

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 375*
Committee Substitute Favorable 4/27/15

Short Title: Real Prop./Error Correction & Title Curative.

(Public)

Sponsors:

Referred to:

March 30, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THE PROCESS FOR CORRECTING NONMATERIAL ERRORS
3 IN RECORDED INSTRUMENTS OF TITLE; TO CREATE A CURATIVE
4 PROCEDURE FOR OBVIOUS DESCRIPTION ERRORS IN DOCUMENTS OF TITLE;
5 AND TO CREATE A TEN-YEAR CURATIVE PROVISION FOR CERTAIN DEFECTS
6 IN RECORDED INSTRUMENTS OF TITLE.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 47-36.1 reads as rewritten:

9 "**§ 47-36.1. Correction of obvious description errors in recorded ~~instruments.~~instruments**
10 **of title.**

11 (a) Notwithstanding G.S. 47-14 and G.S. 47-17, notice of a nonmaterial typographical
12 or other minor nonmaterial error in a deed or other instrument recorded with the register of
13 deeds may be given by recording ~~an~~ a corrective affidavit. If ~~an~~ a corrective affidavit is
14 conspicuously identified as a corrective ~~or scrivener's~~ affidavit in its title, the register of deeds
15 shall index the name of the affiant, the names of the original parties in the instrument, the
16 recording information of the instrument being corrected, and the original parties as they are
17 named in the affidavit. A copy of the previously recorded instrument to which the affidavit
18 applies may be attached to the affidavit and need not be a certified copy. To the extent the
19 correction is inconsistent with the originally recorded instrument, and only to that extent, notice
20 of the corrective information as provided by the affiant in the corrective affidavit is deemed to
21 have been given as of the time the corrective affidavit is registered. Nothing in this section
22 invalidates or otherwise alters the legal effect of any instrument of correction authorized by
23 statute in effect on the date the instrument was registered.

24 (a1) A corrective affidavit authorized by this section shall not be used to correct an
25 obvious description error as defined in G.S. 47-36.2.

26"

27 **SECTION 2.** Article 2 of Chapter 47 of the General Statutes is amended by adding
28 a new section to read:

29 "**§ 47-36.2. Correction of errors in recorded instruments.**

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

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

34 (2) Curative affidavit. – An affidavit executed by an attorney to correct an
35 obvious description error in a deed, deed of trust, or other instrument
36 recorded with the register of deeds.



- 1 (3) Obvious description error. – An error in the legal description of real property
2 that is contained in a recorded deed, deed of trust, mortgage, or other
3 conveyance that is evidenced by any of the following:
4 a. The subject parcel is properly identified and shown on a recorded
5 plat.
6 b. The error is made apparent by reference to other information
7 contained in the instrument or an attachment to the instrument, or by
8 reference to another instrument in the chain of title for the subject
9 parcel, including the recorded plat.
10 c. The instrument contains the correct address or tax map identification
11 number for the subject parcel.
12 d. The instrument contains one or more errors transcribing courses and
13 distances, including the omission of one or more lines of courses and
14 distances or the omission of angles and compass directions.
15 e. The instrument contains an erroneous incorporation of an incorrect
16 plat or deed reference.
17 f. The instrument contains an error in a lot or unit number or
18 designation.
19 g. The instrument omits an exhibit or attachment intended to supply the
20 legal description of the subject property.

21 The term does not include missing or improper signatures or
22 acknowledgements or any designation of the type of ownership interest or
23 right of survivorship.

- 24 (4) Recorded plat. – A plat that has been prepared by a registered land surveyor
25 licensed pursuant to Chapter 89C of the General Statutes and has been
26 recorded with the register of deeds in the county where the property is
27 situated.
28 (5) Title insurance agent. – A person or entity licensed by the Commissioner of
29 Insurance and contractually authorized by one or more title insurance
30 companies to issue commitments and policies on behalf of said title
31 insurance company.
32 (6) Title insurance company. – A company certified pursuant to Article 26 of
33 Chapter 58 of the General Statutes that has issued a policy of title insurance
34 covering a conveyance needing correction.

35 (b) Notwithstanding G.S. 47-14 and G.S. 47-17, obvious description errors in a
36 recorded deed, deed of trust, or other instrument purporting to convey or transfer an interest in
37 real property may be corrected by recording a curative affidavit containing the attorney's North
38 Carolina State Bar number with the register of deeds in every county where the real property is
39 situated, provided that no correction of an obvious description error shall be inconsistent with
40 the description of the property in any recorded plat.

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

44 The notice and copy of the curative affidavit shall be made in any manner provided by the
45 Rules of Civil Procedure for service of summons, including delivered by personal service or
46 sent by registered mail or by certified mail, return receipt requested. The attorney may rely on
47 the last known address as contained in (i) the instrument needing correction, (ii) any recorded
48 instruments relating to the transaction involving the instrument needing correction, (iii) any
49 forwarding address information provided to the attorney, or (iv) any other source that can
50 establish a current address with reasonable certainty.

1 If a county or a municipality is a party to the instrument needing correction, the notice and
2 copy of the curative affidavit shall be sent to the attorney for the county or municipality or to
3 the manager of the county or municipality. If the State is a party to the instrument needing
4 correction, the notice and copy of the curative affidavit shall be sent to the Attorney General
5 and to the director, chief executive officer, or head of the State agency, department, or entity in
6 possession of the subject property.

7 The persons entitled to notice and a copy of the curative affidavit pursuant to this section
8 are as follows:

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

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

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

15 (4) Any title insurance company and title insurance agent, if applicable, who has
16 issued a policy covering the subject property, if known.

17 (5) All adjoining record parcel owners, record holders of any mineral or timber
18 rights, or record easement holders affected by the correction of an error of
19 the type described in sub-subdivision d. of subdivision (3) of subsection (a)
20 of this section.

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

28 (e) A curative affidavit that is recorded pursuant to this section shall operate as a
29 correction of the deed, deed of trust, or other instrument and relates back to the date of the
30 original recordation of the deed, deed of trust, or other instrument as if the deed, deed of trust,
31 or other instrument was correct when first recorded. A title insurance company, upon request,
32 and receipt of the written opinion of the attorney who filed the curative affidavit that the
33 curative affidavit complies with this statute may issue an endorsement to reflect the corrections
34 made by the curative affidavit and shall deliver a copy of the endorsement to all parties to the
35 title policy that can be located.

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

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

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

49 "Curative Affidavit
50

This Affidavit, prepared pursuant to § 47-36.2 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.

4. That the property description (if any) containing the obvious description 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 notice of the intent to record this curative affidavit and a copy of this affidavit was delivered to all parties to the deed, deed of trust, or other instrument being corrected or otherwise required to be noticed pursuant to § 47-36.2 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)

(North Carolina State Bar Number)

(Address of attorney)

(Telephone number of attorney)

1 The foregoing affidavit was acknowledged before me this _____ day of _____, 20__.

2 by _____

3 (Notary Public)

4 My commission expires: _____"

5
6
7 (i) Notice of a curative affidavit made pursuant to this section shall be in substantially
8 the following form:

9 "Notice of Intent to Correct an Obvious Description Error

10
11 Notice is hereby given to you concerning the deed, deed of trust, or other instrument
12 described in the curative affidavit, a copy of which is attached to this notice as follows:

13
14 1. The attorney identified below has discovered or has been advised of an obvious
15 description error in the deed, deed of trust, or other instrument recorded as part of a real estate
16 settlement. The error is described in the attached affidavit.

17
18 2. The undersigned will record the affidavit with the Register of Deeds of _____ County
19 to correct the error described in the affidavit unless the undersigned receives a written objection
20 disputing the facts recited in the affidavit or objecting to the recordation of the affidavit. Your
21 objections must be sent within 30 days of receipt of this notice the following address:

22 _____
23 _____
24 _____

25
26
27 (Name of attorney)

28
29
30 (Signature of attorney)

31
32
33 (North Carolina State Bar Number

34
35
36 (Address of attorney)

37
38
39 (Telephone number of attorney)"

40
41 (m) If an affidavit is conspicuously identified as a curative affidavit in its title and
42 contains the North Carolina State Bar number of the attorney affiant, the register of deeds shall
43 index the name of the affiant, the names of the original parties in the instrument, the recording
44 information of the instrument being corrected, and the original parties as they are named in the
45 affidavit. A copy of the previously recorded instrument to which the affidavit applies may be
46 attached to the affidavit and need not be a certified copy. The register of deeds may rely upon
47 the curative affidavit containing the North Carolina State Bar number of the attorney affiant
48 and is not responsible for confirming that the attorney affiant is licensed to practice law under
49 Chapter 84 of the General Statutes.

50 (n) Nothing in this section requires that an affidavit be attached to an original or
51 certified copy of a previously recorded instrument that is unchanged but rerecorded. Nothing in

1 this section requires that an affidavit be attached to a previously recorded instrument with a
2 copy of a previously recorded instrument that includes identified corrections or an original
3 execution by a party or parties of the corrected instrument after the original recording with
4 proof or acknowledgment of their execution of the correction of the instrument."

5 **SECTION 3.** Article 4 of Chapter 47 of the General Statutes is amended by adding
6 a new section to read:

7 **"§ 47-108.27. Ten-year curative statute.**

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

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

18 (1) The proper execution of a form of acknowledgment as provided under
19 Article 3 of Chapter 47 of the General Statutes.

20 (2) The proper recitals of consideration, residence, address, or date.

21 (3) The proper affixation of a seal by a sheriff, commissioner, receiver,
22 executor, executrix, administrator, administratrix, or other officer authorized
23 to execute an instrument by virtue of an office or appointment held by the
24 grantor.

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

28 **SECTION 4.** This act becomes effective October 1, 2015, and applies to curative
29 affidavits filed on or after that date.