

Writing
Legal
Descriptions

IN CONJUNCTION WITH
SURVEY BOUNDARY CONTROL

by

GURDON H. WATTLES

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BROWN'S BOUNDARY CONTROL AND LEGAL PRINCIPLES

Fifth Edition

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"NAP"

On the maps of some subdivisions, one or more areas may be included within the lines of the tract but not established as, or given numbers as, lots in the tract. They are labeled "NAP" or "NOT A PART" or "Not A Part of this Subdivision." For one example, this occurs when the seller excepts his homestead from the conveyance of the large parcel to be subdivided. In the layout of the new tract with lots set around three sides of the homestead and a street in front, all the boundary measurements of the "NAP" are shown on the tract map making it eligible for conveyance by direct reference in a document. The form of description to use for the "NOT A PART" area will be explained in Chapter 11.

Intention

After finding such items in land descriptions as insufficiency, ambiguity, conflicting elements, mistakes, indeterminate calls, etc., one should not overlook that certain avenue of qualitative analysis that seeks to solve the questionable matters by learning the *intent* of the parties involved. This is not just a simple matter of asking them because, in many instances, the originators of the transaction are long gone by the time the problem rises to the surface due to its financial value.

Obversely, however, when all the facts in a description are finite and conformable, you have control properly and well expressed so one does not need to look for some hidden meaning as an intention. One person I recall tried to create a problem out of the call, "N 23° 25' E. 256.6 feet to the line of the fence set 29.6 feet southwest of Hokum's barn." by claiming that "while the distance to the fence measured 252.0 feet, the distance of '256.6 feet' should hold because it would leave 25 feet to Hokum's barn and that is a normal amount and is all he really needs therefore that was probably the intent." Since the citation of a physical monument as a tie in the legal description carries a number one priority in value, this would be a case where there is no need to even consider the alternative of intent.

From this a conclusion can be drawn that only when the wording is *questionable* does one look for intention. Judge Savage of Maine further pinpointed this quality as "... the intention effectually expressed, not merely surmised."

Intention developed from construction of the wording in the deed-it is a correct presumption that the creator(s) of the deed

(there may have been more than one working at it) intended it to be valid. From that basic concept, one must analyze the meaning of the words actually used in the description in such a way as to result in legal effectiveness instead of a void.

It is a general application of the rule that course and distance give way to an adjainer. Whether it be a marked line as shown on a map and staked on the ground or an unmarked line described in a recorded deed, the called-for line is considered as a monument and therefore more certain than the course and distance; however, the contrary may be shown. If it can be determined that the tie to the adjainer was made by conjecture, or erroneously, it must give way to the course and distance if that complies more closely with the intention, especially if the latter is locative and certain.

It is a long-established adage that that construction of the wording in a description which renders the most certain conclusion is the one to be adopted. Contrariwise, sufficient ambiguity will make the deed void. In between these two situations is a matter of degree. In every case, the description must be read and considered *as a whole*.

Interpretation of individual (including corporate) deeds will show favor to the grantor. On the other hand, intent concerning the meaning of a description in a will has been held in favor of the testator because he had certain plans to be carried out.

Construing Descriptions

Although the practice of surveying relies in part on the application of mathematical formulas, rules of construction, etc., the professionalism of surveying is manifest in the discretionary use of such knowledge, coupled with experience.

When a parcel boundary or a strip of land is described with sufficient detail and with proper ties, there is no problem. Sometimes, however, in an effort to make sure that all possible ties and references are included, the result is conflict because some of the information is incompatible with other parts.

A good description writer will check all references *before* using them in order to assure compatibility.

Where two descriptions purport to cover the same land but between which there is repugnancy, the court will review surrounding facts and favor the most definite and those which confirm the evident intent. Certainly where one is ambiguous, the other more certain will prevail.

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