

Back to basics: Understanding legal descriptions

By Kent Pelt

One of the most fundamental aspects of title insurance work, legal descriptions have a long history in American real estate and serve as the foundation for the sound, legal transfer of property in our country. Here are some terms commonly associated with legal descriptions, a summary of their minimum legal standards, information about title insurance policy coverage and best practices for ensuring their accuracy and preventing claims arising from legal description errors.

What is a legal description?

A legal description is the precise location and measurement of real property. While an address is often used to locate a property, legal descriptions are used when transferring title because they are more accurate.

Ancient legal descriptions may have referred to trees, rocks, river sides or other natural monuments to mark boundaries. Some of these historic descriptions remain today, especially with family farms that have not been conveyed out of a family for many generations. Modern legal descriptions are all based on surveys. These are sectional, metes and bounds, lot, block and tract, parcel map and condominium surveys.



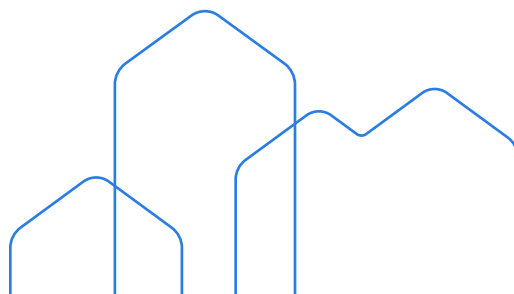
Careful examination of legal descriptions is imperative, and the only way to ensure their accuracy. Most legal description errors come from human error in transcribing and the failure to adequately proofread. This is especially common with lengthy metes-and-bounds descriptions from surveys.

Errors in your legal descriptions can result in title claims, so a bit of extra scrutiny on the front end will avoid a lengthy curative matter after closing.

What is legally sufficient?

A description in a deed must be sufficient for the identification and location of the property conveyed, and for issuing a policy of title insurance. Descriptions must enable the reader to ascertain and identify the land conveyed with reasonable certainty. No specific form or template of description is required. Various U.S. courts have agreed that an address may be enough under the law if there is no ambiguity with the property's physical location.

But what happens when the description is inadequate? A conveyance is void when the description in the deed is omitted, or is so vague and incapable of being made certain that it does not provide constructive notice to third parties.



Modification by state law

Most states have enacted laws regulating the subdivision of land. A good example is California's Subdivision Map Act, the primary regulatory control governing the subdivision of real property in California. The act has several purposes:

- To encourage and facilitate orderly community development;
- To coordinate planning with the community pattern established by local authorities;
- To assure proper improvements are made so the area does not become an undue burden on taxpayers; and
- To create uniform and accurate maps showing the interior and exterior boundaries of subdivisions and the location of improvements.

To the extent public improvements are necessary to serve land uses subject to a given subdivision map, the act is also designed to ensure that a subdivider of property dedicates the necessary easements and other real property interests to the governing agencies and completes the public improvements. This is similar in states where plats are utilized for the creation of subdivisions.

In California, it is illegal to sell a lot without compliance. No lot or parcel that results from the division of a larger parcel can be sold or leased by the subdivider without compliance with the act — and this holds true in other states with similar statutes. A division of land can be accomplished only with the recordation of a final approved subdivision map or parcel map. California property owners who violate the act are subject to a fine or imprisonment as a misdemeanor. Other states have similar penalties.

There are a handful of exemptions from the act, such as the financing or leasing of apartments, offices, stores or similar spaces within apartment buildings, industrial buildings, commercial buildings, mobile home parks or trailer parks.

Title insurance policy coverage

It is important to make sure the legal description you are being asked to insure complies with your state's subdivision law. If the legal description can be identified as the result of a survey to comply with the applicable subdivision law, it can be insured. Where you must be



careful is with older sectional, metes-and-bounds and partial-lot descriptions, such as, “The west 1/2 of Lot 4,” for example.

When older descriptions are encountered, additional care is required. In California, they may only be insured if “grandfathered” by the state subdivision law. In many states, unplatted lands still use partial-lot descriptions, so care should be taken when reviewing the chain of title that additions and less-outs have been properly conveyed in each conveyance.

The American Land Title Association (ALTA) 2021 Owner’s Policy 2021 forms affirmatively cover subdivision violations, which reads:

A violation or enforcement of a law, ordinance, permit or governmental regulation (including those relating to building and zoning), but only to the extent of the violation or enforcement described by the enforcing governmental authority in an enforcement notice that identifies a restriction, regulation or prohibition relating to:

a. The occupancy, use or enjoyment of the land;

b. The character, dimensions or location of an improvement on the land;

c. The subdivision of the land; or

d. Environmental remediation or protection on the land.

Questions? Seek underwriting counsel guidance.

Doma Title Insurance underwriting counsel are standing by to assist Doma agents when they encounter a deed with a legal description that is flawed or ambiguous. Simply email us at:

[\[STATE ABBREVIATION\]underwriting@doma.com](mailto:[STATE ABBREVIATION]underwriting@doma.com)
(for example, FLunderwriting@doma.com).

