

August 2012

# SIDE SHOTS

Professional Land Surveyors of Colorado

Volume 43, Issue 3



## 'Being in the Wrong Place at the Wrong Time'

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# Rule of the Month, 6.5.2, Responsibility to Research Records

By Earl Henderson, PLS

**“6.5.2 Responsibility to Research Records.** The licensed professional land surveyor shall conduct or be responsible for conducting such research activities that are needed to properly define *the property boundary* relative to *instruments of record* and show all visible evidence that may affect ownership and property rights. This may include record research at the County Clerk and Recorder’s Office, the Colorado Department of Highways, the State Office of the Bureau of Land Management, the County Surveyor’s Office, an abstractor’s office and any other appropriate local offices; as well as field research of physical features and monuments and any other features significant in the locality. *Instruments of record* may be obtained from an abstract, title commitment, or title policy.” *(emphasis added)*

It is my contention that this Rule is closely associated by many Land Surveyors (LS’s) with Colorado Statute 38-51-106(i) which requires Land Survey Plats to contain: “A written property description, which shall include *but shall not be limited to* a reference to the county and state together with the section, township, range, and principal meridian or established subdivision,

block and lot number, or any other method of describing the land as established by the general land office or bureau of land management;” *(emphasis added)*

And let’s not forget Item 6.B(i) of the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys (Effective February 23, 2011) which in part requires an ALTA/ACSM Land Title Survey (ALTA Survey) to contain: “The *current record description of the surveyed property*, and any new description of the *surveyed property* that was prepared in conjunction with the survey, including a statement explaining why the new description was prepared.” *(emphasis added)*

The reason for my contention is that I often see Land Survey Plats (LSP’s), and don’t forget that the AES Board at DORA has ruled that an ALTA Survey is also a LSP, that contain a property description headed by “Provided by the Owner” or “As shown in title commitment...”. It seems as though the surveyors who are using these phrases are doing so by inappropriately combining Rule 6.5.2 which allows the surveyor to accept the *instrument of record* from a title commitment,

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with Statute 38-51-106(i) which does not require a notification of where the property description was obtained.

Why do I feel that it's inappropriate? Well, sit back, relax, and I'll tell you. Hopefully we have all figured it out by now that we survey *property* not descriptions found in documents (like I've been told by some title agents). Usually, the property boundary and the description are NOT the same thing or even in the same place, but that's a discussion for another article. Rule 6.5.2 states that as LS's we are responsible for the research "to properly define *the property boundary*". Notice that it does NOT say, "To properly locate the description on the ground." The *instrument of record* should only be the first piece of our research. We can obtain the *instrument of record* from a title commitment or the other listed sources, but we have to obtain the instrument of record one way or the other in order to properly complete our research per Rule 6.5.2 and also to properly survey *the property boundary* (Remember, we don't survey the description.). So the phrase quoted above that the description is "As shown in the title commitment..." doesn't qualify, in my humble opinion, as the correct description of the property being surveyed since it's not from the *instrument of record*. It might read the same, and 38-51-106(i) only requires "a written property description..." without requiring that it be from the *instrument of record*, or an accurate description or even of the property being surveyed (although I think that's implied don't you?). Plus, Rule 6.5.2 allows us to obtain the *instrument of record* from those sources listed but it does not go so far as to allow us to obtain the property description from those sources, two very different things.

If your LSP is also an ALTA Survey the requirements are for the "*current record description*" not the description found in the title commitment so why not show that on your plat by referencing the *current record document*? If you reference the description from the

title commitment then you're not following the current ALTA/ACSM standards and you also better hope that the title company didn't have a typo in there somewhere. And finally, ALTA or not, I want my clients, my colleagues, and everyone else to know that I'm surveying the correct property using the correct description, so I have found it best to head the property description on LSP's with a phrase more like "Property Description as found in Reception #1234567 at the Moffat County Clerk and Recorder's Office:". That way there's no mistaking that the description is the proper description for *the property boundary*.

So, in conclusion, if you're using a phrase similar to "Description from title report..." then you're not following the ALTA standards. If you're using that phrase on your LSP's then I don't feel as though you're following Rule 6.5.2 which requires you to "properly define the *property boundary* relative to *instruments of record*".

Given all that, can you imagine a situation in which you would use a property description that was "Provided by the Owner?" The first thing we all do once the client describes to us what they own is go and get a copy of the *instrument of record* so we can survey *the property boundary* rather than the limits the owner pointed to. "Provided by the Owner" makes me wonder if the owner wrote the description themselves on a bar napkin! As a retracement surveyor especially, I find any LSP with a description headed by "Provided by the Owner" to be suspect because I have no idea where that description came from.

But all of this is just what I think. What do you think? I would enjoy reading your feedback, if you care to send it to Earl@ZenithLS.com Heck, I might even respond. ■