



The Importance of a Legal Description in Real Estate Contracts

If you signed a contract to buy vacant property described as “adjacent to the Mardi Gras, a Daytona Beach business, that has a minimum of 50 frontage feet on the Boardwalk and that has sufficient land to build a 7500 square foot one story building,” and the seller is trying to back out, do you think you can get a court to force the seller to sell the land to you?

In Florida, an agreement for the sale and purchase of real property must be in writing and signed by the party against whom it is being enforced. The agreement must be definite, certain, and complete in all of its essential terms. There is no definitive list of “essential terms;” they may vary based on the nature and complexity of each transaction. A court will evaluate what is essential on a case-by-case basis. However, a description of the land to be conveyed is generally an essential element of an agreement to sell land.

The gold standard in drafting a contract is to use a complete legal description of the property to be conveyed matching some or all of the property owned by the seller. This can be taken from the deed into the seller, a prior survey of the subject property, or a sketch of a description prepared by a surveyor. If a prior survey of the property is available, it can be referred to in the contract and attached as an exhibit. We are fortunate here in Charlotte County that most of the properties subject to active listings are platted lots with relatively simple legal descriptions. If that is the case, the complete legal description should be used including lot, block, section, subdivision name, and plat book and page.

Often closing attorneys and title companies are presented with a contract which contains a shortened legal description, just an address, or only a property appraiser-assigned parcel identification number. Most of these contracts get closed with the right legal description because the closing agents figure it out through online property information, prior deeds, and other title information. Hopefully, the buyer is getting a new survey if a prior one is not available. This is recommended in all real estate purchases and typically required if financing is involved. The survey is the only document that matches what the buyers thought they wanted to buy when they walked around the property before they made their offer and all the dry documents presented at closing, especially the deed. The formal legal description needs to be precisely the same on the survey, the title insurance commitment and policy, the deed, and the mortgage.

But what happens if the parties get crosswise between contract and closing, perhaps on issues having nothing to do with the description of the property? Will the buyer be able to force the seller to close if the legal description on the contract is just an address or a tax ID number? While there is some case law out there which permits the enforcement of such contracts in limited situations, it becomes a matter of proof as to what was intended. The description of land is sufficient only if a surveyor using the general rules of surveying can



Jack O. Hackett II

TEL 941.639.1158

EMAIL jhackett@farr.com

Jack is Board Certified by The Florida Bar in Real Estate and also practices in corporate and business law.

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locate that precise piece of land and establish its boundaries to the exclusion of all other pieces of property in the world. If the description is in any way ambiguous such that it could possibly describe multiple pieces of property, the court will not permit the use of outside evidence to remove that ambiguity. If the description is indefinite or facially vague, there is no meeting of the minds of the parties as to an essential element of the contract and the contract fails.

Sometimes the parties just are not sure about the exact piece of property when entering into the contract. They may have a sketch of the property on which they draw some lines as an approximation of the parcel to be conveyed and state in the contract that it is "subject to survey" or "1 acre, more or less, as shown on the attached sketch." Such agreements are "agreements to agree" and are not enforceable until the precise legal description is agreed upon, preferably in the form of a modification of the contract. Evidence outside of the agreement may be used if the agreement itself shows that the parties were contemplating a particular piece of property, but not if it is an unspecified piece of property or alternative descriptions. The surveyor needs to be brought in right away to draft a description and sketch of the property to be sold, and the parties need to ratify that legal description before the contract is enforceable.

So what about the 50 front feet on the Daytona Beach Boardwalk in the opening paragraph? If you've gotten this far, you already know the answer. The very first sentence of Florida's Fifth District Court of Appeal opinion (link opinion with <http://www.5dca.org/Opinions/Opin2016/111416/5D15-1944.op.pdf>) filed November 18, 2016, that considers this question says it all: "Neither law nor equity can furnish a sufficient description of land to be conveyed where the parties have failed to do so." The contract fails; it will not be enforced; the parties go home, one happy, one not so much.

If you are interested in buying or selling a piece of property and are not quite sure about its legal description, consider seeking the advice of an attorney experienced in real estate transactions or a surveyor before a contract is signed.

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