

NELTA NEWS

New England Land Title Association, Inc.
The Title Industry's Premier Resource for
Education, Information and Networking



Spring 2021
Volume 54, Number 1

*Join us for NELTA's 50th Anniversary Again,
The Live Version!
Gurney's Newport, Rhode Island
October 21-24, 2021*



In This Issue:

**Preliminary Information About NELTA's 50th
Annual Convention and Anniversary Celebration
New ALTA/NSP S Land Title Survey Standards
Meet Your New Associate Board Members**



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Anyone is invited to contribute articles and photographs concerning title issues. The Association reserves the right to edit all material submitted. All opinions expressed herein represent the views of the authors and are not necessarily those of the Association. NELTA NEWS and NELTA, Inc. disclaim any responsibility for views expressed or statements made in any articles.

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**Is the only place to get complete
2021 NELTA Convention Information
Registration and Reservation Forms
NELTA is saving energy, resources & money
It's all on the web at www.nelta.org
Watch for our email in early July**

President's Message

Barbara C. Smith



Raise your hand, virtually of course, if within the last year, you have done any of the following:

- Learned one or more new software applications;
- Come up with an ingenious way of “making do” without a scanner, printer, or high speed internet;
- Learned a new skill or improved an old skill that has nothing to do with your work;
- Tried a new hairdo;
- Put what you thought was a big problem into perspective, realizing it is not so big after all.

It looks now like we are on the back nine of the pandemic. It is time to look ahead and determine what skills we will need to make things work in the post-COVID era. What have we learned in this last year that can improve our safety, efficiency, security and work product? What practices and procedures should we keep, and what should be left behind? I think we all know we will never go back to the “way things were”. Hopefully, the post-COVID era, no, let’s call it the post-vaccine era, will see us in better positions to meet our personal and professional goals.

I can think of no better way to get this started then through communication. Let’s talk. Better yet, let’s get together and talk. Let’s actually see each other again, and not through the distorting lens of ZOOM. We can share our stories, and learn about new title matters, and have a little fun while we are at it. We will have a great opportunity for this October 21st-24th at the annual NELTA Convention in Newport, RI.

Let’s gather, visit and learn together in the beautiful setting of Gurney’s Newport on Goat Island. There will be opportunities to play golf, tour the mansions, shop, and just sit in the sun by the water and visit with old and new friends. There will also be a very special President’s Banquet in celebration of NELTA’s 50th Anniversary to cap off events on Saturday night!

Many thanks to Cathy Jones for her extraordinary work in setting up this exciting event, not once or twice, but three times. It has been a challenge, but we are ready to make it happen in October. I hope to see you there!

*There is only one place to get complete
Convention Information
Registration and Reservation Forms
For the 2021 Annual NELTA Convention*
www.nelta.org

*NELTA is doing our part to contribute
to a resourceful solution to living an
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Watch for our email in early July!

NELTA MEMBERSHIP DRIVE

The NELTA member who recruits the most new Associate Members will be awarded a **\$100.00 Amazon Gift Card**. Deadline is August 1, 2021.

All Members responsible for bringing in new Associate Members will be recognized in NELTA NEWS. Thank you for helping our Association thrive.

For additional information and materials go to the
Membership Drive Link on the NELTA web site @ www.nelta.org.



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Join us this Fall for
NELTA's 50th Anniversary Again. The LIVE Version!
October 21-24, 2021



*October 21-24, 2021
Join us this Fall
At The Luxurious
Gurney's
NEWPORT
Newport, Rhode Island*

Surrounded by picturesque Newport Harbor and Narragansett Bay, Gurney's Newport Resort & Marina offers the seclusion of a private island while being a short walk from the heart and history of the charming waterfront cobblestone streets of Newport. This waterfront resort is centrally located to the area's abundant attractions and activities, which include great restaurants, landmark mansions, museums, vineyards, golf courses, beaches, state parks, scenic walks, musical and theatrical performances, cruises and more.

Expansive grounds offering 360-degree water views provide an ideal setting for various waterfront dining options, entertainment, wellness, luxurious waterfront spa treatments, family fun, and secluded shoreline cocktails featuring the best sunsets in Newport. With guestrooms and suites with water views and more event space than any other property in Newport, Gurney's Newport Resort & Marina is a popular destination for all sorts of stylish business and social gatherings. Their philosophy of service: to accommodate each guest personally.

Some of the most notable changes and new amenities include:

- **New 22-slip marina.** Will offer great connectivity to the harbor front and will accommodate boats up to 240 ft.
- **The lobby.** The biggest change to the building will probably be in the lobby with all new sliders.
- **The addition of a Scarpetta Restaurant.** Serving modern Italian cuisine with an emphasis on pastas and seafood. The restaurant has well-known locations in Manhattan, Las Vegas and Miami Beach.
- **A revamp of Pineapples on the Bay.** The menu will be expanded, and service will be extended to include outside
- **The addition of Gurney's Kids Club.** A place where kids can go and enjoy activities while parents go out in Newport.



Don Kennedy

ALTA Keynote Speaker at NELTA Convention



Don Kennedy is senior vice president of the national agency division for First American Title Insurance Company. Most recently, Kennedy served as Vice President, Area Manager for Direct Title Operations in Southern California. Previously, he acted as Division Counsel for the company's Database Solutions & Home Warranty divisions. Prior to joining First American in 2011, Kennedy served as an attorney in the litigation department of SNR Denton, a global law firm. After earning his Bachelor of Science degree in Political Science from Stanford University, Kennedy went on to receive his juris doctorate from McGeorge School of Law at University of the Pacific. A California resident, Kennedy is a member of the California Land Title Association Board of Governors. Kennedy also serves on the Board of Governors for the American Land Title Association. He serves as chair of ALTA's Underwriter Section Executive Committee. Kennedy resides in Southern California with his wife and their two children.



**Don't have the time to attend the
entire convention?
Attend on a one-day pass
for Friday or Saturday
Seminar Sessions.**

Meet Your New Associate Board Members

NELTA has been extremely fortunate to have had four Associate Board Members who have served our Association tirelessly for the past 20+ years. At our Annual Convention in October, they will be stepping down as we welcome four new Associate Members to serve on the NELTA Board.

We extend our heartfelt gratitude to

Richard Meehan - Steven Edelstein - Shelly Rainen - Larry Heffernan
1992 2000 2001 2005

The Board of Directors recently elected and qualified the following members to serve as Associate Board Members for the next four years. They will be sworn in with the entire Board at our President's Banquet at Gurney's, Newport on October 23, 2021.

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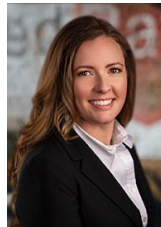
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*NELTA'S 50th
Anniversary AGAIN
The LIVE Version!
October 23, 2021*

*NELTA will be celebrating fifty years
as your premier resource for
Education, Information and Networking
throughout New England.*

*We have so many members who are responsible
for our success over the years.*

*To all of the people who have served on our Board of
Directors, Past Presidents, Speakers, NELTA NEWS
contributors, Vendors, and all the Underwriters who
continue to support the efforts of NELTA, thank you!*

*We hope you and your family
will plan to join us for this special celebration
October 21-24, 2021
At the beautiful waterfront resort
Gurney's Newport, Rhode Island*

*This will be a wonderful opportunity to reconnect with
friends and colleagues who have made NELTA the
vibrant association it continues to be today.*



Welcome New Members!

NELTA proudly welcomes its newest members and sincerely thanks those members responsible for their recruitment

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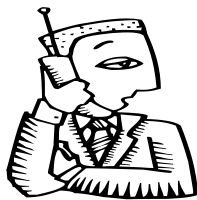
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NELTA...

Your ALTA Connection



New ALTA/NSPS Land Title Survey Standards

Revisions to the Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys went into effect Feb. 23, 2021.

Every five years, ALTA and the National Society of Professional Surveyors (NSPS) review the standards. ALTA's Board of Governors approved the changes in October 2020. The NSPS Board also approved the revisions.



The changes primarily focus on modifications making the standard easier to understand. There are also updates to resolve inconsistent, confusing or conflicting language in and across the different sections. In a few instances, the refinements address unintended liability placed on surveyors while assuring that lender and title needs are still adequately met.

Gary Kent, chair of the ALTA/NSPS Survey Work Group and owner and manager of Meridian Land Consulting LLC, said the changes directly or indirectly assist surveyors, while importantly, not diminishing the value of the product for the ultimate user-title insurers.

"The NSPS and ALTA committees work closely to maintain a standard that will result in surveys that meet the needs of the title industry, while keeping the requirements clear, realistic and achievable for surveyors," Kent said.

A change to Section 6.C.viii addresses the reporting of easements. If a surveyor becomes aware of a recorded easement not listed in the title evidence, the surveyor must advise the title company of the easement. If evidence of a release isn't provided, the easement must be shown or explained on the face of the plat or map.

Todd D'Amico PLS, vice chair of the ALTA/NSPS Survey Work Group, said it's the duty of the professional land surveyor to disclose any additional easement documents they may be aware of.

"This allows for a clearer property transaction by showing additional easements that may affect the property," said D'Amico, who is vice president of commercial surveys and mapping for First American Commercial Due Diligence Services Co. "It also assists the title offices in revising commitments prior to insuring the property, if the easement has not been released. Title offices count on the surveying community to disclose any additional information and the surveyor may

have practiced in that area for so long they have information no one else does."

Such a note might be formatted similar to:

- The 20-foot gas-line easement recorded as Instrument number 64-12345 and shown hereon is not listed in the title commitment; however, no evidence of a release, vacation or abandonment has been provided. The title company has been advised.

There are also several notable changes to the optional items of Table A, including a substantial modification to Item 11 that deals with underground utilities. This section was simplified to help surveyors show underground utilities.

In the 1995 case *Gutierrez de Martinez v. Lamagno* 515 U.S. 417, the U.S. Supreme Court held that the word "shall" is a false imperative that actually means "may." Because of this, the joint ALTA/NSPS committee reviewed each use of the words "must" and "shall" and used the one that it felt was most appropriate.

If there's a contract to perform an ALTA/NSPS Land Title Survey prior to the effective date of the new standards, the surveyor may discuss with the client, title company and lender and include an appropriate clause in the contract.

- Suggested clause: *This survey will be prepared using the 2016 Minimum Standard Detail Requirements for Land Title Surveys as established by ALTA and NSPS since said standards are still currently in effect at the time of this contract. It is understood and accepted by all parties involved that said standards may no longer be current upon completion of the survey, but will still be used for the purpose of this survey.*

The standards can be found at alta.org/forms (under "Most Requested").

Frequently Asked Questions and Other Guidance on New Survey Standards

- **Providing professional guidance to the client:** When deemed appropriate, surveyors might want to consider suggesting to their clients that the advice of a wetlands, flood plain, environmental, archeological or other appropriate expert might be beneficial.
- **Section 4 – research:** Surveyors may encounter situations whereby the title company is unable or unwilling to provide the documents otherwise required pursuant to Section 4. Surveyors must perform their research pursuant to their state's requirements and if their state has no standards in that regard, it is advised that they be familiar with the normal standard of care regarding research.
- **Section 5.B.ii. – sidewalks and trails along the street/road:** It is not unusual that streets and roads are found to have sidewalks or trails running adjacent to them or with a grass strip between the two. Likewise, walking/biking trails are sometimes found adjacent to the street/road - even as part of the paved way. Section 5.B.ii. calls for locating the "travelled way" to be located and, of course, shown on the survey. The question of whether such sidewalks/trails should also be located and shown is answered by Section 5.B.iv., which requires that "The location and character of vehicular, pedestrian, or other forms of access by other than the apparent occupants of the surveyed property to or across the surveyed property observed in the process of conducting the fieldwork (e.g., driveways, alleys, private roads, railroads, railroad sidings and spurs, sidewalks, footpaths)" be located and shown.

- **Section 5.E. – utility locate markings:** For those surveyors concerned about locating and showing what may or may not be actual utility locate markings because they do not have any information regarding the locate request or source of the markings, they might consider developing an appropriate note such as "Paint markings found on the ground and shown hereon as evidence of possible (or probable) underground utilities are consistent with typical utility markings. However, no utility report was provided to authenticate these markings—their source is unknown. The user of this plat/map should rely upon such markings at their own risk."
- **Section 6.B.i.a. – record description:** This section requires that on a survey of an existing parcel, the record description of the parcel being surveyed shall appear on the face of the plat/map. The description of the real property being insured (contained in Schedule A of the title commitment) is typically (and ideally) identical to the record description. In cases where the two descriptions differ, the surveyor may wish to inquire of the title company as to the origin of the Schedule A description. In cases where the title company insists that it will be insuring the description in Schedule A even though it does not match the record, the surveyor may consider showing both descriptions on the face of the plat/map. It is most assured that the parties will require the description to be insured appear on the face of the plat/map, and this section requires that the record description be shown. At a minimum, the surveyor should consider providing a note explaining how the two descriptions differ.
- **Section 6.B.vi. – water boundaries and caveat:** This section calls for a caveat to be noted regarding the nature of water boundaries. Surveyors might consider developing their own such note, but it could be formulated on the order of, "Where the property being surveyed includes a water boundary, the parties relying on the survey should be aware that, (1) laws regarding the delineation between the ownership of the bed of navigable waters and the upland owner differ from state to state, (2) water boundaries are typically subject to change due to natural causes, and (3) as a result, the boundary shown hereon may or may not represent the actual location of the limit of title. The [e.g., bank, edge of water, high-water mark, ordinary high-water mark, low-water mark, ordinary low-water mark, center of stream] shown hereon [was/were] located on [Date]."
- **Section 6.B.vii. – contiguity, gaps and overlaps:** This section requires that the surveyor disclose any gaps or overlaps with adjoining or between interior parcels where the property being surveyed is comprised of multiple parcels. This can be done not only with notes on the graphic portion of the plat/map, but also with textual notes drawing attention to the condition(s). Such information is critically important to the title company so that such issues can be disclosed to the parties and appropriate exceptions to coverage can be written. Where no gaps or overlaps exist, surveyors might consider assuring that the parties understand this fact by providing an affirmative statement to that effect.
- **Section 6.C.i. – easements:** Offsite easements that benefit the surveyed property (i.e., appurtenant easements) are typically identified as insured parcels in Schedule A of the title commitment. Easements that burden the surveyed property are identified as exceptions to title insurance coverage in Schedule B2 of the title commitment. It is also possible that an easement could both benefit and burden a property. Sometimes a title company may inadvertently list a beneficial easement in Schedule B2 as an exception to coverage, rather than identifying it in Schedule A as one that benefits the surveyed property - or vice versa. Surveyors should communicate with the title company when they believe there is a discrepancy between their opinion as to the effect of an easement and how the title commitment reports it.

- **Section 6.C.ii. – Title commitment:** Often in the course of the surveyor preparing the survey and often even after the plat/map has been completed and delivered, there will be revisions made to the title commitment that the surveyor will need to address. Surveyors should assure that they are appropriately compensated for any work that they believe represents additional services. This could be accomplished by carefully spelling out in the contract how many lender/client/title company comment letters will be addressed, how many client/lender/title company-driven revisions will be made to the survey, and over what period of time.
- **Section 7 – certification:** Surveyors are often told they need to certify to multiple parties above and beyond the client, lender and insurer as identified in Section 7 and they need to recognize that more certified parties may equate to more liability. They may wish to consider specifically listing in the contract those parties that they will certify to and that "additional parties may be certified to for an additional fee." If the specific parties are not yet known, they could specify that they will certify to the lender, client and insurer.

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Name & Title _____
Firm or Company _____
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Applicant is: (Check appropriate box)

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____ Surveyors or employees of companies or individuals actively engaged in the profession of land surveying

____ Employees of domestic companies that either are qualified policy issuing agents of title insurance companies or are engaged in the business of preparing and selling commercial abstracts or certificates of title (associate member option)

____ An organization, business or individual having an interest in or wishing to support the efforts of NELTA (sustaining member)

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____ Annual dues include up to two employees of a firm. Each additional employee is \$50.00 annually. Attach list of employee names as they will appear in the Membership Directory with application.

Regular Membership – Annual Dues: \$400.00

____ A title insurance company

____ A corporate abstract company (regular member option)

Recruiter: Did a NELTA member recommend that you join the Association?

____ Yes ____ No If yes, please let us know who we may thank:

Name of Member: _____

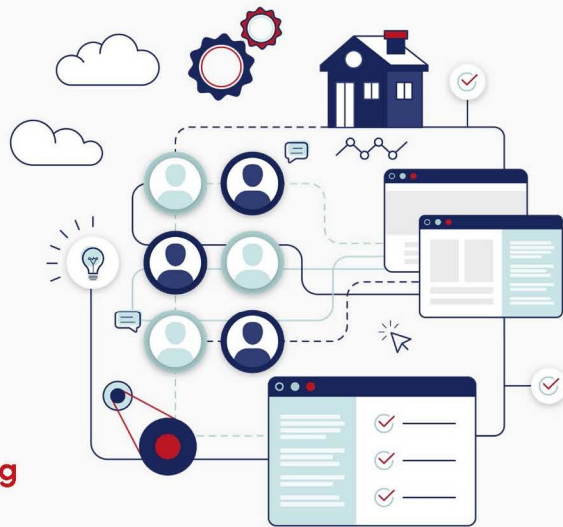
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How did you find out about NELTA? What lead you to become a NELTA member?

Mail completed application to: NELTA, P.O. Box 743, Norwalk, CT 06852-0743. (203) 847-6885.
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