



CHICAGO TITLE INSURANCE COMPANY

TOPIC: <u>Legal Descriptions</u>

TITLE SEARCH & CLOSING RULES:

1. The property must locatable and identified “on the ground” using the recorded legal description and any information contained in the description or elsewhere in the recordable document.
2. The description must describe a unique property, not ambiguous that it could be one of several.
3. Even easements must adequately described or reference sufficient record documents to be so locatable and unique.
4. The priority of which aspect of the description controls the determination of the property actually conveyed is as follows:
 - a. Lot on recorded plat, referencing by plat book and page of recording
 - b. Reference to property as the same as a previously recorded instrument
 - c. Natural or Permanent adjoining monuments (adjoining landowners, river)
 - d. Artificial or less permanent monuments (street, concrete monument, existing iron pipe)
 - e. Courses (directional call)
 - f. Distances
 - g. Quantity of land
 - h. Address
 - i. Acreage
 - j. Other descriptive references

TITLE INSURANCE REQUIREMENTS, EXCEPTIONS AND COVERAGE:

Legal Description insured in Schedule A:

Usually do NOT include acreage.

Legal Description provided must be checked against the survey to assure they conform, checking metes and bounds descriptions, verifying calls north-east versus south-west (to assure they are not inadvertently called “backwards”). If easements are to be insured,

they should also be clearly identified on and covered by the survey. Otherwise, title company counsel should be consulted to determine if survey coverage is available.

Appurtenant easements to be insured should be analyzed just as closely as, if not more so than, fee tracts. They require title certification, adequate description and are subject to the terms and conditions of the instrument creating the easement. (See Topic "Easements" – "Appurtenant Easements")

Requirements:

A requirement is sometimes needed for a current legal description in conformity with survey, if a new survey is being obtained or if the existing legal description is unclear or needs updating.

Exceptions:

Variations in calls between legal description & survey:

When the survey shows a noticeable shortage in a dimension or in the area of the land, exception may be taken, such as:

Variance in the length of the _____ line of the land between that shown in Schedule A (insured property) and that shown on survey by Samuel L. Surveyor, RLS, dated November 15, 2000. [Line shortage problem]

Matters referenced in legal description:

Exception should be taken to all matters revealed by the attorney's title opinion, as well as to any matters indicated by the legal description, such as a creek or road right-of-way (where the description runs to the center line) or other matter mentioned in the actual legal description

FORMS:

None

LEGAL DISCUSSION:

(Author: Nancy Short Ferguson)

The Legal Description contained in the deed, deed of trust, lease or other documents of closing determines exactly which piece of "ground" for which we will insure title, to be contained in Schedule A of the title insurance policy. The legal descriptions contained in easements, restrictions, plats or other documents found in the chain of title determine which exceptions we must take in Schedule B of the policy. Therefore, the ability to read, map and understand legal descriptions is very critical.

Descriptions come in various styles, contain different types of references and are of differing levels of quality. So, in construing them, courts have established preferences

(rules of construction) about which information is the most reliable. Then if ambiguity still exists, construe the next most reliable, and so on. These levels of reliability are as follows:

- 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
- Quantity of land
- Address
- Acreage
- Other descriptive references (For example, “my house” may be enough if it is determinable that the grantor only had one house and it can be located using the evidence on record, such as a prior deed into the grantor, a recorded map or a will.)

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