

# WEST VIRGINIA LEGISLATURE

## 2020 REGULAR SESSION

### ENROLLED

### Committee Substitute

### for

### House Bill 4576

BY DELEGATES SHOTT, NELSON, LOVEJOY, CANESTRARO,

STEELE, BYRD AND PYLES

[Passed March 7, 2020; in effect ninety days from  
passage.]

OFFICE OF THE CLERK  
LEGISLATIVE SERVICES

2020 MAR 25 10 46 AM

FILED

HB 4576

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MAR 25 2 34 16

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1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §36-3-11, relating to establishing a procedure for correcting errors in deeds,  
3 deeds of trust and mortgages; providing definitions; establishing that obvious description  
4 errors in a recorded deed, deed of trust or mortgage involving the transfer of interest in  
5 real property may be corrected by recorded affidavit; requiring that the correction of an  
6 obvious description error may not be inconsistent with the recorded property description;  
7 requiring notice be sent to specified persons; providing notice delivery requirements;  
8 establishing the contents of the corrective affidavit; establishing the effect of the corrective  
9 affidavit once filed; requiring a title insurance company to issue an endorsement to reflect  
10 the corrective affidavit; requiring the clerk to record and index the corrective affidavit in the  
11 deed book; establishing that a recorded affidavit is prima facie evidence of the facts stated  
12 therein; requiring associated costs be paid by the recording party; providing that a person  
13 who wrongfully records a corrective deed is liable for actual damages, reasonable costs,  
14 and attorney fees; providing that remedies provided herein are not exclusive; and  
15 providing a format for the corrective affidavit and notice of an intent to correct an obvious  
16 description error.

*Be it enacted by the Legislature of West Virginia:*

### **ARTICLE 3. FORM AND EFFECT OF DEEDS AND CONTRACTS.**

#### **§36-3-11. Correcting errors in deeds, deeds of trust, and mortgages; corrective affidavit.**

- 1 (a) *Definitions.* As used in this section, unless the context requires a different meaning:
- 2 (1) "Attorney" means any person licensed as an attorney in West Virginia by the West  
3 Virginia State Bar.
- 4 (2) "Corrective affidavit" means an affidavit of an attorney correcting an obvious  
5 description error.

6 (3) "Local entity" means any county, city, town, municipality, public utility, or person,  
7 including any individual, firm, partnership, association, not-for-profit corporation, or other  
8 corporation organized and existing under the laws of the State of West Virginia.

9 (4) "Obvious description error" means an error in a real property parcel description  
10 contained in a recorded deed, deed of trust, or mortgage where:

11 (A) The parcel is identified and shown as a separate parcel on a recorded subdivision plat;

12 (B) The error is apparent by reference to other information on the face of the deed, deed  
13 of trust, or mortgage, or on an attachment to the deed, deed of trust, or mortgage, or by reference  
14 to other instruments in the chain of title for the property conveyed thereby; and

15 (C) The deed, deed of trust, or mortgage recites elsewhere the parcel's correct address  
16 or tax map identification number.

17 (D) An "obvious description error" includes:

18 (i) An error transcribing courses and distances, including the omission of one or more lines  
19 of courses, and distances or the omission of angles and compass directions;

20 (ii) An error incorporating an incorrect recorded plat or a deed reference;

21 (iii) An error in a lot number or designation; or

22 (iv) An omitted exhibit supplying the legal description of the real property thereby  
23 conveyed.

24 (E) An "obvious description error" does not include:

25 (i) Missing or improper signatures or acknowledgments; or

26 (ii) Any designation of the type of tenancy by which the property is owned or whether or  
27 not a right of survivorship exists.

28 (5) "Recorded subdivision plat" means a plat that has been prepared by a professional  
29 land surveyor licensed pursuant to W. Va. Code §30-13A-1 *et seq.* of this code and recorded in  
30 the clerk's office of the circuit court for the jurisdiction where the property is located.

31 (6) "Title insurance" has the same meaning as set forth in W. Va. §33-1-10(f)(4) of this  
32 code.

33 (7) "Title insurance company" means the company that issued a policy of title insurance  
34 for the transaction in which the deed, deed of trust, or mortgage needing correction was recorded.

35 (b) Obvious description errors in a recorded deed, deed of trust, or mortgage purporting  
36 to convey or transfer an interest in real property may be corrected by recording a corrective  
37 affidavit in the office of the clerk of the county commission of the county where the property is  
38 situated or where the deed, deed of trust, or mortgage needing correction was recorded. A  
39 correction of an obvious description error shall not be inconsistent with the description of the  
40 property in any recorded subdivision plat.

41 (c) Prior to recording a corrective affidavit, notice of the intent to record the corrective  
42 affidavit, of each party's right to object to the corrective affidavit, and a copy of the corrective  
43 affidavit shall be served upon:

44 (1) All parties to the deed, deed of trust, or mortgage, including the current owner of the  
45 property;

46 (2) The attorney who prepared the deed, deed of trust, or mortgage, if known and if  
47 possible;

48 (3) To the title insurance company, if known;

49 (4) To the adjoining property owners;

50 (5) To the property address for the real property conveyed by the deed, deed of trust, or  
51 mortgage needing correction;

52 (6) If a local entity is a party to the deed, deed of trust, or mortgage, the notice and a copy  
53 of the corrective affidavit required by this subsection, to the county, city, or town attorney for the  
54 local entity, if any, and if there is no such attorney, then to the chief executive for the local entity.

55 For the purposes of this section, the term "party" includes any local entity that is a signatory; and

56 (7) If the State of West Virginia is a party to the deed, deed of trust, or mortgage, the notice  
57 and a copy of the corrective affidavit required by this subsection, to the Attorney General and to  
58 the director, chief executive officer, or head of the state agency or chairman of the board of the  
59 state entity in possession or that had possession of the property.

60 (d) The notice and a copy of the corrective affidavit shall be delivered by personal service,  
61 sent by certified mail, return receipt requested, or delivered by a commercial overnight delivery  
62 service or the United States Postal Service, and a receipt obtained, to the last known address of  
63 each party to the deed, deed of trust, or mortgage to be corrected that:

64 (1) Is admitted to record in the office of the clerk of the county commission of the county  
65 in which the property is situate and where the deed, deed of trust, or mortgage needing correction  
66 was recorded;

67 (2) Is contained in the deed, deed of trust, or mortgage needing correction;

68 (3) Has been provided to the attorney who prepared the deed, deed of trust, or mortgage  
69 as a forwarding address; or

70 (4) Has been established with reasonable certainty by other means and to all other  
71 persons and entities to whom notice is required to be given.

72 (e) If no written objection is received from any party disputing the facts recited in the  
73 corrective affidavit or objecting to its recordation within 30 days after personal service, or receipt  
74 of confirmation of delivery of the notice and copy of the corrective affidavit, the attorney may  
75 record the corrective affidavit, and all parties to the deed, deed of trust, or mortgage are bound  
76 by the terms of the corrective affidavit.

77 (f) The corrective affidavit shall:

78 (1) Be notarized;

79 (2) Contain a statement that no objection was received from any party within the specified  
80 time period;

81 (3) Confirm that a copy of the notice was sent to all the parties; and,

82 (4) Contain the attorney's West Virginia State Bar number.

83 (g) A corrective affidavit recorded pursuant to this section operates as a correction of the  
84 deed, deed of trust, or mortgage and relates back to the date of the original recordation of the  
85 deed, deed of trust, or mortgage as if the deed, deed of trust, or mortgage was correct when first  
86 recorded.

87 (h) A title insurance company, upon request, shall issue an endorsement to reflect the  
88 corrections made by the corrective affidavit and shall deliver a copy of the endorsement to all  
89 parties to the policy who can be found.

90 (i) The clerk shall record the corrective affidavit in the deed book or other book in which  
91 deeds are recorded in the county and, notwithstanding their designation in the deed, deed of trust,  
92 or mortgage needing correction, index the corrective affidavit in the names of the parties to the  
93 deed, deed of trust, or mortgage as grantors and grantees as set forth in the corrective affidavit.  
94 A corrective affidavit recorded in compliance with this section is prima facie evidence of the facts  
95 stated in the corrective affidavit.

96 (j) Costs associated with the recording of a corrective affidavit pursuant to this section  
97 shall be paid by the party that records the corrective affidavit.

98 (k) Any person who wrongfully or erroneously records a corrective affidavit is liable for  
99 actual damages sustained by any party due to the recordation, including reasonable attorney fees  
100 and costs.

101 (l) The remedies under this section are not exclusive and do not abrogate any right or  
102 remedy under the laws of the State of West Virginia other than this section.

103 (m) A corrective affidavit under this section may be made in the following form, or to the  
104 same effect:

105 **Corrective Affidavit**

106 This corrective affidavit, prepared pursuant to West Virginia Code §36-3-11, shall be  
107 indexed in the names of ..... (grantor(s)) whose addresses are ..... and .....

108 (grantee(s)), whose addresses are ..... The undersigned affiant, being first duly sworn,  
109 deposes and states as follows:

110 1. That the affiant is a West Virginia attorney.

111 2. That the deed, deed of trust, or mortgage needing correction was made in connection  
112 with a real estate transaction in which ..... purchased real estate from ....., as shown  
113 in a deed recorded in the office of the clerk of the county commission of ..... County, West  
114 Virginia, in Deed Book ....., Page ....., or as Instrument Number ....; or in which real estate was  
115 encumbered, as shown in a deed recorded in the office of the clerk of the county commission of  
116 ..... County, West Virginia, in Deed Book ....., Page ....., or as Instrument Number .....

117 3. That the property description in the aforementioned deed, deed of trust, or mortgage  
118 contains an obvious description error.

119 4. That the property description containing the obvious description error reads:

120 .....

121 .....

122 5. That the correct property description should read:

123 .....

124 .....

125 6. That this corrective affidavit is given pursuant to West Virginia Code §36-3-11 to correct  
126 the property description in the aforementioned deed, deed of trust, or mortgage, and such  
127 description shall be as stated in paragraph 5 above upon recordation of this corrective affidavit in  
128 the office of the clerk of the county commission of ..... County, West Virginia.

129 7. That notice of the intent to record this corrective affidavit and a copy of this corrective  
130 affidavit was delivered to all parties to the deed, deed of trust, or mortgage being corrected  
131 pursuant to West Virginia Code §36-3-1 and that no objection to the recordation of this corrective  
132 affidavit was received within the applicable period of time as set forth in West Virginia Code §36-  
133 3-1.

134 .....  
135 (Name of attorney)

136 .....  
137 .....  
138 (Signature of attorney)

139 .....  
140 .....  
141 (Address of attorney)

142 .....  
143 .....  
144 (Telephone number of attorney)

145 .....  
146 .....  
147 (Bar number of attorney)

148 .....  
149 The foregoing affidavit was acknowledged before me

150 .....  
151 This ..... day of ....., 20...., by

152 .....  
153 .....  
154 Notary Public

155 .....  
156 My Commission expires .....

157 .....  
158 Notary Registration Number: .....

159 .....  
160 (n) Notice under this section may be made in the following form, or to the same effect:  
161

162 **Notice of Intent to Correct an Obvious Description Error**

163 .....  
164 Notice is hereby given to you concerning the deed, deed of trust, or mortgage described  
165 in the corrective affidavit, a copy of which is attached to this notice, as follows:

166 1. The attorney identified below has discovered or has been advised of an obvious  
167 description error in the deed, deed of trust, or mortgage recorded as part of your real estate  
168 settlement. The error is described in the attached affidavit.

169 2. The undersigned will record an affidavit to correct such error unless the undersigned  
170 receives a written objection disputing the facts recited in the affidavit or objecting to the  
171 recordation of the affidavit. Your objections must be sent within 30 days of receipt of this notice  
172 to the following address:

173 .....  
174 (Address)  
175 .....  
176 .....  
177 (Name of attorney)  
178 .....  
179 .....  
180 (Signature of attorney)  
181 .....  
182 .....  
183 (Address of attorney)  
184 .....  
185 .....  
186 (Telephone number of attorney)  
187 .....  
188 .....  
189 (Bar number of attorney)

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

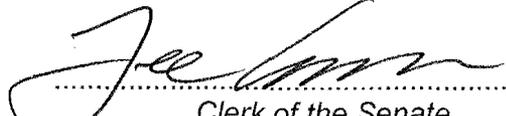
  
.....  
Chairman, House Committee

  
.....  
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

  
.....  
Clerk of the House of Delegates

  
.....  
Clerk of the Senate

  
.....  
Speaker of the House of Delegates

  
.....  
President of the Senate

OFFICE OF THE  
SECRETARY OF STATE

2020 MAR 25 P 4:46

FILED

The within is approved this the 25<sup>th</sup>  
day of March ..... 2020.

  
.....  
Governor

PRESENTED TO THE GOVERNOR

MAR 15 2020  
11 11 2020

Time 1:15 pm