

THE ZIGS AND ZAGS OF LEGAL DESCRIPTIONS

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With so many methods used to describe rights of way, understanding the basic principles in reading, writing, retracing and interpreting legal descriptions can go a long, long way.



Part 2

READING AND WRITING LEGAL DESCRIPTIONS

Outlined here are some guiding principles for reading and writing United States Public Land Survey System (USPLSS), subdivision plat and metes and bounds legal descriptions.

USPLSS Descriptions

Usually, the preferred method for describing large parcels of land is by reference to the USPLSS. If the boundary of the property conforms to a subdivision of the USPLSS, a legal description can easily be composed for it by identifying the section (or some fraction thereof), township, range and principal meridian for the subject land.

Examples of USPLSS Descriptions: The Northeast quarter of the Northeast quarter of Section 10, Township 3 South, Range 68 West of the 6th Principal Meridian, Arapahoe County, Colorado becomes NE/4 NE/4 of Section 10, T-3-S, R-68-W, 6th P.M., Arapahoe County, Colorado.

For purposes of land descriptions, sections are commonly divided into half sections (South ½ Section 36) containing 320 acres,

quarter sections (Northwest ¼ Section 36) containing 160 acres, quarter-quarter (Northwest ¼ Northwest ¼ Section 36) sections containing 40 acres, etc., hence the name "Rectangular Survey System." Land descriptions are then generally made by referring to a particular quarter of a quarter of a specific section located within a township either north or south of the baseline, and either east or west of the principal meridian. It is possible to divide a section even further down to 2 ½-acre tracts.

Ranges running east and west are numbered according to their rank from a Principal Meridian. Townships are numbered north and south from the corresponding Baseline. For example, in Colorado, the Baseline for the 6th Principal Meridian follows the 40th degree line of latitude, which is located just north of the city of Brighton in Adams County, and is also located on Baseline Road through Boulder. (Forty degrees latitude is also the boundary line between Kansas and Nebraska). As such, most USPLSS legal descriptions done for land in Colorado have reference ranges which are east of the 6th Principal Meridian and townships north and south of its baseline. It is always the better practice to include the Principal Meridian, County and State in USPLSS descriptions, even though it may seem redundant when all land in a county is oriented to the same Principal Meridian.

“Too often, the inclusion of additional information confuses rather than clarifies the description.”

Most of Colorado, Wyoming, Kansas, Nebraska and parts of South Dakota were surveyed using the 6th Principal Meridian. However, there is a large section of southwestern Colorado that was surveyed using the New Mexico Principal Meridian. Also, a portion of Mesa and Delta Counties in western Colorado are tied to the Ute Meridian, which is located just east of Grand Junction near the airport, and a small portion of Wyoming has descriptions referenced to the Wind River Meridian. The historic reason for the Ute Principal Meridian and Wind River Meridian is that a survey was needed when the plan was to settle Native Americans in and around those areas. Because no surveys had been extended west of the Continental Divide, it was necessary to establish new meridians and baselines to describe land in those areas.

The simplest way to read a USPLSS legal description is to proceed backwards from the end the description to locate the appropriate State, County and Principal Meridian to determine the general vicinity. Then, the specific township and range can be identified by counting north, south, east or west from the Principal Meridian and its baseline, and the section within that township can be located. The fractional subdivision(s) within the section are also identified by reading the designations backward.

Subdivision Descriptions

Probably the most common legal description today in urban and suburban areas involves describing property by referencing a recorded subdivision plat. A subdivision plat will divide a tract of land into blocks, lots, tracts and/or parcels, and delineate public and private streets, alleys, utility, drainage, open space and other easements, dedications and information. To comply with the specifications and requirements of the governing jurisdiction, a subdivision plat will identify each lot by a number or letter within a block and show its boundaries, measurements and areas. When a subdivision plat is recorded in the office of the county clerk and

recorder or register of deeds where the property is located, it is readily accessible to surveyors, lawyers and the general public who may need to refer to the information contained therein. As such, a lot in platted subdivision (or a portion or fraction thereof) can be described by referring to the plat.

Example of Subdivision Description: Lot 56, Block 2, Rolling Hills Subdivision, Filing No. 2, or Lot 5, Block 2, Capitol Hill Subdivision Addition to the City and County of Denver, State of Colorado, according to the recorded plat thereof.

When referring to a record in a land description, it is generally preferable to set forth the tract or lot and block (or other designation) followed by “ according to the official plat thereof.” The description should also provide appropriate recording or filing information, including the government office in which the official plat can be found. This reference to a recorded plat relieves the scrivener of the burden of reciting all of the other details contained in the plat which add certainty to the location of the parcel on the ground.

Whenever additional information, such as acreage quantity, a metes and bounds description or identification of prior conveyances is provided, the scrivener should be careful to confirm the accuracy of all the information and ensure that there is no conflict with the information set forth in the official plat. Better yet, the scrivener should consider not including additional information unless it is necessary to reflect the intent of the parties. Too often, the inclusion of additional information confuses rather than clarifies the description.

Metes and Bounds Descriptions

A metes and bounds description defines adjoining property lines with courses (bearings and distances) to describe the boundary of the parcels of land. Metes and bounds description are used when ever it is necessary or desirable to describe a tract with irregular boundaries that do not conform to the USPLSS or the lots and blocks laid out in a subdivision plat. Usually, a metes and bounds description will describe the perimeter of the parcel moving in a clockwise direction. The description can be simplified by beginning each new line with “thence,” as shown in the example below. This will take up more space on the page for the description but it makes it much easier to read and check for errors. Though actually a misnomer, metes and bounds is often used to refer to the calls for the perimeter description of a right of way.

The essential elements of a metes and bounds perimeter description include:

- 1) a preamble that provides a general description of the land to be described including the county and state and a common local name or other general information to orient the reader;
- 2) a call identifying either the point of commencement (which should be a corner monument from the USPLSS), recorded subdivision plat, or some other readily recognizable and unique location;
- 3) calls reciting courses and distances to a point of beginning;
- 4) calls reciting courses and distances around the perimeter of the subject land (which may also include references to adjoining boundaries and other natural or artificial monuments parallel to, or intersecting, the perimeter), and back to the point of beginning;
- 5) an area call setting forth the approximate acreage in the parcel;
- 6) a basis of bearing statement for the courses called out.

Example of Modern Metes and Bounds Perimeter Description: A tract of land in the Northwest quarter of the Northwest quarter (NW ¼ NW ¼) of Section 30, Township 1 South, Range 66 West of the 6th Principal Meridian, County of Adams, State of Colorado described as follows:

Commencing at the Northwest corner of said Section 30;
Thence South 20°30' East, a distance of 140.60 feet to the Point of Beginning;
Thence North 88°55' East, a distance of 200.00 feet;
Thence South, a distance of 125.00 feet;
Thence South 88°55' West, a distance of 200.00 feet;
Thence North, a distance of 125.00 feet to the Point of Beginning;
Containing 0.57 acres, more or less.

(Bearings are based on the north line of the Northwest quarter of Section 30 to bear North 89°42' East with all bearings contained herein relative thereto.)

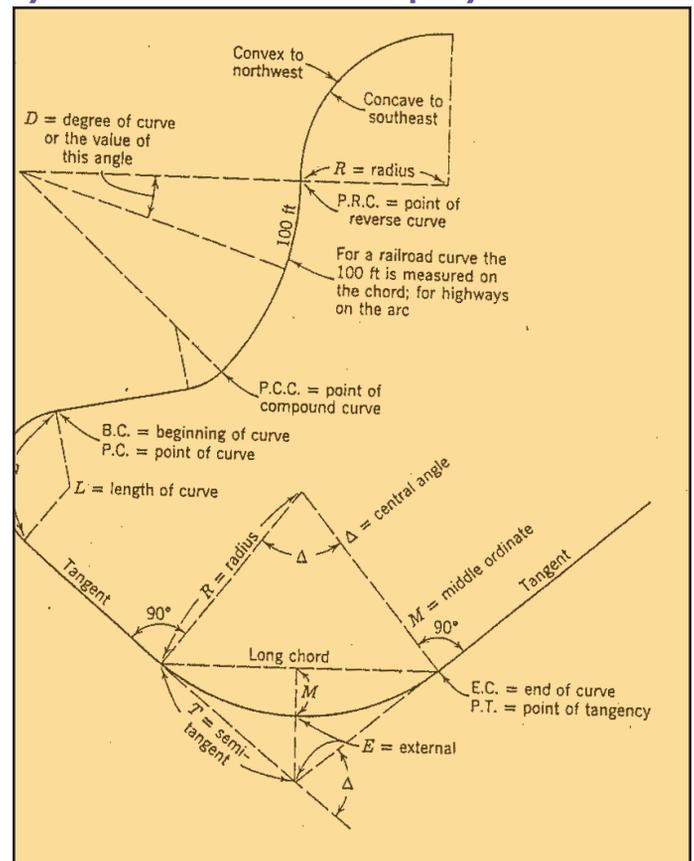
These descriptions rarely rely on natural features alone for determining location. When a metes and bounds description is used for irregular parts or some fraction of a section, it should always be tied to some established corner monument. Likewise, metes and bounds within approved subdivisions should tie to a corner or other reliable point as described in the recorded subdivision plat, though they may also be tied to the USPLSS.

When reading a lengthy metes and bounds description, it is often helpful to trace the calls in reverse order to see if you reach the same points as you did when you started from the beginning. If a perimeter description does not appear to close, there are several computer programs available to help write and check legal descriptions. Some are very easy to use, such as In Deed, which requires very little surveying expertise by checking for accuracy and area, and creating a simple sketch. A more sophisticated software program that may require some surveying and trigonometry knowledge is Quick CoGo. However, it is always best to check with several software suppliers to find programs that will fit your specific needs.

Right of Way Descriptions

Legal descriptions for rights of way should conform to the general principles described above. However, they rarely conform to USPLSS or subdivision lines and often involve complex metes and bounds calls. Moreover, it is a common occurrence to need to acquire rights to locate roads or facilities before the exact location is known, and it is unusual for topographic features or other variables to cause adjustments to the planned right of way route. The following sections will discuss several common drafting techniques used to accommodate the special needs associated with preparing legal descriptions for rights of way.

System Used to Describe Property



Strip and Centerline Descriptions

A strip description is used primarily for describing a road, public utility easement or other type of linear right of way. This type of description will describe a line either by metes and bounds or by reference to a boundary such as a property, USPLSS or subdivision line. Then the right of way is identified as being a strip of land of specified width which is oriented to the line. The line described may be either the edge or centerline of the strip. The width is generally fixed, but can be made variable if the need arises, although that may be confusing and is not recommended. Strip descriptions should terminate on a property or boundary line for closure but may not in certain instances.

Examples of Strip and Centerline Descriptions:

"A strip of land 25 feet wide, lying north of the following described line;"

"A strip of land 25 feet, being 12.5 feet on each side of the following described centerline;" or

"The northerly 10 feet of Lot 7, Block 2."

Fractional or Aliquot Part Descriptions

An easement or right of way can also be described by designating a fractional or aliquot part of a parcel. A description by aliquot parts means the designation of a part of a parcel, usually a USPLSS section or a subdivision lot, that divides the parcel evenly and leaves no remainder.

Examples of a Fractional Part Description:

"The East 10 feet of Lot 6, Blue Lake subdivision;" or

"That portion of the SW/4 of . . . lying north of County Road 110."

Examples of aliquot fractional part description:

"The South half of Lot 15, Block 5, Brown's Addition to the Town of Silt;" or

"The NW ¼ of the NW ¼."

Descriptions of this type are generally used to describe larger parcels. Reading descriptions of this type is simplified by following the description in reverse. For example, the eastern half of the southwest quarter of the southeast quarter is located by first visualizing the southeast quarter; then visualizing the southwest quarter of that southeast quarter, and finally locating the east half of the visualized quarter-quarter parcel. The smallest legal size recognized by federal statute for homestead purposes was one-quarter of one-quarter; however, smaller parcels are commonly designated to identify portions of homesteaded holdings. Since the government has authorized the disposal of 5-acre cabin sites in the mountains and desert regions, the descriptions have been of the type "S ½, SW ¼, SE ¼ SE ¼ of Section 10, Township 10 South Range 5 East....".

Perimeter Descriptions

Whenever there is an irregularly shaped parcel to describe, it can be accomplished by a perimeter description. This type of description is merely a metes and bounds (or "metes") description that describes the perimeter of the right of way using bearings and distances.

Example of a Perimeter Description: Commencing at the Northeast quarter of Section 25, Township 7 South, Range 87 West of the 6th P.M., Garfield County, Colorado;

Thence South 88° 45' 33" East, along the north line of said Section 25, a distance of 300.00 feet to the Point of Beginning;

Thence South 01° 14' 27" West, a distance of 100.00 feet;

Thence North 88° 45' 33" West, a distance of 100.00 feet;

Thence North 01° 14' 27" East, a distance of 100.00 feet;

Thence South 88° 45' 33" East, a distance of 100.00 feet to the Point of Beginning.

Blanket Descriptions

The last type of right of way description covered here is the blanket description. This type is easily written and can provide the entity obtaining the easement or right of way with coverage of their facilities without the necessity of a land survey. This is a very quick method of obtaining land rights, but it also can encumber every square inch of the grantor's property. On the other hand, blanket descriptions are susceptible to being found too vague to be sufficient.

Landowners should not agree to this type of description. Companies who utilize this method of description save money at the time the description is written. This method may necessitate a land survey of the facility and filing a document, usually a quitclaim deed, to remove the encumbrance from the property in question so that some type of improvement or development can occur.

Terminology

The choice of terminology used in writing legal descriptions can be interpreted in different ways and sometimes cause legal questions or a misunderstanding of the intent of the description. Care should be taken regarding the choice of words used in the description in order to lessen the chance of misinterpretation. The following are probably the 10 most commonly misunderstood terms used:

Adjacent - Lying near, close to or in the vicinity of, but not necessarily touching. It is often used incorrectly in place of adjoining. Although thought to mean touching, it indicates only that a person is in the right neighborhood, not on the right line.

Adjoining - The preferred term when the intent is to refer to a boundary that is actually in common with another.

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Along - A call for a boundary to be along a line implies that a person is moving with the call, and the line itself is the route of motion. The term is not interchangeable with "by a line," "on a line" or "with a line." When referring to a strip description or a road, along generally refers to the centerline, unless otherwise called for.

Contiguous - According to Black's Law Dictionary, the term is somewhat vague and should be avoided. "In close proximity," "near though not in contact," and "adjoining" all fall within the meaning.

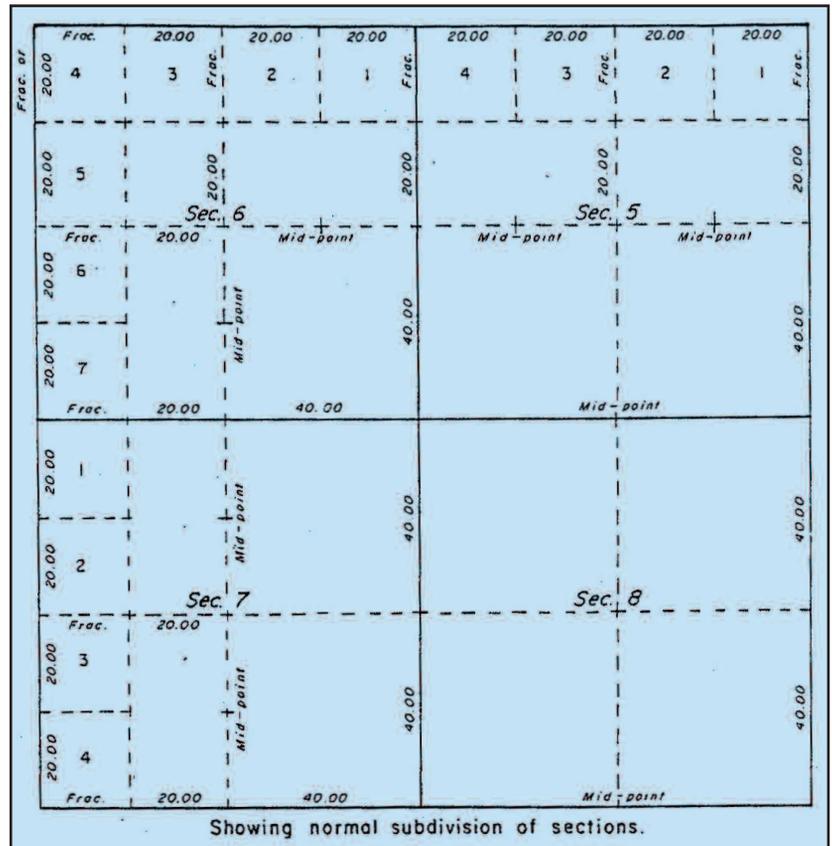
Due - Due north refers to astronomic north, not an assumed north. Geodetic north is not included in this term. The use of "true" instead of "due" does not improve clarity. These terms should be used only when the bearings or azimuths are actually based on astronomic observations. Statements regarding the basis of bearings in a deed should be made in the description. In the absence of a stated basis of bearings, the bearings called for in a legal description are considered to be relative to each other, but not necessarily to bearings in other deeds.

Either - This term is sometimes assumed to mean the same distance on both sides when describing a strip with a centerline. "Thirty-three feet on either side of the following described centerline" is an incorrect use. "Either" implies that there is a choice of one side or the other of the centerline, but not both sides, which was the intent. Scriveners should employ the word "each" instead.

Excepting - This term is not interchangeable with reserving. Some descriptions use them in tandem. However, the word excepting means omitted or cut off, while the term reserving indicates only a portion of something is being withheld. When reserving an easement from a foregoing description, the implication is that fee title to the land has been transferred, but a partial interest in the form of an easement is to be created and held for the grantor. When an exception is made, anything described in the exception that was also described in the body will be entirely removed from the grant.

More or less - This term indicates uncertainty as to the accuracy of a call, and the reader of a call should be cautious. It should be reserved for situations where the quantity is questionable. When used at the end of an acreage call, "more or less" implies that the area is not to be taken as any real influence on the description; that is, the courses and distances in the body of the description control the area of the land, and the area call is supplementary and for information only.

Parallel to - For two lines to be parallel to each other, they must by mathematics be equidistant from each other at any point. Lines or objects cannot be parallel "with" each other, but must be parallel



"to" each other. Although parallel implies straight lines, this term is often used with curves. The principle indicates that the curves are concentric, which means they share a common radius point and are also equidistant from each other at any given point.

Tract or Parcel - These two terms are the most frequently used in metes and bounds preambles to refer to the land being described. The term "parcel" is generally preferred because it does not have any other meanings with which it can be confused. "Tract" is used within the USPLSS for prior vested rights segregated from the original survey or upon resurvey. Similarly, using a section of land can be confused with a 640-acre section of the USPLSS. The term "lot" also has several official meanings, so the description should clarify which system or designation is intended.

CONCLUSION

In conclusion, care must always be taken in the preparation of all descriptions to avoid the need for legal action and to perfect the rights being obtained. A description written incorrectly may cause overlaps or gaps with surrounding properties, title problems, and even worse, the construction of improvements on the wrong property. The best advice is to repeat the guideline used earlier for preparation of legal descriptions: "the preferred method of writing descriptions is to use the best type or combination of types and parts that will give the clearest and shortest description possible."