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When to Write a New Metes and Bounds Description

Surveyors all over the country frequently receive requests from the lenders on ALTA/ACSM Land Title Surveys to write metes and bounds descriptions of surveyed tracts even though the record descriptions are perfectly adequate.

For example, the surveyor has prepared a Land Title Survey of “Lot 12 in the ABC Industrial Park Subdivision” (a platted subdivision). The survey was completed and delivered, and then the lender’s comment letter is received asking for a metes and bounds description of the platted lot. The letter may even suggest that the new description be prefaced with something like “The above parcel is also more particularly described as follows:...”

There is, of course, no such requirement in the ALTA/ACSM Standards, so where are these requests coming from?

This is a common request that apparently has as its genesis various lenders’ survey “checklists” that say something like “Assure that the distances and directions on the survey match the legal description.” Of course, with many descriptions—like the above Lot 12—there are no bearings and distances in the legal description. So, to meet their own requirement, the lender insists that the surveyor write one.

There are numerous reasons that this is not necessary and, in most cases, inappropriate. If the description is adequate (we will discuss the scenario when it is not adequate in a moment), then there is no use writing a new metes and bounds description—in fact, doing so may very well cloud the title. Not only that, if the

title company is knowledgeable about the issue, they will not want to use it anyway. And the seller will be dissuaded by their attorney from executing a warranty deed that is not worded exactly like the one they received. The survey shows the record description (a requirement of the 2005 standards) and the measured dimensions based on the survey; these should be adequate to show the relationship of the legal description to the survey measurements without writing a new description.

The surveyor should engage the lender, explain why writing such a description is unnecessary—and politely refuse to do it. In fact, prior to that conversation, the surveyor might even talk with the title company’s attorney to see if he can enlist support for his or her position. However, if a lender simply will not be persuaded by this logic, and surveyors feel they must comply, then *at a minimum*, they should very carefully write the new metes and bounds description with proper controlling calls so as to not create any title problems.

For example, in the case of the above Lot 12, the new description might read “...Beginning at the southwest corner of said Lot 12; thence [Bearing/Distance] along the west line thereof to the northwest corner of said lot; thence [Bearing/Distance] along the north line of said lot to the northeast corner thereof; thence ...” In this way, there will be no conflict with the intent of the record title. But before bending, the surveyor should *really* try to talk them out of it.

Ultimately, the problem is that we are dealing with people who do not understand title and are blindly following some illogical checklist or requirement.

As mentioned above, there are, however, times when the record description is, in fact, insufficient or otherwise ambiguous or problematic. For example, perhaps there is a severe misclosure, the source of which is not readily identifiable. Or maybe there are major conflicts with adjoining record lines. In these cases, a new description might very well be appropriate; but the problems and potential solutions should be discussed with the client, the various attorneys and the title company before writing a new description. Remember what Justice Cooley wrote in his famous essay: “Surveyors are not and cannot be judicial officers, but in a great many cases they act in a quasi-judicial capacity *with the acquiescence of parties concerned* [emphasis added].”

Questions that should be explored include, for example, how can the problems with the adjoining lines best be addressed? Will there need to be some exchange or accommodation with one or more adjoining owners? What will the title company insure? What are the buyer’s and seller’s positions? If a decision is reached to go ahead and prepare a new description, keep in mind that—particularly in cases where there are major ambiguities—it may be impossible to state that the new description describes the same property as the record description. But, a statement should be written and placed on the face of the survey that explains why the new description was written, and what the relationship of the newly described real estate to its adjoining owners. This is important for future reference and in putting the new description into the context of the chain of title. 