



HOUSE BILL 584: Real Prop./Error Correction & Title Curative.

2017-2018 General Assembly

Committee:	House Judiciary III	Date:	April 10, 2017
Introduced by:	Reps. Jordan, Stevens, Dulin	Prepared by:	Brad Krehely
Analysis of:	PCS to First Edition H584-CSR-N-9		Committee Co-Counsel

OVERVIEW: *House Bill 584 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 act is effective when it becomes law and applies to curative affidavits filed on or after that date. The Proposed Committee substitute makes technical changes only.*

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 notice affidavit.

Section 2 creates G.S. 47-36.2 dealing with correction of errors in recorded instruments. It provides that obvious description errors in a recorded instrument affecting title to real property may be cured by recording a curative affidavit with the register of deeds in every county where the real property is located. Before recording a curative affidavit, the authorized attorney must serve a notice of intent and a copy of the unsigned proposed curative affidavit on the following persons:

- All parties to the instrument that is the subject of the curative affidavit.
- The current record mortgagee, record beneficiary, record assignee, or record secured party in any mortgage, deed of trust, assignment of leases, rents or profits, or other recorded security instrument that may be adversely affected by the curative affidavit.
- The current record owner of the real property.
- The attorney who prepared the instrument that is the subject of the curative affidavit, if known.
- Any title insurance company and title insurance agent, if known, that (i) issued a policy of title insurance covering the property in the transaction in which the error occurred or in any subsequent transaction or (ii) proposes to issue a policy of title insurance in reliance on the proposed curative affidavit.
- The following who may be adversely affected by the recording of the curative affidavit: (i) the current record owners of all adjoining properties, (ii) the current record holders of any mineral or timber rights, and (iii) the record holders of any easement rights.

If the authorized attorney does not receive a written objection to the recordation of the proposed curative affidavit or a written statement disputing the facts in the proposed curative affidavit from any person within 30 days, the authorized attorney may sign and record the proposed curative affidavit.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

House PCS 584

Page 2

An affidavit is sufficient as a curative affidavit if it does the ten things which are set out in newly enacted G.S. 47-36.2(e).

A recorded curative affidavit operates as a correction of the instrument that relates back to and is effective as of the date the instrument was originally recorded. All parties to the instrument are bound by the terms of the curative affidavit and the instrument being recorded.

The register of deeds is directed to accept a curative affidavit unless it does not meet the requirements of newly enacted G.S. 47-36.2(g). The register of deeds is not required to verify or make inquiries about the truth of the matters in the curative affidavit or the authority of the person executing the curative affidavit.

A curative affidavit that is recorded in compliance with the statutes is prima facie evidence of the facts in the affidavit. A person who erroneously records a curative affidavit is liable for actual damages, including reasonable costs and attorneys' fees sustained by any party as a result of the error.

The statutes provide for an acceptable statutory form for curative affidavits and notices of intent to correct curative affidavits.

Section 3 creates a ten-year curative statute. If (i) an instrument conveying or purporting to convey an interest in real property contains a material defect, irregularity, or omission; (ii) the instrument is recorded by the register of deeds in the county or counties where the property is situated; and (iii) the material defect, irregularity, or omission is not corrected within 10 years after the instrument was recorded, then the instrument vests title as if the instrument had not contained the material defect, irregularity, or omission.

Section 4 makes a conforming change.

EFFECTIVE DATE: The act is effective when it becomes law and applies to curative affidavits filed on or after that date.