

A Primer on Land Surveys: Legal Descriptions and Survey Limitations

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Legal Descriptions

"A written land description is the most important instrument of public record involving the establishment of land ownership boundaries, as it directly and/or indirectly involves the owner, buyer, seller, surveyor, attorney, real property lister, appraiser, realtor, title insurer, mortgagor and several other allied interests." William C. Rohde, Wisconsin RLS 841

Boundary location and description can be closely tied to the progress of civilization. Boundaries function as dividing lines, starting with property line between contiguous neighbors that are guarded by a simple fence, and extending to national and international boundaries identified by legal treaties and guarded by armies. Boundaries serve to divide continents into independently governed countries, divide countries into secondary areas of jurisdiction and authority, and then divide these secondary jurisdictions into interests between individuals.

Generally, the metes and bounds system of survey was employed by the older states to the east, the rectangular system of survey by states to the west. The legislatures of older states have employed various land systems while areas later settled are most often divided into districts and lots resembling the government survey.

Some of the more important purposes of land descriptions are:

- To identify unequivocally and definitively one and only one unique parcel of land.
- To identify for legal purposes;

- To identify for the purposes of describing, recovering, and retracing land boundaries;
- To identify for taxation and valuation
- To locate encumbrances positively (e.g. easements)
- To identify for addresses and indexing.

It is desirable that a land description should:

- Contain title identity, i.e. identify the relationship between a particular description and its adjoiners.
- Not interfere with the senior rights of others. That being said, whether or not a conveyance interferes with the rights of an adjoiner does not necessarily alter the validity of the conveyance, and as such it should not be the concern of the surveyor. From the surveyor's viewpoint, all the surveyor can and should do is report the facts relied on and recovered, not state legal conclusions.
- Be so written that either at the present time or at a future date the description can readily be located by a competent surveyor.
- Not contain words capable of more than one interpretation.
- Contain measurement data sufficient to describe a geometric area that closes mathematically, and
- Be based on a recent survey.

A description of the outline of a certain area is the proper grouping of words which delineates one specific piece of land and which it cannot apply to any other piece of land. It is called 'legal' because it must stand up under law and survive legal attacks. (*Wattles, p. 11.2*).

The ideal description would enable all interested parties to go upon the land and definitely point out the boundaries.

The purpose of a description is to identify a particular area, not to fully describe it; a description is sufficient if it identifies the land.

Survey Limitations

Surveyor Specified Limits: Because of the increasing litigious nature of our society, surveyors in recent years have taken greater pains to state what a survey does or does not show. Many survey plats state that the survey was performed either with or without the benefit of a title search or title commitment. If a survey was prepared without the benefit of a title search, then, most likely, the surveyor did not conduct a complete examination through the chain of title. Therefore, issues such as easement may not appear on the drawing.

Another limiting issue is the location of underground utilities. Many surveyors include a statement on their plats that the surveyor makes no guarantee that all the underground utilities are shown nor that they are in the exact location shown. The only way this information can be accurately portrayed on a drawing is for the utilities to be physically excavated. Most survey specifications are not that stringent.

An important fact to remember is that surveyors are not title abstractors. The role of the surveyor is to show visible acts on the ground that encumber the property, while the attorney's responsibility is to evaluate the written or legal factors that are contained within the title of the subject property. These two services in combination comprise a full record of a real property parcel.

Client Specified Limits: Just as there are standard features on every car, there are standard features that should appear on every survey. Automobiles increase in cost with the addition of extraneous details, as do the costs of surveys. Educated clients are aware of the needs to be met with each survey and give these directions to the surveyor in the initial meeting. These needs may not fit the requirements of a third party, so caution is urged regarding the use of a survey created for others.

Title Insurance Limits: Most, if not all, title insurance policies contain exceptions to the policy that the title company will not insure. Among these exceptions are anything that would have been revealed by the preparation of a current survey. A current survey may reveal unwritten title issues that would give notice to all the parties with an interest in the property.

In conclusion, the land surveying process and the professional land surveyor meet a critical need in the development of the earth's surface. Nearly everyone, at sometime in his or her life, has depended on information provided by a reputable surveyor. As new technologies are discovered and new techniques are perfected within this profession, the role of the surveyor may change as well.

However, the need for clear, accurate, and precise information regarding designated ownership and boundaries of land and, perhaps, even space will certainly continue to exist.



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