

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 584
Committee Substitute Favorable 4/11/17

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

(Public)

Sponsors:

Referred to:

April 6, 2017

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-Notice of errors in recorded instruments.instruments of title.**

10 (a) Notwithstanding G.S. 47-14 and G.S. 47-17, notice of a nonmaterial typographical
11 or other minor nonmaterial error in a deed or other instrument recorded with the register of
12 deeds may be given by recording ~~an~~ a corrective notice affidavit. If ~~an~~ a corrective notice
13 affidavit is conspicuously identified as a corrective notice or scrivener's affidavit in its title, the
14 register of deeds shall index the name of the affiant, the names of the original parties in the
15 instrument, the recording information of the instrument ~~being corrected,~~ for which the
16 corrective notice is being given, and the original parties as they are named in the affidavit. A
17 copy of the previously recorded instrument to which the corrective notice affidavit applies may
18 be attached to the corrective notice 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 notice affidavit is
21 deemed to have been given as of the time the corrective notice affidavit is registered. Nothing
22 in this section invalidates or otherwise alters the legal effect of any instrument of correction
23 authorized by statute in effect on the date the instrument was registered.

24"

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

27 "**§ 47-36.2. Cure of obvious description errors in recorded instruments.**

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

30 (1) Authorized attorney. – An individual licensed to practice law under Chapter
31 84 of the General Statutes, who is one of the following:

32 a. The attorney who drafted the instrument containing the obvious
33 description error to be corrected.

34 b. The attorney for any party to the transaction for which the instrument
35 containing the obvious description error was recorded, including, for
36 example, but not limited to, the attorney for (i) the grantor or grantee



1 in a deed; (ii) the mortgagor or mortgagee in a mortgage; (iii) the
2 grantor or trustor in a deed of trust; (iv) the trustee or duly appointed
3 substitute trustee in a deed of trust; (v) the beneficiary of record in a
4 deed of trust or the assignee of record of the beneficial interest; (vi)
5 the assignor or assignee in an assignment of leases, rents, or profits;
6 or (vii) any party to an instrument affecting title to real property.

7 (c) An attorney retained by a title insurance company or title insurance
8 agent that either (i) has issued a policy of title insurance covering the
9 subject property in the transaction in which the error occurred or in
10 any subsequent transaction or (ii) proposed to issue a policy of title
11 insurance in reliance on a curative affidavit recorded or to be
12 recorded in accordance with the provisions of this section.

13 (2) Curative affidavit. – An affidavit executed by an authorized attorney to
14 correct an obvious description error.

15 (3) Notice of intent. – A notice issued by an authorized attorney of the
16 authorized attorney's intent to sign and record a curative affidavit.

17 (4) Obvious description error. – An error in the legal description of real property
18 that is contained in an instrument affecting title to real property recorded in
19 the office of the register of deeds in the county in which the real property or
20 any part or parts thereof is located that is evidenced by any of the following:

21 a. The property is identified and shown on a recorded plat, but the legal
22 description of the property appearing in the instrument is not
23 consistent with the recorded plat.

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

28 c. One or more of the following, as stated in the instrument, are
29 inconsistent in that one or more identify the property incorrectly:

30 1. The legal description of the property.

31 2. The physical address of the property.

32 3. The tax map identification number of the property.

33 4. An incorrect plat reference.

34 5. An incorrect deed reference.

35 d. The legal description of the real property in the instrument contains
36 one or more errors transcribing courses and distances, including, for
37 example, the omission of one or more lines of courses and distances,
38 the omission of angles and compass directions, or the reversal of
39 courses.

40 e. The instrument contains an error in a lot or unit number or
41 designation, and the lot or unit described is not owned by the grantor,
42 trustor, mortgagor, or assignor at the time the instrument is executed.

43 f. The instrument omits an exhibit or attachment intended to supply the
44 legal description of the subject property.

45 The term "obvious description error" does not include and shall not apply to
46 (i) missing or improper signatures or acknowledgements; (ii) any
47 designation of the type of ownership interest or right of survivorship; or (iii)
48 any error in the legal description that operates to convey any interest in real
49 property that the grantor, trustor, mortgagor, or assignor owned at the time
50 of conveyance but did not intend to convey.

- 1 (5) Recorded plat. – A plat that has been prepared by a professional land
2 surveyor licensed pursuant to Chapter 89C of the General Statutes and has
3 been recorded with the register of deeds in the county where the property is
4 situated.
- 5 (6) Recording data. – The book and page number or document number that
6 indicates where an instrument is recorded in the office of the register of
7 deeds.
- 8 (7) Title insurance agent. – A person or entity licensed by the Commissioner of
9 Insurance and contractually authorized by one or more title insurance
10 companies to issue commitments and policies on behalf of said title
11 insurance company.
- 12 (8) Title insurance company. – A company certified pursuant to Article 26 of
13 Chapter 58 of the General Statutes that has issued or intends to issue a policy
14 of title insurance covering real property described in a recorded instrument
15 needing correction.
- 16 (b) Notwithstanding G.S. 47-14 and G.S. 47-17, obvious description errors in a
17 recorded instrument affecting title to real property may be cured by recording a curative
18 affidavit with the register of deeds in every county where the real property is situated.
- 19 (c) Prior to recording a curative affidavit as described in subsection (b) of this section,
20 the authorized attorney seeking to record the affidavit shall serve a notice of intent and a copy
21 of the unsigned proposed curative affidavit on the persons identified in this subsection. Service
22 of the notice of intent and copy of the unsigned proposed curative affidavit shall be made in
23 any manner provided by Rule 4 of the Rules of Civil Procedure for service of a summons to
24 affect personal jurisdiction. The persons entitled to service of the notice of intent and a copy of
25 the unsigned proposed curative affidavit pursuant to this subsection are as follows:
- 26 (1) All parties to the instrument that is the subject of the curative affidavit. In
27 the case of a deed of trust, the parties to the instrument shall include the
28 grantor or trustor named in the deed of trust and the beneficiary of record,
29 but need not include the trustee named in the deed of trust or any substitute
30 trustee.
- 31 (2) The current record mortgagee, record beneficiary, record assignee, or record
32 secured party in any mortgage, deed of trust, assignment of leases, rents, or
33 profits, or other recorded security instrument that may be adversely affected
34 by the recording of the curative affidavit.
- 35 (3) The current record owner of the real property.
- 36 (4) The attorney who prepared the instrument that is the subject of the curative
37 affidavit, if known.
- 38 (5) Any title insurance company and title insurance agent, if applicable and
39 known, that (i) issued a policy of title insurance covering the subject
40 property in the transaction in which the error occurred or in any subsequent
41 transaction or (ii) proposes to issue a policy of title insurance in reliance on
42 the proposed curative affidavit.
- 43 (6) The current record owners of all adjoining properties that may be adversely
44 affected by the recording of the curative affidavit, the current record holders
45 of any mineral or timber rights that may be adversely affected by the
46 recording of the curative affidavit, and the record holders of any easement
47 rights that may be adversely affected by the recording of the curative
48 affidavit.
- 49 (d) Each person served with the notice of intent and a copy of the unsigned proposed
50 curative affidavit described in subsection (c) of this section that wishes to object to the
51 recordation of the proposed curative affidavit or dispute the facts recited in the proposed

1 curative affidavit must do so in a writing sent or delivered to the authorized attorney within 30
2 days after the service of the documents upon that person. If the authorized attorney receives a
3 written objection to the recordation of the proposed curative affidavit or a written statement
4 disputing the facts recited in the proposed curative affidavit from any person served with the
5 notice of intent and a copy of the unsigned proposed curative affidavit within the prescribed
6 30-day time period applicable to the person so served, the authorized attorney shall not sign or
7 record the proposed curative affidavit. If the authorized attorney does not receive a written
8 objection to the recordation of the proposed curative affidavit or a written statement disputing
9 the facts recited in the proposed curative affidavit from any person served with the notice of
10 intent and a copy of the unsigned proposed curative affidavit within the prescribed 30-day time
11 period for each person so served, the authorized attorney may sign and record the proposed
12 curative affidavit.

13 (e) An affidavit is sufficient as a curative affidavit if it does all of the following:

- 14 (1) Contains a statement that the curative affidavit should be indexed as a
15 "subsequent instrument" pursuant to G.S. 161-14.1.
- 16 (2) Contains a statement that the curative affidavit is recorded pursuant to
17 G.S. 47-36.2 to correct an obvious description error contained in a
18 previously recorded instrument.
- 19 (3) Contains a statement that the affiant is an attorney licensed to practice law in
20 North Carolina and is an authorized attorney pursuant to G.S. 47-36.2(a)(1).
- 21 (4) Identifies each instrument subject to the curative affidavit by stating the title
22 of the instrument, the parties to the instrument, and the recording data for the
23 instrument.
- 24 (5) Identifies the obvious description error contained in each instrument subject
25 to the curative affidavit.
- 26 (6) Corrects the obvious description error by stating the correct property
27 description.
- 28 (7) Contains a statement that the affiant served a copy of the notice of intent
29 required by subsection (c) of this section and a copy of the unsigned
30 proposed curative affidavit on all persons entitled to notice pursuant to
31 subsection (c) of this section and that service on each such person was
32 properly effected in a manner prescribed for the service of a summons in
33 accordance with Rule 4 of the North Carolina Rules of Civil Procedure.
- 34 (8) Contains a statement that the affiant did not receive any written objection to
35 the recordation of the curative affidavit or any dispute of the facts recited in
36 the curative affidavit from any person so served within the 30-day period
37 following the date each person was served.
- 38 (9) Provides the name, telephone number, and mailing address of the affiant.
- 39 (10) Is signed and sworn to or affirmed by the authorized attorney as affiant
40 before a notary public, with an appropriate jurat completed by the notary
41 public that conforms to the requirements of Article 1 of Chapter 10B of the
42 General Statutes.

43 (f) A curative affidavit recorded pursuant to this section in the office of the register of
44 deeds in the county where the real property is located shall operate as a correction of the
45 instrument being corrected that relates back to, and is effective as of, the date the instrument
46 being corrected was originally recorded in the office of the register of deeds, with the same
47 effect as if the description of the property was correct when the instrument was first recorded,
48 and all parties to the instrument being corrected shall be bound by the terms contained in the
49 recorded curative affidavit and the instrument being corrected.

50 (g) Upon payment of the appropriate recordation fee, the register of deeds shall accept a
51 curative affidavit for recording unless the curative affidavit (i) is submitted by a method or in a

1 medium not authorized for registration by the register of deeds under applicable law, (ii) is not
2 signed by the affiant and sworn to or affirmed as required by law for an affidavit or affirmation,
3 or (iii) lacks a proper jurat. A copy of the previously recorded instrument to which the curative
4 affidavit applies may be attached to or recorded with the curative affidavit and need not be a
5 certified copy. The register of deeds shall not be required to verify or make inquiry concerning
6 (i) the truth of the matters stated in any curative affidavit or (ii) the authority of the person
7 executing any curative affidavit to do so. The register of deeds shall index the curative affidavit
8 in the name of the affiant and in the names of the various parties to each instrument being
9 corrected as both grantees and grantors, irrespective of their designation in the instrument being
10 corrected. The costs associated with the recording of a curative affidavit pursuant to this section
11 shall be paid by the party submitting the affidavit to the register of deeds.

12 (h) A curative affidavit recorded in compliance with this section shall be prima facie
13 evidence of the facts stated therein. Any person who wrongfully or erroneously records a
14 curative affidavit is liable for actual damages sustained by any party as a result of the
15 recording, including reasonable attorneys' fees and costs.

16 (i) The remedies prescribed by this section are not exclusive and do not abrogate any
17 rights or remedies otherwise available under the laws of this State, including any rights or
18 remedies under G.S. 47-36.1.

19 (j) No particular phrasing is required for a curative affidavit. The following form of
20 affidavit, when properly completed, is sufficient to satisfy the requirements of subsection (e) of
21 this section for a curative affidavit:

22 **"Curative Affidavit**

23 **This curative affidavit should be indexed as a "subsequent instrument" pursuant to**
24 **G.S. 161-14.1.**

25 I, _____, certify as follows:

- 26 1. This curative affidavit is recorded pursuant to G.S. 47-36.2 to correct an obvious
27 description error contained in a previously recorded instrument.
- 28 2. I am an attorney licensed to practice law in North Carolina. I am an "authorized
29 attorney" as defined in G.S. 47-36.2(a)(1).
- 30 3. The instrument or instruments containing an obvious description error requiring
31 correction are identified as follows:
32 *Insert here the following information regarding each instrument to be corrected: the*
33 *title of the instrument, the parties to the instrument, and the recording data for the*
34 *instrument.*
- 35 4. The obvious description error contained in the instrument(s) to be corrected is
36 identified or described as follows:
37 *Insert here the erroneous description that requires correction.*
- 38 5. The erroneous property description is corrected to read as follows:
39 *Insert here the correct description of the real property.*
- 40 6. I have served a copy of a notice of my intent to sign and record this curative affidavit
41 and a copy of this curative affidavit, unsigned, on all persons entitled to notice
42 pursuant to G.S. 47-36.2(c). Service on each such person was properly effected in a
43 manner prescribed for the service of a summons in accordance with Rule 4 of the
44 North Carolina Rules of Civil Procedure. I did not receive any written objection to the
45 recording of this curative affidavit or any dispute of the facts recited in this curative
46 affidavit from any person so served within the 30-day period following the date each
47 such person was so served.
- 48 7. My name, telephone number, and mailing address are as follows:
49 *Insert here the affiant's name, telephone number, and mailing address.*

50 Date: _____

51 _____

Signature of Affiant

COUNTY OF _____, STATE OF _____

The foregoing curative affidavit was sworn to or affirmed and subscribed before me this day by _____.

Date: _____

Signature of Notary Public

Official Seal

_____, Notary Public
Print or Type Notary's Name

My commission expires: _____"

(k) No particular phrasing is required for a notice of intent described in subsection (c) of this section. The following form, when properly completed, is sufficient to satisfy the requirements of subsection (c) of this section for a notice of intent:

"NOTICE OF INTENT TO CORRECT AN OBVIOUS DESCRIPTION ERROR

This is an important legal document that requires your immediate attention. Your property rights may be affected, and you may need to respond to this notice in writing.

I am an attorney licensed to practice law in North Carolina. My contact information is as follows:

Insert the name, telephone number and mailing address of the authorized attorney issuing the notice.

I have discovered or have been advised of an error in the description of real property contained in one or more instruments recorded as part of a real estate-related transaction. A copy of a proposed Curative Affidavit accompanies this notice. The proposed Curative Affidavit identifies the previously recorded instrument or instruments that contain the description errors that I plan to correct, the description error or errors that require correction, and the correct description of the real property. If I sign and record the proposed Curative Affidavit, it will have the legal effect of correcting the erroneous property description in the listed instrument or instruments that contain the description errors.

Real property you own may be affected if I correct the erroneous description of the real property in the instrument or instruments identified in the proposed Curative Affidavit. You should consult with your attorney promptly to determine whether and the extent to which my correction of the legal description in the instrument or instruments that need to be corrected will impact your property or property rights.

IF YOU WISH TO OBJECT TO MY SIGNING AND RECORDING THE PROPOSED CURATIVE AFFIDAVIT OR DISPUTE THE FACTS RECITED IN THE PROPOSED CURATIVE AFFIDAVIT, YOU MUST DO SO IN A WRITING, SENT OR DELIVERED TO ME WITHIN 30 DAYS AFTER THE DATE YOU WERE SERVED WITH THIS NOTICE AND THE PROPOSED CURATIVE AFFIDAVIT.

If I do not receive a written objection disputing the facts recited in the proposed Curative Affidavit or objecting to my signing and recording the proposed Curative Affidavit from you or any other person that receives this notice within the prescribed 30-day period applicable to each person so served, I intend to sign and record the Curative Affidavit. However, if I receive a

1 written objection within the 30-day time period prescribed by statute, I am not permitted to sign
 2 or record the Curative Affidavit.

3 If you dispute the facts recited in the proposed Curative Affidavit or object to my signing
 4 and recording the Curative Affidavit, you need to write to me promptly at my address stated
 5 above. While I encourage you to call me if you have questions, your telephone call will not be
 6 sufficient – you must write to me if you dispute the facts recited in the proposed Curative
 7 Affidavit or object to my signing and recording the Curative Affidavit.

8
 9 Date: _____

10
 11 _____
 12 *Signature of authorized attorney"*

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

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

21 **"§ 47-108.28. Ten-year curative statute.**

22 (a) If (i) an instrument conveying or purporting to convey an interest in real property
 23 contains a material defect, irregularity, or omission; (ii) the instrument is recorded by the
 24 register of deeds in the county or counties where the property is situated; and (iii) the material
 25 defect, irregularity, or omission is not corrected within 10 years after the instrument was
 26 recorded, then the instrument shall be deemed effective to vest title as stated therein and to the
 27 same extent as though the instrument had not contained the material defect, irregularity, or
 28 omission. The proper recordation and indexing of a curative instrument or a notice of lis
 29 pendens shall act as a toll to the 10-year curative period.

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

- 32 (1) The proper execution of a form of acknowledgment as provided under
 33 Article 3 of Chapter 47 of the General Statutes.
 34 (2) The proper recital of consideration paid, the residence of a party, the address
 35 of the property or party, or the date of the instrument or any instrument or
 36 obligation secured by the instrument.
 37 (3) The proper affixation of seal by any person authorized to execute an
 38 instrument by virtue of an office or appointment held by the grantor that is
 39 required to affix the seal to the recorded instrument under applicable law.

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

43 **SECTION 4.** G.S. 161-14.1(a) reads as rewritten:

44 **"§ 161-14.1. Recording subsequent entries as separate instruments.**

45 (a) As used in this section, the following terms mean:

- 46 ...
 47 (3) Subsequent instrument. – Any instrument presented for registration that
 48 indicates in its title or within the first two pages of its text that it is intended
 49 or purports to correct, modify, amend, supplement, assign, satisfy, terminate,
 50 revoke, or cancel a previously registered instrument. Examples of
 51 subsequent instruments include the following:

- 1 a. The appointment or designation of a substitute trustee in a deed of
- 2 trust.
- 3 b. A corrective notice affidavit registered pursuant to ~~G.S.~~
- 4 45-36.1.G.S. 45-36.1 or a curative affidavit registered pursuant to
- 5 G.S. 45-36.2.

6 "

7 **SECTION 5.** This act is effective when it becomes law and applies to curative

8 affidavits filed on or after that date.