for boundary surveyors to share land title records with one another. This concept of cooperation for the mutual benefit of the profession can extend beyond just land records. Imagine a system in which boundary surveyors could report possible land title problems like overlaps, unrecorded or unidentified encumbrances, encroach-

ments, ambiguous deed calls, and lack of adequate property corner monuments to the community. This sort of reporting system could be easily accessed online, from the comfort of each boundary surveyor's office. Imagine the value this would provide to the larger boundary surveying community and local land owners. It might even provide the incentive for parcel owners to fix these problems sooner rather than later.

What Does the Future Hold?

The trends of consolidation and offshoring in the land title industry are likely to continue. The problems that result from these trends, such as loss of local land title knowledge and poor quality land title services, will also continue. Boundary surveyors will continue to do more of their own land title research and deal with more land title problems.

The future will also provide opportunities for greater collaboration. This includes collaboration among surveyors, governments, nonprofit organizations, and utility companies that maintain historical land title records. Hopefully boundary surveyors will take advantage of these opportunities. Should they fail to do so, perhaps a new type of professional will emerge—one that is

paid to deal with the title problems that land title companies ignore, but that will ultimately need a resolution.

Eventually the land title insurance industry may cease to exist in the American economy. Many other industries are currently struggling to survive the challenges of a great recession and a digital age. If land title companies do not find a way to provide a quality insurance project at a reasonable price, the market will demand other solutions to ensure that real property in America can be sold quickly and with as little risk as possible to buyers and sellers. Perhaps a form of the ALTA survey will become more prominent as a product that offers the value of real research, real measurement, real analysis, and real on-the-ground inspection of land title issues, something much more tangible and often more valuable than an insurance policy with more exceptions and loopholes than the tax code.

As professionals involved in land use, planning, management, development, and land transactions, boundary surveyors must develop a strategy to mitigate the impacts of title industry changes. They must act as problem solvers for their clients, not just problem reporters. The public will benefit the most if the boundary surveyors find ways to mitigate the impacts of the land title industry changes to give buyers and sellers of real property in America as accurate a picture land title as possible. Ultimately, an educated public will seek to place trust in the hands of skilled boundary surveyors, rather than the hands of insurance companies. *AS*

The boundary surveyor's relationships within the title industry are with people, not corporations. When those people are relocated or laid off, the relationship suffers.

