



HOUSE BILL 375: Real Prop./Error Correction & Title Curative

2015-2016 General Assembly

Committee:	House Serial Referral To Appropriations Stricken	Date:	April 23, 2015
Introduced by:	Reps. Jordan, Bryan, Stevens	Prepared by:	Brad Krehely Committee Counsel
Analysis of:	PCS to First Edition H375-CSRN-22		

SUMMARY: *House Bill 375 would clarify the process for correcting non-material errors in recorded instruments of title, would create a curative procedure for obvious description errors in documents of title, and would create a 10-year curative provision for certain defects in recorded instruments of title. The Proposed Committee Substitute (PCS) would amend, rather than repeal, G.S. 47-36.1, uses the term "curative affidavit" in newly created G.S. 47-36.2, requires a North Carolina State Bar Number on curative affidavits, and makes other conforming changes.*

[As introduced, this bill was identical to S460, as introduced by Sen. Daniel, which is currently in Senate Judiciary I.]

BILL ANALYSIS:

Section 1 provides that notice of a non-material typographical or minor non-material error in a deed or instrument recorded with the register of deeds may be given by recording a corrective affidavit. However, a corrective affidavit must not be used to correct an obvious description error in G.S. 47-36.2.

Section 2 creates G.S. 47-36.2 dealing with correction of errors in recorded instruments. It allows curative affidavits to correct an "obvious description error" in a recorded deed, deed of trust, or other instrument conveying an interest in real property. The curative affidavit must contain the attorney's NC State Bar Number and be filed in in the county in which the real property is located. Prior to recording the curative affidavit, the attorney must deliver a notice and copy of the affidavit to the last known address of:

- All parties to the instrument being corrected.
- The current record owner of the real property at the property address and any other address reflected in the tax records of the county where the property is situated.
- The attorney who prepared the instrument being corrected, if known.
- Any title insurance company and title insurance agent. if applicable, who has issued a policy covering the subject property, if known.
- All adjoining record parcel owners, record holders of any mineral or timber rights, or record easement holders affected by the correction.

If, after 30 days of receipt of the notice, there is no written objection to the curative affidavit or dispute of the facts recited in the affidavit, the attorney may record the curative affidavit and all parties to the instrument being corrected are bound by the terms contained in the affidavit. The curative affidavit must be notarized and contain specific information.

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House Bill 375

Page 2

A curative affidavit that is recorded operates as a correction of the instrument and relates back to the date of the original recordation of the instrument as if the instrument was correct when first recorded. A title insurance company may issue an endorsement to reflect the corrections made by the curative affidavit and shall deliver a copy of the endorsement to all parties to the title policy that can be located if the attorney who recorded the instrument gives a written opinion that the curative affidavit complies with the law.

The register of deeds must record the curative affidavit in the deed book and index the affidavit in the names of parties to the instrument as grantees and grantors, irrespective of their designation in the instrument needing correction. The costs associated with the recording of a curative affidavit must be paid by the party submitting the affidavit. 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 curative affidavit is liable for actual damages sustained by any party as a result of the recordation, including reasonable attorney fees and costs.

The statute offers a form showing how the curative affidavit must be made. The register of deeds may rely upon the curative affidavit containing the North Carolina State Bar number of the attorney affiant and is not responsible for confirming that the attorney affiant is licensed to practice law.

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.

Section 3 creates a 10-year curative statute. If an instrument conveying or purporting to convey an interest in real property contains a material defect is recorded by the register of deeds in the county where the property is situated and the defect is not corrected before a period of 10 years has elapsed since the instrument was recorded, then the instrument shall be deemed effective to vest title as stated therein. The proper recordation and indexing of a curative instrument or a notice of lis pendens shall act as a toll to the 10 year curative period.

EFFECTIVE DATE: October 1, 2015, and applies to curative affidavits filed on or after that date.