

Preventing Legal Description Claims

1 hour CE (Ethics), 1 hour CLE (General, Real Estate)

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W. Jeffry Stein, Esq. is Chief Underwriting Counsel and Senior Vice President for Alliant National Title Insurance Company. Jeff is responsible for underwriting and support of our independent agents throughout the country.

With over forty four years experience working for title insurers in both claims and underwriting, as well as in private practice actually writing title policies for title insurers, he brings a deep and rich understanding of not just the legal ramifications inherent to the title insurance industry, but of the critical elements necessary to ensure an Independent title insurance agent's success. Jeff is a past president of the FLTA and current member of the ALTA Forms Committee.

When not wrangling title issues, Jeff can be found racing cars, taking professional quality pictures and working with his wife on their horse farm.





Perry Craver, Esq.
Underwriting Counsel, Florida

Perry Craver is a Florida Underwriting Counsel for Alliant National Title Insurance Company, a position he has held since 2021. Mr. Craver first entered the title insurance industry in 1991, and since that time has enjoyed working in numerous roles including title searcher, title examiner, production manager, claims counsel, and underwriting counsel, on both the underwriter and agent sides of the business.

A licensed title agent in Florida, Mr. Craver is a member of the Florida Bar and the Florida Land Title Association. Mr. Craver holds a Bachelor of Science degree from North Carolina State University, and a J.D. from Nova Southeastern University, Shepherd Broad Law Center.



OVERVIEW

Name of Provider: Alliant National Title Insurance Company

Name of Course: Preventing Legal Description Claims

Targeted audience: Florida Title Insurance Agents and other Title Insurance Professionals

Course Objectives:

To improve understanding of the various types of real property legal descriptions used in Florida, with special emphasis given to preventing claims caused by legal description-related issues. Since an understanding of legal descriptions is critical to being able to review a land survey, the course will also aim to improve understanding of surveys and the proper methods of survey review, also with an eye towards claim prevention.

Course Relevance:

Claims related to legal description errors are all too common. They are often caused by a lack of understanding of basic legal description principles, which frequently translate to the inability to properly review a survey. This course will aim to reduce title insurance claims arising from these issues.

Study Method: Classroom



OUTLINE

I. Legal Descriptions	5 Minutes
• What is a good Legal Description and the Types of Legal Descriptions	
II. Review of Sectional Descriptions	10 minutes
III. Review of Metes and Bounds Descriptions	10 minutes
IV. Review of Lot and Block Descriptions	5 minutes
V. General Rules in dealing with Legal Descriptions	5 minutes
VI. Why is a survey needed	5 minutes
• What does a review of a survey disclose?	
• Can title insurance be issued without a review of a survey?	
VII. Does a Title Policy cover Survey Matters	5 minutes
• Review of 2006 and 2021 policy form provisions related to surveys	
• What endorsements require a review of a survey	
VIII. Practice Pointers in the review and use of Surveys	5 minutes
Total Instruction Time	50 min
Total Break Time	10 min
Total Time	60 min



PREVENTING LEGAL DESCRIPTION CLAIMS

Section 1 LEGAL DESCRIPTIONS

This material and seminar will not make us into masters of legal descriptions or the drawing out of the descriptions but is designed to familiarize us with the types of legal descriptions and some of the basics in their use.

From our Uniform Title Standards we find the following standard regarding a legal description. From it we see the purpose of a legal is to describe the land so that at a minimum a surveyor can find it.

The standard mentions a deed, but it applies equally to all instruments with a legal description

STANDARD 21.1

TEST OF SUFFICIENCY OF PROPERTY DESCRIPTION

STANDARD: IF THE DESCRIPTION OF LAND CONVEYED IN A DEED IS SUCH THAT A SURVEYOR, BY APPLYING THE RULES OF SURVEYING, CAN LOCATE THE SAME, SUCH DESCRIPTION IS SUFFICIENT, AND THE DEED WILL BE SUSTAINED IF IT IS POSSIBLE FROM THE WHOLE DESCRIPTION TO ASCERTAIN AND IDENTIFY THE LAND INTENDED TO BE CONVEYED.

Types of Descriptions:

There are many ways to describe land. We are going to tackle three of the more common

1. Sectional Descriptions, also known as the USPLLS United States Public Land Survey System or the Rectangular Survey System or Fractional System.

This is based upon a U.S. Government Survey and is broken down into Sections, Townships and Ranges. This is part of our system in Florida.

2. Metes and Bounds

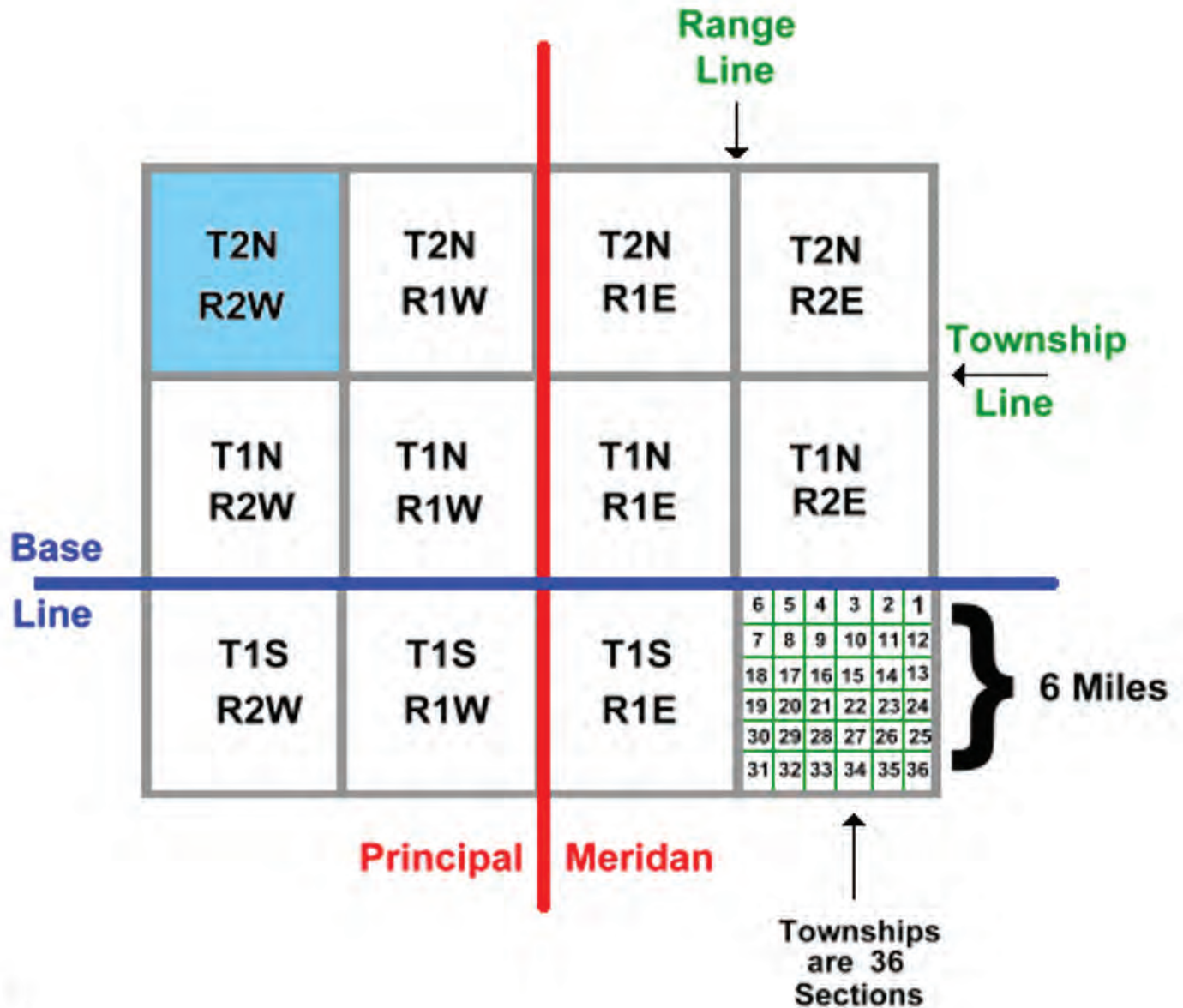
3. Subdivision Description, platted or **Lot and Block** description



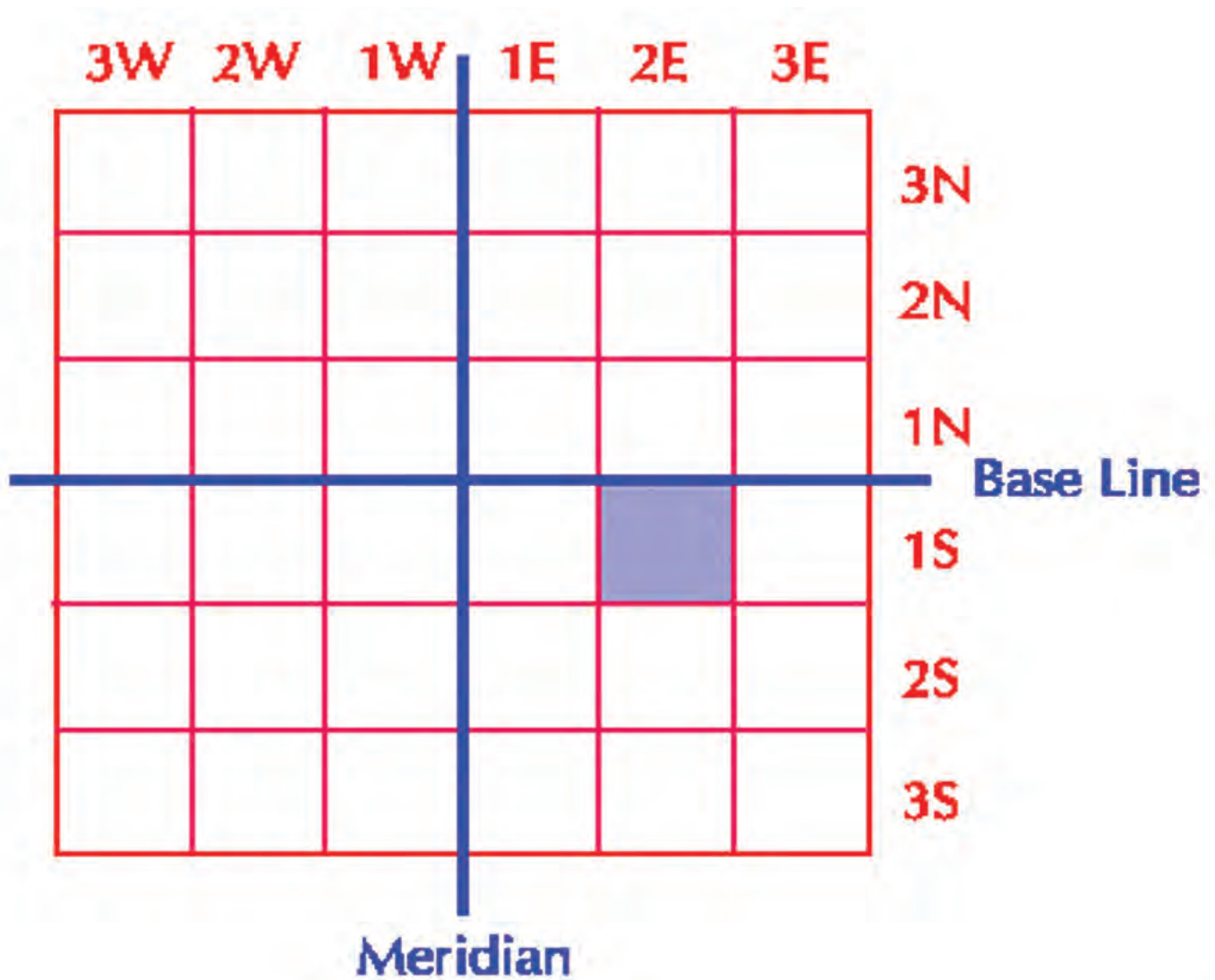
You can see that most of Florida is in the SE quadrant with a bit in each of the other three, NE, SW and NW

To make the system work, additional lines going North and South are drawn every 6 miles (Range Lines) and additional lines going East and West are drawn every 6 miles (Township Lines).

Each 6 mile Square that is created is considered a Township. They are described by Township and Range



So in looking at this next map, what is the highlighted Township called?



Township 1 South Range 2 East.

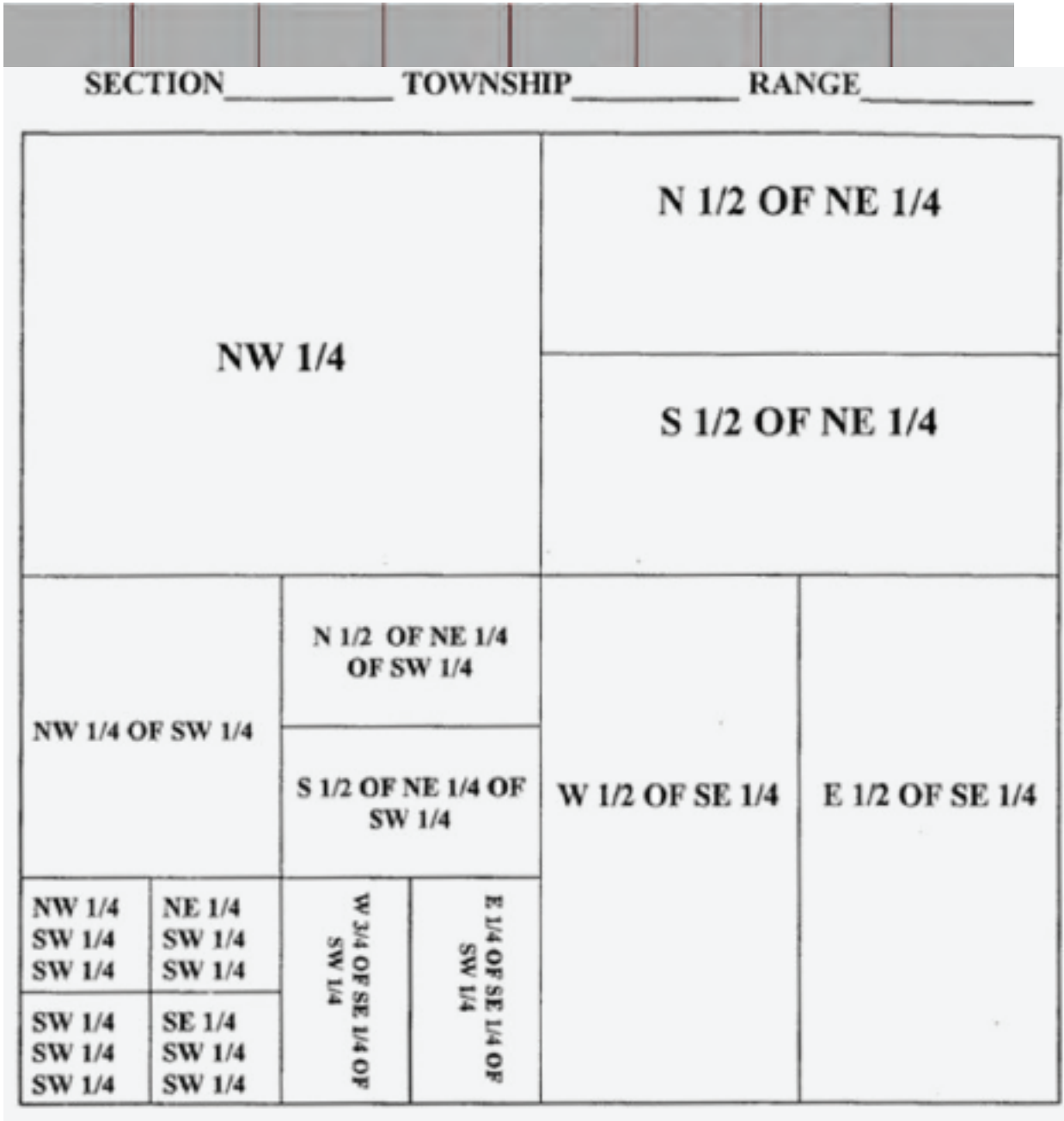
We are in the first Township below the Base Line and the Second Range East of the Meridian.

Each Township is further divided into 36 1-mile squares called sections. A Section has 640 acres.



They are numbered from right to left starting at the top and then snaking through left to right, then right to left etc. (as the Oxen plows)

This image shows the relationship of each township to those around it. This can be real useful to know when your description includes land in two townships.



In a "perfect" section, each side is 5,280 feet long. This means that a perfect quarter section would be 2,640 feet long on all sides; a perfect quarter-quarter section would be 1,320 feet long on each side, etc.

The Key to reading these descriptions is to start at the end and move through the description backwards.

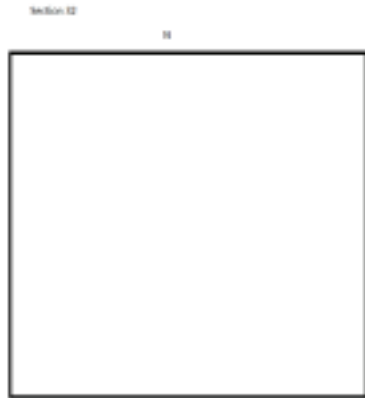
Let's try a couple

A. SW ¼ of the NW ¼ of Section 32 Township 2 South Range 5 East.

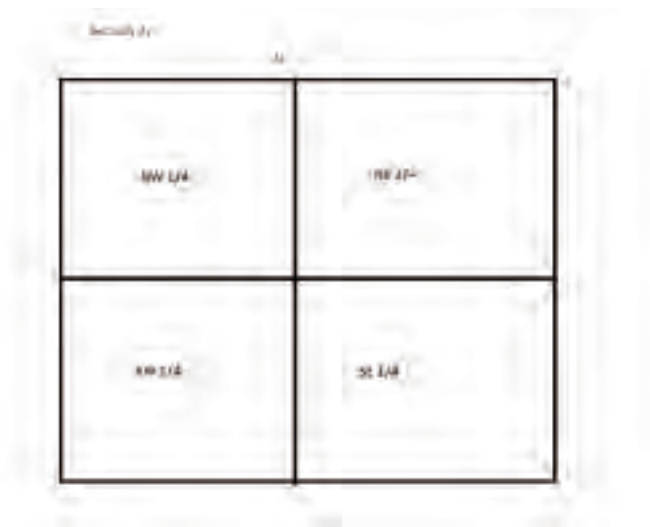
- Let's do the steps
 1. Always orient yourself with North at the top of the page just to keep things simple.
 2. Start by locating the Township by using the Township and Range
 3. Then the Section in that Township

6	5	4	3	2	1	
7	8	9	10	11	12	
18	17	16	15	14	13	
19	20	21	22	23	24	
30	29	28	27	26	25	
31	32	33	34	35	36	

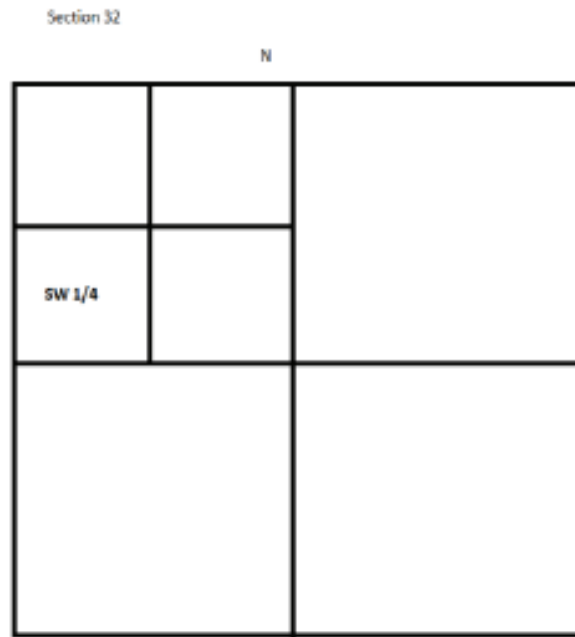




4. Then find the NW $\frac{1}{4}$ (divide the Section into four quadrants by drawing a line North to South down the Middle and East to West across in the middle. The upper left quadrant in your section is the NW $\frac{1}{4}$)



5. Then find the SW $\frac{1}{4}$ (divide the NW $\frac{1}{4}$ into 4 quadrants just like you did the section in step 4) The SW $\frac{1}{4}$ is the square on the lower left.

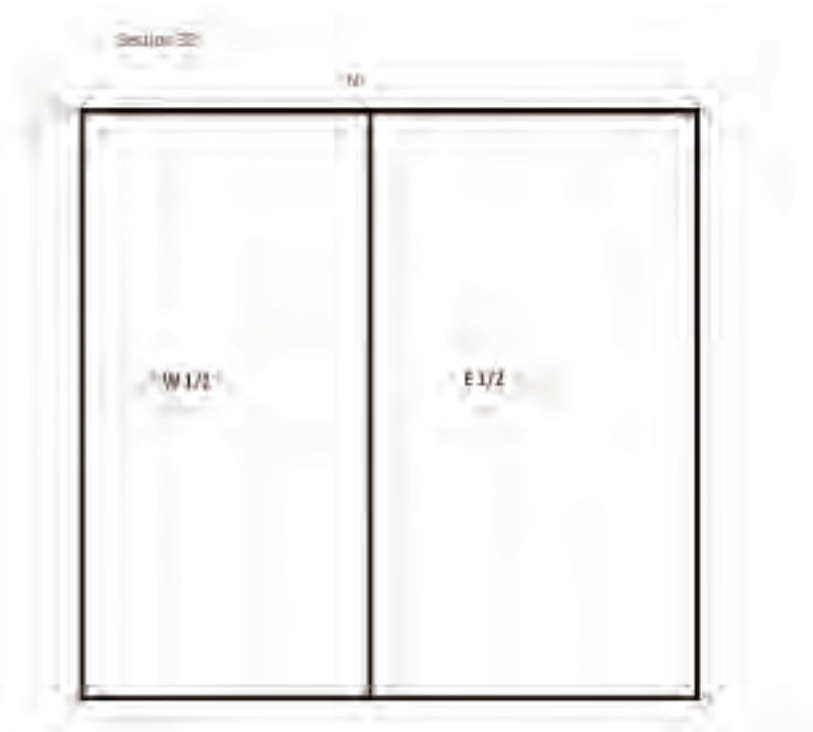


B. North $\frac{1}{2}$ of the SW $\frac{1}{4}$ of the N $\frac{1}{2}$ of the E $\frac{1}{2}$ of Section 32 Township 2 South Range 5 East.

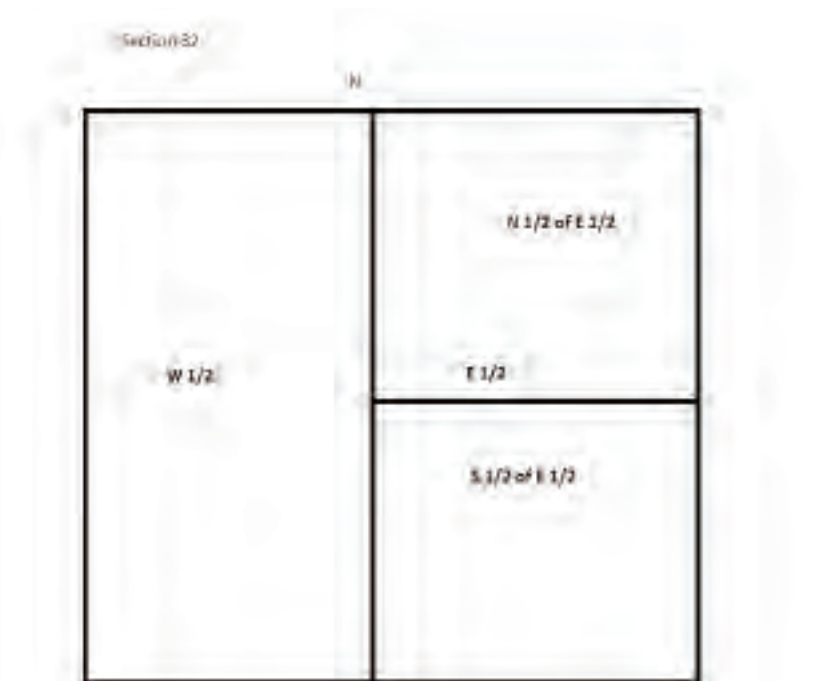
Let's do the steps.

1. Always orient yourself with North at the top of the page just to keep things simple.
2. Start by locating the Township by using the Township and Range
3. Then the Section in that Township
4. Then find the E $\frac{1}{2}$ (Divide the NW $\frac{1}{4}$ equally by drawing a line North to South in the middle making two $\frac{1}{2}$ s. The one on the right being the E $\frac{1}{2}$)



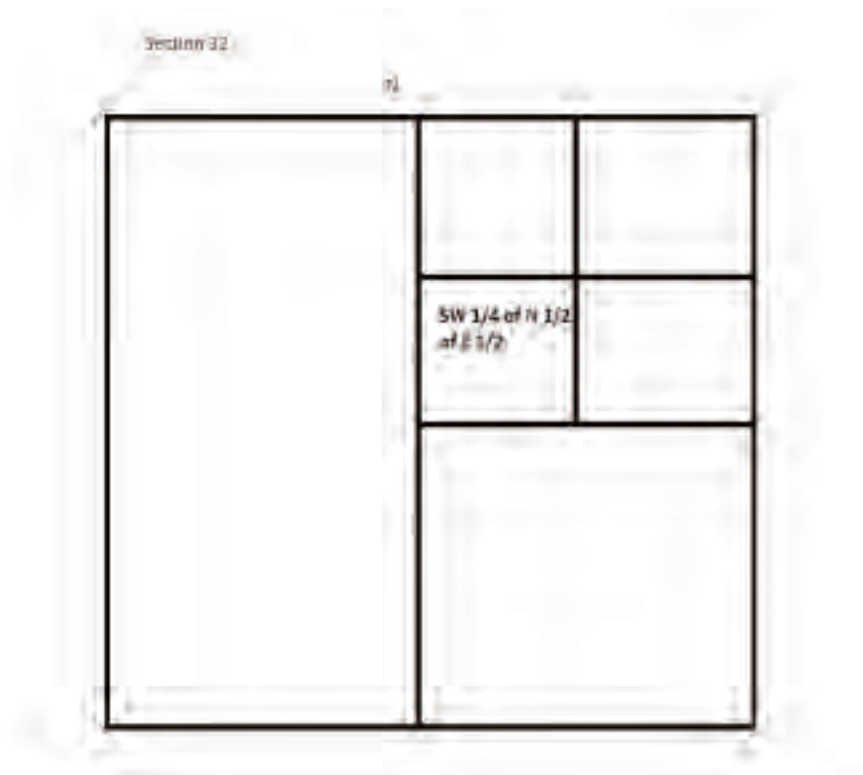


5. Find the N 1/2 of that (divide the E 1/2 in two by drawing a line across the middle the top part is the N 1/2)



What else could you call the N ½ of the E ½ ? (NE ¼)

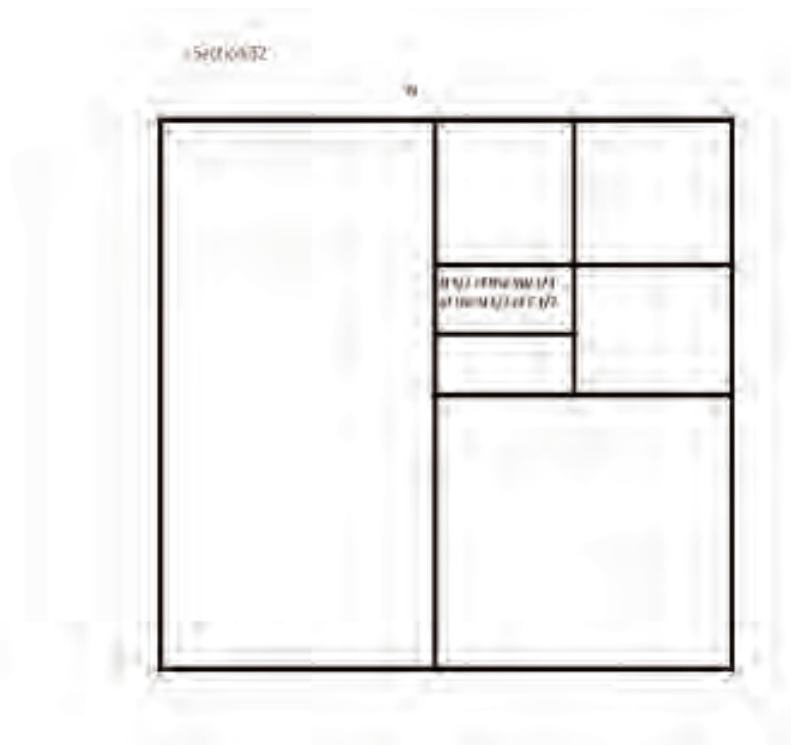
6. Find the SW ¼ of that by dividing it into 4 equal quadrants. The lower left rectangle is the SW ¼



Alternative description: SW ¼ of the NE ¼



7. Find the North $\frac{1}{2}$ (divide it into two equal parts by drawing a line East to West).



Alternate description is the N $\frac{1}{2}$ of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$



Some definitions that are helpful when working with Sectional Descriptions.

Closing Sections. There are also adjustments within a township when there are discrepancies in measurements (aka closure) between interior section lines and exterior boundary line surveys. The North and West rows or tiers of sections in the township are known as closing sections. In other words, sections 1-7, 18, 19, 30 and 31 are more likely to be non-standard, could be bigger or smaller depending upon what is needed to fit things together.

Correction Lines. The world is neither square nor flat. In a perfect Flat world, this system would work, well perfectly. However, since our world is neither flat nor perfect, there are errors. When trying to map squares around a globe, not all of the squares will be perfect. Therefore, there are "correction lines". Every 24 miles, there is a jog to keep the next 24 miles as rectangular as possible.

Lots. The portions of a section where there are discrepancies may be referred to as lots. The sections will be mapped to create as many whole fractional sections as possible (e.g. quarter-quarter, half-quarter, and quarter). Those that cannot be are designated as lots, most of these are sequentially numbered.

Meander Lines. The Land Ordinance of 1785 declared navigable rivers, lakes and streams to be public highways which never left the ownership of the Federal Government. On the original government surveys, these areas were meandered since there was no practical way to monument the location of corners out in the water.

Tracts/Grants. Land ownership vested prior to the State becoming a state were honored and not made a part of the sectional layout. There were sovereign land grants as an example. (e.g. Spanish Land Grants)

2. Metes and Bounds

Metes and Bounds descriptions can be used to define a very intricate description with various distances angles and curves. They can be used to define natural or artificial boundaries, like streets or water ways or other properties.

For our purposes these can also be referred to as course and distance descriptions. These are much more complicated than using sectional descriptions.

Metes is another word for measure and bounds refers to the boundaries or in our case directional calls.



These descriptions use a compass and directions on that compass in a way different than those of you familiar with navigation by use of a compass.

Let's dissect a Metes and Bounds description by looking at some common words and how they are used.

Point of Commencement. This is a place that the description starts, it may be a corner set using the sectional description or an identifiable point, like the corner of a road.

Point of Beginning. This is the actual beginning point of our plot of land being described. Frequently it is some distance away from the Point of Commencement. This point is very important in our analysis of the description.

Course and Distance. This is a direction (aka bearing) expressed in Degrees Minutes and Seconds. The distance is normally measured in feet, but in some old descriptions it may be in chains (66 feet) or links (.66 feet) or rods (16.5 feet). These can run to a monument or to a point on the earth without any monument. Also known as a "Call".

Curves. A curve is a description of a segment along the circumference of a circle. A curve will be described using a combination of the arc length, chord, radius, delta or central angle and the tangent.

North. The legal description should have a reference to which North is being used. It can be magnetic north or a Northerly direction on some other Plat or reference survey being used.

Closure. A metes-and-bounds legal description must close. In other words if it is a square it has to have 4 sides that start at the point of beginning and head in four directions ending back at the point of beginning. Any combination of courses and distances, curves and other calls can be combined, but it must get back to the point of beginning "exactly."

Course or a Bearing. Also known as the direction.

An example is "North 70° 19' East". To find this course, face North and go East around the compass 70° 19'.

Or "South 24° 10' 15" West". To find this course face South and move West around the compass 24° 10' 15".

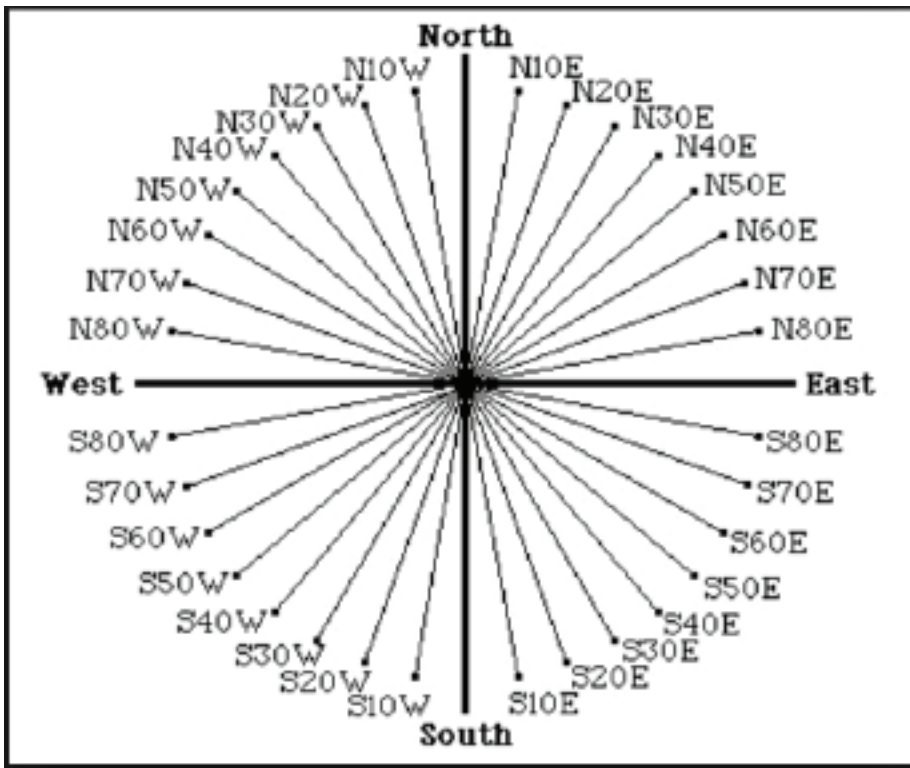
Remember that a circle has 360 degrees. We are breaking that into quadrants of 90 degrees each North and East; North and West; South and West; and South and East.

Each degree has 60 minutes and each minute 60 seconds.



When we are drawing a legal description the seconds and sometimes minutes are difficult to draw.

Here is a compass divided into how we look at it for legal descriptions:



Monuments: Many surveys will use a monument to define a point. For example, North 32° West to the North line of Paradise Way. Or maybe to the NW corner of the land described in deed recorded in OR Book 2 Page 5. There can be the use of physical objects, like the old oak tree or the large rock (frequently seen in the original 13 colonies, but not too often here in Florida). One of the most common monuments is the “point of beginning”. This can be very helpful in making an otherwise erroneous legal description actually close.

Practice Point: *Monuments govern over the course and distance of a call and are therefore useful in interpreting a legal description.*



Curves:

Curves are tricky. Most title folks did not end up here because they love geometry or math. Curves use both. Fortunately, legal descriptions usually give us the information we need. However, they read like a word problem from Math class.

Let's see if we can demystify curves in legal descriptions.

Here is an example. A curve to the left having a central angle of $53^{\circ} 36' 35''$, a radius of 15 feet, an arc length of 14.04 feet and whose chord bears South $63^{\circ} 12' 14''$ West a distance of 13.53 feet to a point of tangency, thence

The parts of this are the

Central angle: Our part of the overall circle

Radius: Distance from the middle of the circle to our point in the description

Arc length: The fractional distance along the circumference of the circle (the length of the curve) central angle divided by 360 multiplied by the circumference

Chord: Straight line between the beginning of our curve and the end; and

Direction the chord runs.

The Circumference is calculated by a formula (sorry) Twice the radius times 3.14 (pi)

In our case $15 \times 2 = 30 \times 3.14 = 94.2$ feet.

Our central angle is 53.66 (each minute is .0167 of a degree each second is .0167 of a minute or divide minutes by 60 to get the first decimal and seconds by 60 for the second decimal)

$53.66 / 360 \times 94.2 = 14.04$ feet (we already knew that from the description but good to check)

A chord is the straight line that runs from the beginning point of our curve to the ending point of the fractional section of the curve (through the central angle). I have left the formula to calculate that out on purpose.

Practice Point: *The chord is always shorter than the Arc Length since it is a straight line between the same two points.*



You start the process of drawing an arc by using the Chord's course and distance. You can "fudge" the drawing by just stopping there and using it as a straight line in your legal.

In the example above, just draw a line from the beginning of the curve's description heading on a bearing or course of $63^{\circ} 12' 14''$ West for 13.53 feet; then draw the next course. The legal will close back to the point of beginning (assuming the legal is correctly written). Your picture will be missing the arc of the curve, but it will let you examine the title sufficiently for most purposes.

Rules of construction for Metes and Bounds Legal Descriptions:

There are rules to be followed when there is a conflict in the calls in a metes-and-bounds survey.

In general, the following govern in the order presented.

1. The actual line as run in the field.
2. Monuments
3. References to adjoining land
4. Courses
5. Distances
6. Quantity or area.

In other words, the most important is the reality in the field and the next most important are actual physical monuments set out in the legal description.

So, an example might read:

Thence run South 425 feet to the North right of way line of Paradise Lane. The actual measurement on the ground is 462 feet and not 425 feet. Instead of being 37 feet short of the road, the monument will govern, and that side of the property will be 462 feet long. The legal description as written is acceptable since the monument (intersection) governs over the course and distance.

Or it could read "Thence run South 36° East 300 feet to the intersection of the Northerly right of way line for Michigan Street and the Westerly right of way line for Florida Avenue. The actual course to get there is South $35^{\circ} 42' 58''$ and it is really 302 feet on the ground. The legal description as written is acceptable since the monument (intersection) governs over the course and distance.



Practice Point: *Some surveyors love to create new “better” descriptions for the property. There are many reasons for this but do not change the legal description found in the chain of title on your documents unless you have spoken to underwriting and there is a really good reason to do so. Sometimes the best compromise is to use both as alternatives with the surveyor certifying them to be the same property.*

Examples:

- Begin at the Southeast corner of Section 24 Township 17 East Range 15 South and go North $89^{\circ} 15' 24''$ East along the Easterly boundary of that section 1489 feet to the point of beginning. Thence West for 300 feet, thence South 200 feet, thence East 300 feet thence North 200 feet to the point of beginning.
- This is basically a rectangle 300 feet by 200 feet. While the original northerly direction was $44' 56''$ shy of due North and the final call to the POB just said North, the monument (POB) governs over the possible variation between “North” and the actual direction. Note that the South call is not parallel with the section line and could be an issue since.

This parcel could be described with more accuracy as follows:

Begin at the Southeast corner of Section 24 Township 17 East Range 15 South and go North $89^{\circ} 15' 24''$ East along the Easterly boundary of that section 1489 feet to the point of beginning. Thence West for 300 feet, thence South $89^{\circ} 15' 24''$ West 200 feet, Thence East 300 Feet to the East Line of Section 24 Township 17 East Range 15 South thence North $89^{\circ} 15' 24''$ along that East line 300 feet to the point of beginning.

Practice Point: *Do not get trapped into drawing up legal descriptions. There are books on how to properly describe a tract of land and we are not trained in that area. Have a surveyor do this work as that is what they are trained to do.*

SUMMARY:

The purpose of a metes and bounds description is to describe the perimeter of the land by starting at one point and moving around the land one direction and distance at a time until you wind your way back to the point of beginning.



3. Subdivision Description, Platted or Lot and Block

Plats start out with a description of a large tract and then have it broken down into smaller subdivisions (e.g. Blocks, Lots, Tracts) as depicted on a Map also known as a Plat that is filed in the Official Records.

The Plat is a surveyed product and shows the boundaries of the individual parcels graphically.

The advantage of a Plat is that the legal descriptions can be made simple since the conveyances only need reference the individual parcel as identified on the Plat and then contain reference to the recording information for the Plat.

Plats can be recorded in the Official Records, Deed Books and Plat Books.

Some plats have multiple Blocks with each block having similar lot numbers.

There are many possible variations in Plats, and they need to be reviewed carefully and the legal description in the chain compared to the Plat.

There are some common elements in a description of the Platted lot.

1. The Lot or Tract number
2. The Block designation, if any (could be a number or letter)
3. The subdivision name
4. The recording information for the Plat using a Book and Page or clerk's file number.

Practice Point: *What if the Plat is more than one page and our lot is on the third page? It is acceptable to refer to the first page of the Plat filing or the exact page on which the Lot is located graphically.*

All of these elements should be present in all descriptions of a platted lot. However, there are occasions where one or more are missing.



4. Mobile Homes

If your legal description includes a mobile home, be sure that it is described by VIN. Double-wides have two VINs. Triple-wides have three. In addition:

1. Make certain that the mobile home(s) described in your legal description are actually located on the property.
2. Make certain that the mobile home description, including the VINs, is included in the legal description of your insured deed and/or insured mortgage.
3. Make certain that the mobile home title has been retired (as evidenced by a recorded "Retire Title Affidavit" or verified at <https://services.flhsmv.gov/MVCheckWeb/>) or that an RP sticker has been attached.
4. If the mobile home title is still active, make sure that the title is in the name of the current owner of the property. If it is not, take the appropriate steps to have the title transferred to the current owner through the FLHSMV.
5. Make sure to have the necessary paperwork signed at closing to either retire the title or transfer the motor vehicle title to the purchaser. If the lender is to have a lien on the mobile home, make sure that their lien is properly shown on the paperwork.
6. Check for liens on the mobile home. If liens are present and shown on the certificate of title, they must be released, or exceptions for them must be shown on Schedule B.

Practice Point: *If the mobile home title has a lien on it, the actual physical title will be held by the lender. Make sure you have appropriate DMV powers of attorney from the seller to allow you to transfer the title to the purchaser once it has been received back from the lender. Have the seller direct the lender to send the original to you. Also obtain a promise from the seller to send you the title when the lender sends it to them instead of you.*



Mistakes in Legal Descriptions you may find (there are many more, here are some examples)

Here are some common mistakes that may result in problems and their possible solutions.

- A. Left off the Lot number in the deed. This has to be corrected otherwise, there is no way to know which Lot was intended to have been conveyed.
- B. Left off the Block Number. This may not be fatal. If there is only one Lot with the lot number in the description contained in the Plat, the Block number is not a critical item. For example, There are two Blocks on the Plat and Block A has lots 1-10 and Block B has lots 11-20. A conveyance by Lot number without the Block is clear as to which lot is being conveyed. However, if there are two Blocks and Block A has lots 1-10 and Block B has lots 1-10, the deed will need to be corrected.
- C. The subdivision name is not in the description, but the Book and Page are correct. Title is likely fine and can be insured without corrective action.
- D. The Book or Page of the Plat is omitted but the Subdivision name is accurately reflected in the description. As long as there are not more subdivisions with that same name, title will likely be insurable.
- E. The subdivision name is incorrect but the other elements are correct. This may be acceptable without correction, but it could be a defect needing correction.

Practice Point: *In all of the instances, it is a best practice to use the entire correct description in the deed out to the proposed insured. This is an exception to the general rule of not altering the historic description in the chain of title.*



Some types of legal description errors are correctable through recordation of a "Curative Notice" as set forth in F.S. 689.041.

The categories of error that are correctable in this manner are as follows:

1. An error or omission in no more than one of the lot or block identifications of a recorded platted lot; however, the transposition of the lot and block identifications is considered one error;
2. An error or omission in no more than one of the unit, building, or phase identifications of a condominium or cooperative unit; or
3. An error or omission in no more than one directional designation or numerical fraction of a tract of land that is described as a fractional portion of a section, township, or range; however, an error or omission in the directional description and numerical fraction of the same call is considered one error.

Use of the Curative Notice is subject to several conditions and requirements, including:

- a. Record title to the intended real property must have been held by the grantor of the first erroneous deed at the time the first erroneous deed was executed.
- b. Within the 5 years before the record date of the erroneous deed, the grantor of any erroneous deed did not hold title to any other real property in the same subdivision, condominium, or cooperative development or in the same section, township, and range, described in the erroneous deed.
- c. The intended real property is not described exclusively by a metes and bounds legal description.
- d. A curative notice is recorded in the official records of the county in which the intended real property is located which evidences the intended real property to be conveyed by the grantor.
- e. A curative notice cannot be used to correct an error in any document that contains multiple errors.

Refer to the statute for additional details. The statute also provides an acceptable form for the curative notice.



General "Rules" when dealing with legal descriptions in Commitments and Policies.

- 1. Area:** Do not include the area of the property in the description. For example, the square feet or acreage. This is true even if the area is on the deed conveying title.
- 2. New and Improved Legals:** Do not use a "new" description that the customer has furnished or a surveyor has come up with. Always use the historic legal description in the chain of title.
 - a. Exceptions to Rule 2:** There are of course exceptions when the legal description is incorrect and needs to be corrected. Then using the full correct description and requiring corrective action is appropriate. Please check with underwriting on the necessary corrections, requirements and ways to show the description.
 - b. The customer insists upon using a new description. We can usually accommodate by using both descriptions and an "also described as" between them. We will want the surveyor to certify that the two descriptions are the same and have that in your file in case something comes up later.
- 3. Proof Read:** Read and compare the description you have in your order/contract, the closing software, the search report and the survey that you obtain for closing to make sure they all agree. If they do not, call underwriting or work to resolve the errors where they can be corrected.

Section 2 SURVEYS

A Little History of Surveying

The earliest recorded records of surveying appear to be in Egypt but it is fair to say that the Babylonians probably began surveying even earlier than that. There are references to surveying in the Bible's Old Testament "Cursed be he that removeth his neighbor's landmark" - Deuteronomy 27:17; "Remove not the ancient landmark which thy fathers have set." - Proverbs 22:28.

In this country, the original efforts of surveyors were to map the country rather than individual properties. We know some of these early surveyors as the founders of our nation. George Washington and Thomas Jefferson were early appointees to the trade of surveying. George Washington was actually the first registered county surveyor in America.



Methods and instruments used in early times were only a little better than those used in ancient times. Instead of Ropes we had graduated to chains and rods. These, made of metal, were less variable, although on a cold day the chain would be shorter than on a hot day.

Modern surveying uses electronic equipment, computers and even satellites. Surveying has come a long way since the Egyptian rope stretchers.

Surveying in the State of Florida is based upon the United States Rectangular System and land grants given by the European countries who governed parts of our State (mainly Spain).

The earliest surveys of Florida were conducted in the 1800's and divided Florida into one-square-mile sections. The surveyors had to use those chains and rods to measure out the sections and at the corners of most they drove lightered knot posts into the ground. Some of those posts still exist today and are used as reference monuments in surveys. (A lightered knot post comes from the center of a pine tree, full of sap they decay very slowly).

What exactly does a surveyor do now?

Today the land surveyor's most important functions include locating the boundaries as set forth in a deed on the ground and the preparation of descriptions of newly created parcels.

In working with existing descriptions, the surveyor is charged with retracing the work of the surveyor who created the description. With modern techniques and equipment, the measurements today frequently do not agree with those done in the past.

In order for a surveyor to do a good job, she needs to know the legal description and what affects the title (e.g. easements and licenses). This is where we come in as title professionals.

So, why is it that we need a land survey to insure title? Or do we?

We as title professionals are detectives. We investigate the ownership of property and determine what is needed to convey title to the next person.

This investigation has two parts. One of which is mandatory and one of which may be optional

First, it is mandatory that we look to the recorded history of the property; the title search. We do this by determining what appears in the Official Records that may affect the ownership of a parcel of land. It is mandatory because the Florida Statutes say it has to be done.



Second, we have to look at possession. This is typically determined by review of a land survey done by a licensed land surveyor. In some cases, we need to actually view the land to be insured.

We have all heard the saying “possession is nine-tenths of the law”. While it is not perhaps that big a percentage it is a significant factor in determining the rights of the parties to a piece of property.

This second step is optional depending on what the parties require from us as insurers.

We of course make a standard exception to eliminate any insurance for matters that do not appear in the first step of our investigation. Parties in Possession and matters affecting title that would be discoverable by an accurate survey are things we cannot see in the Records we search and are therefore part of the standard exceptions.

If the parties want coverage for matters affecting their ownership that we cannot find in our search of the Public Records, we have to first have that investigation done. This is where the land surveyor comes in.

The Practical Stuff

Does the Policy cover survey matters?

The 2006 and 2021 ALTA title insurance policy forms provide survey coverage as one of the Covered Risks:

2006 Forms:

2.(c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term “encroachment” includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.

2021 Forms:

2.c. the effect on the Title of an encumbrance, violation, variation, adverse circumstance, boundary line overlap, or encroachment (including an encroachment of an improvement across the boundary lines of the Land), but only if the encumbrance, violation, variation, adverse circumstance, boundary line overlap, or encroachment would have been disclosed by an accurate and complete land title survey of the Land.



Since our policies automatically and specifically cover encroachments of existing improvements onto and off of our insured land, the review of the survey we receive is doubly important now.

What kind of Endorsements Require a Survey?

Florida Form 9, 5.1, Contiguity, and Survey endorsements

The Florida Form 9 series provides insurance against loss resulting from these statements not being true:

- (3) There is no encroachment of existing improvements located on the Land onto adjoining land, nor any encroachment onto the Land of existing improvements located on adjoining land.
- (4) There is no encroachment of existing improvements located on the Land onto that portion of the Land subject to any easement excepted in Schedule B.

And for loss resulting from:

3. Damage to existing improvements (excluding lawns, shrubbery, or trees):
 - a. (a) that are located on or encroach upon that portion of the Land subject to any easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved;
4. Any final court order or judgment requiring the removal from any land adjoining the Land of any encroachment excepted in Schedule B.
5. Any final court order or judgment denying the right to maintain any existing improvements on the Land because of any violation of covenants, conditions, or restrictions, or building setback lines shown on a plat of subdivision recorded or filed in the Public Records.

To Issue this endorsement (as it relates to survey matters)

- Evaluate acceptable survey to determine any violations of setbacks, encroachments of improvements onto adjoining land or improvements on adjoining land onto the insured land, or into easements. If the review of the survey shows any of these, an exception should be made in Schedule B

Endorsement can be issued in the face of minor encroachments, contact underwriting if you have concern to confirm if encroachments noted are minor.



- A Form 9 may be issued in the face of significant encroachments or without a survey if proper exception is made to the coverage afforded for the Form 9. For example, without a survey the following can be added to Schedule B. "Notwithstanding the issuance of a Florida Form 9 endorsement with this policy, the provisions of paragraphs 1(b)(1), 1(b)(3), 1(b)(4), 3(a), 4 and 5 of the attached Florida Form 9 are hereby deleted."

The full requirements to issue this endorsement are:

- Review covenants conditions and restrictions to verify that
 - the lien of the mortgage cannot be divested, subordinated or extinguished, or its validity or enforceability impaired
 - establish an easement on the insured land *
 - provide for liquidated damages*
 - provide for a private charge or assessment*
 - provide for an option to purchase or a right of first refusal*
- * if the review shows any of these, an exception should be made in Schedule B**
- Determine if there are any violations of the restrictions if there are violations they need to be shown in Schedule B. If they are "minor" the endorsement may be issued. Contact underwriting if you have concern over the nature of the violations.
 - Evaluate acceptable survey to determine any violations of setbacks, encroachments of improvements onto adjoining land or improvements on adjoining land onto the insured land, or into easements. If the review of the survey shows any of these, an exception should be made in Schedule B
 - Endorsement can be issued in the face of minor encroachments, contact underwriting if you have concern to confirm if encroachments noted are minor.
 - Review any mineral reservations for enforceable right of entry on the surface. Cannot be issued in the face of enforceable right of entry. Contact underwriting to discuss



- A Form 9 may be issued in the face of significant encroachments or without a survey if proper exception is made to the coverage afforded for the Form 9. For example, without a survey the following can be added to Schedule B. “Notwithstanding the issuance of a Florida Form 9 endorsement with this policy, the provisions of paragraphs 1(b)(1), 1(b)(3), 1(b)(4), 3(a), 4 and 5 of the attached Florida Form 9 are hereby deleted.”

The ALTA 5 and 5.1 includes the following coverage related to survey matters:

Loss or damage resulting from:

The enforced removal of any structure existing at Date of Policy on the Land (other than a boundary wall or fence) because it encroaches onto adjoining land or onto any easements.

To Issue this endorsement (as it relates to survey matters)

Review the Survey of the property to determine if the structures encroach into easements or onto adjoining property. Call underwriting if any such encroachments are noted on the survey.

The full requirements to issue are:

- Determine that all charges and assessments in favor of any Homeowner Association are current and fully paid. Be mindful that there may be more than one Homeowner Association (e.g. Master Associations and development specific associations)
- Review Restrictive Covenants to make sure there are no provisions which will cause a forfeiture of title or a reversion of Title as a result of any violation of restrictive covenants.
- If there is a provision for forfeiture or reversion of title, make sure that there is an appropriate release of that right by the Homeowner Association
- Determine there are no violations of restrictive covenants
- Review the Survey of the property to determine if the structures encroach into easements or onto adjoining property. Call underwriting if any such encroachments are noted on the survey.



Survey Endorsement

This endorsement provides the following coverage:

The Company hereby acknowledges the lands described in Schedule A are the same lands described in the survey

prepared by _____ dated _____, however, the Company does not insure the accuracy or completeness of said survey.

To give this endorsement

- Review the legal description contained in the policy and the survey. If they are identical the endorsement may be issued. If there are differences that do not alter the basic statement that the two descriptions are the same property, the endorsement may be issued.
- If you are in doubt as to whether or not the descriptions do in fact describe the same land, contact underwriting to discuss. A certification from the surveyor may be required.

Contiguity Endorsement

This endorsement provides the following coverage:

The Company insures the Insured herein against loss or damage by virtue of any inaccuracy in the following statement, to wit:

Parcel _____ of the legal description and Parcel _____ of the legal description are contiguous to each other along the _____ line of Parcel _____ and _____ line of Parcel _____, and, taken as a tract, constitute one Parcel of land.

To give the endorsement:

- The policy must contain 2 parcels separately described and identified (e.g. Parcel 1 and Parcel 2)
- A Survey meeting the minimum technical standards for Florida is typically required.
- A Surveyor's certification of contiguity may also be required if it is not possible to determine from the descriptions that the two parcels are contiguous.
- If the two parcels have a common boundary, the survey and certification can be waived.



- If alterations to the form are requested to show that the insured parcel is contiguous with a public road or a previously conveyed parcel or other alteration, those alterations are prohibited.

What kind of Survey do we need?

Two ways for a survey to be certified.

There are two standards to which a survey can be certified that are acceptable for our purposes; The Florida Minimum Technical Standards or the ALTA standards. The ALTA standards are more strict than the Florida Minimum Technical Standards and are not required except in very rare cases in urban areas. Some other areas of the country require an ALTA survey so when dealing with folks from out of state, they may be reluctant to accept our Florida Minimum Technical Standard survey.

There is more than one type of survey.

What we need to see is a survey done that does three primary things.

First, it needs to describe the land and locate the land in relation to the rest of the world, not just the existing monumentation left by a previous surveyor.

Second, it needs to show us what improvements are located on the land either in whole or in part.

Third, it needs to graphically show any easements or licenses that affect the lands and needs to further show us any evidence of possession or use that might be a clue to a claim against the property.

In Florida, the Florida Administrative Code, contains **Section 5J-17.050 Minimum Technical Standards: Definitions.**

Here is the list from that section:

- a. As-Built Survey: a survey performed to obtain horizontal and/or vertical dimensional data so that constructed improvements may be located and delineated; also known as a Record Survey.
- b. Boundary Survey: a survey, the primary purpose of which is to document the perimeters, or any one of them, of a parcel or tract of land by establishing or re-establishing corners, monuments, and boundary lines for the purposes of describing the parcel, locating fixed improvements on the parcel, dividing the parcel, or platting.



- c. Condominium Survey: a survey performed pursuant to Chapter 718, F.S.; includes a Boundary Survey.
- d. Construction Layout Survey: the measurements made, prior to or while construction is in progress, to control elevation, configuration, and horizontal position and dimensions.
- e. Control Survey: a survey which provides horizontal or vertical position data for the support or control of subordinate surveys or for mapping.
- f. Hydrographic Survey: a survey having as its principal purpose the determination of data relating to bodies of water, and which may consist of the determination of one or several of the following classes of data: depth of water and configuration of bottom; directions and force of current; heights and times of water stages; and location of fixed objects for survey and navigation purposes.
- g. Mean High Water Line Survey: a survey to document the mean high water line as defined in Part II, Chapter 177, F.S.
- h. Quantity Survey: a survey to obtain measurements of quantity.
- i. Record Survey: a survey performed to obtain horizontal and/or vertical dimensional data so that constructed improvements may be located and delineated; also known as an As-Built Survey.
- j. Specific or Special Purpose Survey: a survey performed for a purpose other than the purposes detailed in paragraphs (10)(a)-(i) or (k) of this rule.
- k. Topographic Survey: a survey of selected natural and artificial features of a part of the earth's surface to determine horizontal and vertical spatial relations.

So, which one of these do we need?

In order to provide title insurance coverage, we must have a "Boundary Survey." This locates the property on the globe and in relation to the property surrounding it as well as it must show the improvements located on the property including fences and evidence of occupation or use.



Here is an excerpt from the Minimum Technical Standards found in the Florida Administrative Code that defines what a surveyor must do to give us that Boundary Survey.

2. *Boundary Survey, Map, and Report:*

A. *Boundaries of Real Property:*

1. *The surveyor and mapper shall make a determination of the position of the boundary of real property in complete accord with the real property description shown on or attached to the survey map or report.*
2. *All boundary surveys shall result in a map.*
3. *Any discrepancies between the survey map and the real property description must be shown.*
4. *All changes in direction, including curves, shall be shown on the survey map by angles, bearings or azimuths, and will be in the same form as the description or other recorded document referenced on the map.*
5. *Curved lines with circular curves shall show the radii, arc distances and central angles, or radii, arc distances, chord distances and chord bearings.*
6. *When intersecting lines are non-radial to a curve, sufficient angular data shall be shown to relate the line to the curve.*
7. *Surveys of all or part of a lot(s) which is part of a recorded subdivision shall show the following upon the map:*
 - a. *The lot(s) and block numbers or other designations, including those of adjoining lots.*
 - b. *A comparison between recorded directions and distances with field measured directions and distances when they vary.*
 - c. *A comparison between the recorded directions and distances with field measured directions and distances to the nearest street intersection, right of way intersection or other identifiable reference point.*
 - d. *The dimensioned remaining portion of a lot(s) when part of a lot is included within the description.*



8. *Surveys of parcels described by metes and bounds shall show the following upon the map:*
 - a. *The relationship of the parcel(s) to at least one established identifiable real property corner;*
 - b. *All information called for in the property description, such as point of commencement, course bearings and distances, and point of beginning;*
 - c. *A comparison between recorded directions and distances and field measured directions and distances on the boundary when they vary;*
 - d. *The most current abutting recorded instrument or recorded plat either known by the surveyor and mapper or furnished to the surveyor and mapper.*

- B. *Boundary Monuments:*
 1. *The surveyor and mapper shall set monuments as defined herein, unless monuments already exist or cannot be set due to physical obstructions at such corners or unless a water boundary has been located in approximate position. The survey map shall clearly label all approximate water boundaries with notes and these shall be mapped in a distinctly different graphic fashion from water boundaries located to full survey accuracy.*

 2. *Every boundary monument set shall:*
 - a. *Be composed of a durable material;*
 - b. *Have a minimal length of 18 inches;*
 - c. *Have a minimum cross-section area of material of 0.2 square inches;*
 - d. *Be identified with a durable marker or cap bearing either the Florida license number of the surveyor and mapper in responsible charge, the certificate of authorization number of the business entity; or name of the business entity;*
 - e. *Be detectable with conventional instruments for finding ferrous or magnetic objects.*
 - f. *When a corner falls in a hard surface such as asphalt or concrete, alternate monumentation may be used that is durable and identifiable.*



3. *All monuments, found or placed, must be described on the survey map. The corner descriptions shall state the size, material, and cap identification of the monument as well as whether the monument was found or set.*
4. *When a parcel has an irregular roadway as a boundary, such as a dirt road or a common law road, then a monumented meander or survey line shall be established along or near the feature.*
5. *For other irregular boundaries such as a river, lake, beach, marsh or stream, not identified as in subparagraph 5J-17.052(2)(a)1., F.A.C., a dimensioned meander or survey line may be used. When a meander or survey line is used, monuments shall be set at the meander or survey line's terminus points on real property boundary lines and dimensions shall be shown between a meander or survey line and the boundary line sufficient to show the relationship between the two.*
6. *A boundary survey updating a previous survey made by the same surveyor and mapper or business entity, and which is performed for the purpose of locating non-completed new improvements by measurements to the property lines or related offset lines placed on the property since the previous survey, need not have the property corners reset.*
7. *Side ties to locate or set monuments shall be substantiated by a redundancy of measurements.*

C. Boundary Inconsistencies:

1. *Potential boundary inconsistencies that the survey process did not attempt to detect shall be clearly indicated and explained on the survey map or in the report. Where evidence of inconsistency is found, the nature of the inconsistency shall be shown upon the survey map, such as:*
 - a. *Overlapping descriptions or hiatuses;*
 - b. *Excess or deficiency;*
 - c. *Conflicting boundary lines or monuments; or*
 - d. *Doubt as to the location on the ground of survey lines or property rights.*
2. *Open and notorious evidence of boundary lines, such as fences, walls, buildings, monuments or otherwise, shall be shown upon the map, together with dimensions sufficient to show their relationship to the boundary line(s).*



3. All apparent physical use onto or from adjoining property must be indicated, with the extent of such use shown or noted upon the map.
4. In all cases where foundations may violate deed or easement lines and are beneath the surface, failure to determine their location shall be noted upon the map or report.

D. Rights-of-Way, Easements, and Other Real Property Concerns:

1. All recorded public and private rights-of-way shown on applicable recorded plats adjoining or across the land being surveyed shall be located and shown upon the map.
2. Easements shown on applicable record plats or open and notorious evidence of easements or rights-of-way on or across the land being surveyed shall be located and shown upon the map.
3. When streets or street rights-of-way abutting the land surveyed are physically closed to travel, a note to this effect shall be shown upon the map.
4. When location of easements or rights-of-way of record, other than those on record plats, is required, this information must be furnished to the surveyor and mapper.
5. Human cemeteries and burial grounds located within the premises shall be located and shown upon the map when open and notorious, or when knowledge of their existence and location is furnished to the surveyor and mapper.

E. Real Property Improvements:

1. Location of fixed improvements pertinent to the survey shall be graphically shown upon the map and their positions shall be dimensioned in reference to the boundaries, either directly or by offset lines.
2. When fixed improvements are not located or do not exist, a note to this effect shall be shown upon the map.
3. Building corners are acceptable as monumentation so long as use of building corners as monumentation is clearly noted on survey drawing.



4. *When a boundary survey updating a previous boundary survey is made by the same surveyor or survey firm for purpose of locating non-completed new improvements, then property corners need not be reset; however, when a boundary survey is updating a previous survey made by the same surveyor or survey firm and is performed for purpose of locating completed new improvements then property corners must be recovered or reset. When a boundary survey updates a previous boundary survey made by a different surveyor or survey firm for the purpose of locating either non-completed or completed new improvements, then property corners must be recovered or reset.*

In review of this, we can see that a boundary survey gives us all three things we need. The description, location of the land on the globe, and the improvements and occupation evident on the ground.

So, what are the minimum requirements for us to rely upon a survey presented to us at or before the closing?

Florida Statute Section 627.7842. Policy exceptions; provides the following:

- (1) (a) If a survey meeting the minimum technical standards for surveying required by the Department of Business and Professional Regulation and certified to the title insurer by a registered Florida surveyor has been completed on the property within 90 days before the date of closing, the title policy may only except from coverage the encroachments, overlaps, boundary line disputes, and other matters which are actually shown on the survey.
- (b) If at closing the seller signs an affidavit swearing that there is no person in possession of the property or with a claim of possession to the property except the seller, the title policy may not exclude from coverage rights or claims of parties in possession not shown by the public records.
- (c) If at closing the seller signs an affidavit swearing that no improvements have been made to the property within the past 90 days for which payment has not been made in full, the title policy may not except from coverage any lien or right to a lien for services, labor, or material furnished which is imposed by law and not shown by the public record.
- (2) The title insurer, agent, or agency issuing the title policy may except from coverage the items specified in subsection (1) if the title insurer, agent, or agency has knowledge of facts requiring the exceptions, notwithstanding the survey or affidavits, if the insurer, agent, or agency discloses such facts to the proposed insured.



From this our minimum requirements are:

1. A survey meeting minimum technical standards completed within 90 days before closing
2. Certified to the title insurer (Underwriter)

With this, we have to remove the standard exception and replace it with specific exceptions for encroachments, overlaps, boundary line disputes, and other matters which are actually shown on the survey.

Let's take a look at this:

Practice pointers/issues:

1.) Missing Easements: Let's assume that we have such a survey on our desk. We know that there are easements that are not shown on the survey and if we draw them in, there would be additional encroachments. Can we make exception for those matters?

Maybe not; to meet the minimum technical standard regarding easements, the surveyor has to do the following. I will bold the problem

d) Rights-of-Way, Easements, and Other Real Property Concerns:

1. All recorded public and private rights-of-way shown on applicable recorded plats adjoining or across the land being surveyed shall be located and shown upon the map.
2. Easements shown on applicable record plats or open and notorious evidence of easements or rights-of-way on or across the land being surveyed shall be located and shown upon the map.
3. When streets or street rights-of-way abutting the land surveyed are physically closed to travel, a note to this effect shall be shown upon the map.
4. When location of easements or rights-of-way of record, other than those on record plats, is required, this information must be furnished to the surveyor and mapper.

Practice Point: *we have to get the commitment to the surveyor disclosing all recorded easements that are not shown on a record plat. How often is this done in real life?*



You will see on my checklist attached, that the practice of drawing in an omitted easement and the observation of a possible encroachment may be made and exception taken.

It would be better practice to have the surveyor redo the sketch to include the easement. This will avoid a potential payment of a claim for a statutorily unjustified exception.

2.) Can we reject a survey based upon:

Our belief that the surveyor is less than competent?

The lack of E and O Insurance carried by the surveyor?

No, not according to the statute.

Will we accept less than the statutory minimum?

Probably, so what are our lesser standards?

An Older survey

- Refinances: We can accept an older survey with an affidavit that indicates no improvements have been made since the date of the older survey to the land we are insuring and the adjoining land. The only improvements we are concerned with are those matters that would possibly encroach onto an adjoining property or easement or from the adjoining properties onto our land to be insured.
- Sales: We may be able to accept an older survey to provide the purchaser's lender survey coverage and a Florida Form 9 and Alta 5.1. We will consider offering similar coverage to the purchaser, however, the Owner's form 9 may not be available without a new survey. Please contact underwriting to discuss this.

Just how old can an "older survey" be? There is clearly no absolute time frame. If we are dealing with a refinance and the survey was done for our borrower, we will accept the older survey at any age so long as the affidavit can be honestly furnished.

On a sale, we are less flexible, as the risk of loss is much greater. Within a year is a safe period, although on a case-by-case discussion we may accept an older survey depending on the actual facts.

On a sale we recommend strongly encouraging the purchaser to obtain their own survey even if we are willing to provide coverage.



What if there have been improvements constructed subsequent to the survey date that may have affected the boundaries of the land or the easements located on the land? This is a subjective call, and we expect to have a dialogue between our underwriting department and your office to discuss the facts and review the survey.

No Survey

We are willing in very limited circumstances to offer survey coverage to a purchaser without actually having a survey.

1. A condominium. In the case of a vertical condominium (multi stories with a foot print on the ground actually built) we do not need a survey since the declaration will have one attached to it that will be sufficient for our purposes.
2. Vacant parcel of land in a platted subdivision with similarly vacant parcels all around it. We will accept an affidavit indicating that there are no improvements on the land being insured or the adjoining lands. In the case of the adjoining land having improvements, we may be willing to offer this coverage depending on the individual facts. If faced with this request, please contact underwriting to discuss.

HOW TO WORD AN EXCEPTION FOR A MATTER YOU FIND IN REVIEW OF THE SURVEY

The goal of the exception should be to clearly set out the matter we are concerned with so there is no question that if a claim is asserted based upon that matter there is no coverage.

The words we use are important.

First rule, be specific as to the matters discovered. Courts in general do not look favorably on general exceptions such as "All matters shown on the survey prepared by Great Surveyors dated March 2, 2017 job # 42". While better than no exception, this fails in the goal of writing our exception.



Specific wording can be difficult to frame. Let's look at some examples:

1. OK, but not preferred (better than the blanket exception):

The 5.2-foot encroachment of the concrete porch into the 20-foot drainage and utility easement along the Southerly boundary of the property as shown on the survey prepared by Great Surveyors dated March 2, 2017 job #42.

The concerns with this are:

We have affirmatively represented that we are excepting a 5.2-foot encroachment. What if the surveyor did not measure well and it is 6 feet. An argument can be made for coverage for damage resulting from the additional .8 feet of encroachment.

We have made it sound like we are giving assurances that the concern we have is as was shown on the survey

2. Better

The encroachment of the concrete porch into the 20-foot drainage and utility easement along the Southerly boundary of the property.

Exception is made specifically for the concrete porch into the easement whether the encroachment is 5.2 feet or any other dimension. We have omitted the reference to the specific survey as that reference added nothing to the goal of the exception.

