

PROTECTING YOUR COMMERCIAL PROPERTY INVESTMENT BEFORE SIGNING ON THE DOTTED LINE

You have completed your business plan, identified the need for commercial space ownership, identified the appropriate loans and lenders, found the suitable property, performed the market analysis, retained a real estate attorney, negotiated the preliminary terms and entered into a contract of sale for a commercial parcel of land. Now your due diligence starts, that period of time in which you have the opportunity to uncover any possible issues that may have a negative affect on your potential investment. The information gained during the due diligence period gives you the information that may lead to you breaking off the contract or renegotiating the terms of the deal. It's during this time period that the title search is completed, the building is inspected and the land survey is performed.

The survey will prove to be one of your most valuable tools and will improve your position during the final negotiations. Your survey will not only identify conditions of public record as disclosed in the title report and by other research performed by the surveyor but will discover any unrecorded property rights exercised by third parties. These unrecorded rights could include encroachments onto or from adjoining properties, physical evidence of easements, and flaws in the property description.

As a benefit to the public, the American Land Title Association (ALTA) and the American Congress on Surveying and Mapping created a national standard for Land Title Surveys of commercial properties in 1988. The Land Title Survey, commonly called an ALTA Survey, provides the client a level of protection not obtained by a routine boundary line survey. This national standard details the minimum performance to which the Land Surveyor must prepare the survey. It includes determination of the property lines, location of the site improvements, and location of relevant easements contained in the Title Report. The standards also stipulate the technical details of measurement procedures. In addition to these standards there are optional specifications referred to as the "Table A" list. You have the unique opportunity to accurately define what additional information will be researched and reported by the Land Surveyor. This information can include FEMA flood plain location, pertinent zoning ordinances, building setback

compliance, location of underground utilities and location of parking spaces, to name a few. The ALTA survey standards and Table A can be found at www.alta.org under the forms and standards tab.

Our firm was recently retained to perform an ALTA Survey of a small shopping mall fronting on a State Highway in Rockland County. With the order we received the Table A which had the following items checked off: Location of utilities both aerial and underground, parking spaces, current zoning information, flood zone location with designation and monumentation of the property corners. The final survey map detailed the boundary line information, including the field evidence of an unrecorded access easement through the subject property and the encroachment by 5 feet of a neighbors garage, all of the physical features including the buildings square footage and boundary line set back distances, the pertinent zoning regulations and the location of the limit of the 100 year flood zone.

The client was then able to use the final survey map for two separate purposes. She was first able to insist that the owner resolve the two boundary conflicts, the encroaching garage and the unrecorded easement, before the closing. This eliminated two costly property line headaches her company would have had to deal with at some point in the future. Secondly, she was able to apply her company's proposed expansion plan to the property. By performing a feasibility study she was able to identify certain zoning issues that would need to be addressed for the proposed expansion and identify the physical and regulatory constraints that would have a negative effect on the expansion project schedule.

An Alta Survey will give you the necessary information to identify, and if required enable you to begin resolving, issues before you sign on the dotted line. With out the ALTA survey you expose yourself to the risk that problems that may go undetected and therefore have a detrimental effect on your monetary investment.

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