

## WRITING DESCRIPTIONS

### Objectives when Describing Land

A land description to be legally sufficient in the matter of locatability must identify a particular locatable area or areas to which the interest conveyed attaches. It is desirable that a land description:

- 1) Should contain title identity.
- 2) Should not interfere with the senior rights of others
- 3) Should be so written that either at the present or at a future date, a competent surveyor can readily locate it.
- 4) Should not contain words capable of alternate interpretations.
- 5) Should contain measurement data sufficient to describe a geometric area that closes mathematically.
- 6) Should be based on a recent survey.

### 1. Title Identity

Title identity is the relationship between a particular description and its adjoiners. Certainty of location can be attained without certainty of title identity.

When composing a new conveyance the most desirable description from the title-guaranteeing agencies' viewpoint is one calling for adjoiners without reciting measurement information other than that necessary to complete a perimeter such as shown here:

*Beginning at the southwest corner of Thomas Brown's land as recorded in ...; thence along the southerly line of said Brown's land to the south-easterly corner thereof; thence in a straight line to the north-easterly corner of Doris Muller's land as recorded in ...; thence westerly along the northerly line of said Doris Muller's land to Third Street; thence along Third Street to the point of beginning.*

*Bounded on the north by the land of Thomas Brown as recorded in ...; bounded on the west by Third Street; bounded on the south by the land of Doris Muller as recorded in ...; bounded on the east by a straight line connecting the south-easterly corner of said Thomas Brown's land and the north-easterly corner of said Doris Muller's land.*

In this type of description exposure to damages resulting from discrepancies between monument locations and measurement data is eliminated; size is not stated. But such a description is or should be unsatisfactory to the new owner; it does not disclose on its face the quantity of land purchased. To be satisfactory to a new owner or to a surveyor, a description should be dimensionally complete.

## **2. Senior Rights**

Whether a conveyance interferes with the rights of an adjoiner or not does not necessarily alter the validity of the conveyance; but in instances, it may operate to make a conveyance partially void. If an author inadvertently included portions of an adjoiner's lands, the land inadvertently included is not conveyed, since a person cannot sell another's land. Such inclusion does not operate to void the remainder of the conveyance, since the grantee can claim the land remaining after the overlap is excluded. Because a person may be held liable for selling land not his, it is desirable in composing descriptions to exclude lands of others. From a title insurer's point of view, it is a necessity that others' lands are excluded; the title insurer is liable for such inclusions, and by recent court opinions, in some states, the surveyor may also be liable.

## **3. Sufficiency of Descriptions**

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. What is legally sufficient and what is desirable are two entirely different things.

Competent title authors strive to make a description complete within itself; that is, the description recites all senior claimants, describes all monuments, describes the size and shape by measurements, and agrees with existing possession on the ground (a fact that requires a recent survey).

The courts try to declare a conveyance valid rather than void. Only in cases where the area described by the writings is equally applicable to more than one location or where the deed fails to identify an area does the court reluctantly declare a deed void.

How land may be described and what is sufficient are properly regulated by law, and, if the law prohibits a certain form of description, it may not be used. The right to refer to plats or maps (subdivision descriptions), without including a perimeter description, is excluded in patenting federal mining claims and in describing certain political boundaries. In some areas building-site conveyances by metes and bounds descriptions are illegal.

## **4. Ambiguity**

English words often have multiple meanings and, if improperly selected, may cause ambiguity. Words in one part of a description may conflict with words in another part. ambiguities or conflicts in general do not operate to void a conveyance; they merely require legal interpretation and sometimes court action to clarify the meaning of the description. Thus, in the event that "North" is written instead of "South," the deed is not necessarily void, since errors can be corrected if sufficient writings remain to identify the land. Competent scriveners eliminate conflicts or ambiguities from the writings.

## **5. Mathematical Correctness**

In many existing conveyances the area described is not mathematically correct and sometimes is not geometrically correct. This does not in itself invalidate a conveyance, since identity is all that is required. If a surveyor can locate the land described and measure and determine its area, the conveyance is sufficient. When there is a call for monuments (including record monuments) it is almost impossible to assure mathematical and geometric closures without an accurate survey. Unfortunately, mathematical and dimensional completeness of a description is not a legal necessity; it is merely a desirable feature of a good description.

## **6. Description Based upon a Survey**

Unwritten conveyances or prolonged possession may transfer title to lands without writings. Possession is one of the many necessary elements of ownership. The purpose of a deed is to convey the ownership of land; without knowledge of a possession, relative to the described lines, certainty of transfer of ownership is not always possible.

Occasions do arise wherein a description can be written without benefit of a survey, but it usually takes expert knowledge to determine when a survey is not necessary. If a property is well monumented by definite monuments, it may be a simple matter to describe a rectangular parcel.

Nowadays, especially in urban areas, the demand for title policies that guarantee both title and possession is greatly increasing the necessity for surveys. In many areas, new divisions of land are prohibited without surveys.

### **Desirable Qualities of a Scrivener**

Competent scriveners should have knowledge of the following:

1. Trigonometry, geometry, and all elementary mathematics.
2. The legal meaning of all words and phrases used in land descriptions.
3. The location of known controlling monuments in the area of the description.
4. The science of measurements and calculations to prove the correctness of measurements.
5. Senior rights of adjoining.
6. The order of importance of conflicting elements.

Unfortunately, the activities of scriveners are seldom regulated by law many scriveners are incompetent to perform their duties. Those better qualified are surveyors, title-company employees, abstractors, and attorneys. Attorneys specializing in title work are eminently qualified about the legal meaning of words and phrases used in land descriptions, and they know how to use proper conveyance forms. But they are often weak in mathematics, and the science and techniques of measurements and lack knowledge of possession on the ground.

The skilled surveyor is eminently qualified in the techniques of measurements, mathematics, and monument locations and is usually qualified in the legal interpretation of words and phrases, but he

is often weak in the knowledge of the right of adjoining. In sectionalized land areas, the necessity of knowledge of seniority of conveyances is minimized.

Better land descriptions can be made with the benefit of survey. Others occupying the area described may have occupancy rights, or monuments may be in positions other than that indicated by the record.

### **Technique of Writing**

The art of writing descriptions is not simple; carelessly used words-or omission of words-can alter the entire meaning of a conveyance. Too many words may cause conflicting statements in a deed, whereas too few words may cause ambiguity and uncertainty. The best deed authors use a minimum of terms that give a clear intent without error, conflict, or ambiguity. The selection of the proper words to use comes from knowledge, experience, and practice. It is not the verbose writer filling many foolscap pages who wins acclaim in writing descriptions; the writer who is applauded is the one who condenses but omits nothing essential, who creates no conflicts and is clear.

### **Parts of a Description**

Descriptions are divided into four parts: caption, body, qualifying clauses (including reservations), and augmenting clauses. Although in writing a particular description the four parts may be intermingled to make it difficult to distinguish one part from another, it is better practice, when feasible, to keep the four parts distinctly separated. In general, the distinctions between the four parts are as follows: the caption recites a general area or locality and directs attention to a general vicinity; the body pinpoints a particular area in the given locality described in the caption; the qualifying clause takes back part of that given by the body or by the caption; the augmenting clause gives a right of usage of land outside that conveyed (usually easements). If the description author develops the habit in his writings of following this order just cited, he will make fewer mistakes.

An example of parts of a description follows:

**(Caption)** All that portion of one quarter section 30 of Rancho de la Nacion according to Map thereof No. 166, surveyed by Morell and filed in the office of the Recorder of San Diego County, California, being more particularly described as follows:

**(Body)** One acre of land forming an equal sided parallelogram in the southeast corner of said quarter section 30 of said map.

**(Qualifying clause)** Excepting therefrom the easterly 100.00 feet.

**(Augmenting clause)** And granting an easement for road purposes over the westerly 25 feet of the above excepted easterly 100 feet.

This description is not dimensionally complete, since the angle in the southeast corner of quarter section 30 is not recited; also no monuments are described.

## **Caption**

A logical arrangement in writing descriptions is first to recite the general area or locality of the land so that attention is directed to vicinity. The caption or introductory part of a description serves this purpose. A checklist of the items that often, but not always, appear in the captions is as follows:

1. State.
2. County (parish).
3. City.
4. Subdivision.
  - I. Map name and number.
  - II. Meridian, township, range, and section.
  - III. Land-grant name.
  - IV. Court map.
  - V. Any other identifiable map.
5. Recorded conveyance of which instant description is a part.
6. Place where record map or recorded conveyance is filed.

The wording of the caption may take many forms, either one of the following examples being sufficient.

*All that portion of Section 10, Township 15 South, Range 2 East, San Bernardino Meridian according to the United States Government plat filed January 12, 1885, located in Imperial County, state of California, more particularly described as follows...*

*All that portion of Lot 12, Block 15 according to tract Map No. 16,213 recorded in the office of the County Recorder of Los Angeles County, California, more particularly described as follows...*

## **Body of Description**

The body of a description identifies a particular land area within the locality designated by the caption.

The body, taken together with the caption, must identify a certain area; otherwise, the conveyance will be void. In addition the body ought to contain complete dimensional information that renders the intent of the deed more certain and clear.

Monuments called for in a conveyance locate the land. Monuments are subject to destruction. If a monument is to be replaced after it is destroyed, its measured position must be known before it is destroyed. Often land areas can be described without mention of measurements (calling for monuments alone). Such a description, although legally valid, is unsatisfactory, since no measurements indicate how to replace monuments if lost. The surveyor in describing land is vitally

interested in the ease of future locatability; he includes writings designed to serve as means of identification in the event of monument destruction.

Courts, when interpreting the meaning of conflicting elements within a description, presume and order of importance.

## **Easements**

An appurtenant easement-that is, an easement necessary for the enjoyment of the land-passes automatically whether recited or not. Irrespective of this fact, it is always good practice to include a description of the easement as "Lot 12, Block 40, Horton's Addition...together with an easement for road and utility purposes over the easterly 20 feet of Lot 4."

The best way to describe appurtenant easements is to separate the fee conveyance and the easement into two distinct parts.

The intent of a fee or easement conveyance may be reversed by a description "Lot 12, reserving there from the westerly 20 feet for road purposes." Ordinarily, the grantor reserves the fee subject to a 20-foot easement. If it is intended to convey the fee and reserve an easement, the form "Lot 12, reserving there from an easement for road purposes over the westerly 20 feet" is proper.

## **Exception in Descriptions**

Exceptions in descriptions are particularly prone to ambiguities. A description reading "Lots 10 and 11, except the south 20 feet thereof" may mean an exception for both lots or an exception for Lot 11.

Double exceptions are doubly apt to be used in error. "Lot 13 except the east 12 feet, except the south 10 feet" may mean "Lot 13 except the east 12 feet and also except the south 10 feet of all of Lot 13." or it may mean "Lot 13 except the east 12 feet, except that the south 10 feet of the east 12 feet is not conveyed." This description is greatly improved by writing "Lot 13, except the east 12 feet of Lot 13 and also except the south 10 feet of all of Lot 13."

## Whole Descriptions

A Whole description is made up of words, and the possible number of words that can be used in a description is infinitely variable. It would be impossible to compile a complete list of all description variations.

A whole description only identifies a particular area. It can be simple, short, and to the point; or it can be long, complex, and difficult to understand. Which one is used is the choice of the scrivener. Compare these two descriptions:

1. *Lot 1, Block 4 Highland Addition to Colton, Map 1304, Riverside County, California.*
2. *All that portion of land located in Highland Addition to Colton according to Map 1304 as recorded in the office of the Recorder, Riverside County, California and more particularly described as follows:*

*Beginning at the south-easterly corner of said Lot 1 as shown on said Map 1304; thence along the southerly line of Lot 1, also being the northerly line of Hope Avenue to the south-westerly corner of said Lot 1; thence northerly along the westerly line of said Lot 1 to the north-westerly corner of said Lot 1; thence easterly along the northerly line of said Lot 1 to the north-easterly corner of said Lot 1; thence southerly along the easterly line of said Lot 1 to the point of beginning, also including reversionary rights in Hope Avenue.*

Description 2 says nothing more than is contained in description 1. The desirable feature of a whole description is brevity without loss of clarity or identity (either now or in the future).

## Whole Descriptions by Reference to Maps

The most complete descriptions requiring a minimum of word, yet conveying a maximum of information, are reference calls for a given map. A map is a shorthand notation devised by people to convey, by symbols, a large amount of information without the necessity of reading many words. If a map is complete, it will in itself completely describe a parcel of land. The only knowledge needed by the deed author is how to call for the map as: "Lot 12, Block C, West Highland Addition, according to Map 1604 as recorded in the office of the Recorder, County of San Bernardino, State of California"

Not all states have or always have had platting laws. In the past there were many parcels described as follows: "Lot 12, Block C, West Highland Addition to the City of ..... according to the attached plat."

The strength of this type description resides entirely in the plat; and, if the plat is poor, not showing monuments found or set, the description is poor.

Reference to sectionalized lands by township plat is similar in form. Because of the large number of these descriptions used, abbreviations acceptable to everyone have evolved. Undoubtedly, sectionalized land descriptions give more information with fewer words than any other possible description.

Sec. 2, T 2 S, R 4 E, MDM.

Not only does this describe a unique area, it also calls for all the original surveyor's field notes and monuments.

### **True Metes and Bounds Descriptions**

The following is an example of a true metes and bounds description.

*All that portion of Lot 10, Little Farms, according to the Map thereof number 2113 as recorded in the Office of the County Recorder, County of Ventura, State of California, more particularly described as follows:*

*Beginning at the south-westerly corner of Lot 10 as shown on said Map 2113; thence east 600.00 feet along the south line of Lot 10 to the south-easterly corner of the westerly 600 feet of said Lot 10; said corner also being the true point of beginning; thence N 0o00'30" W, parallel with and 600 feet easterly from the westerly line of said Lot 10, a distance of 2005.62 feet to the southerly line of the northerly 20 acres of Lot 10 lying westerly of National and Otay Railroad; thence N 89o59' E along the southerly line of said 20 acres and its extension, 1300.12 feet to a point of intersection with the centerline of the National and Otay Railroad right-of-way as described in Book 92, Page 462 of Official Records of the County of Ventura, said point of intersection being on a 1,910.08 foot radius (3°) curve whose center bears N 65o02' E; thence southerly along said curve and along the centerline of said railroad, through a central angle of 29°01' a distance of 967.33 feet to the centerline of Frog Creek; thence southerly along the centerline of Frog Creek the following course; S 4°01' E, 300.00 feet; S 2o59' W, 261.50 feet; S 10o31' E, 469.20 feet; south 245.54 feet to the southerly line of said Lot 10; thence leaving Frog Creek, West 2001.30 feet more or less to the true point of beginning. The above described land being subject to a 40-foot easement conveyed to the National and Otay Railroad and a 40-foot easement conveyed to the County for James Road, recorded in Book 1232, Page 23 of Official Records of the county of Ventura.*



## **Bounds Form**

If the land just mentioned was not surveyed and the purchaser was willing to accept a parcel of land without knowing its size, the following bounds form could be used.

*All that portion of Lot 10, Little Farms, according to the Map thereof number 2113 as filed in the Office of the County Recorder, County of Ventura, State of California bounded as follows:*

*On the east by Frog Creek. On the northeast by the centerline of the National and Otay Railroad. On the north by the southerly line of the northerly 20 acres of Lot 10 lying westerly of the National and Otay Railroad. On the west by the easterly line of the westerly 600 feet of Lot 10. On the south by the southerly line of Lot 10.*

The ambiguity of the 20 acres is left just as it was found. Only the courts or the owners can change it. If corrective action is wanted, the two owners can come to an agreement, or litigation can be instituted.

## **Exception Form**

Writing a description by exception is similar to the bounds form; instead of saying, "bounded by the following," the form "excepting the following" is used, as here:

- I. Lot 10, Little Farms, according to the Map thereof number 2113 as filed in the Office of the County Recorder, County of. Ventura, State of. California, excepting the following described parcels:
- II. All land lying east of Frog Creek.
- III. All land lying northeasterly of the centerline of the National and Otay Railroad.
- IV. The northerly 20 acres of Lot 10 lying westerly of the National and Otay Railroad.
- V. The westerly 600 feet of Lot 10.

The bounds form and the exception form are complete and identify the land, but neither gives quantitative data. The advantage of the metes and bounds form given is that it gives definiteness to the meaning of the 20-acre parcel, it gives quantities by which any other surveyor can retrace what the boundaries are. If the surveyor erred in his measurements, the monument calls are superior.

## **The Use of Co-ordinates in Descriptions**

A metes and bounds descriptions with the addition of monument calls does not completely insure future locations. Monuments can be destroyed and can be replaced, provided their position is known prior to destruction.

Ordinarily, when a conflict in calls exists, distance and direction will be superior to co-ordinates. This principle holds because coordinates, a product of distance and direction, are more subject to error. Nevertheless, the recitation of State Plane Co-ordinates in the description and on the plat provides additional evidence helpful to those interested in the property's location.

In metes and bounds descriptions, grid north may serve as a reference for bearings, provided it is properly identified in the body of the description and provided it is recognized by law in the jurisdiction. The corners can be identified by their x and y values (see sample description that follows).

It has been said that a call for co-ordinates is a call for all points of the system. An example of a body of a description by metes and bounds using State Plane Coordinates follows:

*Beginning at a drill hole in a stone bound which is set in the corner of a stone wall on the north line of Farm Road at the southwest corner of land of Peter I. Prince and at the southeast corner of land hereby conveyed, the co-ordinates of which monument referred to the Illinois State Co-ordinate System, West Zone, Are  $x = 617,603.29$ ,  $y = 1,316,042.17$ . Thence, on an azimuth of  $81^{\circ}39'30''$  a distance of 123.39 feet along the northerly line of Farm Road to an iron pin at the southwest corner of the tract hereby conveyed. Zero azimuth is grid south in the Illinois State Coordinate System, west Zone.*

When State Plane Co-ordinates are used in describing parcels within the U.S. Rectangular System, it will be apparent how the section or part of the section was divided. An example of such a description follows:

A tract of land lying Jackson County, State of Alabama, on the left side of the Tennessee River, in the South half (S 1/2) of the Northwest Quarter (NW 1/4) of Section three (Sec 3), Township Six South (T6S), Range Five East (R5E), and more particularly described as follows:

*Beginning at a fence corner at the southwest corner of the Northwest Quarter (NW 1/4) of Section Three (3) Coordinates N 1,470,588; E 416,239), said corner being north six degrees twenty-four minutes west ( $N 6^{\circ}24' W$ ) twenty-six hundred (2600) feet from the southwest corner of Section Three (3) (N 1,468,004; E 416,529), and a corner to the land of T.E. Morgan; thence to Morgan's line, the west line of Section Three (3), and a fence line, north five degrees thirty-three minutes west ( $N 5^{\circ}33' W$ ) thirteen hundred and four (1304) feet to a fence corner (N 1,471,886; E 416,113). The co-ordinates referred to in the above description are for the Alabama Mercator (East) Co-ordinate system as established by the U.S. Coast and Geodetic Survey, 1934. The Central Meridian for this co-ordinate system is longitude eighty-five degrees fifty minutes no seconds ( $85^{\circ}50'00''$ ).*

When State Plane Co-ordinates are required on plats of subdivisions, these values serve to perpetuate the entire subdivision. Such ties are now required by ordinances in some areas.

## Checklist for Descriptions

Because of the variable nature of land descriptions, no checklist can be thorough and complete. To be of value a checklist should be brief, and brevity itself causes omissions. The following list will serve as a reminder for the more important considerations included in descriptions.

1. *General descriptions (caption with title identity).*
  - a. State.
  - b. City, county, or parish.
  - c. Subdivision: name, number, date, and place of recording.
  - d. Court plat: case number, date, title, or other information necessary for identity.
  - e. Recorded document: book and page, where filed, date, title, and other identity information.
  - f. Township plat: data of recording (where there is more than one plat), range, township, section, portion of section.
  - g. Land grant: name, date, court case number, and other identity information.
2. *Seniority of deeds and record monuments: a call for all adjoining senior or superior deeds or use.*
  - a. The exact wording of the adjoiner deed when describing the line along a senior deed.
  - b. A call for property lines of equal rights (lot lines, section lines, etc.).
  - c. Proper identity of senior deed or property lines of equal rights.
3. *Call for a survey.*
  - a. Indirect: a call for a plat that calls for a survey (identify the plat).
  - b. Direct call for a survey: identify where plat and field notes are recorded, date, and surveyor.
4. *Point of commencement.*
  - a. Certainty for present and future identity.
  - b. Compatibility with previous deeds (is it the same point as used in previous deeds, and is the call the same?).
5. *Point of beginning.*
  - a. Correct measurements from point of commencement.
  - b. Certainty of identity: set monument, found monument, tie-out measurements from other monuments-all identified and described.
6. *Call for physical monuments found or set.*

Described for present and future identity, size, shape, material, marks on monuments (blaze, cross, license number, etc.), peculiar means of identifying.

Reference ties from other monuments by bearing and distance or other measurements.

7. *Call for natural monuments.*

- a. General identity: Atlantic Ocean, Columbia River, Grand Canyon.
- b. Locative position on monument: thread of stream, mean high-tide line, along the top of the bank, centerline of Keeney street, and so on.

8. *Directions.*

- a. Definition of basis of bearings or basis of direction (astronomic north, magnetic north, assumed, grid, etc.).
- b. All bearings on same basis.
- c. Directional calls along a monument (northerly along Pine Creek, southerly along Lake Superior; easterly along the centerline of Cabrillo Road).
- d. Directional calls along geometric or irregular lines (southerly along a circular curve of radius ...; westerly parallel with Milar Road; southerly, westerly, and northerly along the 330-foot elevation line; etc.)
- e. Bearings: correct quadrant.
- f. Azimuth: definition of reference meridian (south or north).
- g. Grid: definition of reference meridian.

9. *Distance: consistent units and definition of units where necessary.*

10. *Curves.*

- a. Circular: radius, central angle, chord, arc length, radial direction, direction of concave side, compatibility of parts where more than two curve elements are given.
- b. Spiral: complete definition of basis of spiral.
- c. Elevation: definition of elevation datum.
- d. Irregular: define line (along centerline of Rose Creek, along the average low water mark).

11. *Co-ordinates.*

- a. Origin or coordinates.
- b. Basis of direction.

12. *Area: more or less except where it is controlling with one dimension omitted-gross or net area?*

13. *Mathematics.*

All bearings and distances on same basis, and figure should close mathematically.  
Consistency of parts (length of arc, central angle, and radius, etc.).  
All lines and parts defined by consistent dimensions.

14. *"Of" conveyances.*

- a. Westerly 50' of lot 2 is 50' at 90°.
- b. Westerly 1/2 - define direction of dividing line.
- c. Northerly 10 acres - define dividing line.
- d. Sectionalized lands W 1/2 of NW 1/4 and W 80 Ac of NW 1/4 are not the same.
- e. In all except sectionalized lands, a fractional part is a fraction of the area.

15. *Strip conveyances.*

- a. Extend and shorten terminal lines.
- b. Each side of centerline not "either."
- c. Define station and origin.

16. *Intent*

- a. Does the description properly express the intent of the seller?
- b. Did he intend to sell by a survey, monuments, dimensions, area, or by what?
- c. Does the entire description express this intent?

17. *Final steps: date, sign, seal, and deliver to client.*