

4 Property

HISTORICAL DERIVATIONS

In English Common Law, the word property referred not to the *thing* owned, but rather to the *rights* which the owner had: the rights to possess, use, encumber, transfer and exclude others. Property consisted of a “bundle of rights” or a “bundle of interests” a person had in a thing, whether the thing was real or personal property.

The early English courts distinguished between lawsuits in which the landowner, if wrongfully ousted, could recover the land itself (the “real thing”) and those lawsuits in which the owner could recover only monetary damages. By bringing a “real action,” the owner could receive the return of the land, the “real property.” An action for monetary damages was called “personal,” and the owner’s limited interest was labeled “personal property.”

In the feudal society of medieval England, an estate was the ownership interest that a person had in the land. The estate was termed a freehold estate when the owner’s interest was not subject to certain servile incidents or demands of the overlord. Only an owner of a freehold estate could bring a real action. Therefore, only freehold estates were regarded as real property. A freehold estate was of indefinite duration. A less-than-freehold estate was an interest of specified duration.

Freehold Estates

A freehold estate could be an estate in fee or a life estate. An estate in fee could be either absolute or qualified.

An *estate in fee simple absolute* was the largest estate recognized by the law. Among other rights, its owner controlled its disposition, including the right to will it. Upon disposition, this estate could become *qualified* by a condition. For example, grantor A could sell the estate to grantee B on the condition that the property be used as a hostel for itinerant musicians. If B changed the use, A could reenter the property and terminate B’s estate. Hence, B’s fee/estate could be defeated and was termed *fee simple defeasible*.

A *life estate* would be created if grantor A conveyed real property to B for the life of B or the life of some other person, with the initial grant controlling disposition of the estate upon the death of B (or the death of the other person). Again, this was a freehold because its duration was not fixed in specified temporal terms (i.e., months or years).

Less-Than-Freehold Estates

Less-than-freehold estates were the rights of tenants who rented or leased real property. These estates were personal property.

THE MODERN VIEW

Today, we think of property as the *thing* (not the *rights*) owned. Property is either real or personal. Real property consists of:

1. Land;
2. Anything affixed and regarded as a permanent part of the land;
3. That which is incidental or appurtenant to the land; and

4. That which is immovable by law.

Land

Land includes the soil, rock, and other substances that compose the material of the earth. It also includes space. Not just the space on the surface of the earth, but also the space beneath it to the center of the earth and the space above it to the top of the sky.

The courts have recognized a public right to the use of airspace above private land as a “highway” available to all so long as such use does not unreasonably interfere with the landowner’s enjoyment of the property. The courts also recognize the fluid and “fugitive” or moving nature of subsurface oil and gas. The right of the landowner to drill vertically into his or her land for the purpose of capturing these substances is a valuable part of what is included in the ownership of land, but this does not include any right to drill slantwise under a neighbor’s land for this purpose.

Things Affixed to Land

These include buildings, bridges and trees, as well as anything that is affixed to them (e.g., the doors of a building, permanently installed cabinets, or built-in appliances).

Incidental or Appurtenant to the Land

This form of real property includes anything which is by right used with the land for its benefit.

Examples are watercourses or easements/rights of way over adjoining lands and even passages for light, air, or heat from or across the land of another. Another example is stock in a mutual water company. When such stock is “appurtenant to the land,” ownership of the stock may not be transferred unless the land is transferred with it.

Crops

A tenant’s crops (emblemments), industrial growing crops and things attached to or forming part of the land which are agreed to be severed before sale or under a contract of sale, shall be treated as goods.

“Modern” Estates

Section 761 of the California Civil Code (enacted in 1872) classifies estates in real property, with respect to duration, as:

1. Estates of inheritance or perpetual estates;
2. Estates for life;
3. Estates for years; or
4. Estates at will.

PERSONAL PROPERTY

Personal property is any property that is not real property. It includes money, movable goods or chattels, evidences of debt and choses (things) in action.

“Choses in action” is a legal phrase used to describe the right to recover money or other personal property through a judicial proceeding. It includes the right to recover something under a contract (e.g., money owed on a note) and the right to recover damages for a tort or private wrong.

FIXTURES

Fixtures are items of personal property which are attached to the land in such a manner as to be considered part of the real property.

The courts have utilized five general tests to determine whether or not a given piece of personal property is a fixture. These are:

1. **The intention** of the person incorporating the personal property into the land.
2. The **method** by which the property is incorporated into the land. The degree of permanence of the annexation is significant. For example, if the attachment is by cement and plaster, the item so attached is likely to be classified as a fixture.
3. The **adaptability** of the personal property so attached for *ordinary* use in connection with the land. If well adapted, the item is probably a fixture.
4. The existence of an **agreement** between the parties involved as to the nature of the property affixed to the land. If there is a clear agreement, the status of the attached item is not likely to be an issue.
5. The **relationship** between the person who adds or annexes the article and the person with whom a dispute arises as to its character. This would usually involve seller and buyer or landlord and tenant.

Buyers and lenders inspecting property in contemplation of purchase or loan are justified in assuming that whatever is attached to the land or building and is essential for its use will be part of the conveyance/security. The contract should state clearly any desired exceptions.

A tenant may, during the term of the tenancy, remove from the premises anything the tenant has affixed thereto for purposes of trade, manufacture, ornament or domestic use, *provided* the removal can be accomplished without damage to the premises. This exception does not apply if the thing has, by the manner in which it is affixed, become an integral part of the premises.

LEGAL DIFFERENCES BETWEEN REAL AND PERSONAL PROPERTY

The following are important legal differences between real and personal property:

1. To be enforceable, an agreement for the sale of real property must ordinarily be in a writing signed by the party to be charged. An agreement for the sale of personal property must be in writing if the amount or value of the property exceeds \$500.
2. For the most part, the laws of the situs state govern the transfer of title to real property. Commercial sales of personal property are subject to federal and state laws.
3. The state has provided by law a system for recording documents or instruments affecting the title or interest in real property.
4. Tax laws often distinguish between real and personal property. To the property owner and the taxing authority, the distinction may be one of considerable importance.

LAND DESCRIPTIONS

Every parcel of land sold, leased or mortgaged must be properly identified or described. These descriptions are often referred to as *legal descriptions*. A good description is said to be one which describes no other piece of property but the one involved in the transaction.

The three most common methods of describing property are: by recorded map; by U. S. Government section and township; and by metes and bounds.

Recorded Map

In California, the Subdivision Map Act (Government Code Sections 66410 et seq.) requires the mapping of all new subdivisions. The map shows the relationship of the subdivision to other lands and each parcel in the subdivision is delineated and identified. When accepted by county or city authority, the map is filed in the county recorder's office. Documentation can then describe any lot in the subdivision by indicating the lot number, the block, and the map. The description also includes the name of the city, county and state. For example:

"Lot 14, Block B, Parkview Addition (as recorded July 17, 1956, Book 2, Page 49 of maps), City of Sacramento, County of Sacramento, State of California."

Description by Township and Section

In the township and section system, we begin with *base lines*, which are horizontal, and *meridians*, which are vertical.

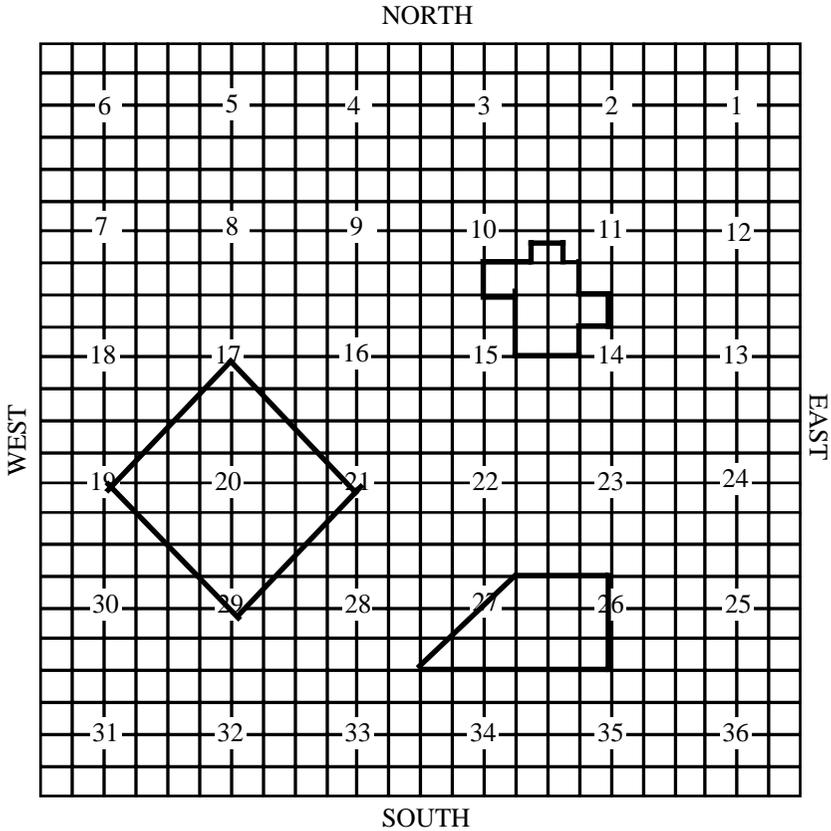
This system establishes a grid of vertical lines ("ranges") and horizontal lines ("township" lines). The lines are six miles apart. A square created by intersections is therefore six miles on each side and contains 36 square miles. Each of these squares is called a township. (In order to correct for the spherical shape of the Earth, additional *guide meridians* are run every 24 miles east and west of the *meridian* and *standard parallels* are run every 24 miles north and south of the *base line*. These are known as *correction lines*.)

In land descriptions, we move "townships" (north or south) from a principal base line and "ranges" (east or west) from a principal meridian,

California has three sets of base lines and meridians: the Humboldt Base Line and Meridian in the northwestern part of the State; the Mt. Diablo Base Line and Meridian in the central part of the State; and the San Bernardino Base Line and Meridian in the southern part of the State.

The description "township 4 north, range 3 east, Humboldt Base Line and Meridian" directs us to the township which is 4 townships to the north from the Humboldt Base Line and 3 townships to the east from the Humboldt Meridian.

Here is a township, with its 36 (square mile) sections numbered and further divided so that the smallest squares are quarters of quarter sections, each containing 40 acres.



The following mathematical observations may aid understanding of section/township descriptions:

- a township is a square, six miles on each side;
- a township contains 36 sections;
- each of the 36 sections in a township is a square, one mile on each side;
- a mile is 5,280 feet;
- a square mile is 27,878,400 square feet ($5,280 \times 5,280$);
- an acre is 43,560 square feet;
- each section in a township is 640 acres (27,878,400 divided by 43,560);
- a half-section is 320 acres;
- a quarter-section is 160 acres; and
- a quarter of a quarter-section (the smallest squares in the township plat) is 40 acres.

The following is the description for the diamond-shaped figure on the township on the preceding page.

Beginning at the NE. corner of SW. 1/4 of Sec. 17, thence southeasterly to the NW. corner of the SE. 1/4 of Section 21, thence southwesterly to the SE. corner of the NW.1/4 of Sec. 29, thence northwesterly to the SW. corner of the NE. 1/4 of Sec. 19, thence northeasterly to the point of beginning.

The description is linear, delineating the boundaries of the figure by connecting four points.

For practice, the reader may want to write out the descriptions of the other two figures. The description of the figure in the upper right can begin: "The SE 1/4 of the NE 1/4 of the SE 1/4, and the S 1/2 of the SE 1/4 of Section 10;" If the reader can locate and shade that portion, the reader can write the rest of the description in like fashion.

The description of the third figure can begin as follows: "Beginning at the NW corner of the SE 1/4 of the NE 1/4 of Section 27, thence due east 3,960 feet,". [Each side of a quarter of a quarter section measures 1,320 feet ($5,280 \div 4$). The line/side described therefore measures $1,320 \text{ feet} \times 3 = 3,960 \text{ feet}$.]

Metes and Bounds Description

A "metes and bounds" description may be necessary when the property referred to is not covered by a duly recorded map and is shaped so as to make it impractical to describe by section and township. Some metes and bounds descriptions are lengthy and difficult for anyone but a civil engineer or surveyor to understand. A complex metes and bounds description is a burden to county recorders and assessors.

A *metes and bounds* description starts at a fixed point of beginning and follows, in detail, the boundaries of the land described in courses and distances from one point to another until returning to the point of beginning. If a mistake is made at the point of beginning, the description is worthless.

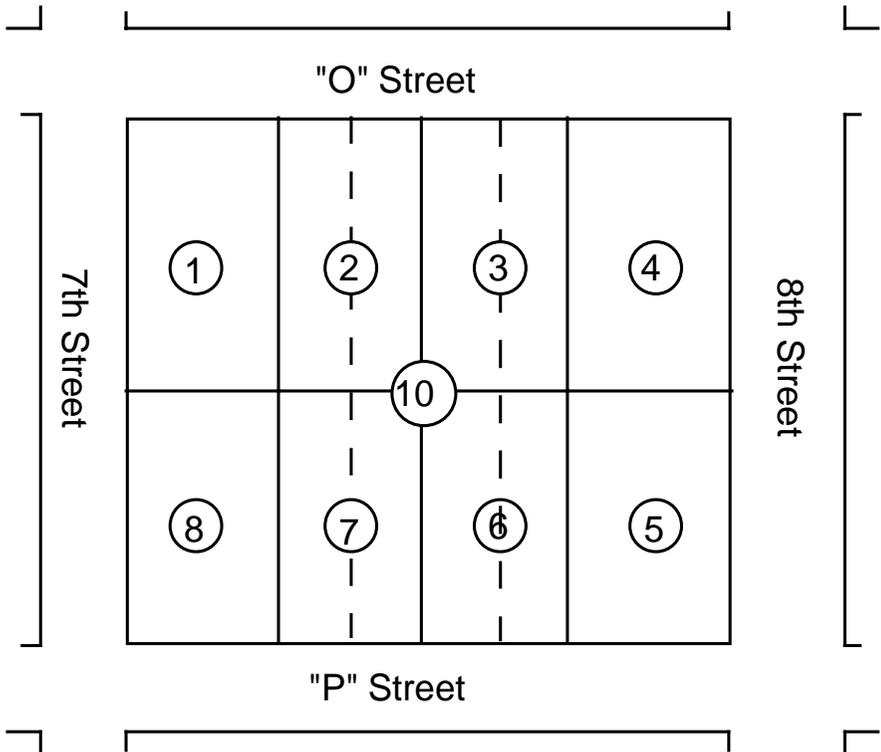
Metes are measures of length: feet, yards, etc.

Bounds are measures of boundaries, both natural and manmade: e.g., rivers and roads. Landmarks (trees, boulders, creeks, fences, roads and iron pipes, etc.), referred to as monuments, are often used in such descriptions.

Older descriptions of this type used markers that have disappeared, been moved or otherwise been altered, making the descriptions indefinite. Thus, since markers are subject to destruction and disappearance they should be used only where necessary and every identifying feature should be designated.

Here is a drawing and metes and bounds description of a regular parcel (front and rear dimensions and sides are the same).

Plat Map
Lots 1 to 8, block 10, tract 1502



Beginning at a point on the southerly line of "O" Street, 150 feet westerly of the SW corner of the intersection of "O" and 8th Streets; running thence due south 300 feet to the northerly line of "P" Street; thence westerly along the northerly line of "P" Street, 100 feet; thence northerly and parallel to the first course, 300 feet, to the southerly line of "O" Street; thence easterly along the southerly line of "O" Street, 100 feet, to the point or place of beginning.

OTHER DESCRIPTION METHODS

Government Lots

In the original government survey system, lakes, streams and other features were sometimes encountered which created fractional pieces of land less than a quarter section in size. These fractional segments were identified by number. The specific lot number then became the legal description for that land parcel and these parcels were called *government lots*.

Today, acreage lost due to township correction lines and unascertainable errors is placed in the quarter sections bordering the western and northern boundaries of a township. These geographical divisions which would otherwise qualify as quarter-quarter sections are also referred to as “government lots.” A government lot does not necessarily contain a standard number of acres.

Record of Survey

After establishing points or lines, a land surveyor or civil engineer who has made a survey in conformity with land surveying practices must file a record of survey relating to boundaries or property lines with the county surveyor in the county in which the survey was made. This record of survey map discloses: (1) material evidence of physical change which does not appear on any map previously recorded in the office of the county recorder; (2) a material discrepancy with information of record with the county; (3) any evidence that might result in alternate positions of lines or points; and (4) the establishment of lines not shown on a recorded map which are not ascertainable from an inspection of the map without trigonometric calculations.

The county surveyor, after examining a record of survey map filed with the surveyor’s office, shall then file it with the county recorder.

Assessor’s Maps

The county assessor may prepare and file in the assessor’s office an accurate map of any land in the county and may number or letter the parcels in a manner approved by the board of supervisors. Section 327 of the Revenue and Taxation Code provides “that land shall not be described in any deed or conveyance by a reference to any such map unless such map has been filed for record in the office of the county recorder of the county in which such land is located.”

Informal Method

In the absence of a title report, it is often found convenient to refer to a specific parcel of realty by street number, name (e.g., “The Norris Ranch”), or blanket reference (e.g., “my lot on High Street”). These methods are legal, but title companies will not ordinarily insure title involving such a description.

If there is doubt about the correct property description method to be used, a person should consult with a licensed engineer or surveyor or with a title company.