

# The Drafting of Legal Descriptions

Presented By  
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Chicago Title Insurance Company  
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## The Problems...

- Omitted “Schedule A”
- Metes and bounds that fail to close
- Poor monumentation
- Improper Lot/Block
- Improper map
- “old” legal descriptions
- And others....

## Today's goals

- Discuss ways to prevent:
  - Bad legal descriptions
  - Perpetuating bad legal descriptions
  - Avoid nagging problems (hopefully not claims) that take time and resources to fix
- Think about new office practices that may help



## Notes

- Legal Descriptions = “legals”
- Metes and Bounds Description = “M&B”

## Legal Descriptions: *Bad Assumptions*

- Old legals are adequate
- New legals are adequate
- That the legal actually describes the property your client is buying
- Surveyors know how to draft adequate legals
- Any prior M&B actually closes
- Realtors know what description to put in the contract

## Drafting Legal Descriptions

- Two important legal issues
  - Rules of Construction
  - What is an adequate legal description?

# I. Rules of Construction

You must know and understand how the content of the legal will be construed.

See Webster's Real Estate Law in North Carolina §10-34 et seq.

Best

- Lot on recorded plat, referenced by plat book and page of recording (because plats usually show all or most of the below factors, though the reliability of the map depends on which of the below factors are shown on the map itself)
- Reference to property as the same as a previously recorded instrument (but again the reliability of the current description depends on which of the below factors are in the description in the prior instrument referenced)
- Natural or Permanent adjoining monuments (adjoining landowners, river)
- Artificial or less permanent monuments (street, concrete monument, existing iron pipe)
- Courses (directional call)
- Distances
- Address
- Acreage or Quantity of land
- Other descriptive references (For example, a will devising "my house" or "all my property" may be specific enough if it can be determined that the grantor only had one tract of land and it can be located using the evidence on record, such as a prior deed into the grantor, a recorded map or a will.)

Worst

*The test is whether the property can be identified on the ground, given all of the above information and, sometimes, outside evidence.*

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# I. Rules of Construction

- The intent of the parties will be construed within the “four corners” of the document.
- § 39-1.1. In construing conveyances court shall give effect to intent of the parties.
  - (a) In construing a conveyance executed after January 1, 1968, in which there are inconsistent clauses, the courts shall determine the effect of the instrument on the basis of the intent of the parties as it appears from all of the provisions of the instrument.
  - (b) The provisions of subsection (a) of this section shall not prevent the application of the rule in Shelley's case. (1967, c. 1182.)

## II. What is an “adequate” legal?

- [D]eed purporting to convey an interest in land is void unless it contains a description of the land sufficient to identify it or refers to something extrinsic by which the land may be identified with certainty. *State v. Brooks*, 279 N.C. 45, 181 S.E. 2d 553; *Carlton v. Anderson*, 276 N.C. 564, 173 S.E. 2d 783; *Lane v. Coe*, 262 N.C. 8, 136 S.E. 2d 269; *Deans v. Deans*, 241 N.C. 1, 84 S.E. 2d 321; *Searcy v. Logan*, 226 N.C. 562, 39 S.E. 2d 593
- An Inadequate legal:
  - *Harris v. Woodard*, 130 NC 580 (1902)
  - Where the parent parcel was a 40 acre tract this description failed: “A certain piece or tract of land, grist-mill and all fixtures thereunto, and one storehouse, 28 x 100 feet long, lying and being in Brassfield Township, Granville County, N.C. and adjoining the lands of Anderson Breedlove, J. C. Usry and Dora Harris, said lot to contain three acres.”
  - Cannot be aided by extrinsic or parol evidence

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*Harris V. Woodard*, 130 NC 580, (1902)

As was said by *Gaston, J.*, in *Massey v. Belisle*, 24 N.C. 170, "Every deed of conveyance must set forth a subject-matter, either certain in itself or capable of being reduced to a certainty by recurrence to something extrinsic to which the deed refers." Here there is no subject-matter which is either definite in itself or capable of being reduced to a certainty by recurrence to something to which the deed refers. No beginning point, nor directions, nor distances are given, and there is nothing which authorizes any one to lay off the lines of any particular three acres out of the forty in the tract, which tract is bounded by the parties named. The reference to them renders the forty-acre tract certain, but is no aid in rendering it possible to select three acres out of said tract. This is not like the "twenty-nine acres to be cut off of the north end" of a tract which was bounded by straight, well-defined lines, and whose selection required merely a knowledge of surveying, as in *Stewart v. Salmonds*, 74 N.C. 518, nor a similar description in *Webb v. Cummings*, 127 N.C. 41, 37 S.E. 154.

## Diagnosing and Drafting a Legal Description

Common principles apply to both drafting and diagnosing a legal description as part of a title exam.

We'll examine the process of drafting by using a sample description.

## Drafting the Legal Description: Sources of Information

- The Contract
- Prior instruments
  - For the dirt in question
  - For the adjoining tracts, occasionally
- Surveys, Plats
  - Surveys are key...tell them to get one!
- Tax office
- Deed Plotting Software
  - Deed Plotter, Quick Plat, etc.
- Google Maps, Google Earth, Bing?



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# Sample Description...

Treat. # 26,200 Book Page: 1200

## EXHIBIT A

?

Beginning at a P.K. nail at the intersection of the U.S. Railroad (Sunny Point) and State Road 1415, thence North 87 degrees 23 minutes 20 seconds East 144.53 feet to the point and place of beginning; thence North 81 degrees 1 minute 47 seconds East 28.62 feet to an existing iron pipe; thence North 81 degrees 1 minute 47 seconds East 28.62 feet to an existing iron bar; thence South 30 degrees 44 minutes 32 seconds East 22.12 feet; thence South 70 degrees 09 minutes 27 seconds East 71.92 feet; thence South 57 degrees 08 minutes 79 seconds West 123.97 feet; thence North 28 degrees 53 minutes 31 seconds West 56.60 feet; thence South 60 degrees 10 minutes 56 seconds West 19.55 feet; thence North 81 degrees 1 minute 47 seconds East 28.62 feet to the point and place of beginning. This is the same property described in deed recorded in Book 2057, Page 325, Brunswick County Registry.

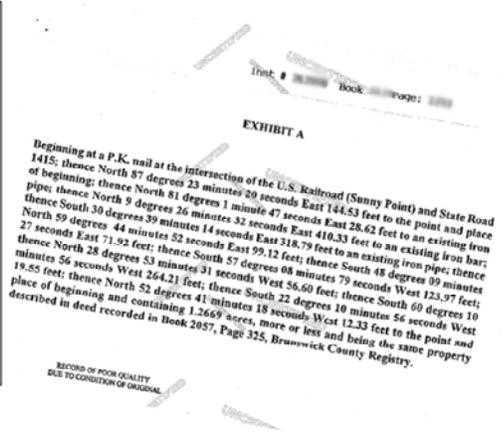
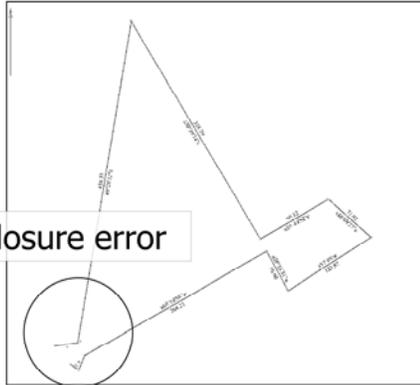
Lacks monumentation...

Has prior deed reference

Low print quality

RECORD OF POOR QUALITY  
DUE TO CONDITION OF ORIGINAL

# Sample Description...plotted

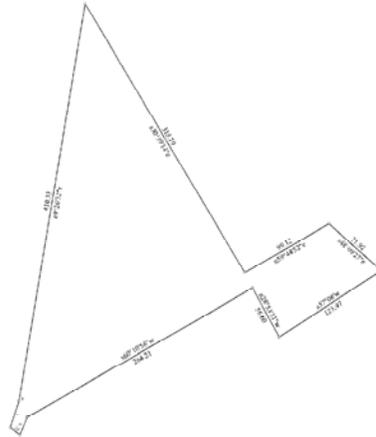


## One advantage of deed plotting software...

Deed plotting software can analyze a tract and make recommendations to correct a defective legal...as it did here:

First run on Legal...  
North 81 degrees

Should be...  
North 18 degrees



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## Let's Improve the Legal...Step One

- Clarify commencement and beginning points
  - Define them and Capitalize them
- Be sure that your legal is “tied down”
- Separate runs for clarity and ease of verification
  - Dyslexics Untie!
  - Count ‘em
- When tract is shown on a prior map or survey...say so

COMMENCING at a P. K. nail at the intersection of the U. S. Railroad (Bunny  
Pole and State Road 1415, thence North from the point of Commencement 67  
degrees 23 minutes 20 seconds East 144.53 feet to the point and place of  
BEGINNING;

Thence from said BEGINNING point:

North 18 degrees 1 minute 47 seconds East 29.62 feet to an existing iron;  
Thence North 9 degrees 26 minutes 32 seconds East 410.33 feet to an existing  
iron bar;

Thence South 30 degrees 30 minutes 14 seconds East 38.79 feet to an existing  
iron pipe;

Thence North 59 degrees 44 minutes 52 seconds East 99.12 feet;

Thence South 48 degrees 09 minutes 27 seconds East 71.92 feet;

Thence South 67 degrees 03 minutes 79 seconds West 123.97 feet;

Thence North 28 degrees 53 minutes 31 seconds West 56.62 feet;

Thence South 60 degrees 10 minutes 56 seconds West 264.21 feet;

Thence South 22 degrees 10 minutes 56 seconds West 19.55;

Thence North 52 degrees 41 minutes 18 seconds West 12.33 feet to the point  
and place of BEGINNING and containing 1.2689 acres, more or less, and  
BEING the same property described in that deed recorded in Book 2057, Page  
325, Brunswick County Registry.

Separating the runs is helpful in making sure that all runs are included and that they are correct.

Separate commencement points, beginning points, from the body of the legal.

ALWAYS include prior deed references even if is something like...“being a portion of....”

For this display we used a smaller font. Use a large font that is easily legible...even when scanned or reproduced many times. This improves the quality of the record and makes life easier on the next person searching that title.

## Step Two ... When in Doubt...Monument it!

- Adding monuments from easily located resources
- Without a survey...
- Use tax maps to locate adjoining

COMMENCING at a P.K. nail at the intersection of the U.S. Railroad (Sunny Point) and State Road 1415; thence North from the point of Commencement and along the northern right of way of S.R. 1415, 87 degrees 23 minutes 20 seconds East 144.53 feet to an iron rod in the margin of said right of way, the point and place of BEGINNING;

Thence from said BEGINNING point:

North 18 degrees 1 minute 47 seconds East 28.62 feet and along the western line of that property now or formerly owned by Samuel T. Jones (Deed Book 203, Page 1145) to an existing iron marking the easternmost corner of said Jones tract;

Thence, North 9 degrees 26 minutes 32 seconds East 410.33 feet along Jones' western line to an existing iron bar marking the common corner of the subject tract with Jones to the West that tract now or formerly owned by Terrance Davis (Deed Book 35 at Page 427) to the North and East an existing iron pipe;

Thence, along Davis' western line South 30 degrees 39 minutes 14 seconds East 318.79 feet to point in the centerline of a ditch;

Thence, South and with the centerline of the said ditch, 48 degrees 09 minutes 27 seconds East 71.52 feet to a point in the northern line of Lot 14 of Seacrest Subdivision as the same is shown on that map recorded in Map Book 2, page 189, Brunswick County Registry;

Thence, South 57 degrees 08 minutes 79 seconds West 123.97 feet to an existing iron marking the northwestern corner of Lot 13 of said Seacrest Subdivision;

Thence, North 28 degrees 53 minutes 31 seconds West 56.60 feet a point in the southern margin of dirt path;

Thence, with and along the southern margin of said dirt path South 60 degrees 10 minutes 56 seconds West 264.21 feet to point;

Thence, South 22 degrees 10 minutes 56 seconds West 19.55 to the northern line of S.R. 1415; 12.33 feet to the point and place of BEGINNING and containing 1 2668

BEING the same property described in

County Registry

Admittedly, there are sound reasons for not wanting to add this level of detail. For example, It may be best to advise a client who is selling property by warranty deed to convey by the description used in her vesting deed.

However, it is also true that this level of detail will keep the errant typographical error from defeating the deed itself. For example, in the legal description that we are using you will recall that the original legal mistakenly showed a run as being "North 81". The run actually is "North 18". Without other supporting information, this may cause the legal description, and therefore the deed, to fail. The simple addition of reference to the neighbor's line and corner make the errant direction readily apparent.

Our sample description did have a prior deed reference and that too can often help to clarify the intent of the parties where a simple typo might otherwise undo the conveyance. We all too frequently see deeds lacking prior deed references. This simple addition can also clarify an errant description and possibly save the conveyance.

## Step Two ...

### When in Doubt...Monument it!

#### Good Monuments are...

- Permanent or nearly permanent
  - At least hard to move!
- Easy to locate (usually)
- Include
  - Roads and intersections
  - Rivers, creeks & ditches
  - Adjoining tracts
  - Trees (to some extent)
  - Easements
  - Concrete monuments
  - Culverts

#### Bad or not so good Monuments are:

- Movable, removable
- Not so permanent as in the case of trees
- Include
  - Irons (old or new)
  - PK nails
  - A stone (a BIG stone might be okay)
  - Axles

## Inside the 4 Corners (the Dean Smith Approach)

- Why is all of this so important?
  - The deed that saves itself
  - Incorporating as much identifying information as is available may prevent a “minor” typo from causing a deed to fail
- NCGS 47.36.1
  - Minor and obvious error
  - Versus corrective deeds
  - Time and MONEY

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### **§ 47-36.1. Correction of errors in recorded instruments.**

Notwithstanding G.S. 47-14 and G.S. 47-17, notice of *typographical or other minor error* in a deed or other instrument recorded with the register of deeds may be given by recording an affidavit. If an affidavit is conspicuously identified as a corrective or scrivener's affidavit in its title, the register of deeds shall index the name of the affiant, the names of the original parties in the instrument, the recording information of the instrument being corrected, and the original parties as they are named in the affidavit. A copy of the previously recorded instrument to which the affidavit applies may be attached to the affidavit and need not be a certified copy. Notice of the corrective information as provided by the affiant is deemed to have been given as of the time the corrective affidavit is registered. Nothing in this section invalidates or otherwise alters the legal effect of any instrument of correction authorized by statute in effect on the date the instrument was registered. (1985 (Reg. Sess., 1986), c. 842, s. 1; 1987, c. 360, s. 1; 2008-194, s. 7(c).)

## The Legal Description In the Office

 (or The Plutonium Theory) 

Simple ideas to avoid mistake, confusion, & error in the office:

- Draft, copy or prepare the legal at preliminary opinion
- Save the correct legal in your software
- Print multiple copies for file and do so only once at the beginning
- Print a “Master Legal” on colored paper so everyone in the office can easily locate the correct exhibit
- Keep the correct legal in the same place in every file
- Flag the legal or place in a colored folder in the file
- Affix Exhibits at the registry...one document at a time
- ALWAYS have two people review descriptions for errors
- Count the number of runs



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