



# HOUSE BILL 584: Real Property/Error Correction and Title Curative.

2017-2018 General Assembly

<b>Committee:</b>		<b>Date:</b>	August 15, 2017
<b>Introduced by:</b>		<b>Prepared by:</b>	Brad Krehely Staff Attorney
<b>Analysis of:</b>	S.L. 2017-110		

**OVERVIEW:** *S.L. 2017-110 clarifies the process for correcting non-material errors in recorded instruments of title, creates a curative procedure for obvious description errors in documents of title, enacts a one-year statute of repose within which to challenge the validity of a curative statute from the date it is recorded, entitles any person to recover damages, including costs and attorney's fees, from an attorney who erroneously or wrongfully records a curative affidavit, and creates a seven-year curative provision for certain defects in recorded instruments of title. The act becomes effective August 31, 2018, and applies to curative affidavits filed on or after that date.*

### 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** enacts new 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 in any manner prescribed under Rule 4(j) or Rule 4(j5) of the Rules of Civil Procedure for serving a summons:

- 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, UCC fixture filing, or other recorded instrument of title recorded after the date of recordation of the instrument that is the subject of the curative affidavit 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.

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Any person objecting to the recordation of the proposed curative affidavit or disputing the facts contained in it must provide written notice of the objection within 30 days after being served with the proposed curative affidavit. 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 45 days or prior to recordation, the authorized attorney may sign and record the proposed curative affidavit. If the authorized attorney does receive such a written objection within the time prescribed or before recordation, the authorized attorney must not sign or record the curative affidavit.

An affidavit is sufficient as a curative affidavit if it does the ten things set out in new G.S. 47-36.2(f).

A recorded curative affidavit operates as a correction of the instrument, and it 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 corrected.

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 new G.S. 47-36.2 is prima facie evidence of the facts in the affidavit. A person who wrongfully or erroneously records a curative affidavit is liable for actual damages sustained by any party as a result of the error, including reasonable costs and attorneys' fees.

New G.S. 47-36.2(k) and (l) provide statutory forms for curative affidavits and notices of intent to record curative affidavits. No particular phrasing is required for the affidavit, but the notice must substantially follow the statutory form.

An action to contest the validity or efficacy of a curative affidavit must be brought within one-year from the date of its recordation; however, this provision does not apply to an action for damages against a person wrongfully or erroneously recording a curative affidavit.

**Section 3** enacts new G.S. 47-108.28, providing that if a recorded instrument conveying an interest in real property contains a material defect, irregularity, or omission, as defined in the statute, which is not corrected within 7 years after the instrument was recorded, then the instrument vests title as stated therein and to the same extent as though the instrument had not contained the material defect, irregularity, or omission.

**Section 4** makes a conforming change.

**EFFECTIVE DATE:** The act becomes effective August 31, 2018, and applies to curative affidavits filed on or after that date.

*Bill Patterson, Staff Attorney for the Legislative Analysis Division, contributed to this summary.*