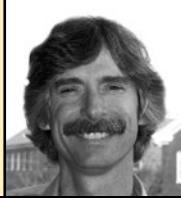


Reconnaissance



By Gary Kent, LS

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ExpressMap—The End of Surveying?

There has been a tremendous flurry of emails flying back and forth across the country over the last few weeks regarding ExpressMap™ and how First American Title is using it to try to put surveyors out of business. This column will try to separate the myths from the facts of ExpressMap.

ExpressMap—which is not new, having been around for about 10 years—is a risk management/assessment tool that First

would simply never order. One such transaction involved a large ski resort; the survey quote was hundreds of thousands of dollars and the time frame was many months. Obviously—through no one’s fault—no survey would ever be ordered in such a situation because the transaction had to close long before the survey could and would be delivered. Yet the lender still wanted the standard survey exception removed. First American responded by developing a way to address those situations; hence, ExpressMap.

information in relation to titles to real estate and of insuring owners and others interested therein against loss by reason of encumbrances and defective title; provided, however, *that no such information shall be so furnished nor shall such insurance be so issued as to North Carolina real property unless and until the title insurance company has obtained the opinion of an attorney, licensed to practice law in North Carolina and not an employee or agent of the company, who has conducted or caused to be conducted under the attorney’s direct supervision a reasonable examination of the title. The company shall cause to be made a determination of insurability of title in accordance with sound underwriting practices for title insurance companies.* [emphasis added]

First American Title did not develop ExpressMap to “put surveyors out of business.”

American Title uses for its own internal purposes. For a fee, First American will contract with someone to fly the subject property to get a current color aerial photo, and then their own staff visually overlays the boundaries and easements onto that aerial. The result is used to assess its own risk in providing ‘extended coverage’ (i.e., removing the standard survey exception) on a title policy. It is not an external product sold separately from title insurance, and the document clearly states that it is not a survey.

As originally conceived, ExpressMap would provide First American a tool to use in transactions for which surveys were prohibitively expensive and time consuming, and which therefore a client

ExpressMap does not purport to satisfy the *Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys* or even to replace a survey. What it *does* is satisfy First American Title Insurance Company’s *underwriting needs* in order to be able to provide extended title insurance coverage without a survey.

Virtually every state regulates title insurance, just as every state regulates surveying. In order to issue a title policy, most states require that title companies conduct an examination of the title, viz.:

North Carolina General Statutes—§ 58-26-1. Purpose of organization...

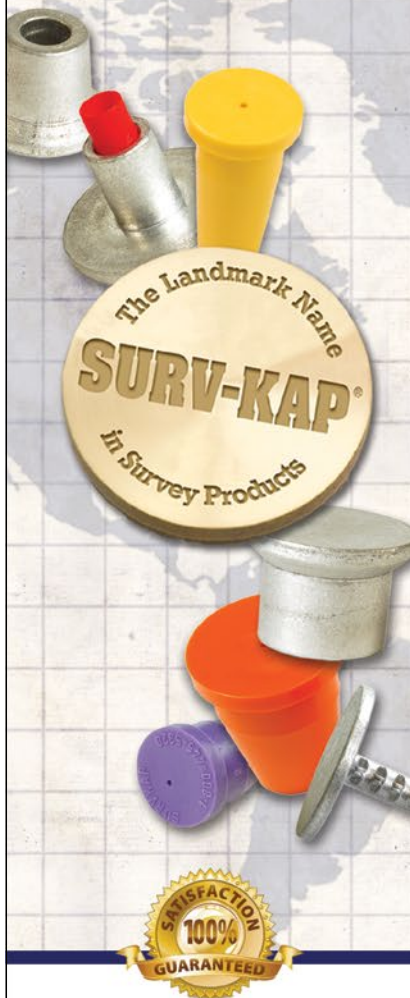
(a) Companies may be formed ... for the purpose of furnishing

Ohio Revised Code—§ 3953.07. Sound underwriting practices.
No policy or contract of title insurance shall be written unless it is based upon a reasonable examination of the title unless a determination of insurability of title has been made in accordance with sound underwriting practices for title insurance companies. ...[emphasis added]

The reason most states require that certain underwriting standards be met is so title insurance companies will not overextend themselves by issuing ill-conceived coverage resulting in an inordinate number of title claims that the company will be unable to pay, or that will result in significant harm to the public because of a large number of claims.

Some have claimed that ExpressMap is contrary to the public interest, but this

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is simply not the case, at least from a title insurance standpoint. With ExpressMap, buyers *do* get extended title insurance coverage, so they *are* protected. Where the public's interest *might* be an issue is if ExpressMap does not meet the underwriting standards of a state with respect to providing that extended coverage. This, however, is a question that can only be addressed by querying a state's insurance commissioner (or equivalent) as to the viability of ExpressMap with respect to that state's underwriting requirements.

The author of this column, being the chair of the NSPS ALTA/ACSM Standards Committee and of ALTA's liaison committee with NSPS, has spoken with a representative of First American Title Insurance Company regarding surveyors' concerns. This person, who is also on the ALTA liaison committee, is familiar with ExpressMap and, in fact, has a title agency that also has registered surveyors on staff and provides surveying services. He welcomes the idea that the underwriting issue be broached in each state, although he believes that First American likely did this when ExpressMap was first rolled out.

Surveyors in a number of states have raised questions as to whether or not ExpressMap constitutes the practice of surveying. Some have said that "NSPS should do something" about ExpressMap. ExpressMap or some aspect of it may well constitute the practice of surveying in some states, but both surveying and title insurance are regulated state-by-state and not nationally. Thus, while NSPS will continue to engage First American in a dialogue, options on a national level are limited to such dialogue, and to applying pressure on First American if appropriate, disseminating information and supporting its members and affiliated state organizations. Whether any laws are being violated is an issue for each state to weigh.

The primary concerns of surveyors are (or *should*) be (1) whether or not ExpressMap and/or its marketing materials violate their state's surveying registration act, and (2) whether or not ExpressMap meets their state's underwriting standards for providing extended coverage.

If a surveyor or surveying society believes that ExpressMap violates their state's registration act, they should either file a complaint, or engage their board of registration/examiners in a dialogue on ExpressMap. From the emails that have been passed around, it appears that there are surveyors in at least one state who are actively trying to get their board to look at

ExpressMap. By one report, however, this was already done a few years ago in that state, and no violations were identified.

Alternatively, if there is a question as to whether title insurance underwriting standards are being met, the state's insurance commissioner should be asked for an opinion on ExpressMap. Keep in mind, that no state requires a survey for title insurance, but it is possible that a state *might* require a survey (or at least more than an ExpressMap) to provide extended coverage. Whether or not that is the case depends on that state's title insurance statutes and/or regulations.

One thing is for certain: First American Title did not develop ExpressMap to "put surveyors out of business." That is akin to saying that banks wanted to put appraisers out of business when they were issuing second mortgages without an appraisal, or that the local GIS department is trying to put surveyors out of business by drawing parcel lines in its GIS.

ExpressMap has nothing to do with 'putting surveyors out of business;' it was an entrepreneurial response to a business need and opportunity that First American Title experienced. In fact, this writer has been told by a number of title people that title agencies would prefer to have a survey on *every transaction they insure*. But that simply is not going to happen because seldom is anyone going to pay hundreds of thousands of dollars for a survey. Big lenders will simply apply pressure when and where they want, to get whatever they want, from whomever they want it. Resisting the wishes of Wells Fargo, for example (which, as of the end of the third quarter of 2012, had over 30 percent of the mortgage market in the United States), will get you nowhere fast. If there is one thing we all should have collectively realized over the last 5 years, it's that no one, including the federal government, is going to tell the big banks how they are going to operate. If they want a way to get extended title insurance coverage without a survey, they will get it.

To summarize, if surveyors are concerned about ExpressMap they can, and absolutely should, make the inquiries suggested above to determine the situation in their state vis-à-vis surveying and title insurance statutes and regulations. If it turns out that First American needs to modify what it is doing in some (or all) states, presumably they will accommodate. In the meantime, we will continue to engage First American Title on behalf of the surveying community. 