

# WRITING LEGAL DESCRIPTIONS and EASEMENTS

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References:

- (1) [Writing Legal Descriptions – Gurdon Wattles](#)
- (2) Black's Law Dictionary

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# HISTORY

Plymouth Colony in 1640, Connecticut in 1639, Massachusetts in 1641, required by law that a notice of conveyance of land was to be **RECORDED**. The system of public disclosure of land transfers has become part of each state's law (1) 1.2

# PUBLIC RECORDS

The process of recordation is known as giving  
**Constructive Notice** .....

Which is defined as, “information or knowledge of a fact imputed by law to a person (although he may not actually have it), because he could have discovered the fact by proper diligence, and his situation was such as to cast upon him the duty of inquiring into it.” (2)

Recorded usually implies that the document referred to may be found in the office of the **County Recorder**

# Quasi Public Records

- Can be found in the office of the County Surveyor, County Engineer, City Engineer, Flood Control District, Cal-Trans, etc. They may include field notes, maps, plans, etc.
- These are Quasi Public Records because they are **not RECORDED** and may be changed or altered – unlike a recorded document or map.
- Wattles cautions, “beware of using Quasi public records for reference or control” (1) 1.7

# Support Information

- The Recorder's Office – Grantor-Grantee Index
- The Assessor's Office – be careful not to over use the assessor's maps
- Tract Maps, Parcel Maps, Record of Surveys and Official Maps
- Wattles warns; not all that is recorded **impacts**  
**Constructive Notice**
- Extrinsic (outside) data

# Preparation of Legal Descriptions

- Section 8726 of the LS Act defines the practice of Land Surveying
- One who determines the information to be shown – for the purpose of describing the limits of real property – must be prepared by a Licensed / Registered Land Surveyor.
- Easements have an exemption per Section 8730
- Other exemptions – Attorneys & Title Companies

# Intent of this Seminar

- This class is not How to Interpret Descriptions
- The class will attempt to give guidelines on the Preparation of various types of Descriptions
- Keep wording to a minimum
- Too many words may offer more than one interpretation
- Too few words may not lead to the intended interpretation
- The **INTENT** of the parties must be clear
- Our Mantra – “**Stand up under the Law and Survive Legal Attacks**”



# What is a Legal Description?

- A description of a parcel of land that a **competent surveyor** can locate precisely on the ground
- The descriptions must have the proper calls to direct the surveyor as to the Intent of the parties
- A legal description is a portion of a **Contract** between two parties
- What is the Intent of what we do? What is our Mantra?

# Things to Do

- A legal description must satisfy the requirements of the **Title Company**
- The title company should review your description to verify the insurability of the wording. If your wording can not be insured; you may have left your client out in the cold.
- Submit a draft of your description to the **Attorney**
- The attorney will help you (what's our Mantra?)

# General Organization

- A legal description has 3 parts:
- The **Preamble or Caption** – calls to the general location
- The **Body** of the descriptions calls to the Precise Location of the parcel
- **Qualifications** call to information that may alter what is conveyed by the description

# Types of Legal Descriptions - 1

- **Lot & Tract** (of which there are 3 types)
- 1 – a Lot in a Block in a Tract or Parcel Map
- 2 – reference to a Section or portion of a Section according to an Official Government Plat
- 3 – reference to sections or portions of sections according to Ranchos; found in County Records

# Types of Legal Descriptions - 2

- Metes and Bounds (of which there are 4 types)
- 1-Beginning at the POB and returning to the POB – Baseball
- 2-Beginning at the POB and terminating at another point – Basketball
- 3-A parcel described by its Adjoiners only
- 4-The worrisome “OF” type – discussion needed

# What Type to Choose?

- Wattles calls for the preferred method to be the type, or combination of types that will give the clearest and shortest description.
- Remember our mantra – your job as a scrivener is to 1<sup>st</sup> describe a parcel that can only be located in one specific location by any competent land surveyor.

# Monuments - 1

- 1<sup>st</sup> – overcome your reluctance to monument your work & file a Record of Survey.
- “Monuments of whatever nature assist in holding together the framework of property delineation, both on paper and on the ground.” (1)
- “In real property law and surveying, monuments are visible marks or indications left on natural or other objects indicating the lines and boundaries of a survey.” (2)

# Monuments - 2

- “....one who interprets descriptions of land must know first the **relative value**, perhaps better classified as **quality**, of any pertinent monument, and second, from this, its applicable authority to **CONTROL**, or **NOT CONTROL**, a line or corner.” (1)
- “A monument is a “thing” recognized and given **AUTHORITY** for the purpose of indicating or referencing a point of boundary to be used for **CONTROL.**” (1)



# Monuments - 3

- There are 2 general categories of monuments:
- 1) LEGAL – a legal monument would be a controlling deed, e.g., “...to the west line of Jones per deed Recorded..... as Instrument No. .... of Official Records in.....”
- 2) PHYSICAL – refers to both natural and artificial physical things which are **accepted** and **used** as marking boundary lines and corners.

# Monuments - 4

- What gives a monument **Control & Authority**?
- **BACKGROUND** – if described by a surveyor in his field book / notes (*Record of Survey*)
- **CHARACTER** – if the monument carries the **markings called for**
- **RECOGNITION** – if the monument **conforms to position** relative to other monuments, etc.
- **ACCEPTANCE** – if the monument has been **called for** by other surveyors

# Monuments - 5

- “In the eyes of the law, **CHRONOLOGY** plays an important role. If monuments can be proven to have been set immediately prior to or coincident with the creation of the description, they are **HELD** to be emblematic of, and the physical **CONTROL** of, the written word, and more especially if cited.” (1) 8.8
- Discuss PM that held monuments not called for in the deed

# Monuments - 6

- “In making use of monuments, remember that a prime requisite for a monument to control over course and distance is to have it recited in the deed – courses and distances must yield to monuments, visible objects, or natural boundaries **CALLED FOR IN THE DEED**” (1) 8.9 court case cited
- Discuss Section 20 law suit

# Monuments - 7

- If you want a monument to control over course and distance make a complete call to the monument in the description.
- ..... the southeast corner of said parcel described in deed recorded in Book 100 at page 100 of Official records of said County shown on Record of Survey 100 RS 100 as being 1” Iron Pipe, tagged LS 9999 found up 2” .....- IP is not controlling but in the chain of title
- Discuss – weaving an R/S into Official Records and thereby Imparting Constructive Notice as to the R/S

# Words and Phrases - 1

- The usage of proper words is the “meat” of a metes and bounds legal description. The goal is a single interpretation without ambiguity.
- Proper use of words will make the description free of **patent** (obvious) **ambiguity**; however,
- **Latent** (discovered later) **ambiguity** may still be there.
- To avoid ambiguities do your homework – research – know the facts – express the facts clearly.

# Words and Phrases - 2

- Do not take for granted that you know the definition of the words you use – **look them up**  
(2)
- One of the first things that happen in a law suit is **Discovery** and your **Deposition**. The lawyers will ask you for your definition of every word that could result in ambiguity in your work.
- If your word(s) can be shown to be ambiguous opposing counsel may try to discredit your entire description.

# Words and Phrases - 3

- An example; if you want a word that means two lines that occupy the same location:
- **Adjoining** – touching, in contact with
- Adjacent – lying near or close to
- Contiguous – in close proximity, neighboring
- Wattles suggests “coincident with”
- I prefer adjoining...but used to use contiguous,  
NG



# Words and Phrases - 4

- Conveyed (NO), **Described** (YES) – never refer to a parcel as conveyed; you do not know what was conveyed, but research will inform you as to what was described. You do the description; let the lawyer do the conveyance.
- **Along** – it is handy to use this term as ... thence along the easterly line of Jones the following five courses.
- Due North (NO), **True North** (Maybe), **North**. Due north is unclear – True north is astronomical – North would be north per your basis of bearings.

# Words and Phrases - 5

- Either side (NO), **Each side** (YES). Either side is not clear as it can be one side or the other side. Each side is clear as it is clearly on both sides.
- **Excepting and Reserving, or Subject to.**  
Excepting – changes the limits of the land being described. Reserving – usually applies to the use of the land by the grantor. Subject to – similar to reserving.

# Words and Phrases - 6

- **More or Less** – means TO (a most powerful word) Bearing and Distance may be disregarded – “to the POB, to the NE corner of Jones, to a 1 ½” Iron Pipe”
- **Parallel** – a line can never be parallel TO another line as parallel lines can not meet. Lines that are parallel are always **Parallel With** each other.

# Words and Phrases - 7

- **Prolongation and Continuation** – a straight line is prolonged and a curve is continued. If you prolong a curve you will proceed along the tangent.
- **Said** – as in “said Lot 1” refers to Lot 1 as previously and fully described above. In short, if properly used, Said, can relieve the scrivener from having to fully re-describe Lot 1, etc. – be careful with the use of Said – say more than said.

# Words and Phrases - 8

- Position of Words, Numbers and Phrases:
- Wattles expresses concern as to ambiguity when Words, Numbers and Phrases are not properly stated (1) 3.14
- May I suggest that you keep direction and distance together and number your courses.
- Remember our mantra.....

# Relationship Between Descriptions and Surveys – (1) 3.15

- A record properly written, or mapped, is the controlling factor for the location or restoration of each course of a boundary.
- Ties to adjoining land hold over bearing and distance called in the description.
- If a description calls to a monument, the monument holds – better make sure it is good.
- A flat call of a distance and/or bearing is not prorated – error usually falls in the last course.

# Relationship Between Descriptions and Surveys - 2

- The caption does (does not?) limit the boundary of title – explanation needed
- If the description ties to the south line of “Jones” the survey must retrace Jones – the retracing surveyor may have to survey more than the parcel described—it is our job to do this correctly.
- The description can rotate calls that are subsequent to going along an adjoining line – explanation needed

# Writing Descriptions – Rules of Construction for a Valid Conveyance

- Must be in Writing
- Must identify the Grantor(s) or Agent(s)
- Must identify the Grantee(s) or Agent(s)
- Must have Words of Conveyance (interest conveyed)
- Must have a Property Description
- Signature of grantor(s) or agent(s)
- Must be Delivered to the grantee
- Must be Accepted by the grantee
- Must be Dated – That is it, so what is missing??



# Writing Descriptions – 2

- A Legal Description is so called because it “Must Stand Up Under the Law and Survive Legal Attacks (1) 11.2
- “Concise Clarity without Ambiguity” will the omission of these words change the meaning? Or will the use of these additional words add to or subtract from the actual meaning of the whole phrase? (1) 11.2

# Parts

- **CAPTION** (Preamble) – the general location of the land to be described,
- That portion of Lot 100, in the City of Simi Valley, shown on Tract Map No. 4491 on Map recorded in Book 100 at Page 100 of Miscellaneous Records (Maps) in the office of the County Recorder, County of Ventura, State of California described as follows:
- Note: whatever is outside of said Lot 100 may not be conveyed. The law will yield to Intent.

# Parts - 2

- **BODY** – the description of the specific portion of said Lot 100 to be conveyed
- **QUALIFICATIONS** – items to be added to, subtracted from, or encumber the recited details, such as
  - Together with,
  - Excepting therefrom,
  - Reserving unto the Grantor,

# FORMS

- Single parcel as shown on a map of record
- Part of a large record parcel described by metes and bounds or a shorter form - explain
- Bounded by deeds of record - explain
- A strip of land within one or more record parcels described as a single parcel or as several parcels - explain
- Section land or subdivisions thereof described under government nomenclature - explain

# FORMS - 2

- Single parcels and several other formats should contain reference to the following:
- Lot or Parcel number
- Block number or letter, if any
- Tract name or Tract Number
- City, if any
- County
- State
- Record Map, Book and Page, MR, PM, RS, etc.
- Public Office – Recorder, Clerk of the Court, etc.

# Forms - 3

- When a portion of a parcel / lot is to be described, begin the Caption with – “That Portion of > and end the Caption with – Described as follows”
- When a portion includes more than one parcel / lot, begin the Caption with – “Those Portions of > and end the Caption with – Described as follows”
- When a portion includes more than one parcel / lot and more than one record map, begin the Caption with – “That Portion of > Together with that portion of > and end the Caption with – Described as a whole as follows”

# Key Elements – Metes & Bounds

- **POINT OF BEGINNING** – a competent, verifiable POB is essential in having a retraceable description. Can you set the gun up on the POB? – examples of an “indeterminate” POB
- **BASIS OF BEARINGS** – a competent, verifiable BofB is a must if your description is to be retraceable. Can you lay-out your description on the ground? – your set up on the POB and backsight what? - examples BofB problems

## Key Elements - 2

- Beginning at the northwest corner of Lot 1 >;  
thence along the north line of said Lot,  
1<sup>st</sup> North  $89^{\circ}45'45''$  East 45.00 feet; thence,  
2<sup>nd</sup> South  $1^{\circ}14'15''$  East 45.00 feet; thence,  
3<sup>rd</sup> South  $89^{\circ}45'45''$  West 45.00 feet to the west  
line of said Lot; thence,  
4<sup>th</sup> North  $1^{\circ}14'15''$  West 45.00 feet to the Point  
of Beginning.



# Key Elements - 3

- Is there a competent Point of Beginning?
- Is there a surveyable Basis of Bearings?
- Can this description be located on the ground?
- If not, your description will NOT “Stand up under the Law and Survive Legal attacks”
- And, if not, you will have failed as a Land Surveyor and failed to protect your client.

# Other Metes & Bounds Forms

- Courses can be described by reference to Lines of Record:
- Bounded on the north by Lot 1 >,
- Bounded on the east by Jones >,
- Bounded on the south by Elm Street >,
- and Bounded on the west by Smith >.
- Note: to locate this description what do you have to survey? – Lot 1, Jones, Elm St and Smith.

# Other Forms – 2

- The north 40.00 feet of the west 90.00 feet of Lot 1 > – discuss the Adam-Fig St survey
- The west 5 acres of the southeast quarter of the southwest quarter of Section 8, > - careful of those OF descriptions
- Review the imbedded problems with “of” descriptions.

# Qualifications

- EXCEPTIONS – Lot 1 > Except the southerly 10 feet thereof. An exception Takes Away from the conveyance.
- RESERVATIONS – Lot 1 >. Reserving unto the Grantor an easement for ingress and egress over the southerly 10 feet thereof. Reduces the fullness of the conveyance.
- ADDITIONS – Lot 1 > together with an easement for ingress and egress over the east 20 feet of Lot 2 > – Adds an off-site easement to the conveyance.

# Sufficiency

- “If a description is sufficient for a competent surveyor to locate the land on the ground, with or without extrinsic evidence, it is considered sufficient as between the parties” (1) 11.9 court case cited – explain competent surveyor
- “Your description should be so clear that the land you intend to cover is unmistakable. If so, attempts to vary your meaning will never succeed” (1) 11.9
- If you discover that your description has an error or ambiguity it can be corrected by a correction deed or court action – discuss the Large Lot Subdivision

# Ties and Boundary

- “Likewise, when you are creating descriptions and incorporate references to boundary deeds, monuments, etc., be certain that each item to which you tie is incontrovertible” (1) 11.12
- Caution – “....thence with Weeks line, the south line of Section 3 and a fence line....”
- Really, could all three ties be coincident, NO – Then what holds?

# Ties and Boundary - 2

- For a monument to be controlling, it must be called to in the description
- When the description calls to a deed, the deed controls and must be surveyed – (discuss the LT-Stearns descriptions call to the RR R/W)
- Beware of Senior Rights (discuss Adam-Fig St)
- When calling to a deed or monument consider their Legal Acceptability (1) 11.19

# Ties and Boundary - 3

- What is Legal Acceptability? – **NOTICE**
- Statutory Notice – by legislative enactment
- Actual Notice – either Expressed, or Implied in the writings
- Constructive Notice – is a presumption of law – impossible to deny; while Implied Notice is a presumption of fact, or what one can learn by reasonable inquiry (1) 11.21 court case cited (discuss the LLA deeds and Studio Rd's RS) (discuss my use of an LA Co CSB map in a legal)



# Ties and Boundary - 4

- Discuss What Imparts Constructive Notice and that which can be “woven” into the Chain of Title
- Subdivision Map that Impart Constructive Notice: recorded Tract Maps, recorded Parcel Maps (look for the owner’s signature)
- Records of Survey usually do Not Impart Constructive Notice – so when would they? – when in the chain of title.

# Ties and Boundary - 5

- When an original description does Not call to a monument at a corner and you find a monument – do Not include the monument in your new description as controlling as it was not controlling in the original description
- Discuss Multiple Parcel in one legal description – each parcel must stand on its own.

# Curves in Descriptions

- **Concave** – the concavity of a curve is the bearing of a line from the MOC to the RP divided into 8 points on the compass – N, NE, E, SE, S, SW, W, NW.
- **Cusp** – the intersecting of two curves, or a curve and a straight line heading in the same direction with an interior angle of  $<90^{\circ}$  - shape of a fang
- **Radial** – the bearing of a radial line is the bearing from the radius to a point on the curve.

# Curves in Descriptions - 2

- **Concentric** – curves with common RP's are concentric.
- **Radius** – if senior to the other elements call it out first - ....to the beginning of a **tangent** curve **concave** easterly having a **radius** of 300.00 feet; thence along said tangent curve,

# Easements

- **Appurtenant** – an easement is appurtenant when it is attached to and for the benefit of the dominant (grantee) tenement.
- **Servient Tenement** – is the grantor, the land burdened with a servitude / the land encumbered by the easement (2)
- **Easement** – a right of use over the property of another.
- **Gross** – an easement is in Gross when it is purely personal, me to you, and usually ends with the death of the grantee (2)

# Easements - 2

- A **Fee** – is an estate in land. **Fee Simple Absolute** is an estate without limitation or condition (2) – a government Patent Grant may have been fee simple absolute.
- **Ingress & Egress** – the right to enter, go upon and return from (2) – access
- Make sure that the intended use is stated, by you in the description, or by the attorney on the vesting – cover sheet.

# Notes

- Always have a coworker check your work.
- Use the “Do’s and Don't’s” in the appendix of Wattles (1)
- Have your client’s **attorney** review your description and draft the **vesting** language.
- Ask your client’s **Title Company** to review your work for **insurability**. If your description can not be insured, you have not served your client.

# Notes - 2

- Always **Sign and Seal** your descriptions – it is the law.
- There is little oversight outside of what you initiate in checking your description before it is recorded.
- If your description is changed by others over your signature and seal, take immediate action – they have broken the law.
- Always remember our mantra – “Stand up under the Law and survive Legal Attacks”