

Classification of Legal Descriptions of Land Records

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The Statute of Frauds provides that transactions shall not be valid unless evidenced by a conveyance that identifies the land. What minimal information is necessary for the conveyance to identify the land within the meaning of the statute? There are many examples of documents that were drawn by individuals who lacked proficiency in the requirements of the Statute of Frauds (Exhibit 31). Parties who prepare conveyances or who examine titles must assure that they are familiar with the applicable laws and concepts that apply to the conveyance's description.

A. United States Land Survey

1. Sectionalized land system

The method of surveying and describing real estate depends entirely upon local, historical events that are beyond the scope of this discussion. Of general interest to states other than the original American colonies, a sectionalized land system was first developed in the Northwest Territory – the present-day states of Ohio, Indiana, Illinois, Michigan, and Wisconsin, and followed by similar government surveys in other states. Congress provided that the Northwest Territory should be divided into townships, that townships were to be six miles square, and that townships were to contain thirty-six sections, each one mile square. A north-south line, known as the principal meridian, was devised so that it was possible to divide the Northwest Territory into a series of north-south lines six miles apart. The territory was divided into numerous six mile wide north-south strips or “ranges,” which were numbered consecutively. Problems were encountered by the land surveyors who located the range lines on the ground at the time of the government survey.

Due to the curvature of the earth, these north-south lines converge as they are extended toward the North Pole. In order to keep the lines as nearly six miles apart as possible, the lines were laid out for a distance of 60 miles, then stopped and moved over so that they were again six miles apart. This resulted in some sections, particularly those located on the western side of the township, being larger or smaller than 640 acres. In extreme cases parts of such sections were divided into government lots.

James B. MacDonald and J.R. DeWitt, I Wisconsin Practice 100 (1973).

States in the Northwest Territory were also divided into east-west lines six miles apart, beginning at a line known as the base line.

The result of the sectionalized government survey is that it is possible to know the approximate surface area of sections and quarter sections, and the approximate dimensions of sections and quarter sections without having had the benefit of a contemporary land survey. The original government land survey maps are usually available for inspection in the office of the county register of deeds.

In sparsely populated rural areas, legal descriptions that consist of sections (640 acres), quarter sections (160 acres) or quarter-quarter sections (40 acres) are commonplace. Many of these descriptions consist of nothing more than quarter-quarter sections in the original government land survey. For example, "The Southwest 1/4 of the Southeast 1/4 of Section 12, Township 36 North, Range 4 West" describes a tract of approximately 40 acres of land that has not been subdivided beyond the government land survey. Although the description lacks any specification of surface area and a perimeter, the description is sufficiently specific to meet the requirements of the Statute of Frauds when included in the conveyance.

The sectionalized land survey systems introduced by act of Congress and surveyed by government surveyors vary considerably. "A California surveyor would be lost if he tried to apply California methods within Ohio, Louisiana, or Florida. Even between states within the Northwest Territory there are differences applicable at different stages of development." Curtis M. Brown, Boundary Control and Legal Principles, §1.17, 31 (2d. ed. 1969). The sectionalized land survey systems left pre-survey communities as they found them: Occupation lines, once formed, remain unsymmetrical as they are, to the present day. (Exhibit 32)

2. Unwarranted assumptions about the government land survey

For all its value, it is important to appreciate the limitations of the original government land survey. When property boundaries are surveyed or drawn, land surveyors and drafters that make assumptions in preparing legal descriptions fail to ascertain the inherent approximations that the government land survey includes, and therefore provide wrong findings or erroneous

opinions concerning the boundary measurements. In some instances, boundary disputes have occurred as a direct result of these unwarranted assumptions.

- a. False assumption: "The east-west and north-south town lines are always 0 degrees, 0 minutes, 0 seconds."

When the call "thence west..." appears in a description, surveyors have not always agreed whether the call means west parallel with the section line, or alternatively North 0 degrees, 0 minutes, 0 seconds West. In the event that the legal descriptions are prepared by surveyors having opposite viewpoints, the description in the deeds of the adjoining parcels will ultimately overlap one another.

- b. False assumption: "All quarter-quarter sections are 1,320 feet in length."

The government land survey was designed to accomplish a division of lands into quarter-quarter sections that were measured approximately 1,320 feet from east to west and from north to south, but not exactly so. Land surveys have occasionally been prepared on the false assumption that the quarter-quarter section was 1,320 feet in length, with the result that a new description after it appeared in a recorded deed, caused an overlap with an adjoining deed. For example, the surveyor assumed, without finding the actual length of the quarter-quarter section line, that the "The East $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ " could be revised by substituting the description: "The East 660 feet of the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$." However, in the event that the actual length of the quarter-quarter section line is 1,308 feet rather than 1,320, an overlap of 6 ($1,320 \text{ minus } 1,308 = 12$; $12 \text{ divided by } 2 = 6$) feet all along the boundary line of the adjoining parcel will have been inadvertently created by the new description.

- c. False assumption: "The centerline of the public highway is always the section line."

Although the centerline of the highway is sometimes the section line, this is not always the case. If it is wrongly assumed without locating the section corners that the section line is the centerline of the highway and a new description is based on this assumption, the description will either overlap that of the adjoining parcel or alternatively, a gap between the two parcels will have been created.

B. Metes and Bounds Descriptions

A metes and bounds description is a description that is not described by reference to a lot or block shown on a map but is defined by starting at a known point and describing, in sequence, the lines forming the boundaries of the property. Curtis M. Brown, Boundary Control & Legal Principles 355 (1969). An example of a metes and bounds description is found at Exhibit 33.

“Metes” means to measure or to assign by measurement and “bounds” means the boundary of the land or the limits and extend of a property. “Metes and bounds descriptions” may be distinguished from “metes descriptions” and “bounds descriptions.”

Bounds descriptions are perimeter descriptions, but they do not have a direction of travel: “All of that land bounded on the north by Thelma Len; bounded on the south by Roger River; bounded on the west by the land of Thomas L. Brown; and bounded on the east by the land of Ruth Almstead.” The sequence of the reciting the bounds is immaterial; the description has no mandatory direction of travel.

Metes descriptions are perimeter descriptions described by measurements, have a direction of travel, and recite no bounds (adjoiners). Often a metes description is included with the common usage of the terms metes and bounds.

Curtis M. Brown, Boundary Control & Principles 10 (1969).

In contrast to subdivision plats, condominiums, timeshares, and certified survey maps, there are no specific statutory prerequisites that pertain to the metes and bounds description as such. However, the metes and bounds description should be examined by the title examiner for accuracy.

In determining the accuracy of a metes and bounds description, it is necessary to make a rough drawing of the tract included in the description to make certain that it returns to the place of beginning and encloses a piece of property of the approximate shape the purchaser believes he is buying. For perfect accuracy, a drawing to scale should be made through the use of a ruler and protractor, the latter to measure the degrees of change in direction.

MacDonald & DeWitt, I Wisconsin Practice 100 (1973).

Today, software programs that determine whether the metes and bounds description closes, and that creates a pictorial version of the description are readily available, and mapping such parcels is standard procedure in some title company offices.

Metes and bounds descriptions tend to be problematic for inexperienced readers, and more time-consuming than simple platted lots to comprehend, yet they are perpetuated in large numbers in many rural areas and suburban fringe areas, so much so that in many counties, there are well-known neighborhoods beset with chronic boundary overlaps and loathed by title staff. Some descriptions, because they allude to monuments or adjoining owners, require extrinsic evidence to aid in construction (Exhibit 34). Metes and bounds descriptions must be examined carefully to assure that they are not defective; the proper metes and bounds description must “close” (begin and return to the point of beginning) and allude to the correct quarter-quarter sections, or the description prove un-locatable, and the deed void. Though metes and bounds descriptions tend to be long, their compelling attribute is that they are specific. They contain, with a high degree of certainty, a narrative characterization in feet and inches (or rods and chains), not metric units, of the parcel’s exterior perimeter. If afforded the opportunity to do so, the licensed land surveyor would be able to locate on the ground such descriptions and forewarn the prospective purchaser of conflicting claims of adjoining owners.

C. Surface Area Descriptions

In rural areas, descriptions contained in many recorded conveyances have referred to surface area only and not any metes and bounds.

Example: “One acre in the Northwest corner of the Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 26...”

Surface area descriptions, though only a rough approximation of the land conveyed, were once commonplace. They continue to be valuable in those areas where land tracts are large, principally in the northern half of the state, because they enable the title searcher to distinguish, with what little available descriptions and maps exist, the seller’s land from the land of adjoining owners. For example, if the seller acquired the title by means of a deed stating “The South 20 acres of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$,” and there is a deed conveying property in the same quarter section to an adjoining owner that stated: “The North 20 acres...” the

title searcher is reasonably assured, unless the county mapping indicates that the quarter section contains fewer than forty acres, that the seller's land is free from any overlapping conveyance on the part of the adjoining owners.

When the description of the seller or a predecessor in title is of surface area type, it is necessary to determine whether the description is sufficiently definite so as to describe the land, and whether the description can be reconciled with the descriptions for adjoining lands of others. If the description is vague and indefinite, a new land survey together with correction deeds may be required. There have been several reported decisions involving the validity of conveyances that contained such descriptions.

Example:

"The southeast corner of the southeast quarter of section 34." "Manifestly that describes nothing... There can be no such construction where there is nothing to locate except a corner without dimensions." Morse v. Stockman, 73 Wis. 89, 40 N.W. 679 (1888).

D. Rules Of Construction For Legal Descriptions

Descriptions are sometimes inconsistent, either internally, or when compared with the description for adjoining land. When the description of the conveyance consists of a combination of different types of descriptions, or when the conveyances of adjoining parcels including one or more of the different types of descriptions, the examiner has no choice but to reconcile the various components of the description to see if taken together, they describe boundaries of a parcel that can be located. In doing so, the examiner must be aware of any rules of construction to determine whether the description is sufficient, and whether it is compatible with that for adjoining landowners.

Where discrepancies exist between descriptions of two adjoining parcels, the rules of construction to be applied in reconciling any description containing inconsistent elements are based on the order in which the description which control are: (1) enumeration of monuments; (2) enumeration of courses and distances; and (3) statement of the quantity of the land conveyed. Heinselman v. Hunsicker, 103 Wis. 12, 79 N.W. 23 (1899).

E. Subdivision Plats and Surveys

Depending upon the state, there are often different types of property descriptions, each subject to statutory imperatives concerning their content. Plats are pictorial versions of a property description that, until the plat was creative, was in narrative form only. To most viewers, a plat, owing to its pictorial features, offers a more easily understood rendition of the description of real estate than a narrative description. However, plats, depending upon the state, constitute both a representation on paper of an actual location on the ground and a unit of subdivision recognized by the statute of the state that restrict or regulate land divisions. State statute laws may recognize any number of plat-related land division devices that entail document format, vehicular access, approval by government departments or agencies, and filing in the public land records. Because statute laws concerning what such stylized plats shall contain vary considerably, standards and criteria that pertain to statutory plats are beyond the scope of this discussion.

F. Condominiums

A condominium has been described as airspace that has, unlike other parcels in which the title holder is in theory the owner of the land and airspace above from the center of the earth to the high heavens, both upper and lower horizontal boundaries. Statute law provides for the subdividing of property as a condominium, without restricting what use is to be made of the property. Therefore, a condominium form of ownership could conceivably be made of residential property, commercial office buildings, private storage areas, parking structures, and recreational parks. Though it is by definition a cubicle of airspace that need not have a lower boundary that extends to the ground, the declarant must have successfully acquired the fee simple title to the underlying ground, and a condominium constructed on the land of another is subject to the rights of others or invalid. For example, the condominium is not valid if it is constructed on lakebed. State v. Trudeau, 139 Wis. 2d 91, 408 N.W.2d 337 (1987). Some states have also rejected the condominium form of ownership for marinas that are known as “dockominiums,” that is, airspace above and/or below the surface of navigable waters. ABKA Ltd. Partnership v. Dep’t of Natural Resources, 2002 WI 106, 255 Wis. 2d 486, 648 N.W.2d 854 (2002).

A cubicle of airspace, because it cannot constitute a valid condominium unit unless it is described by condominium declaration that meets minimal statutory criteria, is more discerning than other units of land division. Title insurers, before insuring condominium units will therefore require that an examination of the condominium declaration be made for various matters mandated by applicable statute. Although

statutes vary, such requirements may include, for example, that the condominium declaration contain the following:

- The condominium name and address, which must be unique in the county and include the word “condominium.”
- A description of the land on which the condominium is located, together with a statement of the owner’s intent to subject the property to the condominium declaration.
- A general description of each unit, including its perimeters, location, and any other data sufficient to identify it with reasonable certainty.
- A general description of the common elements together with a designation of those portions of the common elements that are limited common elements and the unit to which the use of each is restricted.
- The percentage interests appurtenant to each unit.
- Statement of the purposes for which the building and each of the units are intended and restricted as to use.
- The percentage of votes by the unit owners which shall be determinative of whether to rebuild, repair, restore or sell the property in the event of damage or destruction.
- Signatures by all of the owners of the property, and any first mortgagee of the property or the holder of an equivalent security interest in the property.
- If the declaration was amended, signatures by the aggregate of the votes required for an amendment.



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