Not All Surveys are Created Equal - The Benefit and Uses of an ALTA Survey

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While most lenders require a title search before financing the acquisition of commercial real property, survey requirements are not as common. There are many issues that may be disclosed by a survey of a property that may not be obtained from a title search. There are several types of surveys that a lender may consider, but boundary surveys and ALTA surveys are likely the most common. Boundary surveys show the boundary lines between land parcels, but not necessarily any improvements on the property. ALTA surveys are boundary surveys created pursuant to a set of minimum standards adopted jointly by the American Land Title Association (ALTA) and the American Congress on Surveying and Mapping (ACSM). The surveyor depends on these detailed standards to prepare a survey that correlates with the needs of the either or both of the property purchaser and the lender and the requirements of the title insurer. ALTA and ACSM issued the current version of these requirements in 2011.

Although a boundary survey may cost significantly less than an ALTA Survey, an ALTA survey is more intensive and will provide more comprehensive and detailed information. ALTA surveys provide information about property boundaries and easements, as well as improvements such as fences, trails, roads, rights of ways, and other features on the property that may affect ownership of the property and may require further investigation into the possibility of adverse rights. An ALTA survey will also show means of access to the property, the zoning classification for the property, and the flood zone classification for the property. Boundary surveys often lack the level of detail required for a commercial real estate purchaser or lender to properly evaluate the property.

Lenders should require ALTA surveys to ensure that their security interests and investments are protected from adverse claims that may not be disclosed by a title search. The information provided on an ALTA Survey will assist the lender and the purchaser in evaluating the property for potential risks and benefits of owning the property.

There are five (5) major concerns that a lender will want to address during its review of the ALTA survey. First, when ordering the survey, the lender may want to request that the surveyor also draft a legal description for the property, so the lender may compare the surveyor's legal description to the legal description in the title commitment. If the legal descriptions are not the same, then there may be a problem that needs to be addressed.

Second, the lender needs to study the easements and rights of way that are shown on the survey to determine how they encumber or benefit the property. Certain types of easements and rights of way, and their location, may interfere with the purchaser's intended use of the property. It is also important to compare the easements shown on the survey to the easements listed as exceptions in the title commitment to confirm that all exception easements are shown on the survey and vice-versa.

Third, the lender should determine whether there are any encroachments related to the surveyed property. An encroachment is an overlap of an improvement from one property onto the property of another or an overlap onto an easement. Encroachments are relatively common and may require an easy cure (e.g., granting of an easement); some encroachments, however, may be expensive and difficult to cure.
Fourth, the lender should determine whether there are any setback violations for improvements on the property. An ALTA survey will show the setback requirements pursuant to the local zoning ordinance. If the improvements are closer to the property line than the ordinance allows, then the owner of the property has a setback violation. Similar to encroachments, a setback violation may require a simple cure (e.g., variance from the local governmental authority) or an expensive and difficult cure (e.g., removal of the building or improvement that is in violation).

Fifth, the lender can use the ALTA survey to determine how the owner or purchaser can access the property. An ALTA survey will show the surveyed property and surrounding properties, and will help the lender determine whether the purchaser has access to a dedicated roadway. If the property lacks such access, then the property is likely landlocked, and the owner or purchaser will not have a legal way to access the property. If the surveyed property is landlocked, the lender should require that the owner or purchaser obtain and record an easement for ingress and egress before allowing the transaction to close.

Some of the items shown on an ALTA survey may be difficult to understand, so the lender should not hesitate to contact the surveyor to ask questions and raise concerns.

*For more information about this topic, please contact the author or any member of the Williams Mullen Financial Services & Real Estate Team.*

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