

ExpressMap
from
First American Title

List of Concerns from ACSM

Drafted by Curt Sumner LS, Executive Director
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1. The initial paragraph in the promotional material found on-line at www.fatcoboundaries.com defines *ExpressMap* as an alternative way to insure title to land, free and clear of survey matters, except those matters disclosed by the *ExpressMap* investigation.

How does the *ExpressMap* process insure that survey matters have been addressed without performing a survey? It is relatively easy to superimpose descriptions of property boundaries and title exception information (such as easements) onto an aerial photograph, but without actual survey data there is no way to determine if it is positioned accurately, or if features (such as utility structures) actually fall within the specified easement. This is because the easement descriptions are typically tied to the boundary lines of the property, and the position of the boundary lines can only be established by an actual survey.

The fact that an easement is shown to lie within a property is less valuable if it cannot be shown whether whatever is covered by the easement lies within the easement.

Additionally, consumers can be misled by the portrayal of features on an aerial photograph because they do not typically understand that scale, rectification, and other factors can distort their true location.

2. In the section of the *ExpressMap* promotional materials labeled "ADVANTAGES", there is the statement "Licensed Land Surveyors in corporate staff underwriting do the boundary and related title analysis".

What specific methods, procedures, and tools are utilized for the boundary analysis? Certainly, one is not to expect that the *ExpressMap* is a survey. This is clearly stated in several instances throughout the promotional materials. Yet, in this section boundary analysis is implied. Without actual survey data, analysis is impossible.

To state that analysis is done as a part of the *ExpressMap* process is at least misleading, if not a misrepresentation.

3. In the section labeled "Straight answers to your *ExpressMap* questions", there are concerns in several areas.

A) Under "Why develop the *ExpressMap* process?", the first paragraph rightly points out that one of the uses for ALTA/ACSM surveys is for the title insurer's purposes. **However, the second paragraph states *ExpressMap* provides the same results. While *ExpressMap* may address in a cursory way easements of record, etc., it cannot address other evidence found during a survey that can also affect title. Nor, as stated previously, can it show the actual location of easements, etc. with respect to property lines. For example, an ALTA/ACSM survey requires the surveyor to show the location of physical features within five feet of each side of the boundary lines for possible encroachments. The *ExpressMap* cannot possibly do this because no boundary location work is performed.**

The ALTA/ACSM survey also is required to show other evidence that cannot be shown by *ExpressMap*. Included in this group of evidence is: evidence of monuments found or placed, and the location of buildings with measurements perpendicular to boundary lines. The position of buildings with respect to boundary lines is certainly an important item since problems will arise if setback restrictions are not met.

B) Under "Who in Corporate Staff Underwriting prepares the *ExpressMap*", reference is made to the fact that licensed land surveyors and survey technicians gather and review information regarding boundary locations. **This is very misleading to the layperson because it implies that boundary locations are actually analyzed. Of course, this is not possible since no field surveying is done to gather evidence on which an analysis can be conducted. An effort is made in the promotional material text to indicate that the work of the staff is done to make underwriting decisions; however, if those decisions are made for matters regarding their relationship to boundary lines, *ExpressMap* procedures do not allow for such decisions to be made.**

C) Under "How does the process work", there is language that describes how the client may select the *ExpressMap* as an alternative to an ALTA/ACSM survey. **It is also stated that an analysis of the situation is made to determine whether the project is accepted. There is no language relating to whether or not the client is fully informed of the difference between *ExpressMap* and an ALTA/ACSM survey, or whether the full benefits of the ALTA/ACSM survey are explained to the client.**

Is there incentive to fully explain the difference to the client since the premise of the *ExpressMap* is that it is only for the benefit of First American Title?

D) Under "What is the product?", it is stated that the product is an alternative to a standard ALTA/ACSM survey. **While this is factual with regard to review of matters revealed in the title commitment as survey exceptions, as noted above, *ExpressMap* cannot be a true alternative to an ALTA/ACSM survey in every respect. This fact is not made clear in the promotional material.**

E) Under “Will any First American office be able to offer the *ExpressMap*?”, it is stated that all offices can offer the product, but that the work will be done by corporate staff underwriters in the *ExpressMap* office. **Some of the activities performed by the *ExpressMap* staff may fall under the laws governing the practice of surveying in some states. No individual is allowed to practice surveying in any of the 50 states or 4 territories without holding a license in that jurisdiction.**

F) Under “Does the *ExpressMap* eliminate the ALTA field survey and plat?”, it is again stated that the purpose of the typical field survey is to provide an underwriting tool to the title insurer; therefore, *ExpressMap* does replace the ALTA/ACSM survey if First American determines that such a survey is not required for underwriting decisions.

Again, the issue is whether the it is made clear that the *ExpressMap* does not provide all of the benefits to the client as does an ALTA/ACSM survey, and that even the information that affects underwriting decisions cannot be shown with the same degree of certainty.

A boundary line is shown on the *ExpressMap*, but how is its location determined by First American staff? How can determinations be made with regard to underwriting decisions if the actual relationship between the boundary line shown and features on the aerial photograph cannot be determined?

G) Under “Will the ALTA/ACSM certification be used?”, it is rightly stated that the certification will not be used for the *ExpressMap*. **However, the logic given for why it is not needed is stated as being because the only purpose of the certification provided by the surveyor is for the benefit of the title insurer. This is certainly not true. The certification provided for an ALTA/ACSM survey is for the benefit of the client, and sometimes others, as well as for the title insurer. The certification covers the entire body of work included in the ALTA/ACSM survey, not just the title exception references listed in the title commitment.**

While it is stated that there will be notes provided on the *ExpressMap* noting that the data is compiled for the use of First American only, there remains the likelihood that clients may expect that the product is of greater value to them than it actually provides. This is because the promotional material indicates that the *ExpressMap* eliminates the need for an ALTA/ACSM survey and plat.

H) Under “Can ALTA surveys be submitted as they have been in the past?”, it is stated that they can. **In this paragraph, it is stated that the selected surveyor collects the record data, and follows the standards adopted by ACSM/ALTA. This statement implies that the surveyor will collect all record data. While it is true that most surveyors collect data related to the analysis of boundary lines, even under the requirements for an ALTA/ACSM survey, the surveyor is to be provided with “Record Documents”, especially those related to easements, servitudes, and covenants noted in the title commitment. The ALTA/ACSM survey is a team effort that generally includes, among others, a title insurer who is responsible for providing “Record Documents” to the surveyor.**

From the manner in which this paragraph is written, the client may conclude that the title insurer is not involved in gathering and providing to the surveyor, record data pertinent to the property.

I) Under “Does First American discourage surveying?”, the implication that it does not rings somewhat hollow. **The promotional materials go to great lengths to imply otherwise, as well as to imply that surveys are not necessary in order for underwriting decisions to be made.**

Title insurers have the right to make underwriting decisions based on whatever information they choose; however, implications that those decisions can be made regarding title matters affected by their relationship to boundary lines, without a survey of those boundary lines, is misleading.

J) Under “What does the *ExpressMap* cost?”, it is stated that the cost is *usually* less than a new ALTA/ACSM survey. **Is there any comparison data to verify this claim, and has any analysis been done to compare the scope of benefits provided by the *ExpressMap* to all of the benefits provided to the client by an ALTA/ACSM survey?**

After all, the client is paying for the service/product regardless of whether it is the *ExpressMap* or an ALTA/ACSM survey. Shouldn't the client be made aware of the full benefits of each compared to the cost?

K) Under “How long does it take?”, a minimum of three weeks is quoted, after final arrangements are made and documents are received from the title office. **It is interesting that three weeks is typically much more time than is stipulated for the surveyor who will provide an ALTA/ACSM survey. It is very common for a surveyor to be told that the entire project must be done within less than a week, regardless of when or if the title information is provided.**

If time is to be considered to make the decision of whether to utilize *ExpressMap* instead of an ALTA/ACSM survey, the surveyor should certainly be given at least the same amount of time to complete the work as the First American staff is given.

L) Under “Can you count the parking spaces?”, the answer given is valid.

In fact, many surveyors utilize aerial maps to do this. However, the reference to calculating building square footage is potentially misleading. If it implies that the calculation can adequately be done utilizing aerial maps, this is simply not true. If it implies that the calculation can be done, but will require a site visit (which may increase costs), this should be made clear.

M) Under “Will there be a site inspection?”, it is implied that information provided on the *ExpressMap* can be enhanced by enlarging details. **The example given is being able to count the rivets on a manhole cover. One may conclude from this claim that the position of the manhole can also be depicted with a high degree of accuracy. What isn't conveyed here is that the location of that manhole with respect to an easement boundary (which is a title matter) cannot be determined by the *ExpressMap* since the description of the easement is more than likely tied to the property boundary. If *ExpressMap* contends that it can make this determination, it is in fact performing surveying.**

N) Under "Are there other products available for the *ExpressMap* office?", it is stated that an aerial photograph is flown for each specific task. **In some states the development of photogrammetric products is considered to be within the practice of surveying.**

In any case, the cost of obtaining an aerial photograph for each project obviously affects the price for the product. As stated earlier, the client should be given the option to compare the scope of work, benefits, and cost of the *ExpressMap* to those associated with the ALTA/ACSM survey.

Other thoughts:

Among the examples of the *ExpressMap* included in the promotional materials is a project that appears to be a residential property. Typically, ALTA/ACSM surveys are conducted for transactions involving commercial properties.

Since the promotional materials focus on how the *ExpressMap* can be used as an alternative to ALTA/ACSM surveys, is it the intent of First American to utilize it for residential transactions also, especially if such transactions do not require an ALTA/ACSM survey?

The promotional materials state that the *ExpressMap* is for the use of First American only. However, the service/product is offered to the public in the form of the client. Given the nature of the service/product, there is the possibility that offering it to the public can be considered practicing surveying without a license.

If the product is truly for the benefit of First American only, it would seem that it should be funded by First American as a precautionary measure to protect its investment in providing title insurance.