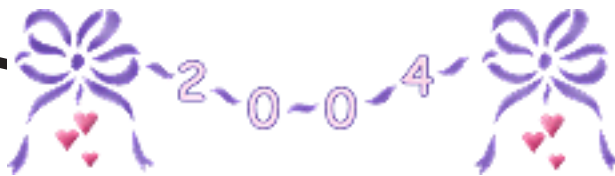


International Right of Way Association



KACHINA CHAPTER 28

Phoenix, AZ



Chapter Newsletter

www.irwaaz.com

JANUARY, 2004



Executive Board Meeting



Wednesday, January 7, 2004



Az State Land



3rd Floor Conference Room



4:45 pm

Confirm to Doug at dwm@mail.maricopa.gov

January Luncheon

When: Tuesday, January 13, 2004 @ 11:30am

Where: Doubletree Guest Suites 320 North 44th Street (NWC 44th Street/Van Buren)

Menu: The menu will be a Mexican Buffet serving Fiesta Salad, Beef Taco Station, Cheese Enchiladas, Spanish Rice, Refried Beans, Churros, Coffee, Iced Tea or Decaf
Cost: \$15 for members & guests (please have exact change or your check payable to IRWA Chapter 28)

RSVP: Please RSVP online at http://www.irwaaz.com/index_luncheon.htm or Call Pam Hicks @ 602-236-5948 or Rebekah Louis @ 602.236.8195

Course 103

Ethics and the Right-of-Way Profession
January 16, 2004, 8am - 5pm

Information on Chapter Website at:
<http://www.irwaaz.com/course103.htm>

Class Coordinator:

Heather McCook
Davis Valuation Group
430 East Southern Avenue
Tempe AZ 85282
480.968.7449 phone
480.237.0478 fax



President's Message

Doug McLaughlin, SR/WA

If I forgot to tell you at our December Luncheon,

"HAPPY NEW YEAR TO ALL OF YOU AND YOUR FAMILIES"

The holiday season has past us now; I hope you and your families and friends were able to enjoy all of the festivities of gathering together during this time of the year.

As the new President I am looking forward to working with you and all the committees that make this Chapter one of the best chapters' of the International Right of Way Association.

The future of this Chapter looks very good because of the past efforts of the membership and those committee members that contributed to make it successful.

Because of their efforts the future of the Chapter is still growing, and will continue to provide the membership with opportunities to improve themselves through educational classes, seminars and Right of Way information as to what is going on in field. Although I can look at the Chapters past as a stepping-stone to what the Chapter will become, in order for it to remain one of the best chapters it needs to have its members continue volunteering to help the different committees that make this Chapter work. Your help is always needed so come to a Board Meeting or speak to one of the committee chairs to ask them how can I help. The names and phone numbers of the committee chairs are posted on our web site. Give one or more of them a call "ask how can I help". Looking forward to seeing you at any of our board meetings, luncheons, or any other functions that are put on through out the year by the Chapter.

THOUGHT FOR THE DAY

"True love is neither physical, nor romantic. True love is an acceptance of all that is, has been, will be, and will not be."

Membership Committee

Rebekah Louis, Chair

The following people were read for 30 day consideration at the December 3rd Executive Board Meeting:

- Brad Stoelk
- Patrick Murphy, Department of the Interior

For Membership information, please refer to the Chapter website or contact our new Membership Chair, Heather McCook at heather@davisvaluation.com.

Adopt a Family Project

Melita Hillman, SR/WA

Thanksgiving Adopt a Family

We received cards from the three families for whom we provided Thanksgiving meals.

From Sharonda, Enroni and Aaron: We would like to thank you for giving us a Happy Thanksgiving. And we hope you enjoy your Thanksgiving as well. :)

From Dee Dee: Thank you so much for all the help you've given to my children and I. We appreciate everything that Save the Family has done for us. THANK YOU.

From the Seamster Family: Thank you and best wishes to you and your family during the holiday season.

Christmas Adopt a Family

Thank you again for your generosity in helping Chapter 28 adopt a family for Christmas. We were assigned Dee Dee and her four children. In addition to the fixings for the Christmas meal, we are providing gifts from the "wish list" for the 4 children. They will also have new sheets, blanket and towels at home and Dee Dee will have new scrubs for work. Finally, the additional funds will be used to purchase gift certificates that can be used over the next few months for a variety of items at Target and Fry's.

I have enjoyed the opportunity to shop for the families and thank you for your support and generosity for this community project. IRWA Chapter 28 does give back to the communities in which we live.

**HAPPY NEW YEAR
2004**

Education Committee

Dan Kovochich, SR/WA, Chair

Seasons Greetings Chapter 28!

The long awaited (tentative) Chapter 28 Course schedule for 2004, 2005 & 2006 will be posted in the education section of the website. Hard dates, times and greater details will follow soon in January.

Thank you to everyone who responded with suggestions of courses. Please note that I will continue to update and add to our list of courses as we go along. If you don't see your favorite course posted yet, be patient. Likewise, a tentative 2007 schedule will be posted sometime in October of 2004. Please note that Chapter 28 is presenting all the core classes (100, 200, 400, 800, 900, 103 & 104) in a three (3) year period of time. The courses are presented in the order they are based upon the following criteria:

1. Presenting all required core courses within a (3) year period of time
2. Your indication of interest
3. Courses that have not been available recently

Many of you have indicated you wish to see more Relocation Assistance courses. Look for additions to the list in January.

As you may know, the Education program structure is going through many upgrades and improvements at the National level. Chapter 28 will learn more about this early in 2004 and will report back accordingly. Please email me at djkovoch@srpnet.com with any questions you have.

IRWA CHAPTER 28 COURSE SCHEDULE for 2004 - 2006

2004 (9)	2005 (8)	2006 (8)
103 or 104	100	104
200	212	213
400	302	303
500	402	401
600	501	502
700	802	602
800	902	703
900	H005	901
Review course		

Other classes of interest:

211	300	503	603
214	403	504	801
		505	803
		506	

Note core courses are: 100,200,400,800,900,103,104—we will have presented all the core course in a three year period of time. (2) 1-day classes each year will be held at annual seminar.



SURVEYOR'S CORNER

Gregg Tuttle, Survey Chair

The Question: Gregg, Who can write a 'legal-description' in Arizona?

Is it true that in some states only attorneys can write 'legals'? While in other states only a Registered Land Surveyor can draft the written perimeter description? Well, as always, another interesting question.

I will not get into what any other states allow, either for attorneys or surveyors.

I will attempt to focus only on Arizona. So, perhaps, a more concise question might be...

- "IN ARIZONA, WHO CAN WRITE A LEGAL DESCRIPTION?"

It has been previously noted, (in various venues of communication in the Arizona professional surveying community), that Article XXVI, of the Arizona State Constitution, *allegedly*, has been interpreted such as to allow *anyone* in Arizona to write a land description.

Article 26 is entitled: "RIGHT OF LICENSED REAL ESTATE BROKERS AND SALESMEN TO PREPARE INSTRUMENTS INCIDENT TO PROPERTY TRANSACTIONS" (It states:)

"Section 1. Any person holding a valid license as a real estate broker or a real estate salesman regularly issued by the Arizona State Real Estate Department when acting in such capacity as broker or salesman for the parties, or agent for one of the parties to a sale, exchange, or trade, or the renting and leasing of property, shall have the right to draft or fill out and complete, without charge, any and all instruments incident thereto including, but not limited to, preliminary purchase agreements and earnest money receipts, deeds, mortgages, leases, assignments, releases, contracts for sale of realty, and bills of sale. "

Interpretative Annotations:

And, here, paraphrasing, from the WEST Publishing book "Arizona Constitution 2000" - in their annotations, about this Constitutional amendment: Article 26 was the product of a struggle between the organized bar and real estate brokers.

In 1961 the Supreme Court held that title company employees filling in the blanks on standards form contracts for the purchase of real estate were engaged in the unauthorized practice of law (State Bar of Arizona v. Arizona Land Title & Trust Co.).

A year after this decision, the Arizona voters approved an initiative, spearheaded by the real estate industry, to overturn it, by adding this article, (XXVI). Although neither attorneys nor real estate brokers seem to be held in particularly high public esteem, the latter clearly won this test in the court of public opinion because the vote on the amendment was better than three to one in favor.

Article 26 gives the real estate broad power to draft and complete instruments incident to a sale, lease or exchange of property, although it does prohibit charging for this service.

The Arizona courts have held that with this power comes "the responsibility and duty" to protect the consumer by "explaining... the implications" of the documents (Morley v. J. Pagel Realty & Ins.).

This decision was later held not to create a duty on the part of the real estate broker representing the seller to advise the purchaser (Haldiman v. Gosnell Dev. Corp.).

A commentator has noted the emergence, out of this amendment and subsequent court decisions, of a doctrine of real estate broker malpractice.

"After-Thoughts" about Article 26:

Nowhere in Article 26, or the annotated notes, does it discuss, (directly), the writing of property boundary descriptions.

It does contain the phrase: "... all instruments incident thereto including, but not limited to, preliminary purchase agreements and earnest money receipts, DEEDS, mortgages, leases, assignments, releases, contracts for sale of realty and bills of sales." (EMPHASIS added.)

So we can be assured that real estates brokers, or real estate salespersons, (each holding valid licenses), have the RIGHT to DRAFT, or fill out and COMPLETE, "all instruments."

Apparently all AZ attorneys have the same "rights" (versus privileges) to create such 'instruments' - which would, by inference, include written property boundary descriptions, - as part of their officially sanctioned duties and responsibilities.

Arizona's Professional, Registered Surveyors, and Written Land Descriptions:

So were does the professional, registered surveyor receive the authority to create the written property boundary descriptions?

See: ARS 32-101.25. "Land surveying practice" means the performance of one or more of the following:"

"(a) Measurement of land to determine the position of any monument or reference point which marks a property line, boundary or corner for the purpose of determining the area or DESCRIPTION of the land." (EMPHASIS added.)

Then, this statute is officially interpreted and explained further in the Arizona Administrative Code, (AAC), (i.e., the "RULES"), Under Title 4 (Professions and Occupations), Chapter 30 (Board of Technical Registration), includes the following:

R4-30-301.14:

14. To the extent applicable to the professional engagement, a registrant shall conduct a land survey engagement in accordance with the April 12, 2001 Arizona Professional Lands Surveyors Association (APLS) Arizona Boundary Survey Minimum Standards, as adopted by the Board on June 15, 2001, the provisions of which are incorporated in this subsection by reference and on file with the Office of the Secretary of State. This incorporation by reference does not include any later amendments or editions

continued on next page...

From that REFERENCE in R4-30-301.14 the current Arizona Boundary Survey Minimum Standards gives the following, (at Section 14):

14. When created by a land surveyor, a written property description of a surveyed tract of land must provide information to properly locate the property and distinctly set it apart from all other property.
When the surveyed property's dimensions, boundaries and area are in substantial agreement with an existing recorded written description, then that existing recorded description shall be used. For new descriptions, the following items and format apply:
- A. The description shall contain, where applicable, a caption, a body, and qualifying clauses.
 - B. A metes, a bounds, or a metes and bounds description of an existing aliquot description, is as an additional description of the existing, precedent aliquot description, and shall be so noted as such.
 - C. Every Public Land Survey System aliquot description shall contain the applicable county, meridian, township, range and sectional information.
 - D. Every platted subdivision lot description shall contain the lot, block, unit, (if applicable), name of the subdivision, city, (if applicable), county, and recorder's document number.
 - E. Every written property line boundary description shall contain the applicable portions of the following:
 - 1. The first part, called the caption, shall contain the applicable information from 14.C and or 14.D.
 - 2. The second part, called the body, shall contain all of the following attributes that apply:
 - a. A clearly stated basis of bearings, referencing two controlling monuments, which were physically existing at the time the property was surveyed.
 - b. All controlling monuments, noting their physical description, and whether found, set or replaced.
 - c. Sufficient data to enable a mathematical verification of the property being inscribed by the body of the description.
 - d. Where described, curved property boundaries shall contain sufficient information to allow verification of the data by mathematical analysis. Curves are presumed to be circular, tangent curve, all other non-tangent, and/of non-circular curves must be so noted in the description.
 - F. Inclusion of complete citations to maps, plats, documents, and other matters of record, which are to be incorporated into and made a part of the description by reference thereto.
 - G. The description shall be sealed with the surveyors Arizona RLS stamp, with signature and date.

So, now, we can see that at least attorneys, real estate professionals, and, professional registered surveyors, are, (by either the Constitution, or, state statute), given authority to draft at least the property boundary description and other items of 'land descriptions', (aka: "legal descriptions" or "legals".)

However, only ONE group, of professionals, is held to higher, and stricter, interpretation of how to create and author the written land description. That is an Arizona professional, registered land surveyors, under the requirements of Section 14 of the ARIZONA BOUNDARY SURVEY, Minimum Standards. As such, AZ/RLSs are held to a MUCH more restrictive standard. (Apparently, other groups do not have such stringent requirements, and at best only have generally 'guidelines'.)

And, it should be noted that some AZ political subdivisions (i.e., counties and municipal entities, among others), can, (and do), have stricter requirements about can author and submit written property boundary (i.e. 'land') descriptions.

So, some additional questions before ending this article:

Do "others" (other than attorneys, realty professionals, and AZ/RLSs) - write land descriptions? YES!
Where do those people get their authority to do so ? ? ? Article 26 ? ? Hmmm!

To whom would one complaint about a 'substandard' description written by "others" ?

Can any governmental regulatory agency take actions against writers of land descriptions who are not one of three professions cited above?

So, who do you want to draft your written land descriptions?

Some attorney, or realty person, who may, or may not, have specific training, and special experience, DIRECTLY related to the creation of quality land descriptions? Or. Do you want some one who is directly tested on this ability, as a part of the professional surveying licensing process?

As always, I am interested in the opinions of, and the feedback from the readers of the Kachina Chapter 28 Newsletter.

2004 Chapter Executive Board

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