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Due Care in Drafting Real Property Descriptions

*Dean T. Lemley**

THE UNDERTAKING OF AN ATTORNEY is not that he possesses perfect legal knowledge or the highest degree of skill in relation to the business he undertakes, nor that he will conduct it with the greatest degree of diligence, care and prudence, but that he possesses the ordinary legal knowledge and skill common to members of the profession and that in the discharge of his duties, he will exercise ordinary and reasonable diligence, care and prudence.¹

Robert Kratovil in "Real Estate Law"² states the generality: "A deed must describe the land conveyed. The land must be so described that it can be located and identified. Otherwise the deed is void. It is often difficult to determine whether a description is good or bad.³ No particular method of describing land is required by law. Land may be described by the name by which it is generally known, by its lot number on a recorded plat, by its section, township and range number on the government survey, by metes and bounds, or even by general description, as 'all land owned by the grantor in Tazewell County, Illinois.'"⁴

In the absence of a recent survey, the title examiner is confined to the record title only, and thus the legal description of the deed must be sufficient to describe the real estate intended to be conveyed so that an examination of the record title alone will disclose those elements of a description which will distinguish the land conveyed from all other land in the world. It has been held that a description in a deed which consists only of the words, "a piece or parcel of land near Bacon Quarter Branch," is too vague and indefinite to create a right of property in any particular parcel of land.⁵

* Preparation at Miami (Ohio) Univ. and Western Reserve Univ.; Special student at Cleveland-Marshall Law School; Agent, Louisville Title Insurance Company, and formerly a title examiner with Lawyer's Title Insurance Corporation and Land Title Guarantee and Trust Company.

¹ Gardner, *Attorney's Malpractice*, 6 Clev.-Mar. L. R. 264 (1957).

² Kratovil, *Real Estate Law* (1946).

³ *Richey v. Sinclair*, 167 Ill. 184 (1897).

⁴ Kratovil, n. 2, par. 78.

⁵ 6 Thompson on *Real Property*, Sec. 3268 (1940); also, *George v. Bates*, 90 Va. 839, 20 S. E. 828 (1894).

An attorney, in drafting a legal description for the conveyance of real property, must satisfy the bare legal requirements and, furthermore, since the apparent purpose is the recording of the instrument, draft such a description as will preclude any confusion or misconception as to the identity of the real estate, from the public records alone.

In order to make a valid conveyance of land, it is essential that the land itself, the subject of the conveyance, be capable of identification, and if the conveyance does not describe the land with such particularity as to render this possible, the conveyance is absolutely nugatory.⁶

It has been held that where the description on its face is so inaccurate as to make it impossible to identify the land conveyed, the deed will be void.⁷ In other words, simply stated, the legal description is sufficient if the real estate described therein can be distinguished as against all the real estate in the world.

Since the basis of every real estate conveyance is the land itself (n. 12 *infra*), it follows logically that the duty and obligation of every draftsman of a description for the conveyance of real property, is to prepare such a description as will in fact identify the land as to the whole world.

⁶ 4 Tiffany, Real Property, Sec. 990-993 (3rd ed. 1939).

See 3 Pomeroy's Equity Jurisprudence, Sec. 871 N (5th ed. 1941).

The doctrine of "*falsa demonstratio non nocet*" permits the introduction of extrinsic evidence to enable the court to strike out or disregard the false or erroneous part of a description in a will, and to apply the remaining part by determining the person or property designated thereby, where enough remains of the description to form the basis of such identification. In order to render this doctrine applicable, however, there must be a sufficient description, after rejecting the false or erroneous portion, to identify the person or property.

⁷ Strother v. Hamilton, 268 S. W. 529 (Tex. App. 1925).

See Burby on Real Property, Sec. 249 (2nd ed. 1954).

Extrinsic evidence cannot be used to supply words essential to a description. In Oatman v. Niemeyer, 207 Calif. 424, 278 P. 1043 (1929), a description was admittedly inadequate, but the court granted reformation of the instrument. This relief is improper if the deed does not describe the land sought to be conveyed. If there exists a specifically enforceable contract to convey, then the remedy of the grantee should be specific performance rather than reformation. In this case the court seems to consider the deficient deed as a sufficient writing to satisfy the Statute of Frauds. It is, at times, stated that less certainty is required in a description of land in the case of a contract to convey than is required in a deed. Wright v. L. W. Wilson Co., Inc., 212 Calif. 569, 299 P. 521 (1931). This position is not sound. The Statute of Frauds is as important a factor in a contract to convey land as is in the conveyance itself. In either case the writing should be complete.

Procedure

Many of the difficulties encountered in the drafting of legal descriptions may well be avoided if the attorney will follow a few simple rules of procedure in the procuring and preparation of the descriptions.

Ordinary care would suggest that he examine the deed by which the present owner of the premises derived title, in order to secure a basis for his further search. This description should be checked against the County Auditor's Map and the record of conveyances of deeds, to determine if any conveyances have since been made of part or all of the premises, and will be helpful in determining if any part has been subject to road widening, vacation, or relocation by ordinance or appropriation proceedings. Such ordinances or proceedings are not always noted on these maps, but in certain counties they appear often enough to make the examination worthwhile.

If the premises are described as being in a recorded subdivision, check the plat reference in the office of the County Recorder as to the name and location of the subdivision, the volume and page of the recorded plat, the subplot number, and the street upon which the property fronts or abuts.

Where the description is by metes and bounds, and reference is made to a survey by date, and number of a registered engineer or surveyor, this information should be noted as it may be of importance in checking the surveyor's field notes in the event of litigation or clarification of a description problem. Premises fronting on a state or county highway should be checked in the office of the County Engineer, where accurate and detailed plats of road records are available.

It should be noted that each of the County offices usually has capable personnel available to assist the attorney, who devote their time and effort as a public service. This normally includes assistance in checking indexes, instruments of public record, and explanations of any data appearing on maps.

In county seats where title insurance companies have offices or personnel, the above procedures can usually be omitted, since these companies normally provide free service to customers in furnishing legal descriptions. However, it must be remembered that the title insurance company cannot be responsible for the accuracy of the description or the names of the apparent owners until an examination of title has been made. Thus the attorney

is not relieved of his responsibility toward his client, yet the device is a time saving one in the event a sale or transfer will be consummated and a title examination required.

Mechanics of Drafting Descriptions

(Engineering data and figures in this section examined and approved by Burden, Slabe, and Mackay, Civil Engineers and Surveyors, of Cleveland, Ohio.)

The average degree of skill does not require the ability or knowledge of a civil engineer, but since the practice of law encompasses every phase of life to some extent, the attorney who has slight knowledge of civil engineering must be prepared to call upon his vast reservoir of general information for legal descriptions. This article does not pretend to do more than cover the bare necessities of information in the understanding of course and distances in the preparation of the metes and bounds description, and to provide some very general examples of conveyances in recorded subdivisions.

The circles in the accompanying Figures represent a compass which is composed of 360 degrees. In map making, true North is directly opposite true South, and true East is directly opposite true West. (Where Polar points and Magnetic points are used this may not be a true statement, but for the purposes intended, true courses only will be used.) It is also true that

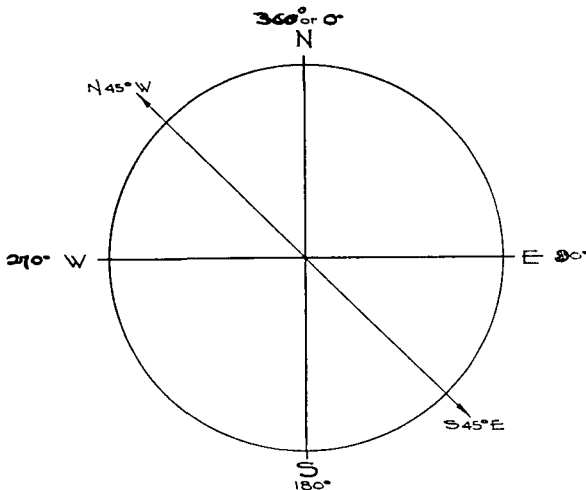


Figure 1

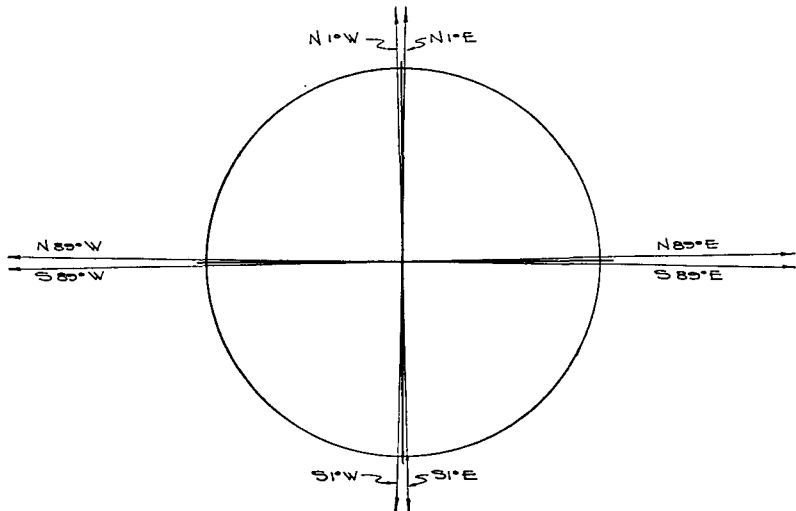


Figure 2

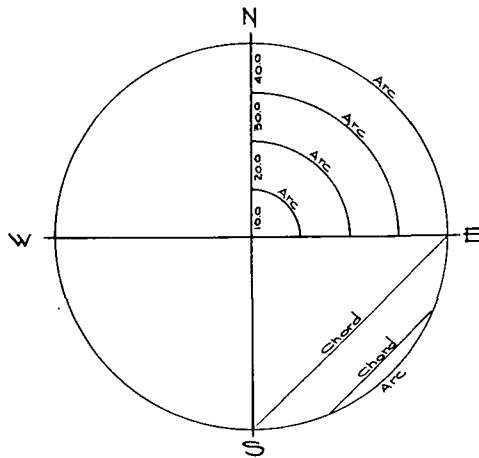


Figure 3

East and West lie exactly half way between North and South. Thus, if North were at 0° , East would be at 90° , South would be at 180° and West would be at 270° , and completing the circle, North would also be at 360° .

All points are figured in relation to North and South in bearings. (The term "bearing" is what we know as a "course" and it simply means a direction.)

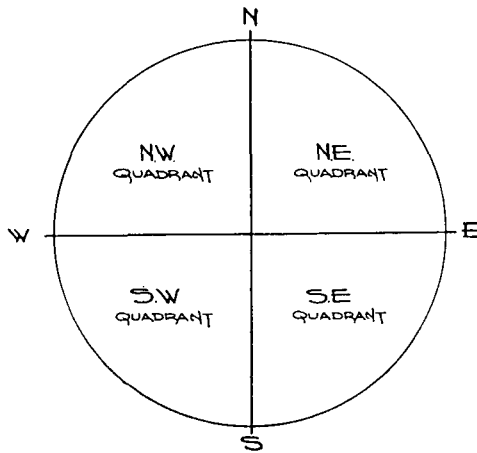


Figure 4

In checking a description and sketching it to see if it is correct, it is easiest to represent North at the top of the page, and South at the bottom of the page, with East to the right and West to the left. If a line is drawn from the bottom of the page to the top of the page, we have gone from South to North and the direction, course, or bearing, is due North. If we go from the top of the page to the bottom of the page, we have gone from North to South and the direction, course, or bearing is due South. The line is in the same place but we have reversed our direction.

It follows then that South 45° East is the reverse of North 45° West and although the line is the same, we have reversed our course or direction. (Known to campers and "old soldiers" as a *back azimuth*.) This is always true.

This circle is further divided into 4 sections known as quadrants, and each contains $\frac{1}{4}$ of a circle or 90°. To further simplify and to enable the writer to convert a graphic example into written instructions, the North-South Axis of the circle is determined as the only starting point for all angular measurements, therefore by rotating clockwise or counter clockwise from either North or South, your angular measurement will never exceed 90°. The greater the angular measure of "bearing" the nearer it approaches East or West. It may be seen by this that a bearing of 89° will lie very close to the East-West Axis of our measuring circle. The prefix of North or South determines which cardinal point was used as a starting point and the suffix of East or West determines the direction in which it was measured.

A further extension of bearings discloses that in each degree there are 60 minutes (') and in each minute there are 60 seconds (") thus allowing for minute calculations in direction.

The arc is the curved distance between the quadrants and "radiates" from the center of the circle much like sound waves. As the distance of a quadrant extends outward from the center of the circle, the arc distance between the straight lines increases proportionately; thus arc A, 10 feet from the center of the circle, is not as wide as arc B, 40 feet from the center of the circle.

A working knowledge of cardinal points, quadrants, bearings, or courses, and arcs, is essential to the reading and drafting of a legal description.

Boundaries are indicated by naming natural or artificial monuments to, from, or along which they are run, or with reference to which corner points are established, or by stating the courses and distances of the boundary lines, and frequently by all these elements of description, as they are termed.

A monument is a tangible landmark; and monuments, as a general rule, prevail over courses and distances for the purpose of determining the location of a boundary, even though this means either the shortening or lengthening of a distance, unless the result would be absurd and one not clearly intended, or all of the facts and circumstances show that the call for course and distance is more reliable than the calls for monuments.⁸

A monument, for the purpose of description, may consist of any object or mark on the land, whether natural or artificial, which serves to identify the location of a line constituting a part of the boundary, and it may be either a permanent natural object, such as a river, lake, ledge of rocks, or tree, or it may be an artificial object, such as a highway, wall, ditch, or a post or an iron pin set in survey.

A course is the direction in which a line runs, stated with reference not to its terminus, but to its correspondence with a certain point of the compass, or at variation from the magnetic or sidereal meridian.

⁸ Alabama—*Marengo County v. Wilcox County*, 215 Ala. 640, 112 S. 243 (1927);
Arkansas—*Davis v. Strong*, 209 Ark. 254, 186 S. W. 2d 776 (1945);
California—*Wagner v. Blume*, 71 Calif. App. 2d 94, 161 P. 2d 1001 (1945);
Massachusetts—*Morse v. Kelley*, 305 Mass. 504, 26 N. E. 2d 326 (1940);
Michigan—*McMurtry v. Abbey*, 296 Mich. 234, 295 N. W. 628 (1941);
Ohio—*Federspiel v. Mitchell Brick Co.*, 22 Ohio App. 13, 153 N. E. 279 (1926);
Texas—*Giles v. Kretzmeier*, 239 S. W. 2nd 707 (Tex. Civ. App. 1951).

Check List for Legal Descriptions

(1) The city, county, state, original lot name or number, subplot number, subdivision name, and volume and page of recorded plat must be checked and included.

(2) Lines run parallel *with* other lines and perpendicular to other lines.

(3) The terms Northerly, Southerly, Easterly, and Westerly should be used in relation to fixed, known lines.

(4) Where streets are located with a geographical description, as Euclid Avenue, S. W., such descriptive words should be included.

(5) The dedication and acceptance of streets in a recorded subdivision should be carefully noted. Some plats have been accepted for record only, and the streets have not been accepted for public use.

(6) Some lots are described in feet and inches, and some by feet and hundredths of feet. This becomes of paramount importance when the lot is split and sold in parcels.

(7) Be careful to determine whether the sideline distances are measured from the *center line* of the street, or from the *side line* of the street. The plat heading will usually denote which beginning line is used, and it is customary to measure from the side line of the street.

(8) When the description includes part of a vacated street or alley, the legislative authority granting such vacation must be determined and the proceedings examined.

(9) Where a road has been widened or relocated, the authority for such alteration must be investigated, and the plat examined for the new courses and distances used.

(10) It is suggested that a sketch be drawn at the courthouse to verify the drafted description, and kept in the attorney's file for reference.

This is, of course, a bare list of requirements, but represents those items which frequently lead to trouble when not carefully noted.

Recorded Subdivision

In many of the states there are statutory provisions authorizing an owner of land to have it surveyed and laid off in lots, and blocks, streets, parks, and the like, and to file in the public

records a plat or map of the land as thus laid off, authenticated and certified as may be required.

Thereafter any one of these lots or blocks may be conveyed by mere reference to the number which it bears upon the recorded plat; thus all necessity of a detailed description is abbreviated.⁹

Where a reference is sufficiently made by a deed to a public record, which specifically described the property sought to be conveyed, the description is sufficient,¹⁰ and where a deed refers to an authentic plat of land, such plat becomes a portion of the deed as fully as if incorporated in it.¹¹

Usually the most simple and accurate description to be written is that of a subplot in a recorded subdivision. The following description is effective to identify the real estate from any other parcel of land in the world:

"Situated in the City of Cleveland, County of Cuyahoga, and State of Ohio, and known as being all of Sublot Number 1000 in The John Smith Subdivision as recorded in Volume 1 of Maps, Page 1 of Cuyahoga County Records."

In view of some of the citations quoted (at n. 11 *supra*) perhaps some of the verbiage would appear superfluous, yet the descriptive example given is brief and definite, and probably this much of the description should always be used.

However, it is quite normal for the average purchaser to desire more complete information as to the identity and size of his real estate; thus the common practice in many localities, as a matter of convenience to the client, has been to provide the following description:

"Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as being Sublot Number 1000 in J. A. Smith Subdivision of a part of Original Rockport Township Lot Number 5, as shown by the recorded plat in Volume 1 of Maps, Page 1 of Cuyahoga County Records, and being 50 feet front on the Westerly side of Maplewood Avenue, S. W., and extending back 150 feet deep on the North-

⁹ Carney v. Dunn, 221 Ark. 223, 252 S. W. 2d 827 (1952); Gates v. Asher, 280 S. W. 2d 247 (Tex. Civ. App. 1955).

¹⁰ Bryant v. Fordyce, 147 Kans. 586, 78 P. 2d 32 (1938).

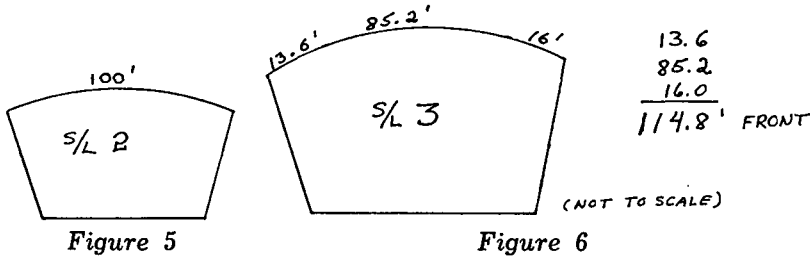
¹¹ Redd v. Murray, 95 Calif. 48, 24 P. 841, 30 P. 132 (1890); East Coast Lbr. Co. v. Ellis-Young Co., 557 Fla. 256, 45 S. 826 (1908); Peoria Gas and Elec. Co. v. Dunbar, 234 Ill. 502, 85 N. E. 229 (1908); Cundiff v. Staton, 20 Ky. L. 1271, 49 S. W. 179 (1899); McKinney v. Doane, 155 Mo. 287, 56 S. W. 304 (1900); Menstell v. Johnson, 125 Ore. 150, 262 P. 853, 266 P. 891, 57 A. L. R. 311 (1928).

erly line, 155 feet deep on the Southerly line, and having a rear line of 52 feet, as appears by said plat, be the same more or less, but subject to all legal highways."

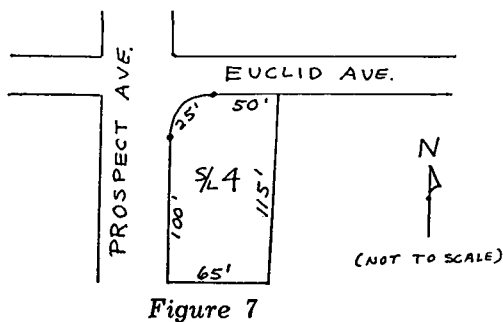
There can be no doubt as to the location and identity of the above property, since the geographical and political subdivisions, and the plat itself are tied to record monuments by survey as a condition precedent to recording.

Where the front line is curved, the frontage must be computed by using the arc distance which appears on the plat.

Frequently, where monuments are set on the front line, the *entire* lot frontage may include one or more of these monuments, and the arc distances must be added together to compute the total frontage.



Corner lots, or lots having a frontage on each of two intersecting streets, where a curved turnout line exists, must be so described as to include the frontage on both streets, and the arc distance of the curve between the two streets.



"Situated in the City of Cleveland, County of Cuyahoga, and State of Ohio, and known as being Sublot Number 4 in the John Marshall Subdivision of a part of Original 10 Acre Lot Number 20, as shown by the recorded plat in Volume 15 of Maps, Page 10 of Cuyahoga County Records, and being 50

feet front on the Southerly side of Euclid Avenue, 25 feet front on the curved turnout between the Southerly side of Euclid Avenue and the Easterly side of Prospect Avenue, and extending back 100 feet deep on the Westerly line, which is also the Easterly side of Prospect Avenue, 115 feet deep on the Easterly line, and having a rear line of 65 feet, as appears by said plat, be the same more or less, but subject to all legal highways."

Where the corner is angular, that is, no curved turnout exists, the description should be written as follows:

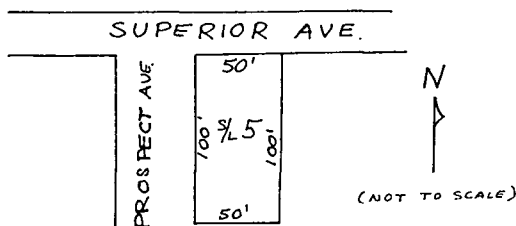


Figure 8

"Situated in the City of Cleveland, County of Cuyahoga, and State of Ohio, and known as being Sublot Number 5 in the Louisville Subdivision of a part of Original 100 Acre Lot Number 145, as shown by the recorded plat in Volume 39 of Maps, Page 9 of Cuyahoga County Records, and being 50 feet front on the Southerly side of Superior Avenue, and extending back 100 feet deep on the Westerly line, which is also the Easterly side of Prospect Avenue, 100 feet deep on the Easterly line, and having a rear line of 50 feet, be the same more or less, but subject to all legal highways."

Where a subplot abuts an alley, the description should tie into the alley as follows:

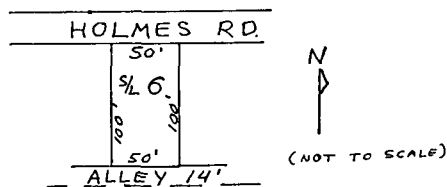


Figure 9

"Situated in the City of Cleveland, County of Cuyahoga, and State of Ohio, and known as being Sublot Number 6 in the Williams Subdivision of a part of Original Euclid Township Lot Number 17 as shown by the recorded plat in Volume 38 of Maps, Page 19 of Cuyahoga County Records, and being

50 feet front on the Southerly side of Holmes Road, and extending back of equal width, 100 feet deep to the Northerly line of a 14 foot alley, as appears by said plat, be the same more or less, but subject to all legal highways."

Sometimes the front, side, or rear lines of the lot will be irregular. These are commonly referred to as "broken" lines and may be described as follows:

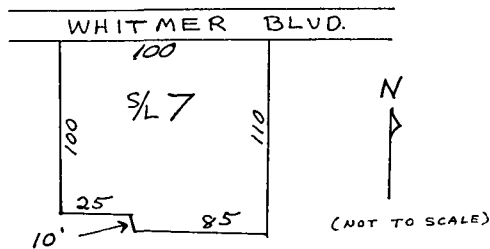


Figure 10

"Situated in the City of Cleveland, County of Cuyahoga, and State of Ohio, and known as being Sublot Number 7, in the First Western Corporation's Inwood Beach Boulevard Subdivision Number 4 of a part of Original Brooklyn Township Lot Number 2, Section Number 1 as shown by the recorded plat in Volume 165 of Maps, Page 12 of Cuyahoga County Records, and being 100 feet front on the Southerly side of Whitmer Boulevard, and extending back 100 feet deep on the Westerly line, 110 feet deep on the Easterly line, and having a broken rear line of 120 feet as appears by said plat, be the same more or less, but subject to all legal highways." Note that the length of the broken line is computed by totalling each of the distances.

Any combination of the above descriptions can normally be used, and as a matter of orderly draftsmanship, it is customary to describe the frontage and then the side and rear lines. This is the order in which a purchaser will probably view his land on the plat and at the situs.

The term "and extending back of equal width" should be used when the four corners of the subplot form 90° or right angles, and the term "extending back between parallel lines" might encompass a lot size trapezoidal, rectangular, or square, or forming a parallelogram. The plat must be checked carefully as to whether or not the terminology used in the description is a true statement.

In describing a lot that has neither "parallel lines," nor "extends back of equal width," each line must be separately described as follows:

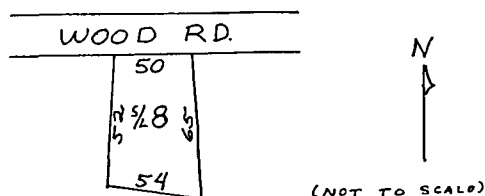
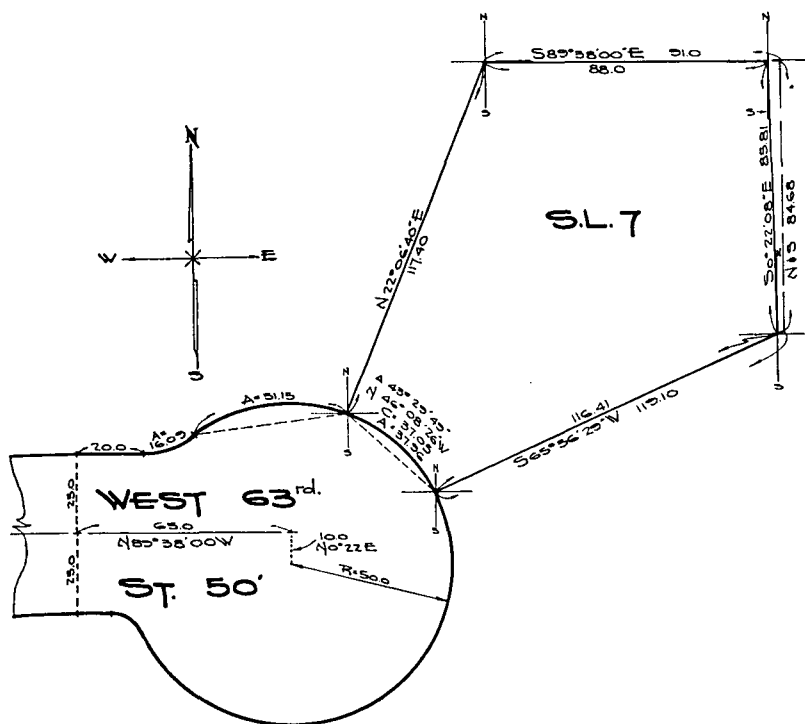


Figure 11

"Situated in the Village of Avon Lake, County of Lorain, and State of Ohio, and known as being Sublot Number 8 in the Beachcliff Acres Allotment of a part of Original Avon Town-



Typical Illustration of a parcel of land drawn according to bearings and distances taken from Legal Description.
Scale: 1"=30' February 1958

BURDEN, SLADE & MACKAY
Civil Engineers & Surveyors

Reg. Ohio Surveyor # 3748
LOUISVILLE TITLE ENGINEERING
DEPT.

Figure 12

ship Section Number 4, as shown by the recorded plat in Volume 9 of Maps, Page 13 of Lorain County Records, and being 50 feet front on the Southerly side of Wood Road, extending back 52 feet deep on the Westerly line, 65 feet deep on the Easterly line, and having a rear line of 54 feet, as appears by said plat, be the same more or less, but subject to all legal highways."

Irregular Sublot (See Figure 12)

"Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as being part of Sublot No. 7 in the Steve Hollo Re-subdivision of a part of Original Brooklyn Township Lot No. 36 as shown by the recorded plat in Volume 164 of Maps, Page 42 of Cuyahoga County Records, and being further described as follows:

Beginning at a point on a cul-de-sac at the Northeasterly end of West 63rd Street, at the most Westerly corner of said Sublot No. 7;

Thence North 22° 06' 40" East along the Northwesterly line of Sublot No. 7, 117.40 feet to the Northwest corner thereof;

Thence South 89° 38' 00" East along the Northerly line of Sublot No. 7, 88.00 feet to a point;

Thence South 0° 22' 08" East, 85.81 feet to a point on the Southeasterly line of Sublot No. 7;

Thence South 65° 36' 29" West along the Southeasterly line of Sublot No. 7, 116.41 feet to a point on the said cul-de-sac;

Thence Northwesterly along an arc of a circle deflecting to the left 37.96 feet whose radius is 50 feet which chord bears North 45° 08' 26" West 37.05 feet to the place of beginning, be the same more or less, but subject to all legal highways."

It is not uncommon to be required to draft legal descriptions of the following:

- (a) More than one sublot
- (b) Part of one sublot
- (c) One sublot and part of another
- (d) More than one sublot and parts of another or others
- (e) Parts of more than one sublot
- (f) Irregular parts of sublots.

The following examples each describe a suggested means of writing a description for the above:

- (a) More than one sublot

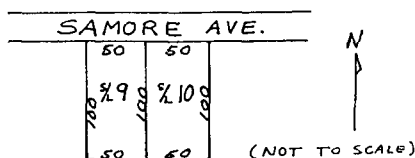


Figure 13

"Situated in the City of Shaker Heights, County of Cuyahoga, and State of Ohio, and known as being Sublots Number 9 and 10 in the W. G. Stapleton Subdivision of a part of Original Warrensville Township Lots Nos. 48 and 49 as shown by the recorded plat in Volume 139 of Maps, Page 40 of Cuyahoga County Records, and together forming a parcel of land having a frontage of 100 feet on the Southerly side of Samore Avenue, and extending back of equal width 100 feet deep, as appears by said plat, be the same more or less, but subject to all legal highways."

(b) Part of one sublot

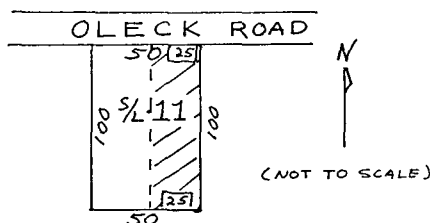


Figure 14

"Situated in the City of Cleveland, County of Cuyahoga, and State of Ohio, and known as being the Easterly 25 feet, front and rear, of Sublot Number 11, in the A. R. F. Company's Subdivision of a part of Original Rockport Township Lot Number 40, as shown by the recorded plat in Volume 28 of Maps, Page 10 of Cuyahoga County Records, and being 25 feet front on the Southerly side of Oleck Road, and extending back of equal width, 100 feet deep as appears by said plat, be the same more or less, but subject to all legal highways."

The above description should be used only when the front and rear lines are perpendicular to the side lines, since in effect, the Easterly 25 feet of the lot will be conveyed regardless of the front and rear dimensions where the front and/or rear are not perpendicular to the Easterly or side line.

The most accurate and thus most preferable description of the above parcel of land is as follows:

"Situated in the City of Cleveland, County of Cuyahoga, and State of Ohio, and known as being the Easterly 25 feet of Sublot Number 11 in the A. R. F. Company's Subdivision of a part of Original Rockport Township Lot Number 40, as shown by the recorded plat in Volume 28 of Maps, Page 10 of Cuyahoga County Records, and bounded and described as follows:

Beginning at a point on the Southerly side of Oleck Road, at the northeast corner of said Sublot Number 11; thence Westerly and along the Southerly side of Oleck Road, a distance of 25 feet to a point; thence Southerly and parallel with the Easterly line of Sublot Number 11, 100 feet to a point on the rear line of said Sublot; thence Easterly along said rear line a distance of 25 feet to the Southeasterly corner of said subplot; thence Northerly along the Easterly line of said subplot number 11, a distance of 100 feet to the place of beginning, be the same more or less, but subject to all legal highways."

(c) One subplot and part of another

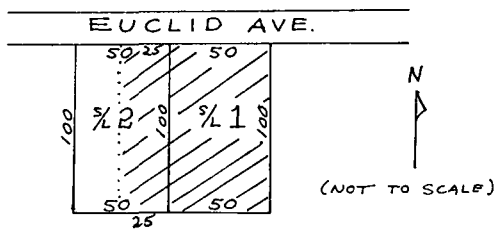


Figure 15

"Situated in the City of Cleveland, County of Cuyahoga, and State of Ohio, and known as being all of Sublot Number 1, and the Easterly 25 feet front and rear of Sublot Number 2 in the Euclid Avenue Subdivision of a part of Original 2 Acre Lot Number 7 as shown by the recorded plat in Volume 9 of Maps, Page 39 of Cuyahoga County Records, and together forming a parcel of land having a frontage of 75 feet on the Southerly side of Euclid Avenue, and extending back of equal width 100 feet deep, be the same more or less, but subject to all legal highways."

As in the example at "B" above, a more accurate description follows:

"Situated in the City of Cleveland, County of Cuyahoga, and State of Ohio, and known as being all of Sublot Number 1 and the Easterly 25 feet front and rear of Sublot Number 2 in the Euclid Avenue Subdivision of a part of Original 2 Acre Lot Number 7 as shown by the recorded plat in Volume 9 of Maps, Page 39 of Cuyahoga County Records, and bounded and described as follows:

Beginning at a point on the Southerly side of Euclid Avenue at the Northeasterly corner of Sublot Number 1; thence Westerly along the Southerly side of Euclid Avenue a distance of 75 feet to a point, which point is distant Westerly, 25 feet from the Northwesterly corner of Sublot Number 1; thence Southerly, and parallel with the Easterly line of Sublot Number 2, a distance of 100 feet to a point on the rear line of said Sublot Number 2, said point being distant 25 feet Westerly from the Southeasterly corner of Sublot Number 2, thence Easterly along the rear lines of Sublots Numbers 2 and 1, a distance of 75 feet to the Southerly corner of Sublot Number 1; thence Northerly along the Easterly line of Sublot Number 1, a distance of 100 feet to the place of beginning, be the same more or less, but subject to all legal highways."

(d) More than one Sublot and parts of another or others

The same principles apply here as in "C" above. The beginning point should be tied into a record monument such as a subplot corner or a point a strict distance from some platted monument in the subdivision. As usual, the metes and bounds description is more accurate, and where necessary, reference deeds may be used for boundaries.

(e) Parts of more than one subplot

This description calls for careful scrutiny by the attorney to be certain that the parcels are properly referred to as the *Westerly* or *Easterly* portions of the lot, and to be sure that they are adjacent and contiguous and do, in fact, constitute *one* parcel in the whole. Error frequently results in direction, where the attorney would refer to the Easterly one-half when he intends to describe the Westerly one-half of the lot. Thus, the recommendation that the attorney use the more accurate metes and bounds description to preclude such error.

(f) Irregular parts of sublots

Irregular parts of sublots can rarely be described accurately without the use of reference or "tie" deeds in the absence of a survey. Where no survey is available to the attorney, but where reference deeds have been checked against adjoining title lines, the description may be written in metes and bounds, with reference, however, to the recorded plat. Where a survey is available, the metes and bounds description may be written from the information disclosed thereon.

Proposed or Unrecorded Subdivisions

Some lots are physically staked out upon the ground by surveyors, and a plat thereof prepared for use of the allotter, but such plat may never be recorded in the office of the County Recorder. Consequently, the plat references do not constitute *record* monuments since the plat is not recorded.

In the absence of such record, mere reference to the subplot number and plat name is insufficient, and the "metes and bounds" description, so called, must be used to describe parcels of land in these "proposed" or "unrecorded" subdivisions.

It is important to note that reference to actual monuments, or recorded monuments, and tie-in-deeds, or a strict use of courses and distances as disclosed by the survey of the proposed subdivision, should be used. The number of the survey, date prepared, and name of the registered surveyor who prepared it should be used in the description. The purpose is, of course, to distinguish the property described from all the real estate in the world.

The following examples are submitted as a guide:

"Situating in the City of Cleveland, County of Cuyahoga, and State of Ohio, and known as being Sublot No. 1 in the John Smith Subdivision, Proposed, of a part of Original Warrensville Township Lot Number 5 and bounded and described as follows:

Beginning at an iron monument at the intersection of the Southerly side of Warrensville Road, and the Westerly side of Green Road as shown by the Dedication plat of said Warrensville Road as recorded in Volume 102 of Maps, Page 10 of Cuyahoga County Records; thence South $89^{\circ} 28' 16''$ West along the Southerly side of Warrensville Road a distance of 500 feet to an iron monument and the principal place of beginning of the premises intended to be described; thence South $1^{\circ} 10' 30''$ West a distance of 100 feet to an iron pin set; thence South $89^{\circ} 28' 16''$ West, a distance of 50 feet to an iron pin set; thence North $1^{\circ} 10' 30''$ East a distance of 100 feet to an iron pin set on the Southerly side of Warrensville Road; thence North $89^{\circ} 28' 16''$ East a distance of 50 feet and along the Southerly side of Warrensville Road to the place of beginning according to a survey dated December 1, 1958, by Thomas A. Burden, Registered Surveyor No. 295, be the same more or less, but subject to all legal highways."

In the absence of a survey, and where reference deeds have been checked, the following example shows another method of describing the same parcel of land as above:

"Situating in the City of Cleveland, County of Cuyahoga, and State of Ohio, and known as being Sublot No. 1 in the John

Smith Subdivision, Proposed of a part of Original Warrensville Township Lot Number 5, and bounded and described as follows:

Beginning at an iron monument at the intersection of the Southerly side of Warrensville Road and the Westerly side of Green Road, as shown by the Dedication Plat of said Warrensville Road as recorded in Volume 102 of Maps, Page 10 of Cuyahoga County Records; thence Westerly along the Southerly side of Warrensville Road a distance of 500 feet to the Northwest corner of land conveyed to John Brown by deed dated September 1, 1955, and recorded in Volume 8181, Page 2 of Cuyahoga County Records, and the principal place of beginning of premises intended to be described; thence Southerly and along the Westerly line of premises conveyed to Brown as aforesaid, a distance of 100 feet to the Northeasterly corner of land conveyed to Alfred Jones by deed dated August 1, 1955, and recorded in Volume 8080, Page 3 of Cuyahoga County Records; thence Westerly and along the Northerly line of land conveyed to Jones, as aforesaid, a distance of 50 feet to the Southeasterly corner of land conveyed to Louis W. Miller, by deed dated October 1, 1925 and recorded in Volume 2502, Page 108 of Cuyahoga County Records; thence Northerly and along the Easterly line of land conveyed to Miller as aforesaid, a distance of 100 feet to the Northeasterly corner thereof, and a point on the Southerly side of Warrensville Road; thence Easterly, and along the Southerly side of Warrensville Road, a distance of 50 feet to the place of beginning, be the same more or less, but subject to all legal highways."

A deed may constitute a sufficient description of the land conveyed by stating that it is bounded by, or adjoins lands belonging to named persons.¹²

Acreage

Acreage is usually described similarly as land in an unrecorded or proposed subdivision (*Supra*), omitting, of course, any reference to a subdivision name and subplot number, but including data as to a survey if available.

It is often desirable to disclose the amount of acreage conveyed or intended to be conveyed by the deed, but for identification purposes, the parties should be able to rely upon the accurate description and not the amount of acreage as such.

¹² Porter v. Paschal, 159 Ga. 416, 125 S. E. 846 (1924);
Brenneman v. Dillan, 296 Ill. 140, 129 N. E. 564 (1920);
Bayard v. Baldwin Lbr. Co., 157 La. 994, 103 S. 290 (1925);
Campbell v. United Fuel Gas Co., 100 W. Va. 508, 130 S. E. 666 (1925).

Conclusion

A long, detailed description may be exasperating to the engineer, attorney, or title examiner when preparing and checking the deed, but it is not nearly so exasperating as is a long, detailed, and expensive law suit to the client.

Identity of land is the sole purpose of the description, and the authorities are endless¹³ that nothing will pass by a deed except what is described in it, whatever the intentions of the parties may have been.¹⁴

Yet it is only when it remains a matter of conjecture what property was intended to be conveyed, *after resorting to such extrinsic evidence as is admissible*, that the deed will be held void for uncertainty in the description of the parcel.¹⁵

If the starting point of a boundary line cannot be identified, the deed is necessarily void; and it is imperative that a metes and bounds description must close. This means that each course or call, following the distance given, must meet the next course at the proper point, so that by following each course along the given distance, the description eventually returns to the place of beginning. A description which omits one or more boundaries and leaves the quantity of land undetermined, is insufficient.¹⁶

It is suggested that in difficult descriptions the services of a professional engineer should be used, and that the survey, correlated with record title deeds and a policy of title insurance, will enable the attorney to protect his client in his real estate ownership to the maximum.

The ownership of land and the protection of land are singular in the events of world history, since the beginning of our history of law. To each of us, his home is his castle. The attorney has the duty to support this valid desire for clarity of rights by his careful attention to the legal description which is the basis of every conveyance of land.

Each description of a single object must be conceived of as a single utterance, just as one cipher cable word may represent

¹³ Bissette v. Strickland, 131 S. E. 655 (No. Car., 1926);
Powers v. Rawles, 119 So. Car. 134, 112 S. E. 78 (1922);
Robinson v. Allison, 109 Ala. 409, 19 S. 837 (1896);
Kyle v. Jordan, 187 Ala. 355, 65 S. 522 (1914).

¹⁴ Thayer v. Finton, 108 N. Y. 394, 15 N. E. 615 (1888).

¹⁵ Los Angeles County v. Hannon, 159 Calif. 37, 112 P. 878 (1910);
Colton v. Lewis, 119 Ind. 181, 21 N. E. 475 (1889);
Harkness v. Devine, 173 Tex. 628, 11 S. W. 872 (1889).

¹⁶ Sullivan v. Fant, 160 S. W. 612 (Tex. Civ. App., 1913).

a message of forty words. We do it no violence by ignoring the non-essential terms; for neither the omission nor the insertion of non-essential terms alters its essence as a whole. By conceiving clearly the singleness of each description as a symbol of a single object, we appreciate that the imperfections of either omission or insertion do not destroy its character as a single effort at the designation of a single object.¹⁷

¹⁷ *Island Coal Co. v. Streitlemeier*, 139 Ind. 83, 37 N. E. 340 (1894).

But see 7 A. L. R. 2d 1331 (1949). A deficiency in the quantity of land or in the title which the vendor has agreed to convey has generally been held to entitle the purchaser to specifically enforce the conveyance of what is actually available, with a decree allowing him an abatement in the purchase price or other compensation for the deficiency, at least where the amount of abatement may be readily computed and the rights of third persons are not involved. See also 55 Am. Jur. 615, 139, Vendor and Purchaser.