



Surveying the Unknown

With many commercial real estate buyers using cash, rather than traditional loans to acquire distressed and opportunistic assets, it is no wonder that extra costs for items that were previously "lender requirements" are being trimmed from acquisition budgets. One such expense being cut is the cost of a current ALTA/ACSM survey. There are good reasons why lenders require a current survey for every transaction and, while skipping a new survey can save several thousands of dollars now, there are certainly potential drawbacks that every buyer must consider:

◆ **Boundary Lines and Existing Encroachments:** Without a survey, a purchaser cannot fully analyze the current status of the property, identify access, easements, setbacks, improvement locations, parking and verify the accuracy of a metes and bounds legal description. Sadly, boundary and encroachment disputes are a fact of life and these are not issues you can see with a casual walk of the property. In this case, what you can't see can still hurt you and only a current survey can help you hedge against the costly downside risk of such disputes.

◆ **Title Insurance:** We recommend obtaining an ALTA 2006 Owner's Extended Coverage title insurance policy rather than obtaining standard coverage. Unfortunately, often times, a title company may require an updated survey in order to provide such extended coverage. Even in those cases when a title company will provide Extended Coverage without a current survey, the issued policy will have a coverage exception for any "facts, rights, interests or claims which would be disclosed by a correct ALTA/ACSM survey." Given this exception, it goes without saying that in the event of an actual title claim arising from an existing easement or encroachment, your policy will have a pretty wide gap in coverage if all the title company needs to argue to deny coverage is that the defect in question would have been disclosed by a current survey.

◆ **Unplotted Easements:** All properties are subject to certain title exceptions that should be reviewed during a buyer's due diligence period. Not only is it critical to see the clearly defined encumbrances, but the easements that cannot be located can impact the marketability of title, existing use rights and the right to redevelop property in the future. Prior to your acquisition, a buyer can object to an unlocated easement or try and obtain affirmative title insurance coverage, but without a survey, these items will be unknown until there is an issue, in which case you alone will be left to resolve the problem.

For the cost of a survey, a buyer and its investors can rest assured that they are fully apprised of any potential title and survey issues early-on, and make an informed decision to move forward with a full understanding of the property. For these reasons, and many more, we recommend obtaining a current ALTA/ACSM Land Title Survey for your next acquisition.

We assist in all phases of the acquisition of distressed and opportunistic assets to take advantage of today's market, including due diligence, negotiation and documentation of purchase agreements, financing and development, leasing and operation.

For more information please call (480) 889-8948, send an email to info@steinlawplc.com or visit www.SteinLawPLC.com.

Upcoming Speaking Engagements

[Scott J. Stein](#) will be presenting to the Commercial Group of the Southeast Valley Regional Association of Realtors (SEVRAR) (<http://www.sevrrar.com>) on Thursday, April 28, 2011, on Battle Scars: Market Driven Changes to Boilerplate Real Estate Transactional Agreements

Stein Law Recent Developments Archives

The following is a link to our Stein Law, PLC Recent Developments Archives:

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Practice Areas

Stein Law, PLC is a boutique business and real estate transactional practice offering legal services in the areas of:

◆ real estate purchase and sales, leasing and development;

- ◆ business transactions, joint venture and operating agreements, and corporate contracts;
- ◆ entity formation;
- ◆ loan financings, workouts and modifications; and
- ◆ hospitality development, management and licensing matters.

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