

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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HOUSE BILL 375\*  
PROPOSED COMMITTEE SUBSTITUTE H375-PCS20332-RN-22

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.



\* H 3 7 5 - P C S 2 0 3 3 2 - R N - 2 2 \*

- 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  
5 My commission expires: \_\_\_\_\_"

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.