

Real Estate Legal Descriptions



By Ann M. Cantrell, NCCP

Some paralegals believe that only attorneys can prepare real estate legal descriptions. While it is true that an attorney should review your work before it is finalized, you don't need a law degree to prepare an efficient and effective legal description. It helps if you're a geometry geek, but if you can understand the basics, you've got a jump on a lot of people.

When looking at a survey, always position it so that North is up, even if that means the numbers and text are upside-down. Make sure you are using a final sealed survey and not a preliminary drawing, so that if changes are made during finalization of the survey, you won't miss making them in your description. Legal descriptions should not be drawn from topographic maps, site plans, landscaping plans, or anything other than as-built, boundary, or American Land Title Association (ALTA®) surveys.

Where is It?

First, describe the general location of the property in a brief paragraph that sets out the township, the county and the state. For example: "Lying in Friendship Township, Guilford County, North Carolina, and being more particularly described as follows..."

Start with a clearly defined "beginning" point. Your description should be written so that a person could take it to the site and physically find the beginning point from the references you have provided. It should begin at an existing marker if possible. If that is not possible, then begin from a point or new monument to which an existing monument can be tied.

It is insufficient to state "beginning at a point in the west margin of Main Street located 50 feet from an iron pipe." This gives no more information about the location of the tie than it does about the beginning point. Use a monument or tie that is identified on a plat if possible, or one that is identified as, or tied to, a state

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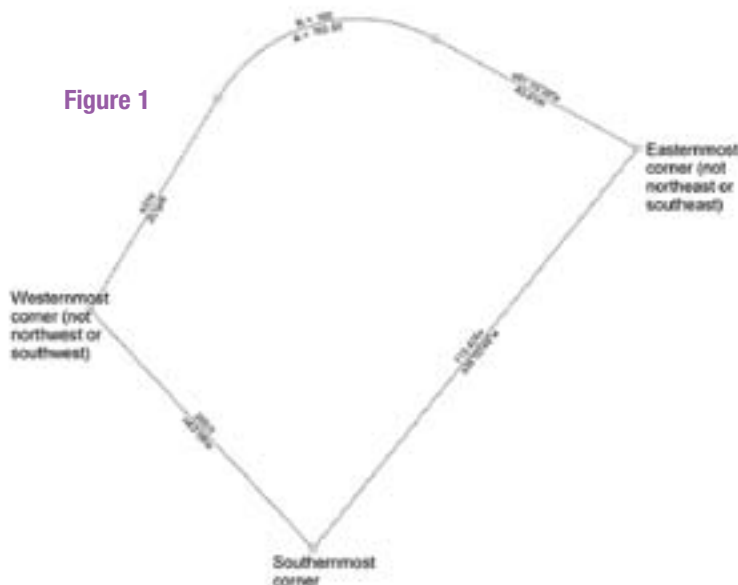
monument. If you tie to a monument or point from an adjacent deed reference shown on a survey, be sure you have looked at that deed description to ensure that it is still the corner you intend to describe. If a portion of the adjacent property has been sold, it may not be what was originally identified as a particular corner of the tract.

It is generally preferred for descriptions to run in a clockwise or counterclockwise direction, and it may be necessary to reverse the directions in calls in order to make them correct in your description. One line can be described as running both “North 45° East” and “South 45° West,” and for the drawing itself, either is correct. However, for the legal description, only one will make the call run in the right direction to begin at one point and end at another. It is a common mistake to reverse the first direction (north or south) and forget to reverse the second (west or east), which is one of many good reasons to plot your descriptions and check for closure errors.

What Shape is It?

Lines described as the “northeast,” “northwest,” “southeast,” or “southwest,” can be problematic, particularly for right-of-way margins. The only line that it would make sense to describe in this manner is one that runs exactly 45° in any direction. If a line is angled at more than 45°, then it is more horizontal than vertical, and the property line is, therefore, either a north line or a south line in the case of a basically square or rectangular tract. Likewise, if it is angled at less than 45°, it is more vertical than horizontal, and should be described as either an east or west line.

If the tract is not a basic square or rectangle, and a north, south, east or west line is staggered, consisting of multiple lines of varying directions, then the entire line should be viewed as the north, south, west or east line, rather than its parts being described independently. Use phrases such as: “...thence along the west line of Jane Doe the following eight (8) courses and distances...”



or, “...thence continuing along the west line of Jane Doe...”

Include as many references as possible to adjacent property, roads, creeks, railroad rights of way, etc. Include book and page numbers and right-of-way widths, particularly when plat references are available. Be sure to identify monuments properly, as they take precedence over calls (see, eg. James A. Webster, Jr., *Webster’s Real Estate Law in North Carolina* §10-38, 5th Edition 1999).

Look at an entire north, south, east, or west line when determining which corner your monument marks. If the tract is, for example, a rectangle, but situated at an angle on the axis, then what appears to be the northwest corner is better defined as the northernmost corner, or the westernmost corner. Use an identifier that cannot be interpreted more than one way and can only identify one corner of the tract (*Figure 1*).

Is it Curvy?

Some people are intimidated by describing curves, but a curve is simply a portion of an entire circle. At least three elements of a curve are necessary in order to describe it effectively. The most common elements found on surveys are the “radius,” the “arc length,” the “chord bearing” and the “chord distance.” Look at a curve on a survey, and then picture it continuing all the way around to its beginning point so that it is a full circle.

The radius is the straight line from what would be the center point of that circle to any point on the circle itself (like the hands of a clock). The arc length is the distance of the actual curved line. You can determine this length by laying a string along the curved line and cutting it at the points where the curve begins and ends. Lay the cut string straight on a measuring rule to determine the length.

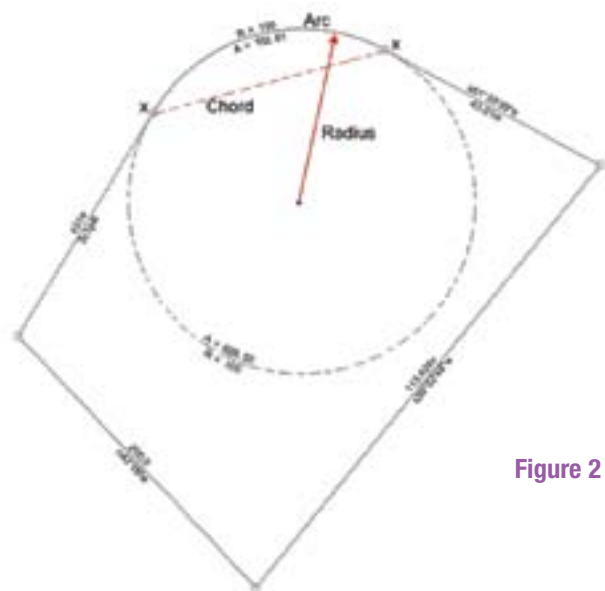


Figure 2

The chord is the imaginary straight line between the beginning and end points of a curve, and the chord bearing and distance make up the call that describes that straight line. Draw a dotted line between the two points to see the chord (*Figure 2*).

If your tie line is a curve, there is no need to describe anything other than the chord when describing the tie. The arc length will always be longer than the chord distance, even if by only an amount too small to describe in two digits. It is necessary to state whether the curve runs to the right or to the left. If you find this difficult to determine from an “aerial” view as you look at the drawing, imagine walking along the line, and decide whether you will be veering to the right or to the left when you get to the point of curvature.

If the arc is very slight and looks like a straight line (meaning the radius is a large number), and you can't tell whether it runs right or left, draw it out both ways with a deed plotting software (eg. Deed Plotter™ for Windows™ at www.greenbriergraphics.com) and compare the acreage to the survey. Your closure error will be the same whether the curve goes to the right or to the left because you are starting and ending at the same points. The acreage, however, will increase or decrease depending on whether the line is convex or concave to the tract. You will know whether the curve goes to the right or left when the acreage matches what is shown on the survey, but do not hesitate to call the surveyor and ask if you are unsure, or if you do not have plotting software.

There are many ways to describe a curve sufficiently, but the following is effective: “...thence along a curve to the right having a radius of 50.00 feet, an arc length of 127.25 feet, and a chord bearing and distance of North 66° 38' 58" East 95.98 feet to an existing iron pipe...” (this article assumes a tangent curve and does not address non-tangent curves).

Also, use the “Key Viewer” or “Alt Fonts” feature on your keyboard to find the degree symbol, and be sure the minutes and seconds symbols are not the single and double quotation marks that your “Smart Quotes” feature may use if you do not intervene (note the different uses of true quotation marks and the prime and double-prime symbols used to indicate minutes and seconds in the preceding paragraph).

Cover Yourself... and the Client

Protect yourself by adding as much information as you can, in addition to boundary lines, to identify the property. Be sure to state that the last line meets your beginning point, so that if your description contains an undiscovered closure error, your intent of creating closure is made clear. State that the property is the same as that shown in the prior deed in the chain of title, especially if that deed contains a superseded description, and include the recording reference for that deed. This makes your intent to describe the same property clear, even if your description does not describe it properly.

These practices could give you, your attorney, and the client an extra layer of protection if an error is discovered in your description at some point. They may also provide a title insurance company with enough comfort to insure over the closure error.

At the end of your description, insert a reference to the survey, including the title, the date, the name of the surveyor, a lot number or lot name if applicable, and, if available, the job number. Include the acreage and add the words “more or less” to account for any minor closure error, which will be shown in the title block on the survey.

There is no need to use both a plat description and a metes-and-bounds description together. If the tract is platted, the plat description should be used because metes and bounds can vary between descriptions. A plat description prevails over a metes-and-bounds description, which makes the metes-and-bounds description superfluous in a case where both appear.¹

Don't 'Suppose'

Never assume anything when looking at a survey. A point may look like it's situated in the centerline of a road right of way, but unless the surveyor has designated that to be the case, it is not necessarily in the exact centerline. A property line may appear to run along a right-of-way margin, but it does not necessarily. Look for the commonly used symbol for a right-of-way margin, which is a solid line broken at regular intervals by two short ones.

If you call a surveyor to obtain additional information that is not reflected on the survey, ask that the survey be revised to include it before adding it to your description. In some situations your attorney may feel it is sufficient to have the additional information faxed or e-mailed to you by the surveyor in lieu of having it added to the drawing (eg. if the additional information was minor or too late to add to the final survey). This way, you have backup in your file if there is ever a question as to why you added information to your description that was not shown on the survey.

You are limited to the information shown on the survey, even if that means your description is not as detailed as you would like it to be. Bear in mind that surveyors are usually flexible and willing to add information that you request be shown on the drawing, to the extent possible. Surveyors are a great resource, and most are happy to help you when you call with questions or requests. They understand that surveys are not always easy to read, especially if they contain so much information that it's difficult to match calls with lines, as happens often with ALTA surveys.

There is only so much room on a drawing to insert the amount of information required, and sometimes the surveyor has no choice but to shift some data. It is wise to draw out every description you prepare to make sure you have not misinterpreted something. Drawing out descriptions prepared by surveyors is also smart—just in case.

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Exercise Diligence

If you have a closure error, the likelihood is that you have missed something, but on the few occasions that you find errors in the surveys, the surveyors will want to make the corrections.

The Deed Plotter application has a nice conversion option that automatically draws a highlighted description typed in Microsoft Word so you don't have to manually enter the calls. This is a great time saver, but remember that it is limited to the formatting of the description, and all calls should be double-checked manually before you assume the surveyor or the software is in error.

There are many resources for paralegals who wish to write real estate legal descriptions. As with most paralegal duties, expertise comes with familiarity and practice, but the single most important asset at your disposal is diligence.

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¹ *Kelly v. King*, 225 NC 709, 36 SE 2d 220 (1945); *Hayden v. Hayden*, 178 NC 259, 100 SE 515 (1919); *Davidson v. Arledge*, 97 NC 172, 2 SE 378 (1887).

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