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SENATE DRS25159-MQ-45 (03/05)

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

Sponsors: Senator Daniel (Primary Sponsor).

Referred to:

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7 **SECTION 1.** G.S. 47-36.1 is repealed.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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

45 (d) If, after 30 days of receipt of the notice described in subsection (c) of this section,
46 no written objection to the recordation of the corrective affidavit or dispute of the facts recited
47 in the affidavit has been received, the attorney may record the corrective affidavit and all
48 parties to the instrument being corrected shall be bound by the terms contained in the affidavit.
49 The corrective affidavit shall be notarized and shall contain (i) a statement that no objection
50 was received from any party entitled to notice, (ii) a copy of the notice sent to the parties, and
51 (iii) the attorney's North Carolina State Bar number.

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

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

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

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

"Corrective Affidavit

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

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

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

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

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

5. That the correct property description should read: _____

6. 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 5 above upon recordation of this affidavit with the Register of Deeds of _____ County.

7. That the typographical or other minor error (if any) is described as 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)"

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

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

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

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

"§ 47-108.27. Ten year curative statute.

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

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

- (1) The proper execution of a form of acknowledgment as provided under Article 3 of Chapter 47 of the General Statutes.
- (2) The proper execution of a corporate conveyance as provided under G.S. 47-41.01.
- (3) The proper affixation of a seal by a sheriff, commissioner, receiver, executor, executrix, administrator, administratrix, or other officer authorized to execute an instrument by virtue of an office or appointment held by the grantor.

1 (c) Nothing in this section is intended to modify any provisions of law pertaining to the
2 competency or infancy of the grantor or the provisions of Chapter 22 of the General Statutes, or
3 to limit any remedies available under the laws of this State."

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