

1 SENATE BILL 426

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Ron Griggs

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10 AN ACT

11 RELATING TO PROPERTY; ENACTING A NEW SECTION OF CHAPTER 47,  
12 ARTICLE 1 NMSA 1978 TO PROVIDE FOR SCRIVENER'S ERROR AFFIDAVITS  
13 TO CORRECT ERRORS IN INSTRUMENTS AFFECTING REAL PROPERTY.

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. A new section of Chapter 47, Article 1 NMSA  
17 1978 is enacted to read:

18 "[NEW MATERIAL] USE OF SCRIVENER'S ERROR AFFIDAVITS.--

19 A. As used in this section, "scrivener's error  
20 affidavit" means an affidavit to correct a drafting error or  
21 clerical error relating to:

22 (1) the identification, marital status,  
23 heirship, relation, death or time of death of any person who is  
24 a party to an instrument affecting the title to real property;

25 (2) the identification of a corporation or

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1 other legal entity that is a party to an instrument affecting  
2 the title to real property; or

3 (3) the legal description to real property in  
4 an instrument affecting the title to real property.

5 B. A scrivener's error affidavit shall only be  
6 executed by:

7 (1) a licensed attorney who prepared the  
8 original instrument or by a current employee of the title  
9 insurer or title insurance agent who completed the form of the  
10 original instrument who is licensed under the New Mexico Title  
11 Insurance Law for an error on a deed or other legal document  
12 prepared in conjunction with a closing of a transaction  
13 affecting the title to real property;

14 (2) a current employee of the mortgagee or  
15 beneficiary named in the form of the original instrument, or a  
16 licensed attorney who represents the mortgagee or beneficiary  
17 named in the form of the original instrument, for an error on a  
18 mortgage or deed of trust;

19 (3) a licensed attorney who represents the  
20 principal or grantor of the original instrument or by the  
21 principal or grantor of the original instrument for an error on  
22 a power of attorney or easement; or

23 (4) a licensed attorney who represents a party  
24 to the original instrument or who prepared the original  
25 instrument for an error on any other writings affecting title

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1 to real estate.

2 C. A scrivener's error affidavit shall:

3 (1) state that the affiant has actual  
4 knowledge of and is competent to testify to the facts in the  
5 affidavit and an acknowledgment that the affiant is testifying  
6 under the penalty of perjury;

7 (2) be sworn to and acknowledged by the  
8 affiant before a person authorized to administer an oath under  
9 the laws of this state;

10 (3) conspicuously identify the document in its  
11 title that it is a "scrivener's affidavit" or "scrivener's  
12 error affidavit"; and

13 (4) contain the following information  
14 concerning the original instrument being corrected:

15 (a) the name of the person or entity  
16 that prepared or completed or was associated with the original  
17 instrument;

18 (b) the names and capacities of all  
19 parties to the original instrument;

20 (c) the recording information, including  
21 the recording date and document, instrument or reception  
22 number, if available, of the original instrument;

23 (d) a brief description of each error in  
24 the original instrument that the scrivener's error affidavit is  
25 designed to correct; and

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(e) the correct information to be inserted or reflected in the original instrument.

D. A scrivener's error affidavit that substantially complies with this section as to form and execution shall be:

(1) recorded by the county clerk in the land records of the county where the real property is located;

(2) indexed by the county clerk in the general index under the names of the original parties to the instrument as they are identified in the scrivener's error affidavit; and

(3) admissible as evidence to the same extent as a deed or other recorded instrument in an action involving the original instrument to which it relates or the title to the real property affected by the original instrument.

E. A scrivener's error affidavit shall be effective as of the time of the recording of the original instrument being corrected for errors of an obvious or minor nature. For all other errors and for a bona fide purchaser or bona fide encumbrancer, for value of real property, a scrivener's error affidavit shall be effective at the time the affidavit is recorded. Errors of an obvious or minor nature may include:

(1) defects in a legal description, such as omission of one or more words;

(2) clerical errors or errors in the name of a subdivision or recording information for a plat or omitted bearings or distances in metes and bounds descriptions, as long

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1 as such correction does not add any additional land to the land  
2 being described or remove any land from the land being  
3 described;

4 (3) misspellings of names, or incorrect or  
5 lack of middle initials or erroneous marital status of grantors  
6 or grantees under a deed or borrower or mortgagor or trustor  
7 under mortgage or deed of trust;

8 (4) an omitted address for the grantee under a  
9 deed;

10 (5) errors in the type of legal entity or  
11 state of domicile of a corporation or other legal entity; or

12 (6) defective or missing description of  
13 capacity of a party to the original instrument.

14 F. Nothing contained in this section shall be  
15 deemed to prohibit any other manner of correcting errors in any  
16 writings affecting title to real estate by any other lawful  
17 means such as corrective deeds, additional deeds to correct  
18 errors or modifications to mortgages or deeds of trust.

19 G. A "scrivener's error affidavit" shall be  
20 prepared in substantially the following form:

21 "SCRIVENER'S ERROR AFFIDAVIT

22 I, \_\_\_\_\_ ("Affiant"),  
23 being first duly sworn, state under oath:

24 1. I am duly authorized to execute this Affidavit, have  
25 actual knowledge of the matters set forth within this Affidavit

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1 and am competent to testify in a court of law about the facts  
2 stated in this Affidavit.

3 2. I am eligible and qualified to be the Affiant of this  
4 Scrivener's Error Affidavit under New Mexico law due to the  
5 following facts:

6 [Explain qualifications for eligibility]

7 3. The instrument containing the error that this  
8 Affidavit intends to correct is as follows:  
9 "Original Instrument" [Describe the instrument containing the  
10 error]

11 4. The purpose of this Affidavit is to provide notice of  
12 the scrivener's error described in this Affidavit and to  
13 correct the Original Instrument.

14 5. The Original Instrument was prepared or completed by  
15 or associated with: \_\_\_\_\_.

16 6. The names and capacities of the parties to the  
17 Original Instrument are:  
18 \_\_\_\_\_  
19 \_\_\_\_\_

20 7. The recording information, including the recording  
21 date and document, instrument or reception number for the  
22 Original Instrument, is as follows: Date of Recording \_\_\_\_\_  
23 Recording information  
24 \_\_\_\_\_, in  
25 the real property records of \_\_\_\_\_ County, New Mexico.

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8. A brief description of each error in the Original Instrument that this Affidavit is designed to correct:

\_\_\_\_\_  
\_\_\_\_\_

9. The correct information to be inserted, removed or reflected in the Original Instrument is as follows:

\_\_\_\_\_  
\_\_\_\_\_

10. This Affidavit is made under penalty of perjury. FURTHER AFFIANT SAYETH NAUGHT.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

Name: \_\_\_\_\_

Company Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF NEW MEXICO

COUNTY OF \_\_\_\_\_

This instrument was sworn to and acknowledged on this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by

\_\_\_\_\_, as

\_\_\_\_\_ of

\_\_\_\_\_.

\_\_\_\_\_

Notary Public

(Seal)

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My commission expires: \_\_\_\_\_".