

The Basics of Real Estate Title

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Introduction

- Scope
 - What is “title”
 - Where does the idea come from
 - Real property vs. other kinds of property
 - How do we describe real property
 - What are the sources of legal descriptions
 - Surveys

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What is Title

- At its most basic, it's "ownership"
 - Who owns something?
 - What do they own?
 - How much do they own?
 - Who else owns part of it?
 - Who has the best claim of ownership?

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Real Property vs. Other Kinds of Property

- We have the law of property to address those prior questions
- Law recognizes 3 broad types:
 - Real Property
 - Dirt, and everything "affixed" to it
 - Personal Property
 - Everything else that you can touch
 - Intellectual Property
 - Ideas, Music, Art, Literature, Software

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Real Property

- Property is either real (immovable) or personal (movable)
- Land, and generally whatever is erected or growing upon or affixed to land.
 - Buildings, trees, sidewalks, crops

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Real Property

- Buildings, including Fixtures
 - Bathtub
 - Walls, roof, floor, windows
 - Carpet
 - Built-in appliances
 - Plumbing, electrical
 - Light fixtures

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Real Property

- Things that are not fixtures
 - Furniture
 - TV (if not built in or attached)
 - Appliances (if not built in or attached)
 - Toaster, counter-top microwave
 - The car parked in the garage

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Where does "title" come from?

- The Sovereign – Government
- At some point, the Government owned all the lands
 - After the United States was created, that was the Government
 - Before, the King – England, France, Spain

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Where does "title" come from?

- Our country is based on English Common Law
 - We get our system of laws from England
 - Exception: Louisiana
 - French Code Law
 - Our concepts of real property ownership are traced back to Old England

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Where does "title" come from?

- In addition to The Beatles and Doctor Who, England gave us the concept of "estates" to describe interest in property
- "The degree, quantity, nature and extent of interest which a person has in real and personal property" – Black's Law Dictionary

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Estates

- Estates are “absolute” or “conditional”
 - Absolute
 - An interest not subject to being defeated upon a condition
 - Conditional
 - An interest that depends on something else happening
 - Example: You can keep the house as long as you live in it as your residence

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Estates

- “Fee Simple Absolute”
 - You own everything
 - The highest form of ownership
 - What does it mean?

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Estates

■ "Fee"

- Same as "feud" or "fief" – England again
- Lands belonged to the King, awarded to Lords
- Lords could give property to citizens
- It is an estate of inheritance
 - That means it wasn't a temporary grant for a fixed time
 - Citizen could leave it to anyone he wanted to, or sell it during his life time

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Estates

■ "Fee Simple Absolute"

- An estate to a man (or woman) and his heirs, assigned forever without limitation or condition
 - Unlimited power to sell it
 - Unlimited power to distribute in their will
 - Descends to his heirs and legal representatives if dies without a will

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Estates

- “Fee Simple Absolute”
 - Think of all the possible interests that exist as a bundle of property rights
 - A bundle of sticks
 - Fee Simple Absolute means you own all the sticks in the bundle
 - Other interests means other people own some of the sticks out of the bundle

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Estates – What kinds?

- Fee Simple Absolute (or just “fee”)
 - Unconditional ownership
- Leasehold
 - For a term of time, fee owner allows somebody to use the property in exchange for rent

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Estates – What kinds?

- Life Estate
 - You can use it for your life, and upon your death goes to . . .
- Conditional Estate
 - Limits the use
 - If you don't comply with the conditions, goes to . . .
 - Example: Residential use only
 - Example: School use only

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Estates – What kinds?

- Remainder
 - Goes to a third party after a life estate terminates (person dies) or if a condition is broken
- Reversion
 - Goes back to the person who granted the life estate when it terminates (person dies) or if a condition is broken

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Estates – What kinds?

- Land Contract
 - Common in Michigan
 - Form of seller financing
 - Cross between a lease and a sale
 - “Rent to Own” – sort of
 - Buyer (vendee) makes payments over time to seller (vendor), when fully paid the vendee owns the property

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Estates – What kinds?

- Mortgagee
 - An owner borrows money and promises to pay it back (Promissory Note)
 - If he doesn't pay, the lender of the money can sue to get a judgment that the borrower owes the lender the money
 - but what if the borrower doesn't have the money anymore?

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Estates – What kinds?

■ Mortgagee

- Lender has borrower execute a *mortgage*
 - If the borrower doesn't pay, the lender can take the mortgaged property from the borrower and sell it to get his money back
- This is a foreclosure
 - Judicial – go through court
 - Non-judicial – can foreclose privately by following statutory rules – Most common

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Estates – What kinds?

■ Easement, License, Right of Way

- Permission to use another's property
- Often for "ingress and egress"
 - Property that is land-locked – no access to a public road or right of way
 - Need to cross somebody else's property to get to or from your property
- Also for roads, utilities

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Moving along . . .

Now that we've talked about *types* of ownership, let's talk about describing *what* we own

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Defining Real Property

- What do you own?
- How do you describe it?
- Problem with addresses
 - House numbers can be changed
 - Street names can be changes
 - Even City, Village or Township (CVT) can be changed
- *Description needs to be the ONLY possible parcel*

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Describing Real Property

- Primarily 3 different methods
 - Government Survey (Public Land Survey System, or PLLS)
 - Metes and Bounds
 - Platted Property

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Government Survey

- Proposed by Thomas Jefferson
- Federal Government responsible for areas west of the original 13 colonies
- Northwest Ordinance of 1787 established a rectangular survey system
- Still in use today

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Government Survey - Definitions

- Principal Meridian
 - North-South Meridian
 - Arbitrary starting point for all East-West references

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Government Survey - Definitions

- Base Line
 - The Base Line in Michigan is pretty well known by another name
 - 8 Mile Road, a/k/a “Base Line Road”
 - Extended across Lake Michigan, it’s the border between Illinois and Wisconsin
- Michigan Meridian
 - North-South through middle of state
 - Intersects with Base Line in Jackson County – Meridian Baseline State Park

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Government Survey - Definitions

- Township (1)
 - A six-square mile area of land
- Township (2)
 - A horizontal row of townships (above)
- Range
 - A vertical column of townships
- Section
 - A one-square mile area of land in a Township
 - 36 Sections in a Township

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Government Survey- How does it work

- State is laid out in a grid of 6-square mile Townships (6x6=36 square miles)
- Township are described as number North or South of Base Line
- Township are described as number East or West of Principal Meridian

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Government Survey- How does it work

- The first township northeast of Meridian Baseline State Park would be
- Township 1 North, Range 1 East
 - Town 1 North, Range 1 East
 - T1N, R1E
- Intersection of 7 Mile Road and Middlebelt Road in Livonia
 - T1S, R9E
- Where are you now? T4N, R1W, S13

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Government Survey - Definitions

- Township is 6 miles square
 - 6 Miles x 6 Miles
 - 36 square miles
- Each Section is one square mile
 - 6 Sections x 6 Sections
 - 36 Sections
- 36 Sections in a Township

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THEORETICAL
TOWNSHIP DIAGRAM
SHOWING
METHOD OF NUMBERING SECTIONS
WITH ADJOINING SECTIONS

36	31	32	33	34	35	36	31
50 Ch.	6 Miles — 480 Chains					50 Ch.	60 Ch.
1	6	5	4	3	2	1	6
12	7	8	9	10	11	12	7
13	18	17	16	15	14	13	18
24	19	20	21	22	23	24	19
25	30	29	28	27	26	25	30
36	31	32	33	34	35	36	31
1	6	5	4	3	2	1	6

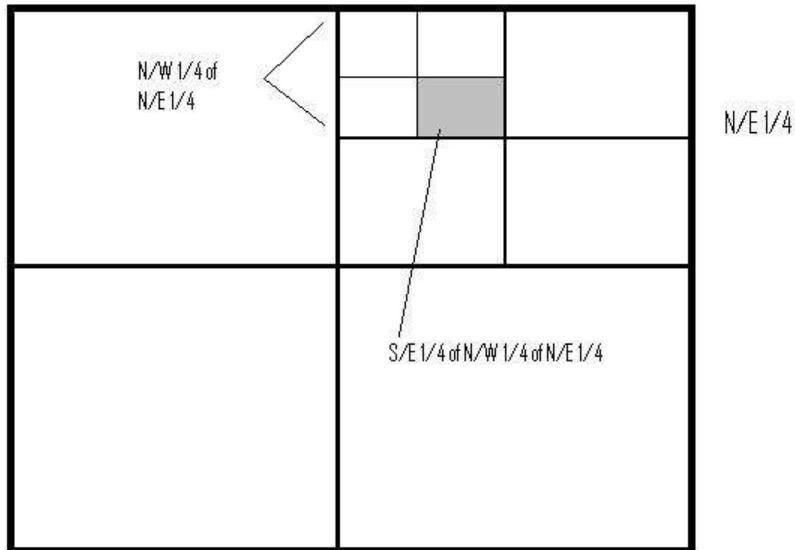
1 Mile

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Government Survey – How it works

- Property within Section then broken down by nested quarters
 - NE, NW, SE, SW quarter
 - NE, NW, SE, SW quarter
 - NE, NW, SE, SW quarter
- The easiest way to read these are backwards

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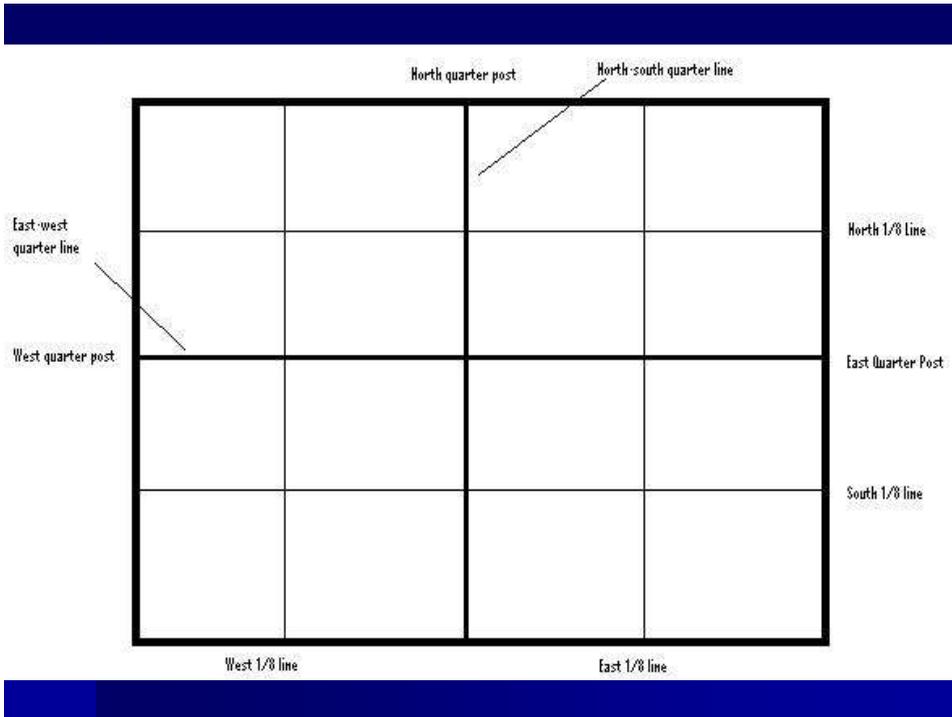


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Government Survey – How it works

- Reference points in Section
- Quarter Posts
- Quarter Lines
- 1/8 Lines

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Describing Real Property

- Primarily 3 different methods
 - Government Survey (Public Land Survey System, or PLLS)
 - Metes and Bounds
 - Platted Property

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Metes and Bounds

- Defines the perimeter of a property
- Define a starting point, then go a series of directions and distances ("calls") to trace the outline of a property

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Metes and Bounds

- Very Flexible
 - Can define a simple rectangle, triangle, curves, circles – any shape of property
- Reference Monuments
 - Man-made: Government Survey references, subdivisions, streets
 - Natural: Lakes, rivers, rocks, trees

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Metes and Bounds

- Define the point of beginning
 - Usually using the Government Survey system
 - i.e., the Northwest corner, Section 15, Town 1 South, Range 9 East
- Define direction and distance
 - Format
 - North/South, degrees of declination, East/West
 - Distance

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Metes and Bounds - Example

- To head northeast 100 feet:
 - North
 - 45 degrees of declination
 - East
 - 100 feet
- North 45 Degrees East 100 Feet

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Metes and Bounds - Degrees

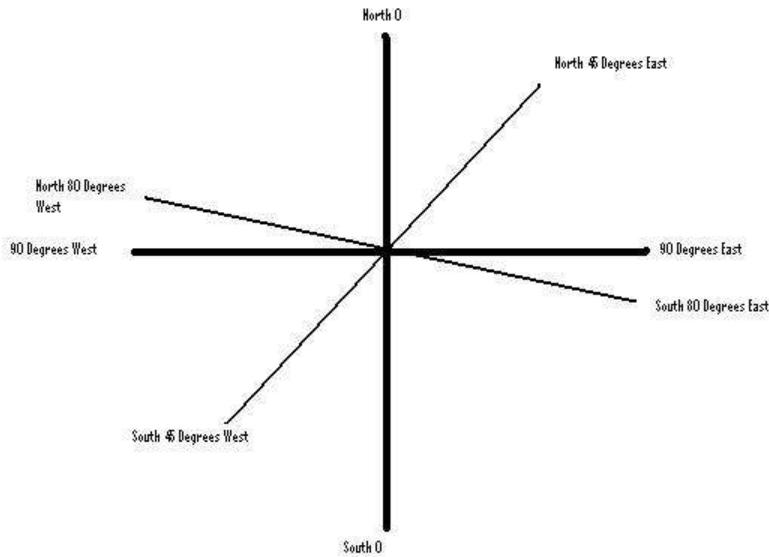
- North/South, then degrees East/West
- Therefore, can never be higher than 90 Degrees
 - Degree = °
- 60 Minutes in a Degree
 - Minute = ′
- 60 Seconds in a Minute
 - Second = ″

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Metes and Bounds

- These are all the same:
 - North 45 Degrees East 100 Feet
 - N 45 Degrees E 100 Feet
 - N 45 Degrees 0 Minutes 0 Seconds East
100 Feet
 - N45°0′0″E 100′

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Metes and Bounds - Curves

- The arc of a curve is defined using mathematical formulas, with a distance along that arc
- Beyond the scope of this presentation
- Mainly because I can't do it

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Metes and Bounds - Summary

- Can be simple – defining a simple rectangle:

Part of the Northeast 1/4 of Section 12, Town 1 North, Range 11 East, City of Madison Heights, Oakland County, Michigan, described as follows: Beginning at point of distance North 01 degrees 13 minutes 00 seconds East, 1426 feet and North 88 degrees 39 minutes 00 seconds West, 60 feet from the East 1/4 corner; thence North 88 degrees 39 minutes 00 seconds West 278.99 feet; thence North 01 degrees 13 minutes 00 seconds East, 128.50 feet; thence South 88 degrees 39 minutes 00 seconds East 278.99 feet; thence South 01 degrees 13 minutes 00 seconds West, 128.50 feet to the point of beginning.

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Metes and Bounds - Summary

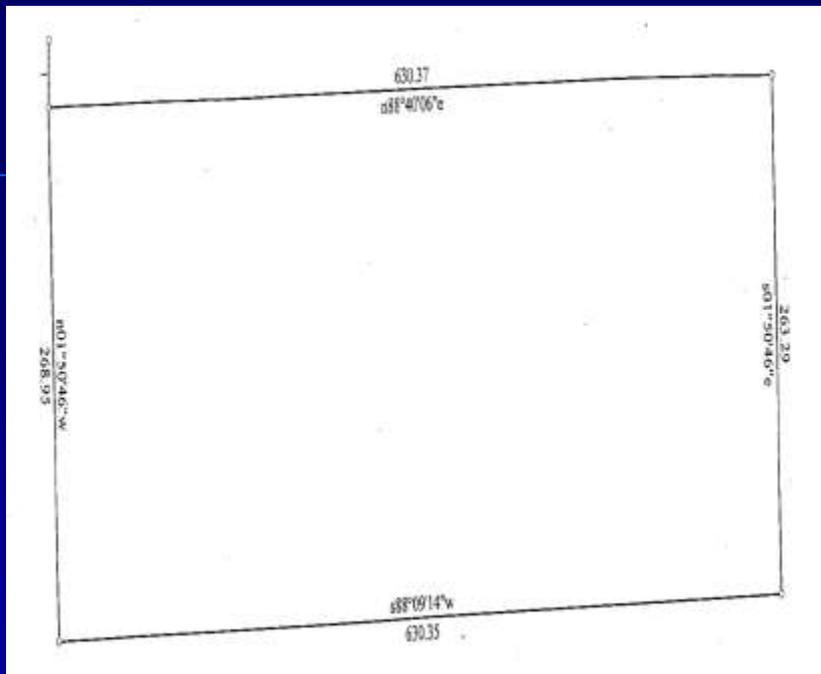
- Can be very lengthy and complex
 - Hundreds of calls
 - Curves
 - If one error is made, the description won't "close" – the perimeter or outline of the property will have a gap

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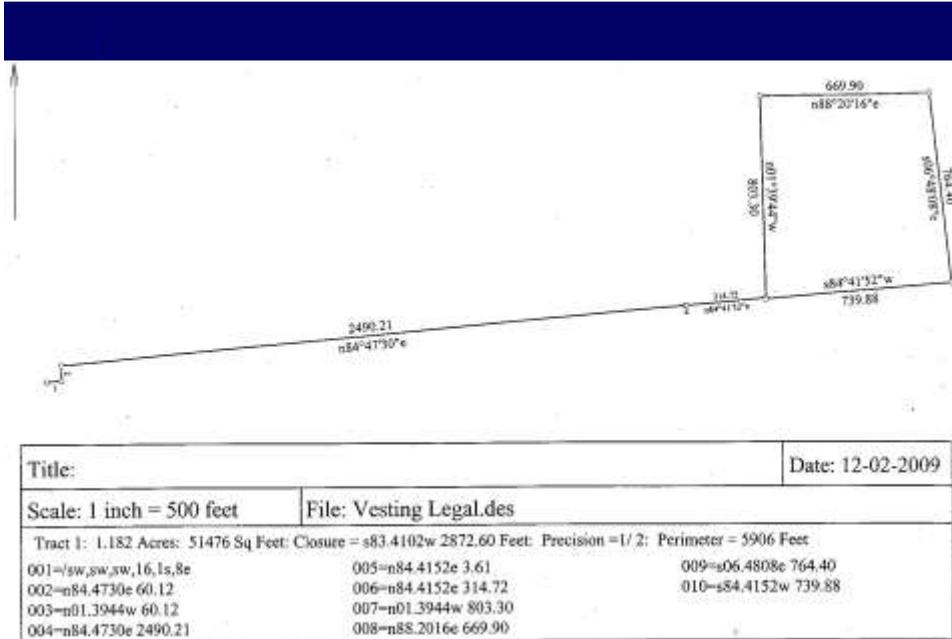
Metes and Bounds – Complex Legal

- A parcel of land in the Southeast 1/4 of Section 25, Town 1 North, Range 10 East, City of Southfield, Oakland County, Michigan. Said parcel described as beginning at a point on the North and South 1/4 line of said Section 25, North 00 degrees 18 minutes 00 seconds West 700.00 feet from the South 1/4 corner of said Section 25; thence along said 1/4 line, North 00 degrees 18 minutes 00 seconds West, 637.50 feet; thence North 89 degrees 50 minutes 42 seconds East 1298.04 feet; thence South 00 degrees 26 minutes 00 seconds East 11.32 feet to a point on the Westerly Right of Way line of Providence Drive (120.00 ft. wide); thence along said R.O.W. the following courses: South 44 degrees 34 minutes 00 seconds West, 84.84 feet and South 00 degrees 26 minutes 00 seconds East, 455.19 feet and South 53 degrees 44 minutes 16 seconds West, 252.85 feet; thence along a curve to the right, an arc distance of 189.71 ft., radius = 177.66 ft., delta = 61 degrees 10 minutes 52 seconds and whose chord bears South 84 degrees 19 minutes 42 seconds West 180.82 ft., thence North 65 degrees 4 minutes 52 seconds West 74.78 ft., thence along a curve to the left, an arc distance of 127.75 ft.; thence South 89 degrees 34 minutes 00 seconds West 663.25 feet to the Point of Beginning

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Metes and Bounds - Summary

- Really good examiners can draw out metes and bounds legal descriptions with a ruler, compass and protractor
- For the rest of us, there's software

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Metes and Bounds – A word about distances

- Often run across older terms of distance
- 25 Links = 1 Rod = 16½ Feet
- 100 Links = 4 Rods = 66 Feet = 1 Chain
- 8000 Links = 320 Rods = 80 chains = 1 Mile
- 5280 Feet = 1760 Yards = 1 Mile

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Recorded Plats

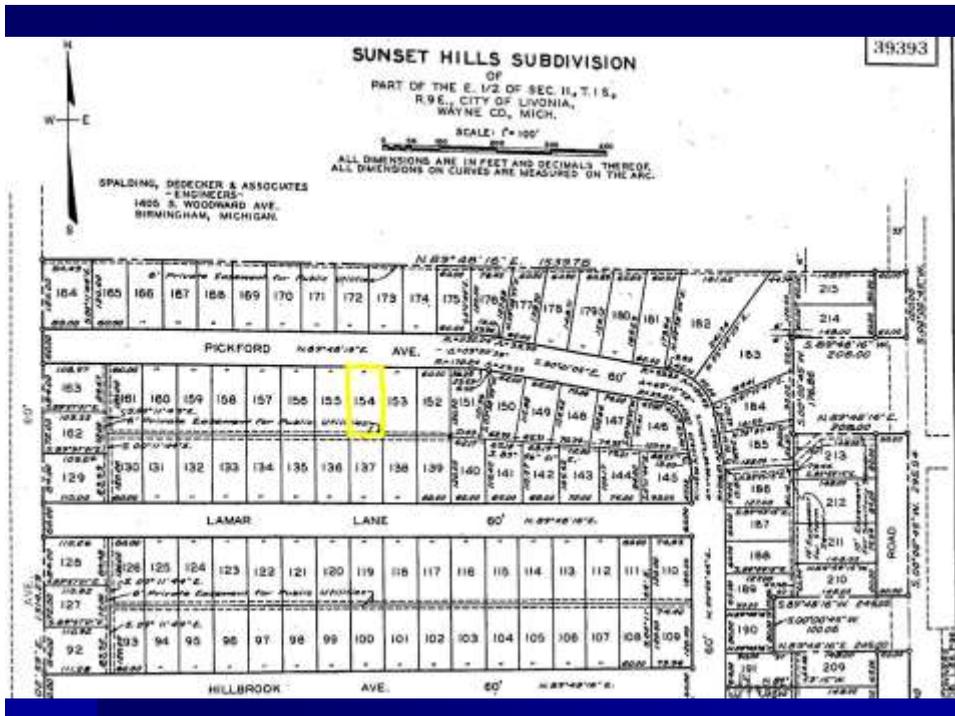
- Generally, the easiest to search
- Property is laid out in lots
- Document recorded with the lot descriptions
- From that time forward, simply refer to the lot in the recorded plat

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Recorded Plat

- Once recorded, you can reference the property based on the lot and recorded plat:
 - Lot 154, Sunset Hills Subdivision, as recorded in Liber 80, Page 68-69 of Plats, Wayne County Records

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Legal Descriptions

- These three different methods can be and often are combined
 - Starting point using Government Survey
 - Can combine platted lots and metes and bounds

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Legal Descriptions - Miscellaneous

- Private Claims
- Very old
- Original Settlements, French Farms
 - Wayne County
 - Monroe County
 - Upper Peninsula, Mackinac Island

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Surveys - Overview

- Surveys
 - Why we get one
 - What to do when you get one

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Claims Issues Property Description/Surveys

- Part of Larger Parcel
- Improvements on wrong properties
- Encroachments
- Easements, Rights of Way
- Gaps, Gores (irregular tracts between 2 adjoining descriptions) Overlaps

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Surveys

- Policies cover (Covered Risk 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

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Surveys

- But we look at land records, we don't look at the property
- We need somebody to show us what is actually there

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Surveys

- Standard Exception:
Encroachments, overlaps, boundary line disputes, and any matters which would be disclosed by an accurate survey and inspection of the property

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Surveys

- To remove the standard exception
 - Get a survey
 - Transaction must fit within underwriting guidelines which might waive the survey requirement with an approved affidavit from a knowledgeable party
 - Check with your Underwriter for guidelines

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Surveys - Types

- Mortgage Report
- Lot Survey, Boundary Survey
 - MCL 54.211 et seq. – a “PA 132 Survey”
 - Recorded when property conveyed and surveyed in to 4 parcels or less, or a greater number where 10 acres or more
- Topographic Survey
- **ALTA/ACSM Land Title Survey**

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Surveys

What to do when you get one

- Look at the certification – is this an ALTA/ACSM Land Title Survey
 - A “Mortgage Report” is not
 - Is it certified to insurer? Property owner?
- Look at the date
 - Is it current, or an older survey?

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Surveys

What to do when you get one

- **READ THE LEGAL DESCRIPTION**
 - Does it match the commitment?
 - Is there a “same as” provision?
 - i.e., multiple parcels “same as” a unified legal description
 - Does it match the tax legal description?

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Surveys

What to do when you get one

- **Use a highlighter to trace the entire boundary of the insured parcel**
 - Stop to highlight any encroachments
 - Things that cross the property lines
 - Either the surveyed property or neighbors
 - Identify any overlaps, gaps, gores, strips
 - Irregularities where properties don't line up

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Surveys

What to do when you get one

- Examine the drawing
 - Is there access?
 - Any additional encroachments, easements, rights of way, utilities, fences, parking, setback issues

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Surveys

What to do when you get one

- Examine the easements, rights of way
 - Are they all reflected on the commitment?
 - Are there any improvements which encroach on any easement?

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So what's the point?

Now that we know *types* of ownership and know how to describe *what* is owned, how do we *prove* we own it?

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Title Search and Examination

- We examine the *chain of title*
 - The government sold to A
 - A sells to B
 - B sells to C
 - C sells to D
 - Etc.
 - Until today

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Title Search and Examination

- So, do we go back to the Government (back to “patent”)?
 - Rarely

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Title Search and Examination

- 40 Year Marketable Title Act

Any person who has an unbroken chain of title of record to any interest in land for 40 years shall be considered to have a marketable record title to that interest.

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Title Search and Examination

- Determine the conveyance of the property
 - Including mortgages
 - Easements
 - Leases
 - Taxes
- To determine ownership of “all the sticks in the bundle”

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Title Search and Examination

- By law, all the records of the conveyances of property are held and indexed in the office of the Register of Deeds in each county in Michigan
- *Abstract of title* is prepared – lists of conveyances
- Abstract is then *Examined* to decide who currently owns any of the interests to the property

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The Basics of Real Estate Title

Questions

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