

# FEDERAL STANDARD ABSTRACT

## TITLE NEWS

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### Title News

#### THE LEGAL DESCRIPTION

The legal description of the property is an aspect of the real estate transaction that the parties may take for granted, especially when the deal may not be for a lot of money, as in your smaller type of residential transaction, or where the survey print appears to be simple. However, a deed supposedly conveying the property may sometimes be void for vagueness when the legal description of the property is erroneous or unclear. And if the deed is bad, title is actually not conveyed. The situation may be even worse, furthermore, in the case of a mortgage.

#### DEEDS

It is all too easy for people to assume that the legal description is accurate when in fact, due to human error, an important mistake has been made. Most of us could probably tell "horror stories" of a bad description causing real problems later. (How often have you seen a deed or mortgage recorded with the wrong block or lot number?) If the parties had checked the legal description in the deed early on, however, such a situation would probably never have developed in the first place.

The legal description is a verbal version of the survey print produced by the surveyor. The length of each property boundary line is called a "mete." The direction of each boundary line is called a "bound." Hence, the legal description is commonly referred to as the "metes and bounds."

All legal descriptions must begin by citing the village, township or city, county and state names. Then the metes and bounds must refer to some fixed point of reference such as a fixed boundary or landmark. This is usually done by referring to the intersection of two streets. In more rural parts of the state, however, use is made of recognizable

landmarks, such as "the old oak tree" or "Wilson's brook."

If a legal description in a deed fails to establish such a fixed point of reference, however, the deed could be void as a matter of law. For example, if the fixed point of reference is a point along the line separating the property of Mr. Smith and Mr. Jones, it is necessary to find the properties of Smith and Jones in a title search. If those properties are not found, the deed may be void due to the deficient legal description because no fixed point of reference has been established.

A survey and a legal description should be identical. If they differ, the difference must be analyzed and evaluated. If the difference is minimal, it will not have a significant impact on the conveyance. For instance, the metes and bounds may be the same, but the distance from the point of beginning to the fixed point of reference may be different in the legal description as opposed to the survey. If such is the case, the discrepancy may be minimal if all structures on the property are located well away from the boundary lines and if the discrepancy is small. Generally, however, all distances in the legal description and the survey will be the same.

#### MORTGAGES

Having an accurate legal description in a mortgage is even more important than having one in a deed. If the legal description is wrong in a deed, the purchaser will still take possession of the property, thereby putting all others on constructive notice that he or she owns the property. A mortgagee, however, rarely if ever takes possession of the property, so that the mortgagee gives no notice, constructive or otherwise, except by recording the mortgage. Thus all subsequent purchasers, mortgagees or lien holders have no notice of the mortgagee's

rights against the property except through the recorded mortgage.

If the mortgage contains an erroneous description and is indexed against the wrong block and lot, the recorded mortgage does not serve to give constructive notice of the mortgage lien. *O'Neill v. Lola Realty Corp.*, 264 A.D. 60, 34 N.Y.S.2d 44 (2d Dept. 1942). It's as if the mortgage were never recorded, which means, for legal purposes, it's as if the mortgage didn't exist. But where the legal description is correct and the indexing is erroneous because of a recording officer's error, the recorded mortgage does give constructive notice, and the mortgage is held to have been correctly filed. *Security Discount Associates Corp.*, 187 N.Y.S.2d 677 (Sup. Ct. Suffolk Co. 1959). (Nevertheless, it remains difficult to reconcile these decisions with Real Property Law

section 316 which states that the index is actually part of the public record.)

The moral of the story seems to be that the legal description must always be accurate. Of course it should be compared against previous deeds, and plot subdivisions and similar changes in the property should also be taken into consideration. And, yes, the title company you choose makes a huge difference, because it is the title company that insures title to the specific property in question. If the metes and bounds are wrong, there may be huge problems later. That doesn't mean, however, that the seller's or buyer's or bank's attorney should not make sure the metes and bounds are accurate themselves. Most errors in legal descriptions will be caught by the title company involved, but that does not mean an attorney should take the legal description for granted.

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