

# **WEST VIRGINIA LEGISLATURE**

**2020 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 4576**

BY DELEGATES SHOTT, NELSON, LOVEJOY, CANESTRARO,

STEELE, BYRD AND PYLES

[Originating in the Committee on the Judiciary.]



1 A BILL 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 establishing that prior to recording a corrective affidavit all interested parties must be  
8 notified of the intent to record a corrective affidavit and the right of each party to object;  
9 requiring that notice to correct an obvious error, and a copy of the accompanying affidavit  
10 must be provided to any owner of adjoining property, each party to the deed, deed of trust  
11 or mortgage, and the address for the property needing correction; if a local entity is a party,  
12 notice shall be sent to the attorney for the local entity or the local entity; if the state is a  
13 party, notice shall be served upon the Attorney General and the state agency that has or  
14 had possession of the property; establishing that if there is no objection within 30 days of  
15 service upon all designated parties to the deed, pertinent attorneys, the title insurance  
16 company and adjoining property owners, the corrective affidavit may be recorded;  
17 establishes the contents of the corrective affidavit; establishes the effect of the corrective  
18 affidavit once filed; requires a title insurance company to issue an endorsement to reflect  
19 the corrective affidavit; requires the clerk to record and index the corrective affidavit in the  
20 deed book; establishes that a recorded affidavit is *prima facie* evidence of the facts stated  
21 therein; requires associated costs be paid by the recording party; provides that a person  
22 who wrongfully records a corrective deed is liable for actual damage, reasonable costs,  
23 and attorney fees; provides that remedies under this section are not exclusive; and  
24 provides a format for the corrective affidavit and notice of an intent to correct an obvious  
25 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; affidavit.**

1           (a) As used in this section, unless the context requires a different meaning:

2           “Attorney” means any person licensed as an attorney in West Virginia by the West Virginia  
3 State Bar.

4           “Corrective affidavit” means an affidavit of an attorney correcting an obvious description  
5 error.

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

9           “Obvious description error” means an error in a real property parcel description contained  
10 in a recorded deed, deed of trust, or mortgage where:

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

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

16           (C) Such deed, deed of trust, or mortgage recites elsewhere the parcel’s correct address  
17 or tax map identification number.

18           (D) An “obvious description error” includes:

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

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

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

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

25 (E) An “obvious description error” does not include:

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

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

29 “Recorded subdivision plat” means a plat that has been prepared by a professional land  
30 surveyor licensed pursuant to W. Va. Code §§30-13A-1, et seq., of this code and recorded in the  
31 clerk’s office of the circuit court for the jurisdiction where the property is located.

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

33 “Title insurance company” means the company who issued a policy of title insurance for  
34 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 an affidavit in the  
37 office of the clerk of the county commission of the county wherein the property is situate or where  
38 the deed, deed of trust, or mortgage needing correction was recorded. No correction of an obvious  
39 description error shall be inconsistent with the description of the property in any recorded  
40 subdivision plat.

41 (c) Prior to recording a corrective affidavit, the attorney seeking to record the affidavit shall  
42 deliver a copy of the affidavit to all parties to the deed, deed of trust, or mortgage, including the  
43 current owner of the property; to the attorney who prepared the deed, deed of trust, or mortgage,  
44 if known and if possible; and to the title insurance company, if known, and give notice of the intent  
45 to record the affidavit and of each party’s right to object to the affidavit.

46 (d) For an affidavit to correct an obvious description error in a deed as defined and  
47 described in subsection (a)(3), notice and a copy of the affidavit shall also be provided to any  
48 owner of property adjoining a line to be corrected.

49 (e) The notice and a copy of the affidavit shall be delivered by personal service, sent by  
50 certified mail, return receipt requested, or delivered by a commercial overnight delivery service or

51 the United States Postal Service, and a receipt obtained, to the last known address of each party  
52 to the deed, deed of trust, or mortgage to be corrected that:

53 (1) Is admitted to record in the office of the clerk of the county commission of the county  
54 wherein the property is situate and where the deed, deed of trust, or mortgage needing correction  
55 was recorded;

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

57 (3) Has been provided to the attorney as a forwarding address; or

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

60 (f) The notice and a copy of the affidavit shall be sent to the property address for the real  
61 property conveyed by the deed, deed of trust, or mortgage needing correction.

62 (1) If a local entity is a party to the deed, deed of trust, or mortgage, the notice and a copy  
63 of the affidavit required by this subsection shall be sent to the county, city, or town attorney for  
64 the local entity, if any, and if there is no such attorney, then to the chief executive for the local  
65 entity. For the purposes of this section, the term "party" includes any local entity that is a signatory.

66 (2) If the State of West Virginia is a party to the deed, deed of trust, or mortgage, the notice  
67 and a copy of the affidavit required by this subsection shall be sent to the Attorney General and  
68 to the director, chief executive officer, or head of the state agency or chairman of the board of the  
69 state entity in possession or that had possession of the property.

70 (g) The notice and a copy of the affidavit shall be served upon:

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

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

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

76 (4) To the adjoining property owners.

77 (h) If no written objection is received from any party disputing the facts recited in the  
78 affidavit or objecting to its recordation within 30 days after personal service or receipt of  
79 confirmation of delivery of the notice and copy of the affidavit, the corrective affidavit may be  
80 recorded by the attorney, and all parties to the deed, deed of trust, or mortgage shall be bound  
81 by the terms of the affidavit.

82 (i) The corrective affidavit shall:

83 (1) Be notarized;

84 (2) Contain a statement that no objection was received from any party within the period;

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

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

87 (j) A corrective affidavit recorded pursuant to this section operates as a correction of the  
88 deed, deed of trust, or mortgage and relates back to the date of the original recordation of the  
89 deed, deed of trust, or mortgage as if the deed, deed of trust, or mortgage was correct when first  
90 recorded.

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

94 (l) The clerk shall record the corrective affidavit in the deed book or other book in which  
95 deeds are recorded in the county and, notwithstanding their designation in the deed, deed of trust,  
96 or mortgage needing correction, index the affidavit in the names of the parties to the deed, deed  
97 of trust, or mortgage as grantors and grantees as set forth in the affidavit. An affidavit recorded in  
98 compliance with this section shall be prima facie evidence of the facts stated in such affidavit.

99 (m) Costs associated with the recording of a corrective affidavit pursuant to this section  
100 shall be paid by the party that records the corrective affidavit.

101 (n) Any person who wrongfully or erroneously records a corrective affidavit is liable for  
102 actual damages sustained by any party due to such recordation, including reasonable attorney  
103 fees and costs.

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

106 (p) An affidavit under this section may be made in the following form, or to the same effect:

107 **Corrective Affidavit**

108 This Affidavit, prepared pursuant to West Virginia Code §36-3-11, shall be indexed in the  
109 names of ..... (grantor) and .....(grantee), whose addresses are ..... The  
110 undersigned affiant, being first duly sworn, deposes and states as follows:

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

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

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

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

121 .....

122 .....

123 5. That the correct property description should read:

124 .....

125 .....



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

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

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 (g) 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)

NOTE: The purpose of this bill is to establish a procedure for correcting obvious errors in deeds, deeds of trust, and mortgages, and establishing a format for the corrective affidavit and notice of an intent to correct an obvious description error.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.