

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 584
Committee Substitute Favorable 4/11/17
Senate Judiciary Committee Substitute Adopted 6/21/17

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.**

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

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. Cure of obvious description errors in recorded instruments.**

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

32 (1) Authorized attorney. – An individual licensed to practice law under Chapter
33 84 of the General Statutes, who is one of the following:

34 a. The attorney who drafted the instrument containing the obvious
35 description error to be corrected.



- 1 b. Any attorney for a party to the transaction for which the instrument
2 containing the obvious description error was recorded, including, for
3 example, but not limited to, the attorney for (i) the grantor or grantee
4 in a deed; (ii) the mortgagor or mortgagee in a mortgage; (iii) the
5 grantor or trustor in a deed of trust; (iv) the trustee or duly appointed
6 substitute trustee in a deed of trust; (v) the beneficiary of record in a
7 deed of trust or the assignee of record of the beneficiary's interest;
8 (vi) the assignor or assignee in an assignment of leases, rents, or
9 profits; or (vii) any party to an instrument affecting title to real
10 property.
- 11 c. An attorney retained or authorized by either a title insurance
12 company or title insurance agent that either (i) has issued a policy of
13 title insurance covering the subject property in the transaction in
14 which the error occurred or in any subsequent transaction or (ii)
15 proposes to issue a policy of title insurance in reliance on a curative
16 affidavit recorded or to be recorded in accordance with the provisions
17 of this section.
- 18 (2) Curative affidavit. – An affidavit executed by an authorized attorney to
19 correct an obvious description error.
- 20 (3) Notice of intent. – A notice issued by an authorized attorney of the
21 authorized attorney's intent to sign and record a curative affidavit.
- 22 (4) Obvious description error. – An error in the legal description of real property
23 that is contained in an instrument affecting title to real property recorded in
24 the office of the register of deeds in the county in which the real property or
25 any part or parts thereof is located that is evidenced by any of the following:
- 26 a. One or more of the following, as stated in the instrument, are
27 inconsistent in that one or more identify the property incorrectly, and
28 the error is made apparent by reference to other information
29 contained in the instrument, contained in an attachment to the
30 instrument, or contained in another instrument in the chain of title for
31 the subject parcel, including a recorded plat:
- 32 1. The legal description of the property.
33 2. The physical address of the property.
34 3. The tax map identification number of the property.
35 4. A plat reference.
36 5. A prior deed reference.
- 37 b. The legal description of the real property in the instrument contains
38 one or more errors transcribing courses and distances, including, for
39 example, the omission of one or more lines of courses and distances,
40 the omission of angles and compass directions, or the reversal of
41 courses.
- 42 c. The instrument contains an error in a lot or unit number or
43 designation, and the lot or unit described is not owned by the grantor,
44 trustor, mortgagor, or assignor at the time the instrument is executed.
- 45 d. The instrument omits an exhibit, attachment, or other descriptive
46 information intended to supply the legal description of the subject
47 property, and the correct legal description may be determined by
48 reference to other information contained in the instrument, including,
49 but not limited to, one or more of the items described in
50 sub-subdivision a. of this subdivision.

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

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

11 (6) Recording data. – The book and page number or document number that
12 indicates where an instrument is recorded in the office of the register of
13 deeds.

14 (7) Title insurance agent. – A person or entity licensed by the Commissioner of
15 Insurance and contractually authorized by one or more title insurance
16 companies to issue commitments and policies on behalf of said title
17 insurance company and that has issued or proposes to issue a policy of title
18 insurance covering real property described in a recorded instrument needing
19 correction.

20 (8) Title insurance company. – A company certified pursuant to Article 26 of
21 Chapter 58 of the General Statutes that has issued or proposes to issue a
22 policy of title insurance covering real property described in a recorded
23 instrument needing correction.

24 (b) Notwithstanding G.S. 47-14 and G.S. 47-17, obvious description errors in a
25 recorded instrument affecting title to real property may be cured by recording a curative
26 affidavit with the register of deeds in every county where the real property is situated.

27 (c) Prior to recording a curative affidavit as described in subsection (b) of this section,
28 the authorized attorney seeking to record the affidavit shall serve a notice of intent and a copy
29 of the unsigned proposed curative affidavit on the persons identified in this subsection. Service
30 of the notice of intent and copy of the unsigned proposed curative affidavit shall be made in
31 any manner prescribed for the service of a summons in accordance with Rule 4(j) or Rule 4(j5)
32 of the North Carolina Rules of Civil Procedure. The persons entitled to service of the notice of
33 intent and a copy of the unsigned proposed curative affidavit pursuant to this subsection are as
34 follows:

35 (1) All parties to the instrument that is the subject of the curative affidavit. In
36 the case of a deed of trust, the parties to the instrument shall include the
37 grantor or trustor named in the deed of trust, the beneficiary of record, and
38 any assignee of the beneficiary known to the party filing the curative
39 affidavit or its authorized attorney, but need not include the trustee named in
40 the deed of trust or any substitute trustee.

41 (2) Any current record mortgagee, record beneficiary, record assignee, or record
42 secured party in any mortgage, deed of trust, assignment of leases, rents or
43 profits, UCC fixture filing, or other recorded instrument of title that may be
44 adversely affected by the recording of the curative affidavit. For the
45 purposes of this subdivision, "instruments of title" means any instrument,
46 recorded after the date of recordation of the instrument that is the subject of
47 the curative affidavit, that affects title or constitutes the chain of title to real
48 property, including, but not limited to, all deeds, wills, estate documents
49 evidencing transfer of title, plats, surveys, easements, rights-of-way,
50 outstanding mortgages and deeds of trust, judicial orders or decrees, and
51 documents evidencing intestate succession.

- 1 (3) The current record owner of the real property.
- 2 (4) The attorney who prepared the instrument that is the subject of the curative
3 affidavit, if known.
- 4 (5) Any title insurance company, if applicable and known, and title insurance
5 agent, if applicable and known, that (i) issued a policy of title insurance
6 covering the subject property in the transaction in which the error occurred
7 or in any subsequent transaction or (ii) proposes to issue a policy of title
8 insurance in reliance on the proposed curative affidavit.
- 9 (6) The current record owners of all adjoining properties that may be adversely
10 affected by the recording of the curative affidavit, the current record holders
11 of any mineral or timber rights that may be adversely affected by the
12 recording of the curative affidavit, and the record holders of any easement
13 rights that may be adversely affected by the recording of the curative
14 affidavit.

15 (d) Each person served with the notice of intent and a copy of the unsigned proposed
16 curative affidavit described in subsection (c) of this section that wishes to object to the
17 recordation of the proposed curative affidavit or dispute the facts recited in the proposed
18 curative affidavit must do so in a writing sent in any manner provided for under subsection (e)
19 of this section to the authorized attorney within 30 days after the service of the documents upon
20 that person. The authorized attorney may sign and record the proposed curative affidavit at any
21 time after more than 45 days have elapsed since the last person to be served was served with
22 the notice of intent and a copy of the unsigned proposed curative affidavit. However, the
23 authorized attorney may not record the proposed curative affidavit if, at any time before
24 recording the proposed curative affidavit, the authorized attorney receives a written objection to
25 the recordation of the proposed curative affidavit or a written statement disputing the facts
26 recited in the proposed curative affidavit from any person served with the notice of intent and a
27 copy of the unsigned proposed curative affidavit.

28 (e) In complying with any requirement for objecting to the recordation of the proposed
29 curative affidavit or disputing the facts recited in the proposed curative affidavit pursuant to
30 this section, the objection or document disputing the facts must be addressed to the authorized
31 attorney and shall be delivered by at least one of the following methods:

- 32 (1) Delivering a copy to the authorized attorney by handing it to the authorized
33 attorney, or by leaving it at the authorized attorney's office with a partner or
34 employee of the authorized attorney.
- 35 (2) Mailing a copy to the authorized attorney's mailing address provided in the
36 notice of intent.
- 37 (3) Sending a copy by facsimile to the authorized attorney's facsimile number
38 provided in the notice of intent, as evidenced by a facsimile receipt
39 confirmation.
- 40 (4) Electronic mail addressed to the authorized attorney's e-mail address
41 provided in the notice of intent.
- 42 (5) Depositing a copy prepaid with a designated delivery service authorized
43 pursuant to 26 U.S.C. § 7502(f)(2) addressed to the authorized attorney's
44 mailing address provided in the notice of intent.

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

- 46 (1) Contains a statement that the curative affidavit should be indexed as a
47 "subsequent instrument" pursuant to G.S. 161-14.1.
- 48 (2) Contains a statement that the curative affidavit is recorded pursuant to this
49 section to correct an obvious description error contained in a previously
50 recorded instrument.

- 1 (3) Contains a statement that the affiant is an attorney licensed to practice law in
2 North Carolina and is an authorized attorney pursuant to subdivision (1) of
3 subsection (a) of this section.
- 4 (4) Identifies each instrument subject to the curative affidavit by stating the title
5 of the instrument, the parties to the instrument, and the recording data for the
6 instrument.
- 7 (5) Identifies the obvious description error contained in each instrument subject
8 to the curative affidavit.
- 9 (6) Corrects the obvious description error by stating the correct property
10 description.
- 11 (7) Contains a statement that the affiant served a copy of the notice of intent
12 required by subsection (c) of this section and a copy of the unsigned
13 proposed curative affidavit on all persons entitled to notice pursuant to
14 subsection (c) of this section and that service on each such person was
15 properly effected in a manner prescribed for the service of a summons in
16 accordance with Rule 4(j) or Rule 4(j5) of the North Carolina Rules of Civil
17 Procedure.
- 18 (8) Contains a statement that more than 45 days have elapsed since the last
19 person to be served was served, and that before signing and recording the
20 curative affidavit, the affiant did not receive from any person so served
21 any written objection to the recordation of the curative affidavit or any
22 written statement disputing the facts recited in the curative affidavit.
- 23 (9) Provides the name, telephone number, e-mail address (if available),
24 facsimile number (if available), and mailing address of the affiant.
- 25 (10) Is signed and sworn to or affirmed by the authorized attorney as affiant
26 before a notary public, with an appropriate jurat completed by the notary
27 public that conforms to the requirements of Chapter 10B of the General
28 Statutes.

29 (g) A curative affidavit recorded pursuant to this section in the office of the register of
30 deeds in the county where the real property is located shall operate as a correction of the
31 instrument being corrected that relates back to, and is effective as of, the date the instrument
32 being corrected was originally recorded in the office of the register of deeds, with the same
33 effect as if the description of the property was correct when the instrument was first recorded,
34 and all parties to the instrument being corrected shall be bound by the terms contained in the
35 recorded curative affidavit and the instrument being corrected.

36 (h) Upon payment of the appropriate recordation fee, the register of deeds shall accept a
37 curative affidavit for recording unless the curative affidavit (i) is submitted by a method or in a
38 medium not authorized for registration by the register of deeds under applicable law, (ii) is not
39 signed by the affiant and sworn to or affirmed as required by law for an affidavit or affirmation,
40 or (iii) lacks a proper jurat. A copy of the previously recorded instrument to which the curative
41 affidavit applies may be attached to or recorded with the curative affidavit and need not be a
42 certified copy. The register of deeds shall not be required to verify or make inquiry concerning
43 (i) the truth of the matters stated in any curative affidavit or (ii) the authority of the person
44 executing any curative affidavit to do so. The register of deeds shall index the curative affidavit
45 in the name of the affiant and in the names of the various parties, other than a trustee or
46 substitute trustee named in a deed of trust, to each instrument being corrected as both grantees
47 and grantors, irrespective of their designation in the instrument being corrected. The costs
48 associated with the recording of a curative affidavit pursuant to this section shall be paid by the
49 party submitting the affidavit to the register of deeds.

50 (i) A curative affidavit recorded in compliance with this section shall be prima facie
51 evidence of the facts stated therein. Any person who wrongfully or erroneously records a

curative affidavit is liable for actual damages sustained by any party as a result of the recordation, including reasonable attorneys' fees and costs.

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

(k) No particular phrasing is required for a curative affidavit. A curative affidavit in substantially the following form, when properly completed, is sufficient to satisfy the requirements of subsection (f) of this section:

"Curative Affidavit

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

I, _____, certify as follows:

1. This curative affidavit is recorded pursuant to G.S. 47-36.2 to correct an obvious description error contained in a previously recorded instrument.
2. I am an attorney licensed to practice law in North Carolina. I am an "authorized attorney" as defined in G.S. 47-36.2(a)(1).
3. The instrument or instruments containing an obvious description error requiring correction are identified as follows:
Insert here the following information regarding each instrument to be corrected: the title of the instrument, the parties to the instrument, and the recording data for the instrument.
4. The obvious description error contained in the instrument(s) to be corrected is identified or described as follows:
Insert here the erroneous description that requires correction.
5. The erroneous property description is corrected to read as follows:
Insert here the correct description of the real property.
6. I have served a copy of a notice of my intent to sign and record this curative affidavit and a copy of this curative affidavit, unsigned, on all persons entitled to notice pursuant to G.S. 47-36.2(c). Service on each such person was properly effected in a manner prescribed for the service of a summons in accordance with Rule 4(j) or Rule 4(j5) of the North Carolina Rules of Civil Procedure, and more than 45 days have elapsed since the last person to be served was served. By signing and recording this affidavit I certify that I did not receive from any person so served any written objection to the recordation of this curative affidavit or any written statement disputing the facts recited in this curative affidavit.
7. My contact information is as follows:
Insert here the affiant's name, telephone number, email address (if available), facsimile number (if available), and mailing address.

Date: _____

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: _____ "

(l) The form of the notice of intent to be given as described in subsection (c) of this section shall be substantially as follows (including capitalization and bold typeface as shown):

"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, email address (if available), facsimile number (if available), 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 and your title insurance company, if known, 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.

Your writing must be sent or delivered to me by one of the following methods:

- (1) Delivering a copy by handing it to me or by leaving it at my office with a partner or employee of mine.
- (2) Mailing a copy to me at the mailing address provided in this notice of intent.
- (3) Sending a copy by facsimile to my facsimile number, if provided in this notice of intent, as evidenced by a facsimile receipt confirmation.
- (4) Electronic mail sent to my e-mail address, if provided in this notice of intent.
- (5) Depositing a copy prepaid with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) addressed to the mailing address provided in this notice of intent.

I am not permitted to sign or record the Curative Affidavit if, at any time before I actually sign and record it, I receive a written objection to my signing and recording the Curative Affidavit or a written statement disputing the facts contained in the Curative Affidavit from any person served with this notice and a copy of the unsigned proposed Curative Affidavit. However, assuming I do not receive any such objection or statement disputing the facts, Section 47-36.2 of the North Carolina General Statutes permits me to sign and record the Curative Affidavit at any time after more than 45 days have elapsed since the last person to be

1 served was served with this notice and a copy of the unsigned proposed Curative Affidavit, and
2 I intend to do so.

3 If you object to my signing and recording the Curative Affidavit or dispute the facts recited
4 in the proposed Curative Affidavit, you need to send or deliver your written objection or
5 written statement disputing the facts recited in the proposed Curative Affidavit to me promptly
6 using one of the methods described above. While I encourage you to call me if you have
7 questions, your telephone call will not be sufficient – you must write to me if you dispute the
8 facts recited in the proposed Curative Affidavit or object to my signing and recording the
9 Curative Affidavit.

10
11 Date: _____

12
13 _____
14 *Signature of authorized attorney"*

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

21 (n) The period prescribed for the commencement of an action contesting the validity or
22 efficacy of a curative affidavit recorded under this statute shall be one year from the date of
23 recordation of the curative affidavit. This subsection does not apply to an action for damages
24 sustained by any party as a result of the wrongful or erroneous recordation of a curative
25 affidavit as provided in subsection (i) of this section."

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

28 **"§ 47-108.28. Seven-year curative statute.**

29 (a) An instrument conveying or purporting to convey an interest in real property that
30 contains a defect, irregularity, or omission shall be deemed effective to vest title as stated
31 therein and to the same extent as though the instrument had not contained the material defect,
32 irregularity, or omission, if both of the following conditions are met:

- 33 (1) The instrument is recorded by the register of deeds in the county or counties
34 where the property is situated.
35 (2) The material defect, irregularity, or omission is not corrected within seven
36 years after the instrument was recorded.

37 The proper recordation and indexing of a curative instrument or a notice of lis pendens shall
38 toll the seven-year curative period.

39 (b) For the purposes of this section only, an instrument shall be deemed to contain a
40 "defect, irregularity, or omission" when any of the following conditions are met:

- 41 (1) The recorded instrument lacks any of the following:
42 a. A properly executed form of acknowledgment as provided under
43 Article 3 of this Chapter or Chapter 10B of the General Statutes.
44 b. The proper recital of consideration paid.
45 c. The residence of a party.
46 d. The address of the property
47 e. The address of a party.
48 f. The date of the instrument.
49 g. The date of any instrument or obligation secured by the instrument.
50 h. The proper affixation of seal by any person authorized to execute an
51 instrument by virtue of an office or appointment held by the grantor

1 that is required to affix the seal to the recorded instrument under
2 applicable law.

3 (2) The name of a grantor, trustor, mortgagor, assignor, borrower, or other
4 person with an interest in the property does not appear in any part of the
5 instrument, but the person executed the instrument without limitation or
6 qualification. The person who executed the instrument without limitation or
7 qualification shall be deemed to have conveyed or encumbered (as
8 applicable) any interest or right such person then had in the property
9 conveyed or encumbered by the terms of the instrument.

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

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

14 **"§ 161-14.1. Recording subsequent entries as separate instruments.**

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

- 16 ...
- 17 (3) Subsequent instrument. – Any instrument presented for registration that
- 18 indicates in its title or within the first two pages of its text that it is intended
- 19 or purports to correct, modify, amend, supplement, assign, satisfy, terminate,
- 20 revoke, or cancel a previously registered instrument. Examples of
- 21 subsequent instruments include the following:
- 22 a. The appointment or designation of a substitute trustee in a deed of
- 23 trust.
- 24 b. A corrective notice affidavit registered pursuant to G.S.
- 25 45-36.1.G.S. 47-36.1 or a curative affidavit registered pursuant to
- 26 G.S. 47-36.2.

27"

28 **SECTION 5.** This act becomes effective August 31, 2018, and applies to curative
29 affidavits filed on or after that date.