



OLD REPUBLIC
National Title Insurance Company

777 Post Oak Blvd., Suite 200
Houston, Texas 77056
713-877-1770 Fax
713-877-1780 Office

Bulletin

To: All Agents, Direct Operations and Attorneys for the State of Texas
From: Stephen R. Streiff
Date: February 20, 2003
Re: Survey Copyrights

Procedural Rule P-2 of the Texas Title Insurance Basic Manual was amended in 2002 to expressly allow reliance upon a prior survey, regardless of age or party for whom the survey was performed, to amend the area and boundary exception on a title policy provided that no new improvements had been constructed and that the current owner executes an acceptable survey affidavit. Previously, Procedural Rule P-2 had provided that the survey could not be more than 7 years old and could only be relied upon for refinance transactions. This substantive amendment of Procedural Rule P-2 obviously affects the necessity for a title insurance company to require a new survey be furnished in order to provide the title insurance coverage that most lenders demand.

The Texas Society of Professional Surveyors obtained an attorney's opinion letter in July 2001 concerning the use of copyrights by surveyors. This opinion letter recommended that surveyors copyright surveys they have prepared. A copy of this letter was mailed to all members of the Texas Society of Professional Surveyors. As such, the majority of surveys performed since July, 2001 contain a copyright and many surveyors began to copyright surveys prior to such time. The Texas Society of Professional Surveyors has also furnished information to their members concerning the necessary procedures for obtaining a copyright.

If a survey is capable of being copyrighted and the surveyor follows the necessary procedures to perfect a copyright, any party violating that copyright is susceptible to both actual and statutory monetary damages. The statutory damages range from \$200.00 to \$150,000.00 depending on a variety of factors, including whether the action was innocent or willful. If the survey contains a copyright, then an express license that it may be used in connection with the current transaction is preferable. If no such license is set forth on the survey itself or by separate written instrument, then a party making copies of a survey for the transaction for which it was prepared would be relying merely upon an implied license or other legal theory to do so. We strongly recommend that an express license to copy the survey for the current transaction be obtained or the certification on the survey state that such a license is granted.

If a survey contains a copyright notation and the parties desire to use same for a subsequent transaction, whether a refinance by the original party or a resale to a third party, we strongly recommend a written license from the surveyor be obtained to copy the survey in connection with the new transaction. If such a written license is not obtained, then the parties would be relying upon an implied license or other legal premise. The basis for relying upon legal theory for use in a subsequent transaction is much more uncertain than reliance upon an implied license or other legal argument for use in a current transaction.

In sum, if a survey contains a copyright notation, we strongly recommend a written license to make copies of the survey be obtained absent such a license being noted on the survey. If such a written license is not obtained, then the party making the copies would be relying upon unsettled legal contention. Until case law is established, reliance upon such a legal assertion is a hazardous risk, particularly if the survey is being copied in connection with a transaction other than that for which it was prepared