

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4576

BY DELEGATES SHOTT, NELSON, LOVEJOY, CANESTRARO,

STEELE, BYRD AND PYLES

[Introduced January 28, 2020; Referred to 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 “Obvious description error” means an error in a real property parcel description contained
7 in a recorded deed, deed of trust, or mortgage where:

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

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

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

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

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

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

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

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

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

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

24 (ii) Any designation of the type of tenancy by which the property is owned or whether or

25 not a right of survivorship exists.

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

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

30 “Title insurance company” means the company who issued a policy of title insurance for
31 the transaction in which the deed, deed of trust, or mortgage needing correction was recorded.

32 (b) Obvious description errors in a recorded deed, deed of trust, or mortgage purporting
33 to convey or transfer an interest in real property may be corrected by recording an affidavit in the
34 land records of the circuit court for the jurisdiction where the property is located or where the
35 deed, deed of trust, or mortgage needing correction was recorded. No correction of an obvious
36 description error shall be inconsistent with the description of the property in any recorded
37 subdivision plat.

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

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

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

50 (1) Is admitted to record in the office of the clerk of the county commission where the

51 property is located and where the deed, deed of trust, or mortgage needing correction was
52 recorded;

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

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

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

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

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

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

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

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

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

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

73 (4) To the adjoining property owners.

74 (h) If no written objection is received from any party disputing the facts recited in the
75 affidavit or objecting to its recordation within 30 days after personal service or receipt of
76 confirmation of delivery of the notice and copy of the affidavit, the corrective affidavit may be

77 recorded by the attorney, and all parties to the deed, deed of trust, or mortgage shall be bound
78 by the terms of the affidavit.

79 (i) The corrective affidavit shall:

80 (1) Be notarized;

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

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

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

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

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

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

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

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

104 **Corrective Affidavit**

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

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

109 2. That the deed, deed of trust, or mortgage needing correction was made in connection
110 with a real estate transaction in which purchased real estate from, as shown
111 in a deed recorded in the Clerk's Office of the Circuit Court of, in Deed Book, Page
112, or as Instrument Number; or in which real estate was encumbered, as shown in a deed
113 recorded in the Clerk's Office of the Circuit Court of, in Deed Book, Page, or as
114 Instrument Number

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

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

118

119

120 5. That the correct property description should read:

121

122

123 6. That this affidavit is given pursuant to West Virginia Code § 36-3-11 to correct the
124 property description in the aforementioned deed, deed of trust, or mortgage and such description
125 shall be as stated in paragraph 5 above upon recordation of this affidavit in the Circuit Court of
126

127 7. That notice of the intent to record this corrective affidavit and a copy of this affidavit was
128 delivered to all parties to the deed, deed of trust, or mortgage being corrected pursuant to West

129 Virginia Code § 36-3-1 and that no objection to the recordation of this affidavit was received within
130 the applicable period of time as set forth in West Virginia Code § 36-3-1.

131
132 (Name of attorney)

133
134 (Signature of attorney)

135
136 (Address of attorney)

137
138 (Telephone number of attorney)

139
140 (Bar number of attorney)

141 The foregoing affidavit was acknowledged before me

142 This day of, 20...., by

143
144 Notary Public

145 My Commission expires

146 Notary Registration Number:

147 (g) Notice under this section may be made in the following form, or to the same effect:

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

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

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

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

170 _____
171 (Address)
172
173 _____
174 (Name of attorney)
175
176 _____
177 (Signature of attorney)
178
179 _____
180 (Address of attorney)
181
182 _____
183 (Telephone number of attorney)
184
185 _____
186 (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.