

Preparing a Survey Report Part 3: Service Limitations

This is the third article in a series of articles suggesting formats and contents of a survey report. In the first article [Feb. 2008], I discussed reporting an opinion on the location of corners and boundaries. In the second article [Mar. 2008], I discussed how surveyors could communicate encroachments, gaps and overlaps in a survey report.

The survey report is an excellent media to set forth and explain in more detail the limitations of the surveying services. This section of the survey report, once written for one client, can be used in survey reports for subsequent clients with minor adjustments for the current services.

Ordinarily the scope of services is set forth in the contract. Conversely, the limitations are sometimes stated but often implied from the scope of services set forth in the contract. However, where the client is a layperson, simply stating what will be done during surveying services does not necessarily leave the client with a clear understanding of what was not done.

Stating the limitations of the surveying services in a survey report provides unlimited space to expand and explain limitations to the surveying services. This section will educate the client on limitations to the services that were performed on the client's behalf.

Many surveyors attempt to put limitations of surveying services on the plat (*a.k.a.*, CYA notes). Too many notes or notes that are too wordy clutter the plat with writing and cause the plat to lose the focus and clarity that is an advantage of a plat. The old saying that a "picture is worth a thousand words" becomes meaningless when the picture includes a thousand words.

The general format for preparing commentary on surveying service limitations is to introduce the limitations by stating the purpose for the surveying services that were performed. This in turn will lead to the discussion on the limitations to the services.

Consider the following example of an introduction prefacing the limitations:

Preamble

You have indicated that the purpose for requesting surveying services was to locate the boundaries of your property in order to define the limits of a proposed timber harvest. Accordingly, the services provided have resulted in a boundary retracement survey. A boundary retracement survey is a reasonable opinion on the location of your boundaries communicated in the form of a plat and marked on the ground in conformance with mandatory standards promulgated by the board of licensure. Copies of the standards can be obtained by following the appropriate links found at <http://www.lsrp.com/statinfo.html>.

As in any professional opinion, there can be no guarantee of absolute certainty as explained in *Broyles v. Brown Engineering Co., Inc.* 151 So.2d 767, 772, 275 Ala. 35, 39 (1963).

"If a civil engineer is employed to locate a government land line between tracts or areas, we submit that he would not impliedly insure location of the correct line. In determining this location, it is commonly known that his [opinion] is dependent on obtaining a correct starting point for his survey—a point that is often obscured or is evidenced by misleading or false marks—marks that are made by someone else. An engineer under such circumstances cannot ordinarily be expected to guarantee or insure definite and positive results."

>> By Knud E. Hermansen, PhD, LS, JD

The example of the preamble discloses an important limitation of surveying services—there can be no absolute guarantee of perfection for most surveying services.

The general form and content for explaining limitations would include the: 1) identity of the limitation, 2) explanation of the limitation's relevance, 3) statement regarding the ramifications of the limitation, and 4) advice to the client on dealing with the limitation.

Limitations that may be discussed in the survey report fall into six categories, with considerable overlap between the categories.

The first category of limitation includes those limitations that are normal and a reasonable part of the surveying services that were performed. These limitations are often explained in the surveying report because the client or third parties may not know they are reasonable and a normal part of the surveying services.

Consider the following two examples of common limitations that often apply to a boundary retracement survey. These limitations often go unreported to the client, leaving the client under a misconception of the reliability of the surveying services:

Monument & Corner Identification

The relevant deed descriptions call for some of your corners to be marked by stones, trees, posts, or other natural materials that are not susceptible to detection by electromagnetic devices. These materials often decay, are lost to fire, vandalism, logging, construction, or become obscure in the landscape. In some cases the objects are covered by vegetation detritus or snow. As a result, the accurate identification of your corner monument or its former position is often difficult or impossible given the lack of reliable information, evidence lost to time, decay, or deceit; along with cost and time constraints fixed for completing the surveying services on your behalf. Every attempt was made, using the evidence available and adhering to reasonable standards under the circumstances, to locate the former position of the monument. Yet, another competent surveyor, using the same information, may come to a reasonable but different or conflicting opinion. Accordingly, you are advised to exercise some discretion when cutting timber or improving your property up to the boundary that is now marked.

Public Record Research

Public record research was conducted to identify and gather boundary location information such as bearings, distances, and monuments that define the limits to your property. The conduct of the research met mandatory surveying standards or those standards that a reasonably competent surveyor would be expected to comport with in the same or similar circumstances for the locality where the property is located. Accordingly, the research that was conducted is not without potential problems or weaknesses.

Records are indexed by past and present owners of your property making the research tedious and time consuming. Misspelled names, multiple parcels owned by a person in your chain of title, inconsistent procedures for indexing corporate names, failure to record deeds, title passing by

probate or intestacy, deeds indexed outside of the expected time period of the index, records that have deteriorated to the point they are unusable, incomprehensible handwriting, faded writing, improperly indexed records, ancient deeds stored in inaccessible locations or unavailable, poor quality copies of the original, deed books misplaced, and so on, make a complete and comprehensive search impossible to complete accurately, costly to perform, and time consuming.

As a result, errors in the recent boundary description may be undetected, historical easement conveyances hidden, and relevant boundary information not recovered, to name but a few.

To overcome these obstacles, considerable time and fees will be required. In the vast majority of cases, the additional time and cost required will not be worth the additional information, if any, that would be discovered. Nevertheless, it must be recognized that these circumstances do pose a risk of inaccuracy to both an attorney's opinion on the strength of your title and my opinion on the location of your boundaries.

Additional affirmative insurance coverage can sometimes be obtained to indemnify you against losses incurred from one or more of these happenstances.

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Similar explanations falling in this category of limitation would include researching private records, examining municipal records for utilities and road easements, easements recorded that predate the boundary information, the availability of relevant records held in private ownership, the change in magnetic bearings over time, uncertainty in measurements due to the imprecise equipment originally used along with the lack of skill and education employed by the original surveyors, and the failure to perform a forward search in the public records, to name a few.

A second category of limitation that can be discussed in the survey report are those limitations that may be reasonable but mistakenly believed by the client to be provided or performed by the surveyor. For example, stating that surveying services will consist of boundary retracement services often cause some clients to believe that all boundaries will be located such as wetland boundaries, 100 year flood plain boundaries, set-back boundaries, and easement boundaries to name just a few.

Consider the following example illustrating a limitation explanation falling in this category of limitation:

Wetlands

The identification and delineation of wetlands were not a part of the boundary retracement services provided. Federal and state legislation has defined and established restrictions for the protection of wetlands. The presence of wetlands on or near your property will limit or restrict the use and improvement of your property. If you are contemplating the development or improvement of your property you would be wise to retain the services of a specialist to identify wetlands and delineate the boundaries to the wetlands. For a fee to be negotiated, this firm will map the delineation of the wetlands accomplished by a specialist. You should consult with your state environmental protection agency for a more detailed explanation on identifying wetlands and laws meant to ensure their protection.

A third category of limitation that may be placed in the survey report are explanations on limitations resulting from common misrepresentations of surveying services communicated to the client by other professionals. A common example is the misconception the client often has that the mortgage loan inspection is a survey. This misconception is widespread and is caused in part by the fee for the service being listed as a “survey” cost on the HUD 1A closing form. Another common misconception is that the surveyor who has performed a record search will also have examined the title to the property.

No Title Opinion

The services provided do not include and should not be construed to be an opinion on the title. A record search performed as part of the surveying services does not substitute for a title search and a title search by a title abstractor does not substitute for a record search by a surveyor. While boundary information is often found in title documents, the examination of the same document by the title examiner and surveyor is different. Title abstractors look at the parties, interest conveyed, the intent of the parties, recital, type of deed, consideration, dates of execution, etc. A surveyor looks at the description of the property and other spatial data bearing on boundaries or use of the land (e.g., easements). A poor description often passes good title while a good description may not necessarily pass good title. Often boundary information is found in plats, miscellaneous records, neighboring deeds, etc. These records are seldom examined by a title abstractor. Furthermore, title abstractors usually limit the time period encompassed by a title search back 40 years or less from the present time period. On the other hand, surveyors will often search back in time for a century or more to the first description of the boundary in order to get original information and identify omissions or blunders in the current boundary description.

As a result of the record research, an opinion on the record boundary is presented. An opinion on your title must be obtained from an experienced real estate attorney.

Limitations that arise as a consequence of the client’s intentions comprise a fourth category of limitation that may be discussed in the survey report. This category includes a discussion of services that the surveyor knows should be considered by the client but the surveyor can not or does not want to perform these services for the client.

For example, a surveyor that is performing a boundary survey for the client who intends to sell a lot, may want to expressly advise the client that the surveying services do not include services that the client should obtain before conveying the lot. These services might include a site evaluation for the suitability of an on-site septic system, soil survey, engineering design, public road access permit, invisible or “dormant” easements, zoning constraints, and subdivision restrictions or limitations, to mention a few.

On Site Septic System

The surveying services performed on your behalf did not include a site evaluation for the placement of a septic system. The construction of an on-site septic system is required for all residential property not able to be served by a public sewer. Before the construction of an on-site septic system can commence, a site evaluation must be done by a person licensed in this state to perform septic system evaluations. After the site evaluation, a permit must be sought and issued from the appropriate agency. This service should be completed prior to conveying the lot. Failure to perform this service could result in creating a lot that may not be suitable for residential construction.

Please consult with your local code enforcement officer if you have questions regarding on-site septic systems and what individuals are licensed and able to perform these services in your area.

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A fifth category of limitation that may be covered in the survey report are common problems that often give rise to expensive litigation involving the surveyor through no fault of the surveyor. Many of these situations appear to have arisen through legislation meant to protect the environment, buyer, or government. Closing agents and lending institutions may not know about the legislation, understand it, or have designated

another professional to check on the application of the legislation to the property. More often than warranted, the surveyor discovers they are the ones designated by the closing agent to check on the matter but only after the surveyor has completed the surveying services. Right or wrong, the surveyor is treated like the grade school teacher who is expected to spot child abuse among the students in her class even though she has never been trained as a social worker.

Examples of this category of limitation include warnings of inchoate mechanics liens; underground utilities, invisible or “dormant” easements, grave sites, significant archeological sites, historical structures, significant or endangered habitat/species, malfunctioning septic systems, zoning violations, and hazardous waste, to name a few.

Underground Utilities

The surveying services did not include the identification, detection, or location of underground utilities on your property. Disturbing underground utilities may result in hefty penalties and damages you will be liable for. Before digging or excavating on your property you are required to check for the presence and mark the location of underground utilities.

Before excavating or digging, call 1-888-digsafe.

Client specific limitations comprise the sixth and final category of limitation that may be discussed in the survey report. Sometimes the client is the surveyor’s own worst enemy, preventing the surveyor from properly and successfully completing the surveying services on behalf of the client in an efficient and timely manner.

Situations falling within this category often arise, yet vary greatly. In one situation a surveyor may be asked to rely entirely on the research performed by someone else (a non-surveyor) or limit the research to a certain time period regardless of where the evidence might lead. Surveyors have been asked to start and complete surveys in the winter where deep snow make monument detection difficult, if not impossible. There are numerous clients who insist on starting logging or construction before the survey is complete thereby chancing the destruction of field evidence or making the surveyor’s field work much more difficult and costly. It is common for surveyors to be asked to perform ALTA/ACSM land title surveys in a restricted time period, yet the record information is delivered just before the documentation is due from the surveyor. Many surveyors can share the experience of being asked to survey for a client who has already inflamed the neighbor (indeed, neighborhood) by marking the (supposed)

common boundary and then asking the surveyor to verify the client’s opinion (making the surveyor appear to be either a “hired gun” for the client or angering the client to the point payment for services is not forthcoming when the client’s opinion is shown to be wrong).

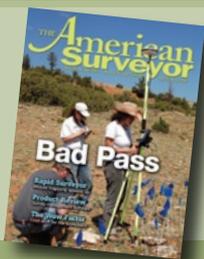
Road Width

In order to reduce the fee for surveying services, you have specifically requested that I not examine the town records now archived at the state capita. Tedious and time-consuming research is necessary to determine if the public road bordering your property is described in these historical municipal records. This research would be necessary to determine if a width different from the presumed width of three rods (set by common law) should be used. Public road information is commonly located in the historical town meeting minutes of the current town or the municipalities that are a predecessor to the current town. In my experience, approximately 40% of public roads have a width more or less than three rods (49.5 feet). The most common widths, aside from three rods, are two rods (33 feet) and four rods (66 feet). It is not unusual to have a width of six rods (99 feet) for a public road. In one case, a road width of eight rods (132 feet) was created by a municipality. The width of the public road could affect the building set back location and the area that may eventually be devoted to use of the public thoroughfare without compensation to you for damage to your property that is located in this area.

To avoid creating title problems when developing your property, you are advised to have the necessary research performed, obtain affirmative title insurance coverage (if possible), presume a worst case scenario when developing the property, or consult with an attorney for further options.

While a discussion of limitations in the surveyor’s report could never cover all limitations, it is wise to try and cover as many limitations as possible. Undoubtedly, the length of this section precludes many clients from reading it. Nevertheless, experience has shown that surveyors face a great potential for liability for not communicating with the client, not for communications that the client chooses not to read. 

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