

LEGAL DESCRIPTIONS

Conveyance of real property must be in writing and must contain a description of the property being conveyed. This description must satisfy only basic requirement: that it must indicate how to identify a particular parcel of land relative to monuments on the face of the earth. Courts have generally ruled that a description is valid if it describes one separate and unique parcel of land. The scrivener or author of a description must also strive to achieve other objectives when describing this unique parcel of land. Those objectives are as follows:

A well-prepared legal description should:

1. Not interfere with the rights of others
2. Be based on a recent survey
3. Not contain words capable of alternate interpretations (North, etc.)
4. Contain measurement data sufficient to describe a geometric area that closes mathematically

Please note that the word should is underlined. Unfortunately for those of us who deal with land title and boundaries, there are almost no states that have statutory lists of instructions for the preparation of legal descriptions or qualifications for those persons who prepare legal descriptions. Therefore, legal descriptions often do contain hidden defects and words subject to alternative interpretation, interfere with the rights of others and do not form mathematically closed figures.

It is clearly in the best interest in the purchaser, the lender and the title insurer to know if the property to be conveyed has been correctly described. Land Surveyors are often asked to certify that the description forms a mathematically closed figure, but that is only one part of a correct description. A legal description can close perfectly and at the same time overlap onto the ownership of others or contain ambiguous terms that different people are likely to interpret in different way.

The interested parties need to know if the description fulfills the other qualifications of a correct description, particularly whether or not there are gaps or overlaps with adjoining property. Section 5 (d) in the ALTA/ACSM Survey Standards begins to address this issue when it requires that "names and recording data identifying adjoining owners as they appear of record shall be shown". Since the surveyor has been furnished that information as required by those standards, consideration should be given to having the

surveyor make an affirmative statement to the effect that there are no overlaps or gaps with adjoining property.

There are three commonly used types of legal descriptions: those based on the United States Public Land Survey System, metes and bounds, and subdivision into platted lots. Sometimes, a combination of the above is utilized.

The United States Public Land Survey System or Rectangular System refers to the method which the government surveyed the lands of the public domain. In this system devised by a committee headed by Thomas Jefferson, the lands of the public domain were divided into six mile squares known as townships. Each township was divided into 36 one mile squares called sections which contained approximately 640 acres. Homesteaders were generally given patents to a quarter section of land containing 160 acres. The attached map of a section of land shows the typical method for proportionally dividing a section of land. A description utilizing this system might read as follows: The Northeast quarter (NE1/4) of the Southeast quarter (SE1/4) of Section 10, Township 12 North, Range 4 West of the Indian Meridian, Oklahoma County, Oklahoma. It should be noted that because of errors in the original survey and because of the advances in measurement technology, there are often significant differences between current day measurement and the measurement reported on the original survey.

A metes and bounds description is characterized by commencing at a well defined point of beginning and proceeding around the perimeter of the parcel citing a distance and bearing for each side. The last course in a metes and bounds description will always return to the point of beginning. Curved sides should contain at least three elements of the curve, usually the radius, arc length and chord distance and bearing, and should be identified as either being a curve to the left or right. If the intention of the parties is to have a course end or go along a natural, artificial or record monument, it must be so stated in the description. For example, if a creek is to be used as a boundary, then the description should read "to the center of the creek; thence along the center of the creek."

A subdivision description makes reference to a map or plat that is recorded in the office of the County Clerk; for example, Lot 25, Block 5, Section 6, Quail Creek, an addition to Oklahoma City, Oklahoma County, Oklahoma, recorded in Book 43 of Plats, Page 14. Each state has specific statutory requirements which must be complied with before a map can be accepted and filed or record.

Combinations of the above types of descriptions are sometimes utilized, particularly by non-surveyors. Although this type of description is easy to

create, the result is often ambiguity for those who have to interpret this type of description. Examples of this type of description are: The East 150 feet of Lot 5; the South 10 acres of the NE 1/4 of Section 10, T. 12 N., R. 4 W.; The West half of the following described property... Those preparing legal descriptions should be aware of how courts interpret proportional and exception type language contained in these types of descriptions.