

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.]

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

(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.

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Chairman, House Committee

.....
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2020.

.....
Governor