

SUFFICIENCY OF REAL PROPERTY DESCRIPTIONS

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LEGAL REQUIREMENTS:

- Statute of Frauds

The Statute of Frauds (adopted in England in 1677 and later incorporated into the laws of the United States) required that contracts be in writing. One of the five types of contracts included in this statute was for the conveyancing of real property wherein it is required that the memorandum (deed) or note be signed by the party charged, or by his legal representative.

The Statute of Frauds is included in the Nevada Revised Statutes under the chapter pertaining to "Estates in Property; Conveyancing and Recording," (NRS 111). This statute reads:

111.105 Conveyances by deed. Conveyances of lands, or of any estate or interest therein, may be made by deed, signed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved, and recorded, as directed in this chapter.

This statute, similar in content to that of many other states, requires that the instrument be in writing, signed by the owner, acknowledged, and recorded.

PRACTICAL REQUIREMENTS:

- Descriptions should be clear and concise
- Descriptions should be grammatically correct
- Descriptions **MUST** describe the land with certainty and to the exclusion of all other interpretations

The following sections of this paper will go into these aspects in more detail; however, one has to wonder as to what standard sufficiency can be measured. While there are excellent texts that explain the various types of descriptions and their proper usage, there is little written on actual sufficiency.

Gurdon H. Wattles, in Chapter 7 of *Writing Legal descriptions*, explains that sufficiency is one of the first details to look for in the analysis of any description and that **sufficiency is related to the adequateness of references to documents in the public record, calls to monuments, certainty in dimensions, and the completeness of the necessary facts.** (emphasis added)

Further, a section of the 1979 Specifications for Descriptions of Tracts of Land for Use in Land Orders and Proclamations, by the Cadastral Survey, Bureau of Land Management, U.S. Department of Interior, states that:

"Drafts of proposed proclamations and land orders should be carefully prepared with proper regard for established **good usage as to terminology, phraseology, punctuation, arrangement, and paragraphing**. The description of the tract or tracts of land involved should be **technically competent, definite, and susceptible of only one interpretation**. It should furnish sufficient **information for the identification of the land on the ground**...Land descriptions should be **reviewed by an officer qualified to pass upon the technical sufficiency** and form thereof, who has access to the basic survey data and other records from which the draft of the proposed order was prepared." (emphasis added)

What makes a "Legal Description" . . . Legal?

This question is seldom asked and, in my opinion, has led to the mistaken belief that professional land surveyors can prepare instruments of conveyance, such as grant deeds and easement documents. Simply stated, it is the inclusion of a description into an instrument of conveyance that causes the description to become a legal description. This, I believe, has been the natural result of the labeling of these descriptions as "legal descriptions."

It must be remembered that the inclusion of a description of real property into such instruments of conveyance constitutes the practice of law. Therefore, unless you are licensed to practice law, or are preparing instruments at the request of an attorney, you must refrain from preparing these documents. As a practical matter, however, it is presumed that such documents are prepared under the direction of an agency's legal

representative when non-attorneys in public agencies draft the documents. The same may be true for those large engineering/surveying firms who have an attorney "employed" by virtue of a full-time retainer.

For this reason, the terminology for a description of real property used in this paper does not include the word "legal."

ELEMENTS OF REAL PROPERTY DESCRIPTIONS:

General Provisions

- Do not write out numbers
- Use a colon to end the preamble
- Use a semicolon to end each course
- Do not capitalize general direction calls:
 - ... southwest corner
 - ... west 50 feet
- Curves are considered tangent unless otherwise stated
- Do not use "True Point of Beginning"; use "Commencing at" and then proceed to the "Point of Beginning"
- Follow the area of the land described with "more or less"; this assures that the area of the land described is not considered a "bound" or given more significance than intended
- Adjectives describing a line are not capitalized
- Spell out units:
 - ... North 89~57'26" West 135.36 feet
- Donot use abbreviations

Caption or Preamble

The caption is the first element of a description and appears first on the page. It is the statement that recites the general location of the property to be described and functions to limit the extent of what is to follow in the body of the description. For example:

A portion of the NW1/4 of the NW1/4 of Section 5, Township 21 South, Range 61

East, M.D.M., City of Las Vegas, County of Clark, State of Nevada, described as follows...

Note that if the description that followed included any lands located in another 1/16 of the section, those lands would not be included in the conveyance. Therefore, care should be given to the language contained in the caption.

Body

The main portion of the description. For example:

BEGINNING at a point on the south line of said Section 5, said point being South 89~25'17" East, 165.21 feet from the southwest corner of said Section 5; Thence North 01~54'23" West 345.91 feet...

Limiting Clauses

Often called qualifiers, these are used to limit or preserve some rights for the grantor or to recognize a previous conveyance. They can also be used to grant a right (easement) to a third party.

EXCEPTING THEREFROM, the south 30.00 feet thereof for...

RESERVING THEREFROM, the easterly 20.00 feet thereof for private road and public utility purposes...

The term SUBJECT TO refers to some right or grant already in existence, such as a mineral right, easements, etc., and are often included in the deed to ensure continued passage with each successive conveyance. **Let the title company or attorney include these, not you.**

Augmenting Clauses

These are used to attach some thing or a right or privilege to the property being described. For example:

TOGETHER WITH a perpetual view easement...

TOGETHER WITH a reciprocal access easement across...

Miscellaneous

- The basis of bearings used for the description.
- Identification of the end of the description by including "END OF DESCRIPTION."
- The validated seal or stamp of the registrant responsible for preparation or issuance of the description. In Nevada, this is required by state law (NRS 625.330).

- Sometimes a description is prepared for the purpose of a lease or mortgage of a portion of a parcel of land. In states that only permit the creation of additional parcels or subdivisions of land by a mapping or platting process, the following clause should be added to the end of the description. This provides protection for the preparer of the description should the description be used for an actual conveyance:

"The above described parcel of land represents a portion of (state here what the parent parcel is) and is not intended for inclusion in a document conveying fee ownership. To do so is a violation of state law and/or local ordinance."

- The following clause should be added to the description of a portion of a parcel of land prepared for the adjustment of a boundary line or the vacation of a fee-owned right-of-way:

"The above described parcel of land is to become part of and adjoined to (state here what the adjoining parcel is)."

TYPES OF DESCRIPTIONS:

Sectional Lands

- Based on the subdivision of sections by aliquot parts, such as:

The SW1/4 of the NE1/4 of Section 5, Township 21 South, Range 61 East, M.D.M., City of Las Vegas, County of Clark, State of Nevada.

- Based upon non-aliquot portions of a section, such as:

The west 1/2 of U.S. Government Lot 1 of Section 31, Township 21 South, Range 61 East, M.D.M., County of Clark, State of Nevada.

Aliquot: Contained in something else an exact number of times.
(*Black's Law Dictionary*)

Lot and Block Descriptions

- Lot 1 of Block 1 of Las Vegas Heights, according to the plat thereof, recorded in Book 10, Page 20 of Plats, Clark County, Nevada Records.

Portions of Existing Parcels

- The west 1/2 of Lot 1 of Block 1 of Las Vegas Heights, recorded in Book 10, Page 20 of Plats, Clark County, Nevada Records.

- The east 50.00 feet of Lot 1 of Block 1 of Las Vegas Heights, recorded in Book 10, Page 20 of Plats, Clark County, Nevada Records.
- The east 30.00 feet and the south 30.00 feet of that parcel of land conveyed to John Smith by deed recorded in Book 891203, Inst. No. 556, Clark County, Nevada Records, TOGETHER WITH a spandrel area having a radius of 15.00 feet in the resulting southeast corner of said parcel.
- The east 25.00 feet of the south 30.00 feet of the north 60.00 feet of Lot 1 of Block 1...

Certain ambiguities in interpretation may arise with these types of descriptions. Therefore, include a sketch (as an exhibit) which graphically depicts the intent.

Use sketches in other types of descriptions as well. It is interesting to note that the courts have written that when an ambiguity exists between the written word and a map or sketch, the latter may properly be referred to in ascertaining the intent of the grantor. *(From Application of Eklund, 465 P.2d 552)*

Metes and Bounds Descriptions

A series of bearings and distances around the perimeter of an area (metes), together with references to monuments, both physical and legal (bounds). For example:

BEGINNING at the northwest corner of that parcel of land conveyed to John Smith by deed recorded in Book 891203, Inst. No. 556, Clark County, Nevada Records; Thence South 04~34'51" West, along the west line of said parcel, 300.67 feet to the southwest corner of said parcel; Thence...

Strip Descriptions

A description usually for rights-of-way such as roads, utilities and flood control channels.

- A strip of land, 60.00 feet in width, lying 30.00 feet on both (not"either") sides of the following described centerline...
- A strip of land 75.00 feet in width, lying 25.00 feet northerly, northwesterly, and westerly and 50.00 feet southerly, southeasterly, and easterly of the following described line...

It is essential that the following clause be added to the end of the description in order to avoid gaps and overlaps where the sidelines intersect property lines:

"The sidelines of the above described strip of land shall be extended and shortened to terminate at (state the appropriate property line (s))."

COMMON WORDS AND PHRASES:

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| <p>A Distance of</p> | <p>Use this phrase only when a numeric value will be followed by another numeric value.</p> <p style="text-align: center;">...Thence North 00~21'15" West, along the west line of said Section23, a distance of 664.12 feet...</p> <p>This term is often overused and adds redundancy to descriptions. Except for the above situation, avoid using it, i.e. where there is no following numeric value.</p> |
| <p>Adjacent/Adjoining</p> | <p>Adjacent means "lying near or close to." It implies that the two objects are not widely separated, but may not actually touch. Therefore, don't use this term to describe objects that are intended to touch.</p> <p>Likewise, the term "contiguous" means nearly the same as "adjacent" and should be avoided. The term "adjoining" and "coincident with" are the best choices where two objects are intended to actually touch.</p> <p style="text-align: center;">...Together with a 12.00 foot wide easement (state its purpose and to whom it favors) the northerly line of which adjoins/is coincident with the north line of the above described parcel of land.</p> |
| <p>Along</p> | <p>Use this term when the preceding course in a description terminates at a right-of-way, senior property line, or a riparian boundary and the following course is to proceed along that boundary. Use of this term ensures that if a retracement of the description results in a different direction of that boundary, the described line will be coincident with it.</p> <p style="text-align: center;">...Thence North 02~23'47" West, along the centerline of Jones Blvd., 34.81 feet...</p> |
| <p>Both</p> | <p>Use this term in strip descriptions where the right-of-way lines are on both sides of the described centerline. The term "either" is often used and</p> |

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| | <p>incorrectly gives the indication of a choice.</p> <p>A strip of land 40.00 feet in width, lying 20.00 feet on both sides of the following described centerline:</p> |
| <p>Conveyed/ Described</p> | <p>These terms are used when the line being described is intended to terminate or run along a senior property line. The use of the term "conveyed" is not interchangeable with the term "described". There may be an ownership difference between what was described on the deed vs. what was actually conveyed by the document. Therefore, careful attention must be given when using either of these terms.</p> <p>...to a point on the south line of that parcel of land conveyed to John Smith by deed recorded in Book 891203, Inst. No. 556, Clark County, Nevada Records...</p> <p>...to a point on the south line of that parcel of land as described in Book 891203, Inst. No. 556, Clark County, Nevada Records...</p> |
| <p>Exceptions and Reservations</p> | <p>Use "excepting therefrom" when the language to follow is <u>not</u> intended to be included in the preceding description. This phrase is an important element in a description for the preservation of senior rights.</p> <p>...EXCEPTING THEREFROM, that portion of the above described parcel of land conveyed to John Smith by deed recorded...</p> <p>The term "reserving therefrom" operates to give or preserve some privileges for the grantor or a stated third party. It therefore denotes a use or easement.</p> <p>...RESERVING THEREFROM, the easterly 20.00 feet thereof for private road and public utility purposes in favor of that parcel of land conveyed to John Smith by deed recorded...</p> |
| <p>Parallel</p> | <p>Use this term when the direction of a line is intended to have the identical direction of another line. The correct preposition to be used with the term</p> |

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| | <p>is "with."</p> <p>...Thence North 89~58'29" East, parallel with the north line of said Lot 4...</p> |
| Point | <p>Refers to a specific location, usually when such a point is on a subsequently named object.</p> <p>...451.21 feet to a point on said west line of Lot 7...</p> <p>Avoid using this term where no qualifier follows.</p> |
| Prolongation | <p>This term is used to extend a line. The term "continuation" is used to extend a curve.</p> <p>...Beginning at a point on the centerline of Jones Blvd., said point being on the westerly prolongation of the south line of Lot 2 as shown on Parcel Map...</p> <p>...Thence North 01~04'09" West, along the west line of said Lot1 and its northerly prolongation, 231.06 feet to a point on the centerline of...</p> |
| Right Angles | <p>This term is used to denote a specific relationship to another object.</p> <p>...334.81 feet to a point 40.00 feet southerly of, as measured at right angles to, the centerline of...</p> |
| Said | <p>This term is used to avoid unnecessary redundancy in descriptions. It refers only to an immediately preceding matter, never to one that follows. The term "aforesaid," although synonymous, is archaic and is not recommended.</p> <p>...12.00 feet to a point on the west line of said Parcel 3; Thence North 01~01'35" West, along said west line, 145.00 feet;</p> |

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| To | <p>Use this term freely to indicate the actual terminus of a line you are describing, regardless of the actual stated terminus of the line in feet.</p> <p style="text-align: center;">...Thence South 67~34'12" West 64.87 feet to a point on the centerline of Jones Blvd....</p> <p style="text-align: center;">...North 89~45'21" West 300.97 feet to the southwest corner of Lot 2...</p> |
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CURVES:

There are many ways to describe curves. Some variations are a result of regional convention. However, some aspects of describing curves are fundamental. At least two elements of a curve are required for definition (usually radius and length). It is conventional, however, to add a third element for a check. Additional elements must be added to define the orientation of the curve and the direction of travel along it. Following are ways to describe various curves:

Line to Tangent Curve:

...North 23~16'52" East 700.00 feet to the beginning of a 25.00 foot radius curve, concave northwesterly; Thence northeasterly along said curve 5.45 feet through a central angle of 12~30'00"; Thence North10~46'52" East...

Line to Non-tangent Curve:

...North 00~11'54" West 162.50 feet to a point on a 250.00 foot radius curve, concave southeasterly, the radius point of which bears South31~21'47" East; Thence northeasterly along said curve 32.94 feet through a central angle of 07~33'00"; Thence...

- OR -

...North 00~11'54" West 162.50 feet to the beginning of a non-tangent 250.00 foot radius curve, concave southeasterly, the radius point of which bears...

Compound/Reverse Curve:

...Thence westerly along said curve 100.72 feet through a central angle of 54~11'10" to the beginning of a 200.00 foot radius compound/reverse curve,

concave southerly (the radius point of which bears South 20~11'44"West)...

Curve to Non-tangent line:

...Thence northeasterly along said curve 88.91 feet through a central angle of 23~15'36"; Thence North 39~12'45" West, non-tangent to said curve, 672.45 feet...

The above method of describing curves is preferable in that it gives the curve information in much the same order that a draftsman would use if plotting the curve (i.e., a logical progression) and is adaptable to the wide variety of situations that can occur.

PRESERVATION OF JUNIOR AND SENIOR RIGHTS:

In the preparation of property descriptions, it is essential that the seniority of previously conveyed properties be preserved. The proper use of many of the common words and phrases outlined earlier will assist in that endeavor.

This topic is complex, and a thorough discussion is beyond the scope of this paper. The following, however, will serve as an introduction to this topic.

Parcels that were conveyed of a larger parcel of land are entitled to their full measure. The subsequent conveyance of another portion of the larger parcel is junior to the preceding parcel and senior to any subsequent to it. Therefore, a properly written description will include, where appropriate, adequate references to senior property lines.

Failure to reference the seniority of an adjoining property line could result in alternate locations of property lines, gaps or overlaps, and possibly cloud the title.

Consequently, when preparing property descriptions on lands conveyed by metes and bounds or a portion of an existing parcel, it is essential to research the history (back to the initial conveyance) of each parcel of land that abuts the land being described.

Remember: "First in time is first in line."

Generally speaking, descriptions by aliquot portion of a section (i.e. the NW1/4 of the SE1/4 of Section 14...) have the effect of a simultaneous conveyance, even though each portion of the section may have been patented at different times. Therefore, junior/senior rights do not normally pass or accrue to these types of lands.

NEVADA STATUTORY REQUIREMENTS:

(From Volume 39, Chapter 625 Nevada Revised Statutes and Nevada Administrative Code, Revised 1995)

625.330 Authorized practice; use of seal; prohibited acts.

1. Each professional land surveyor may practice land surveying and prepare:
 - (a) Maps, plats, reports and *descriptions*; and
 - (b) Grading and drainage plans for residential subdivisions containing four lots or less, or other documentary evidence in connection therewith.
2. Every map, plat, report, drawing, *description*, grading and drainage plan or other document issued by a professional land surveyor must be signed by him, endorsed with his certificate number, dated and stamped with his seal or rubber stamp, whenever the map, plat, report, drawing, *description*, grading and drainage plan or other document is filed as a public record, filed with any public authority or delivered as a formal or final document.
3. It is unlawful for a professional land surveyor to sign, stamp or seal any map, plat, report, *description*, grading and drainage plan or other document relating to land surveying which was not prepared by him or for which he did not have the responsible charge of the work.
4. It is unlawful for anyone to stamp or seal any documents with the seal after the certificate of the professional land surveyor named on the seal has expired or has been suspended or revoked, unless his certificate has been renewed or reissued. (emphasis added)

625.730 Requirements for legal description of property. If a professional land surveyor is called upon to prepare a legal description of real property, the professional land surveyor shall include:

1. A sufficient caption, body, and where applicable, qualifying clauses;
2. A clear statement of the relationship between the real property being described and the survey control or the basis of the unique location;
3. A clear statement explaining the basis of bearings or language which otherwise makes definite the method of direction and orientation for the lines of the property being described and the survey control related thereto;
4. Full and complete citations to maps, plats, documents and other matters of record, facts of pertinence, which are intended to be incorporated into and made a part of the legal description by reference thereto;
5. When called out, complete and detailed descriptions of physical monuments, both

natural and artificial;

6. When appropriate, incorporated either directly or by citation, sufficient data to enable a check of mathematical closure for the property being described; and

7. His name, Nevada registration number and validated seal.

EFFECTS OF INSUFFICIENT REAL PROPERTY DESCRIPTIONS:

Patent Ambiguity

A patent ambiguity is an uncertainty in a description that is obvious from the written word on the face of the document. A conveyance containing a patent ambiguity cannot be explained by extrinsic evidence and may be considered as void or voidable by the courts. For example:

...Township 21 South, Range 61 East, M.D.M., lying in the County of Nye, State of Nevada... (This township is actually in Clark County, Nevada)

Latent Ambiguity

A latent ambiguity is an ambiguity that does not appear in the description, but by applying the description to the ground, causes certain conflicts to arise.

"...it is that which seemeth certain and without ambiguity for anything that appeareth upon the deed or instrument, BUT there is some collateral matter outside of the deed that breedeth ambiguity." (*Lord Bacon, 17th Century*)

...to the northeast corner of John Smith's corral...

While the above example may seem obviously ambiguous today, there was a time when this type of "bound" was commonplace. Just because it is obvious today that this is ambiguous (because its location may be unknown, lost or destroyed) it is only a latent ambiguity. A deed must be construed as of the time it was given and not at a later date. (*Goddard v. Coever, 412 P.2d 259*)

In the case of a latent ambiguity, parol or extrinsic evidence may be admissible in applying the description to the ground. However, parol or extrinsic evidence may never be applied for the purpose of completing the description itself since the description is sufficient on its face.

Parol evidence: Oral or verbal evidence

Extrinsic evidence: External evidence, or that which is not contained in the agreement

Junior and Senior Rights

When a conveyance makes reference to a line or boundary of a previously conveyed parcel of land, that land is said to be senior. It is to receive all that to which it is due.

Consider the case of a land owner who believes that his property is 100.00 feet wide. He first sells by deed, the west 50.00 feet; he later sells by deed, the east 50.00 feet.

A subsequent survey of the property reveals that his original parcel was only 95.00 feet wide. The owner of the west 50.00 feet is entitled to the full 50.00 feet and the owner to the east gets the remainder, or 45.00 feet. (The same situation would result if the original property was sold by acreage.)

What would happen if the original property contained 110.00 feet? Generally speaking, there are three possibilities:

1. If the easterly parcel were conveyed several years after the westerly parcel, the easterly parcel may be entitled to all of the excess. (Especially if the original grantor had no interest in adjoining property.)
2. If both parcels were first conveyed at the same time, or nearly so, then each parcel may share equally in the excess. (Again, especially if the original grantor had no interest in adjoining property.)
3. The gap may remain in the ownership of the original owner.

Clearly, the resolution of such a situation is difficult for land surveyors. The primary function of the surveyor is to gather and report all possible information, which may affect the location of a boundary. Information that should be acquired includes the location of lines of occupation, the location of physical improvements lying in the area of question, and the testimony of affected (interested) parties. Upon a full evaluation of this information, the surveyor is then charged with rendering an opinion as to the most probable solution and explaining such, in writing, to the client.

Often, the location of occupation lines and physical improvements will shed some light as to the intent of the parties and assist the surveyor in formulating an opinion as to the appropriate location of a boundary line. However, it may be that none of the physical evidence favors one interpretation of the deed over that of another. The surveyor then must look to the possibility of unwritten title transfers, again, by obtaining the testimony of the affected parties and/or their predecessors.

In general, when retracing property whose description indicates an adjoining senior interest in title, the land surveyor is required to establish that interest. For example:

...Thence South 42~16'54" West 300.32 feet **to** the southwest corner of that property conveyed to John Smith by deed recorded...(emphasis added)

Rules of Construction

It is well known that over the years, there have been countless disputes over the locations of property lines. In certain cases, the disputes revolve around language contained in the deed. As a result, there have been several court cases, which have established the priorities for these calls. (*Scott v. Hansen, 422 P.2d 525*)

1. Natural monuments, such as rivers and lakes, or artificial monuments, such as stakes and iron pipes, recited in the description.
2. Monuments not recited, but disclosed by reference to maps or other documents of record.
3. The recital of a boundary of record, such as reference to a map or deed.
4. A recited distance and/or bearing ties to record corners or lines not on the boundary of the subject property.
5. * Distances recited in the description without mention of any of the foregoing.
6. * Bearings recited (or their derived angles) without mention of any of the foregoing.
7. Area of the parcel when stated as an addendum to the description, as in "and containing 4.78 Acres, more or less."

* These two items are often interchanged, depending on the circumstances.

Note that the items on the above list should be considered as general rules of construction. Most states have adopted statutes that address the rules of construction, which must be applied to situations in those states.

However, the application of the rules of construction are not to be made arbitrarily. One must consider any number of facets of the description, which may bring to light the true intent of the parties. Some of these are:

- That which is first mentioned is preferred.
- That which is most certain prevails.
- When one set of facts conforms more closely than any other combination, that is the most reasonable solution. (*From Application of Eklund, 465P.2d 552*)
- In the case of doubt in the effect of language used to form a contract, the language is interpreted against the party who chose it (i.e., the grantor)...Doubts arising from the deed as to the intentions of the parties must be resolved in favor of the free and untrammelled use of the land. (*Phoenix Title and Trust Company v. Smith, 403 P.2d 828*)
- A call in a grant may be reversed and a line retraced in an opposite direction,

whenever by doing so, the boundaries will most nearly harmonize with calls on monuments of the grant. (*Phoenix Title and Trust Company v. Smith*, 403 P.2d 828)

Most generally, however, the following excerpt from *Hurd v. Byrnes*, 506 P.2d 686, is a good principle to keep in mind:

"...we have adopted a policy against construing conveyances so as to create strips of land, the title of which would otherwise remain in abeyance for long periods of time."

**** END ****

Author's Note: This paper was presented at the 1995 ACSM/ASPRS Conference in Charlotte, North Carolina and has been updated and edited from its original form into this HTML format. It was written more for a presentation and discussion, than a definitive paper on the topic.
