

Legal Descriptions: A Practical Guide *Webinar*

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Sponsored by:



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LEGAL DESCRIPTIONS: A PRACTICAL GUIDE WEBINAR

- I. **The Basics: Why is the Legal Description in an instrument so important?**
 - A. Basic elements of an insurable instrument
 - B. Cause of claims
 - C. Verification
- II. **Types of Descriptions**
 - A. Platted Lot, Block &/or Tract
 - 1. Platted Lots-Fractional Lots or Tracts
 - 2. Platted Lots-Footage Descriptions and Describing Residue parcels
 - B. Metes and Bounds
 - C. U.S. Government Survey, Govt. Lots
 - D. Condominiums
 - E. Easements
- III. **The Basics: Test of Sufficiency of Legal Description.**
 - A. Uniform Title Standard 21.1
 - B. Surveyor must use only his tools and the description.
 - C. Tax Parcel ID # Not Sufficient
 - D. A Street Address is not a sufficient Legal Description, **except in cases of:**
 - 1. Powers of Attorney,
 - 2. Devises,
 - 3. Transfers of land by Final Judgment of Dissolution of Marriage
 - 4. Bankruptcy instruments
 - E. Uniform Title Standard 21.3- Exception
- IV. **Problematic Legal Descriptions-Rules of Construction**
 - A. Hierarchy and Priorities
 - B. Ambiguous Descriptions
 - C. Monumentation and Rules of Construction-Distinguishing Harmless Error and Fatal Errors in Description
 - 1. Distances
 - 2. Angles and Bearings
 - D. Scrivener's Affidavit, Clerk's Affidavit
 - E. Re-execution and Re-recording of Instruments
 - F. Overlap, Gore, Hiatus
 - G. Exception for Service of Process, (*Brown v. Sohn*)
 - H. Survey Review-Conflicting Survey and Deed, Adverse Possession
 - I. Disputed Boundaries, Boundary Line Agreements-Parties must refer to same survey
 - J. Agent Orders survey to clarify description or title issues – Beware!
 - K. Foreclosures & Litigation-
 - 1. Quiet Title & Reformation Suits
 - L. Wild Instruments



The Basics

Why is the legal description so important?

An instrument must contain an adequate legal description to be insurable. Errors in legal descriptions are a frequent cause of claims. Many times, legal description errors are perpetuated instrument after instrument. To help avoid claims, the accuracy of the legal description should be verified prior to the execution of the instrument.

Types of Descriptions

Four main types of legal descriptions exist:

1. **Platted Lot, Block or Tract.** A platted lot, block or tract occurs where a plat is recorded in the Official Records of the county. Typically, these types of legal descriptions are easier to handle since they are composed of four basic elements – lot number, block number, subdivision name and plat book/page. The less data required means less chance of error.
2. **Condominiums.** This type of legal description is created by recording a declaration of condominium in the Official Records. These descriptions should include a unit number, sometimes a building designation/number, condominium name and the declaration book/page.
3. **Acres (also called section land, un-subdivided land or raw land).** The major components of this description are a section (or portion thereof), a township designation and a range designation, and may be further subdivided into fractional parts of sections.
4. **Metes and bounds.** Also referred to as a perimeter description or running description, the description proceeds from point to point on the ground and establishes the boundaries of subject property. Each point in a straight line is described by two designations; first, an angle to state in which direction one must go to reach the next point in the description, and second, a distance to the next point in the description. Sometimes the boundary is a curve, and in such cases, the radius, chord bearing and chord distance for the curve are generally provided, together with a statement whether the curve is concave or convex and in what direction. Each such portion of a description from one point to the next is referred to as a "call". This type of description can also be used to describe a portion of a platted lot, block or tract. A metes and bounds cannot typically be used to describe a portion of condominium property.

Guide Tip: There is a higher chance of error with a metes and bounds description, especially where it consists of numerous "calls" which contain both angles or bearings and distances and sometimes include curve data.

Example of Platted Lot:

Lot 1, Block 2, Green Acres Subdivision, Plat Book 4, Page 5, of the current public records of Duval County, Florida

Example of Fractional Portion of Platted Lot:

The North ½ of the West 1/4 of Lot 1, Block 2, Green Acres Subdivision, Plat Book 4 page 5 of the current public records of Duval County Florida.

Example of Footage Description of Platted Lot:

North 100 feet of the South 200 feet of Lot 1, Block 2, Green Acres Subdivision, Plat Book 4 page 5 of the current public records of Duval County, Florida.

Condominiums

Example of Condominium Legal Description:

Unit 5, Building A, of the Sunrise Safari Condominium, according to the Declaration of Condominium recorded in Official Records Book 32, Page 8 of the public records of Broward County, Florida.



In determining a proper legal description of a condo unit, it is important to review the declaration of condominium. Many instruments affecting condo units are prepared without such review, and it is not uncommon to find errors in such descriptions.

Quicksand – Common Problems with Condominium Descriptions

1. Incorrect condominium name.
2. Erroneous unit, building or phase designation.

Section Land Descriptions – US Government Survey-Rectangular Survey System

Rectangular Survey System

In the 1800s the US Government had the State of Florida surveyed by what is referred to as the “Rectangular Survey” system. This is the basis for all subsequent surveys in Florida. In this system, there are three basic components; a Section number, a Township designation (example: Township 1 North) and a Range designation (example: Range 1 East). The Government Survey established the “Principal Meridian” (PM) running North and South through Tallahassee (to measure points East and West) and the “Base Parallel” (BP) running East and West through Tallahassee (to measure points North and South). Every 6 miles East and West of the PM additional lines were established, and every 6 miles North and South of the BP additional lines were established. The result is a “checkerboard” grid that overlays the entire state. Lines that measure points North and South are referred to as lines of latitude, and are also called “Township lines”. Lines that measure points East and West are referred to as lines of longitude and are also called “Range lines”. These lines intersect to form an area approximately 6 miles square, or 36 square miles. Such an area is called a “Township”. So, property lying between the Base Parallel and the line 6 miles North of the Base Parallel will lie in Township 1 North. Any property lying between the Principal Meridian and the line 6 miles East of the PM will lie in Range 1 East. Land lying within this area would be described as lying within Township 1 North, Range 1 East. A Township is described by two designations; a Township designation and a Range designation. (Example: Township 1 North, Range 1 East)

To further divide a Township into smaller subdivisions, a Township is normally divided into 36 equal areas called a “Section”. Refer to your slide to see how the sections are arranged within the Township. And a Section can be further subdivided by fractional portion or by footage portion or by a metes and bounds description. Government lots were also established by this survey to account for irregular shaped parcels resulting from waterways, land grants and other irregularly shaped parcels of land.

The Government Survey can also be useful also in identifying certain navigable water bodies and their locations. Metes and bounds descriptions are descriptions by distances and angles. Angles are also referred to as bearings.

Example of Section Land Metes and Bounds Legal Description:

Part of the Northwest Quarter of Section 1, Township 2 South , Range 27 East described as follows: Begin at the Northwest corner of the Northeast Quarter of said Section 1; thence run North 89 degrees 05 minutes, 15 seconds West, along the North line of said Section 1, a distance of 100 feet to a point; thence run South 00 degrees 10 minutes 03 seconds West a distance of 75 feet to a point; thence run South 89 Degrees 05 minutes 15 seconds East a distance of 100 feet to a point; thence run North 00 degrees 10 minutes 03 seconds East, a distance of 75 feet to the point of beginning.

Note: A metes and bounds description may also be used to describe a portion of a platted lot, block or tract. This type of description describes the perimeter boundaries of the property.

Test of Sufficiency of Legal Description

UNIFORM TITLE STANDARD 21.1 - TEST OF SUFFICIENCY OF LEGAL DESCRIPTION

If the description of land conveyed in a deed is such that a surveyor, by applying the rules of surveying, can locate the same, such description is sufficient, and the deed will be sustained if it is possible from the whole description to ascertain and identify the land intended to be covered.

In applying the above rule, the Surveyor must use only his tools and the description.



While a tax parcel number may prove helpful in determining what description was intended, it is not a sufficient legal description.

Poll Question:

A street address is a sufficient legal description for the following...

- A. Powers of Attorney
- B. Devises (Wills & Trusts)
- C. Transfers of land by Final Judgment of Dissolution of Marriage, provided an affidavit links the address to the description. (If a deed is required, it must have an adequate description)
- D. Instruments filed in Bankruptcy
- E. All of the above

Caution: Where an address may describe more than one parcel of land owned by the party, an address should not be relied upon.

Caution: While generally not sufficient, an instrument attempting to convey by an inadequate description or address should not be ignored, as it may be reformed, or may give actual notice of its existence.

Paula Principal's POA refers to "all of my property".

Is a specific legal description required?

No. **While POAs are strictly construed as to the authority granted**, where the principal evidences in the POA an intention to give authority to the attorney in fact over all the principal's property, the term "all my property" or "all of my real property" is sufficient.

Where the principal evidences in the POA an intention to give authority to the attorney in fact over only a specific parcel or parcels, then the specific property must be described; but a correct address is a sufficient description in such case.

Problematic Legal Descriptions - Rules of Construction

UNIFORM TITLE STANDARD 21.3 - CONVEYANCE DESCRIBED ONLY BY REFERENCE TO PREVIOUS RECORDED DOCUMENT

A conveyance which describes the land only by reference to a previously recorded instrument, without reciting the description set forth in the previous instrument, is valid, even though the title examiner must go to another instrument to identify the property conveyed.

This assumes the previous instrument has an adequate description. And, this standard also applies to instruments other than conveyances.

UNIFORM TITLE STANDARD 21.4 - CONFLICT BETWEEN SPECIFIC DESCRIPTION AND STATEMENT OF ACREAGE

If a deed contains a specific description of the property such as by government survey, Metes and Bounds, or reference to a plat, together with a statement of acreage, the specific description prevails over the statement of acreage, unless an intent to convey a certain quantity is clearly stated.

The general point here is that a specific description will generally control over a more general description. For example, where the description says South ½ of Lot 1 described as...but metes & bounds describes "South ½ of



Lot 1 and North 10 feet of Lot 2” the description will include the north 10 feet of Lot 2. Where a metes and bounds description is included, the examiner must **not** ignore the metes and bounds description. **But, beware of the exception to this rule!**

See *Carson v. Palmer*, 190 So. 720. In this case, the general description in a deed stated **Lot 6** of a platted subdivision, but the metes & bounds description, which described only the boundaries of the property, described **Lot 9** of that subdivision. The grantee in the deed attempted to support the conveyance by explaining that Lot 6 had already been conveyed by the grantor to another person and that the grantee had gone into possession of Lot 9, but the court held that where the two descriptions described completely different Parcels, the description is void and the Deed Fails.

Rules of Construction/Monumentation - Harmless Errors

Some errors in angles and distances in a legal description may be considered harmless (no correction required) where the call in the description runs along a monumented line or a line established by survey, such as an established right of way line or Section line (the angle is controlled by that line), or to a monumented point or a point identified by a survey (the distance is controlled by that point) such as to a platted lot line or a Section line.

Angles and Bearings

Where a call in a description says “Thence run North 89 degrees 05 minutes 15 seconds East, along the North right of way line of Liberty Street” the North line of Liberty Street controls the angle/bearing of that call.

Distances

Where a call in a description says “Thence run North 89 degrees 05 minutes 15 seconds East, along the North right of way line of Liberty Street a distance of 100 feet to the West line of Lot 4 of Green Acres Subdivision” the West Line of Lot 4 controls the distance of that call.

Scrivener’s Affidavit, Clerk’s Affidavit

Certain types of errors in platted descriptions or condo descriptions may be corrected by a Scrivener’s Affidavit. The concept of the Scrivener’s Affidavit is that, if the error in the name of the Subdivision/Plat or Condo Project is slight enough that it can be shown that no other recorded Subdivision/Plat of Condo Project is so similarly worded to be confused with the correct Subdivision/Plat or Condo Project, or

If the Lot, block or Condo Unit designation is correct, and any similarly worded Subdivision/Plat or Condo Project contains no such Lot, Block or Unit designation, then the error in the description can be corrected by a Scrivener’s Affidavit. The affidavit can be executed by the clerk of the court, a surveyor or a title professional who is familiar with the records of plats or condo declarations in that county.

Safari Scrivener

Carrie Condo conveyed Unit 6, Building B, of Wild Game Condominium, according to the Declaration of Condominium recorded in Official Records Book 1, Page 2 of the Public Records of Lee County, Florida. The correct Condominium name was Wild Thing Condominium (no Condominium named Wild Game Condominium exists in Lee County).

In this case a Scrivener’s Affidavit can be used to correct the erroneous name of the condo project.

Re-execution and Re-recording of Instruments not effective

Where an instrument contains a fatally flawed description, it **cannot be corrected** by correcting the description on the original instrument and re-recording it. This is because some of the essential elements for a valid instrument are lacking; the correction is not executed by the grantor, the witnesses did not sign as witnesses to the correct instrument, and the correction was not acknowledged. **This is one of the all-time classic mistakes made by all types of title practitioners.** Once an instrument leaves the hands of the grantor and the party who took the acknowledgment, any substantive error, including a fatally flawed description, cannot be corrected by



unilaterally changing the instrument to correct the mistake and then re-recording the instrument. **In order to correct the instrument, a new corrective instrument should be obtained and recorded with fresh execution, subscribing witnesses and a new acknowledgment.**

Overlaps and Gaps

An Overlap is a situation in which two adjacent owner's deeds describe part of the same property; both deeds cover part of the same lands. An overlap can be discovered when a survey indicates a physical encroachment, (suggesting the bounding deed be checked) or when comparing deeds from adjacent properties from the same grantor. Regardless who has superior title to the overlap area, an overlap represents an adverse claim to title and should not be ignored.

A Gap parcel is a parcel of land that is not described in either adjacent owner's deed. Very small gaps (a few tenths of a foot or less) may usually be ignored. Larger gaps may be problematic. Although the gap parcel is not insured, since it is not included in the legal description in our policy, **a claim may still result where the owner of the gap parcel asserts a claim for access through subject parcel under a common law access easement.**

Exception for Service of Process, (Brown v. Sohn, 276 So. 2d 501)

In this Quiet Title Action, the plaintiff attempted to serve the defendant with process by publication, referred to as constructive service of process. The legal description used in the publication was - "Pt Lots 3, 4 recorded in Deed Book 237-254 & COB 21-431(Ex Pt in Co Rd & Pt Recorded in Official Records Books 1025-572, 570, 1116-629, 1066-380, 1116-627, 1449-169, 1516-501, 1472-81, 1951-200, 1958-57, 2056-448, 2349-556) Sec 5 T 2 S R 28 E". **The court said that what suffices as a legal description of land in a deed will not suffice to apprise a defendant in a lawsuit.** Another point that relates to this case is that, where any errors appear in the description used in the publication, the courts are more likely to invalidate the service of process, so the description must be carefully verified.

Survey Review - Calls on Deed v. Actual Measured Bearings & Distances

Where the bearings and distances measured on the ground conflict with those stated on the deed, the surveyor is required to disclose the actual measured bearing or distance. **This is typically done by notation on the map by showing the actual measured angle or distance by parenthetical notation.** Those who review surveys must consider these differences.

Disputed Boundaries, Boundary Line Agreements

Sometimes parties will enter into boundary line agreements to settle boundary line disputes. In order to be reliable, such agreement must refer to the same survey so that all points on the description can be located. This is necessary since surveyors can disagree on the location of certain points in the description. It is also necessary for the agreement to include conveyance language, and to have the holder of any mortgage join in the agreement to be binding on the mortgagee.

Agent Orders Survey to Clarify Description or Title Issues

In an effort to help resolve title issues relating to descriptions or boundaries, a requirement will sometimes be made in the commitment for a survey. However, a survey usually does not resolve the issues, but merely helps to clarify any necessary requirements or exceptions. For this reason, such requirement should also reserve the right to amend the commitment to add additional requirements or exceptions upon review of the survey.

UNIFORM TITLE STANDARD 16.5 - WILD INSTRUMENTS - STRANGER TO STRANGER

A wild instrument, as the term used herein, is a recorded instrument which purports to affect title to real property in which none of the parties to the instrument have ever had a recorded interest. A wild instrument does not render title to the real property unmarketable, provided that: (1) it can be reasonably determined from the record that the wild instrument as intended to describe other real property or (2) the wild instrument has been of recorded for at least seven years and no further instruments have been recorded which are based on, or arise out of, the wild instrument.

So, how do we prove the instrument intended to describe other property?



1. If a correction is already of record, nothing further is required. However, the correction will not be reflected in a search of subject property, since the description is different.
2. If a correction is not of record, an affidavit by a person with the requisite knowledge may be recorded stating the instrument was intended to describe property other than subject property. This affidavit may be made by the scrivener, a lender (where the wild instrument was a mortgage) or a title agent.

Foreclosure Suits - Count for Reformation

Where an error appears in the description of the mortgage being foreclosed, and the complaint seeks reformation of the description in the mortgage, the court may enter a Judgment reforming the description in the mortgage. Or, if the borrower's deed has a defective description, but his seller's deed had a correct description, a count may be added to the complaint to reform the description in the deed by joining the grantor in the deed as a party defendant. The concept is that the plaintiff has proven that the description has one or more mistakes and is not what the parties to the instrument intended. In other words, the borrower did not get the benefit he bargained for. This is essentially an action against the person who executed the instrument. So, service of process must be against the person and constructive service of process is not sufficient. Some other matters to consider with reformation actions are:

- There is a 20 year statute of limitations on reformation of deeds, § 95.231(2), Fla Stat. - After 20 years from the recording of a deed or the probate of a will purporting to convey real property, no person shall assert any claim to the property against the claimants under the deed or will or their successors in title.
- Gift Deeds may not be reformed; Deeds constituting gifts are generally not subject to reformation, since there was no "bargain" made to receive a gift.

