



CAPITAL

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Sufficient Descriptions of Property When a Metes and Bounds or Lot/Block Description is Unavailable



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The statute of frauds requires that all contracts for the sale of real estate be in writing and signed. This writing must contain a description of the property to be conveyed that identifies the property with reasonable certainty. Failure to sufficiently describe the property to be conveyed renders the contract void and unenforceable.

A proper metes and bounds description of the land would satisfy the statute of frauds, but for the sake of efficiency, contracts for the sale of land often incorporate by reference other documents that themselves contain a metes and bounds description in order to satisfy this requirement. While one might have to trace through several levels of referenced documents to arrive at the adequate description, so long as it exists in the chain of reference, the contract is enforceable. Theoretically, problems could arise if the original metes and bounds description is deficient in some manner, but identifying such a deficiency may often prove impractical.

But what if the contract does not incorporate a chain of documents that contain a metes and bounds description? The description may nevertheless be sufficient if it identifies one tract to the exclusion of any other reasonable interpretation. To that end, although the validity of a contract for the sale of land is a question of law, courts permit some extrinsic evidence (that is, evidence outside of the contract itself) in assessing the sufficiency of a property description.

But what if the conveyance of real property does not incorporate a chain of documents that contain a metes and bounds description? The description may nevertheless be sufficient if it identifies one tract to the exclusion of any other reasonable interpretation.

Extrinsic evidence is not permitted to supply the essential terms of the contract but may be used to explain and clarify. For example, descriptions such as “my property” have been found sufficient when extrinsic evidence showed that the seller owned one and only one tract of land satisfying this description. The inverse of the previous example also holds true: when, from the description given, it is reasonably possible to locate more than one tract of land fitting that description, the statute of frauds is not satisfied.

A typical case of such inadequacy occurs when the property to be conveyed is described as part of a larger, adequately described, parcel of land, such as:

25 acres on the East side of the 100 acre tract situated in the Blackacre Survey, Capital County, Texas, being the same land described and conveyed in Deed from O to A, dated December 25, 1991, and recorded in Volume 42, Page 360, Deed Records of Capital County, Texas.

Although the description of the larger, 100 acre parcel of land is sufficient with its reference to the Deed containing a metes and bounds description, “on the East side” describes only one border of the 25-acre tract to be conveyed. Is it a 25-acre square tract in the Northeast corner of the 100 acres? The Southeast corner? Or perhaps some rectangular configuration? Because multiple reasonable interpretations are possible, the description is insufficient. Thus, preventing the defect requires that the description of the land contain not only general information about the area, tract survey and county, but also information regarding the exact size, shape, and boundaries of the tract. For example, the above example could be remedied as follows:

25 acres in the shape of a square in the Northeast corner of the 100 acre tract situated in the Blackacre Survey, Capital County, Texas, being the same land de-scribed and conveyed in Deed from O to A, dated December 25, 1991, and recorded in Volume 42, Page 360, Deed Records of Capital County, Texas.

Another common issue is whether street addresses are sufficient descriptions. The same principles apply. Where the address reasonably describes more than one piece of property—such as “123 Abacus,” when there exists 123 Abacus St., 123 Abacus Ln., and 123 Abacus Ct.—the description is insufficient. On the other hand, complete addresses that unambiguously identify one and only one tract of land have been found sufficient.

In litigation on this issue, courts have permitted expert testimony on the sufficiency of property descriptions following the principle that if enough appears in a description so that a person familiar with the area can locate the premises with reasonable certainty, it is sufficient to satisfy the statute of frauds. As discussed above, reasonable certainty in practice means identifying one tract to the exclusion of all other reasonable alternatives. Therefore, while one expert might testify that only one tract of land is reasonably identifiable from the description at issue, a court could still find the description insufficient if an opposing expert credibly testifies that other tracts can be reasonably ascertained from the description.

In order to ensure that descriptions of property in contracts for the sale of land satisfy the statute of frauds, then, one should ideally incorporate by reference a document, such as a recorded deed, that contains within it a proper metes and bounds description of the tract, as well as identification of the area, survey and county. When selling a piece of property that is part of a larger tract, one must make sure to avoid the pitfall of leaving the shape, size, and boundaries of that part undefined. This can be remedied by describing the specific shape, size, and boundaries of the tract to be conveyed in the contract, or by attaching or incorporating by reference a plat that defines all of the boundaries. Retaining a professional land surveyor to create or review the plat of the tract to be conveyed can provide an added layer of protection, ensuring that the plat correctly defines the property.