

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 375*

Short Title: Real Prop./Error Correction & Title Curative. (Public)

Sponsors: Representatives Jordan, Bryan, and Stevens (Primary Sponsors).
For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary II, if favorable, Appropriations.

March 30, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE PROCEDURES FOR CORRECTING TYPOGRAPHICAL,
3 OBVIOUS DESCRIPTION, OR OTHER MINOR ERRORS IN RECORDED
4 INSTRUMENTS AND TO CREATE A TEN-YEAR CURATIVE PROVISION FOR
5 CERTAIN DEFECTS IN RECORDED INSTRUMENTS.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 47-36.1 is repealed.

8 **SECTION 2.** Article 2 of Chapter 47 of the General Statutes is amended by adding
9 a new subsection to read:

10 "**§ 47-36.2. Correction of errors in recorded instruments.**

11 (a) The following definitions apply to this section, unless the context requires a
12 different meaning:

13 (1) Attorney. – A person licensed to practice law under Chapter 84 of the
14 General Statutes.

15 (2) Corrective affidavit. – An affidavit executed by an attorney to correct an
16 obvious description error, typographical error, or other minor error in a deed,
17 deed of trust, or other instrument recorded with the register of deeds.

18 (3) Obvious description error. – An error in the legal description of real property
19 that is contained in a recorded deed, deed of trust, mortgage, or other
20 conveyance that is evidenced by any of the following:

21 a. The subject parcel is properly identified and shown on a recorded
22 subdivision plat.

23 b. The error is made apparent by reference to other information
24 contained in the instrument or an attachment to the instrument, or by
25 reference to another instrument in the chain of title for the subject
26 parcel.

27 c. The instrument contains the correct address or tax map identification
28 number for the subject parcel.

29 d. The instrument contains one or more errors transcribing courses and
30 distances, including the omission of one or more lines of courses and
31 distances or the omission of angles and compass directions.

32 e. The instrument contains an erroneous incorporation of an incorrect
33 plat or deed reference.

34 f. The instrument contains an error in a lot number or designation.



1 g. The instrument omits an exhibit or attachment intended to supply the
2 legal description of the subject property.

3 The term does not include missing or improper signatures or
4 acknowledgements, or any designation of the type of ownership interest or
5 right of survivorship.

6 (4) Recorded subdivision plat. – A plat that has been prepared by a registered
7 land surveyor licensed pursuant to Chapter 89C of the General Statutes and
8 has been recorded with the register of deeds in the county where the property
9 is situated.

10 (5) Title insurance company. – A company certified pursuant to Article 26 of
11 Chapter 58 of the General Statutes that has issued a policy of title insurance
12 covering a conveyance needing correction.

13 (b) Notwithstanding G.S. 47-14 and G.S. 47-17, obvious description errors or
14 typographical or other minor errors in a recorded deed, deed of trust, or other instrument
15 purporting to convey or transfer an interest in real property may be corrected by recording a
16 corrective affidavit with the register of deeds in every county where the real property is
17 situated; provided that no correction of an obvious description error shall be inconsistent with
18 the description of the property in any recorded subdivision plat.

19 (c) Prior to recording a corrective affidavit as described in subsection (b) of this section,
20 the attorney seeking to record the affidavit shall deliver a notice and copy of the affidavit to the
21 last known address for all of the persons listed in this subsection.

22 The notice and copy of the corrective affidavit shall be delivered by personal service or sent
23 by certified mail, return receipt requested. The attorney may rely on the last known address as
24 contained in (i) the instrument needing correction, (ii) any recorded instruments relating to the
25 transaction involving the instrument needing correction, (iii) any forwarding address
26 information provided to the attorney, or (iv) any other source that can establish a current
27 address with reasonable certainty.

28 If a county or a municipality is a party to the instrument needing correction, the notice and
29 copy of the corrective affidavit shall be sent to the attorney for the county or municipality, or to
30 the manager of the county or municipality. If the State is a party to the instrument needing
31 correction, the notice and copy of the corrective affidavit shall be sent to the Attorney General
32 and to the director, chief executive officer, or head of the state agency, department, or entity in
33 possession of the subject property.

34 The persons entitled to notice and a copy of the corrective affidavit pursuant to this section
35 are as follows:

36 (1) All parties to the deed, deed of trust, or other instrument being corrected.

37 (2) The current record owner of the real property at the property address and any
38 other address reflected in the tax records of the county where the property is
39 situated.

40 (3) The attorney who prepared the deed, deed of trust, or other instrument being
41 corrected, if known.

42 (4) Any title insurer who has issued a policy covering the subject property, if
43 known.

44 (5) All adjoining parcel owners affected by the correction of an error of the type
45 described in sub-subdivision d. of subdivision (3) of subsection (a) of this
46 section.

47 (d) If, after 30 days of receipt of the notice described in subsection (c) of this section,
48 no written objection to the recordation of the corrective affidavit or dispute of the facts recited
49 in the affidavit has been received, the attorney may record the corrective affidavit and all
50 parties to the instrument being corrected shall be bound by the terms contained in the affidavit.
51 The corrective affidavit shall be notarized and shall contain (i) a statement that no objection

1 was received from any party entitled to notice, (ii) a copy of the notice sent to the parties, and
2 (iii) the attorney's North Carolina State Bar number.

3 (e) A corrective affidavit that is recorded pursuant to this section shall operate as a
4 correction of the deed, deed of trust, or other instrument and relates back to the date of the
5 original recordation of the deed, deed of trust, or other instrument as if the deed, deed of trust,
6 or other instrument was correct when first recorded. A title insurance company, upon request,
7 shall issue an endorsement to reflect the corrections made by the corrective affidavit and shall
8 deliver a copy of the endorsement to all parties to the title policy that can be located.

9 (f) The register of deeds shall record the corrective affidavit in the deed book and index
10 the affidavit in the names of parties to the deed, deed of trust, or other instrument as grantees
11 and grantors, irrespective of their designation in the deed, deed of trust, or other instrument
12 needing correction. The costs associated with the recording of a corrective affidavit pursuant to
13 this section shall be paid by the party submitting the affidavit to the register of deeds. An
14 affidavit recorded in compliance with this section shall be prima facie evidence of the facts
15 stated therein. Any person who wrongfully or erroneously records a corrective affidavit is liable
16 for actual damages sustained by any party as a result of the recordation, including reasonable
17 attorney fees and costs.

18 (g) The remedies prescribed by this section are not exclusive and do not abrogate any
19 rights or remedies available under the laws of this State.

20 (h) A corrective affidavit made pursuant to this section shall be in substantially the
21 following form:

22 "Corrective Affidavit

23
24 This Affidavit, prepared pursuant to § 47-36.1 of the North Carolina General Statutes, shall
25 be indexed in the names of _____ (grantor) and
26 _____ (grantee), whose addresses are
27 _____ . The undersigned
28 affiant, being first duly sworn, deposes and states as follows:

29
30 1. That the affiant is a North Carolina attorney, North Carolina State Bar
31 No. _____.

32
33 2. That the deed, deed of trust, or other instrument needing correction was made in
34 connection with a real estate transaction in which _____ conveyed real
35 property to _____, as shown in a deed recorded in the Register of
36 Deeds of _____ County, on _____ and in Book _____, Page _____.

37
38 3. That the property description in the aforementioned deed, deed of trust, or other
39 instrument contains an obvious description error or typographical or other minor error.

40
41 4. That the property description (if any) containing the obvious error reads: _____

42
43 5. That the correct property description should read: _____

44
45 6. That this affidavit is given pursuant to § 47-36.1 of the North Carolina General Statutes
46 to correct the property description in the aforementioned deed, deed of trust, or other
47 instrument and such description shall be as stated in paragraph 5 above upon recordation of this
48 affidavit with the Register of Deeds of _____ County.

49
50 7. That the typographical or other minor error (if any) is described as
51 follows: _____.

8. That the typographical or other minor error (if any) should be corrected to read as follows:

9. That this affidavit is given pursuant to § 47-36.1 of the North Carolina General Statutes to correct the property description in the aforementioned deed, deed of trust, or other instrument and such description shall be as stated in paragraph 8 above upon recordation of this affidavit with the Register of Deeds of _____ County.

10. That notice of the intent to record this corrective affidavit and a copy of this affidavit was delivered to all parties to the deed, deed of trust, or other instrument being corrected pursuant to § 47-36.1 of the North Carolina General Statutes and that no objection to the recordation of this affidavit was received within the applicable period of time as set forth in § 47-36.1 of the North Carolina General Statutes.

(Name of attorney)

(Signature of attorney)

(Address of attorney)

(Telephone number of attorney)

The foregoing affidavit was acknowledged before me this _____ day of _____, 20____, by _____

(Notary Public)

My commission expires: _____"

(i) Notice of a corrective affidavit made pursuant to this section shall be in substantially the following form:

"Notice of Intent to Correct an Obvious Description Error

Notice is hereby given to you concerning the deed, deed of trust, or other instrument described in the corrective affidavit, a copy of which is attached to this notice as follows:

1. The attorney identified below has discovered or has been advised of an obvious description error in the deed, deed of trust, or other instrument recorded as part of a real estate settlement. The error is described in the attached affidavit.

2. The undersigned will record the affidavit with the Register of Deeds of _____ County to correct the error described in the affidavit unless the undersigned receives a written objection disputing the facts recited in the affidavit or objecting to the recordation of the affidavit. Your objections must be sent within 30 days of receipt of this notice the following address:

(Name of attorney)

(Signature of attorney)

(Address of attorney)

(Telephone number of attorney)"

16 (m) If an affidavit is conspicuously identified as a corrective affidavit in its title, the
17 register of deeds shall index the name of the affiant, the names of the original parties in the
18 instrument, the recording information of the instrument being corrected, and the original parties
19 as they are named in the affidavit. A copy of the previously recorded instrument to which the
20 affidavit applies may be attached to the affidavit and need not be a certified copy.

21 (n) Nothing in this section requires that an affidavit be attached to an original or
22 certified copy of a previously recorded instrument that is unchanged but rerecorded. Nothing in
23 this section requires that an affidavit be attached to a previously recorded instrument with a
24 copy of a previously recorded instrument that includes identified corrections or an original
25 execution by a party or parties of the corrected instrument after the original recording with
26 proof or acknowledgment of their execution of the correction of the instrument.

27 (o) If a corrective affidavit is solely made by a notary public in order to correct a
28 notarial certificate made by that notary public that was attached to an instrument already
29 recorded with the register of deeds, the notary public shall complete the corrective affidavit
30 identifying the correction and may attach a new acknowledgment completed as of the date the
31 original acknowledgment took place, which shall be deemed attached to the original recording,
32 and the instrument's priority shall remain the date and time originally recorded."

33 **SECTION 2.** Article 4 of Chapter 47 of the General Statutes is amended by adding
34 a new subsection to read:

35 **"§ 47-108.27. Ten year curative statute.**

36 (a) If an instrument conveying or purporting to convey an interest in real property
37 contains a material defect, irregularity, or omission is recorded by the register of deeds in the
38 county where the property is situated and the defect, irregularity, or omission is not corrected
39 before a period of 10 years has elapsed since the instrument was recorded, then the instrument
40 shall be deemed effective for all purposes and to the same extent as though the instrument had
41 not contained the defect, irregularity, or omission. The proper recordation and indexing of a
42 corrective instrument or a notice of lis pendens shall act as a toll to the 10-year curative period.

43 (b) For the purposes of this section, a "material defect, irregularity, or omission" occurs
44 when the recorded instrument facially fails to comply with any of the following:

- 45 (1) The proper execution of a form of acknowledgment as provided under
46 Article 3 of Chapter 47 of the General Statutes.
- 47 (2) The proper execution of a corporate conveyance as provided under
48 G.S. 47-41.01.
- 49 (3) The proper affixation of a seal by a sheriff, commissioner, receiver,
50 executor, executrix, administrator, administratrix, or other officer authorized

1 to execute an instrument by virtue of an office or appointment held by the
2 grantor.
3 (c) Nothing in this section is intended to modify any provisions of law pertaining to the
4 competency or infancy of the grantor or the provisions of Chapter 22 of the General Statutes, or
5 to limit any remedies available under the laws of this State."

6 **SECTION 3.** This act becomes effective October 1, 2015, and applies to corrective
7 affidavits filed on or after that date.