

LEGAL DESCRIPTIONS

One of the basic skills required of a conveyancer is the ability to properly describe a parcel of land. Even if she never prepares a description, which is advisable, she must be able to check and understand the description found in instruments registered on title. However, if a conveyancer chooses to prepare a description to be included in instruments for registration, she must know not only how to accurately describe the parcel so that someone else will understand what she is trying to describe, she must be able to describe the land so that it will be in a form acceptable for registration. The latter entails a knowledge of the current regulations under the Registry Act. If the practitioner chooses to prepare such a description, it should only be because the land can be described so easily and accurately that there can be no doubt about the dimensions of the land or its precise location on this planet. If the description is to include bearings, the relationship of a line to north or south, this is the work of a surveyor.

Practitioners should be wary of accepting a legal description as accurate simply because it has appeared in a series of Deeds going back for a long time. It is the duty of the practitioner or searcher to compare the

legal description to the plan, both for the sake of accuracy of the dimensions and the validity of the subdivision of the lot being created in the plan. In the vast majority of cases, legal descriptions and plans match perfectly. It is incumbent on anyone conducting a title search to ensure that this is indeed the case by comparing the legal description to the plan. Practitioners are quick to trot out the legal doctrine of Falsa demonstratio non nocet (false description does not injure or vitiate--does not negate the instrument) when an error or imprecise description is found. However, it would be better for each of us to correct such an error, if possible, rather than passing the problem around. It is also worthwhile to remember the full maxim: Falsa demonstratio non nocet, um de corpore (persona) constat (false description does not injure or vitiate, provided the thing or person intended has once been sufficiently described).

The same maxim is used when a line or part of a legal description is missing. As Black's Legal Dictionary states, a legal description must be such that it is "complete enough that a particular parcel of land can be located and identified." This sort of error, and the reversal of numbers, i.e., "25" for "52"; most often occurred at a time when it was common for lawyers to retype legal descriptions; hence, errors were always possible. It was my practice to have my property secretary retype a description, proofread it, and then have it followed through again with one person reading from the

old description and then the second person reading the new description. Once it was verified, both parties were to place their initials on the left-hand side of the page to evidence the review.

It is a common practice for us to obtain plot plans for all new purchases and this has allowed us to pick up on errors in legal descriptions that might require a new survey. The legal description should always be compared with the new plot plan, simply as a rough assurance to the lawyer that nothing major is out of line. However, as the Nova Scotia Association of Land Surveyors has long advised us, unless we fully resurvey, an error in a description used over a long time may not surface.

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