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AN ACT

RELATING TO PROPERTY; AMENDING PROVISIONS THAT AUTHORIZE
CORRECTIONS OF MINOR DRAFTING OR CLERICAL ERRORS OR OMISSION
IN RECORDED INSTRUMENTS OF REAL PROPERTY.

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

SECTION 1. Section 47-1-57 NMSA 1978 (being Laws 2016,
Chapter 67, Section 1) is amended to read:

"47-1-57. USE OF SCRIVENER'S-ERROR AFFIDAVITS.--

A. As used in this section, "scrivener's-error
affidavit" means an affidavit to correct a minor drafting or
clerical error or omission in a recorded instrument,
including:

- (1) a legal description, such as the
omission of one or more words;
- (2) the name of a subdivision;
- (3) the recording information for a plat;
- (4) a metes and bounds description or
sectionalized legal description; provided that the
description shall reference a recorded instrument reflecting
the correct description, if available;
- (5) the spelling of a name;
- (6) a middle initial, if incorrect or
missing;
- (7) a grantor's or grantee's address, if

1 omitted in a recorded instrument;

2 (8) a party's marital status;

3 (9) a missing exhibit or addendum; or

4 (10) the legal type or state of domicile of
5 a corporation or other legal entity.

6 B. A scrivener's-error affidavit shall be executed
7 by only the following:

8 (1) for an error or omission on a recorded
9 instrument involving real property:

10 (a) the licensed attorney who prepared
11 the original instrument;

12 (b) the employee of the title insurer
13 or title insurance agent who completed the form of the
14 original instrument;

15 (c) an employee of a title insurer or
16 title insurance agent licensed pursuant to the New Mexico
17 Title Insurance Law;

18 (d) a land professional who is
19 certified or registered by a nationally recognized land
20 professional organization and who filled in the form or
21 provided the description for the original instrument; or

22 (e) a licensed attorney who has
23 examined title to the property and discovered discrepancies
24 in the description in a chain of title that are reasonably
25 apparent to the attorney to be a minor drafting or clerical

1 error or omission; and

2 (2) for an error on a power of attorney:

3 (a) a licensed attorney who represents
4 the principal or grantor of the original instrument; or

5 (b) the principal or grantor of the
6 original instrument.

7 C. A scrivener's-error affidavit shall:

8 (1) state that the affiant has actual
9 knowledge of and is competent to testify to the facts in the
10 affidavit and contain an acknowledgment that the affiant is
11 testifying under the penalty of perjury;

12 (2) be sworn to and acknowledged by the
13 affiant before a person authorized to administer an oath
14 under New Mexico law;

15 (3) conspicuously identify in its title that
16 it is a "scrivener's affidavit" or "scrivener's-error
17 affidavit"; and

18 (4) contain the following information
19 concerning the original instrument being corrected:

20 (a) the name of the person who or
21 entity that prepared, completed or was associated with the
22 original instrument;

23 (b) the names and capacities of all
24 parties to the original instrument;

25 (c) the recording information,

1 including the recording date and document, instrument or
2 reception number, if available, of the original instrument;

3 (d) a brief description of each error
4 in the original instrument that the affidavit is designed to
5 correct; and

6 (e) the correct information to be
7 inserted or reflected in or the information to be removed
8 from the original instrument.

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

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

14 (2) indexed by the county clerk in the
15 general index under the names of the original parties to the
16 instrument as they are identified in the affidavit;

17 (3) admissible as evidence to the same
18 extent as a deed or other recorded instrument in an action
19 involving the original instrument to which it relates or the
20 title to the real property affected by the original
21 instrument; and

22 (4) effective as of the date of the original
23 instrument being corrected.

24 E. Nothing contained in this section shall be
25 deemed to:

1 (1) prohibit any other manner of correcting
2 errors in any writings affecting title to real estate by any
3 other lawful means such as corrective deeds, additional deeds
4 to correct errors or modifications to mortgages or deeds of
5 trust; or

6 (2) require a change to the records of the
7 county assessor or the county treasurer.

8 F. A scrivener's-error affidavit shall be prepared
9 in substantially the following form:

10 "SCRIVENER'S-ERROR AFFIDAVIT

11 I, _____ ("Affiant"),
12 being first duly sworn, state under oath:

13 1. I am duly authorized to execute this Affidavit, have
14 actual knowledge of the matters set forth within this
15 Affidavit and am competent to testify in a court of law about
16 the facts stated in this Affidavit.

17 2. I am eligible and qualified under New Mexico law to
18 be the Affiant of this Scrivener's-Error Affidavit because of
19 the following facts:

20 [Explain qualifications for eligibility]

21 3. The instrument containing the error that this
22 Affidavit intends to correct is as follows:
23 "Original Instrument" [Describe the instrument containing the
24 error]

25 4. The purpose of this Affidavit is to provide notice

1 of the scrivener's error described in this Affidavit and to
2 correct the Original Instrument.

3 5. The Original Instrument was prepared by, completed
4 by or associated with: _____.

5 6. The names and capacities of the parties to the
6 Original Instrument are:
7 _____
8 _____

9 7. The recording information, including the recording
10 date and document, instrument or reception number for the
11 Original Instrument, is as follows: Date of Recording _____
12 Recording information
13 _____,

14 in the real property records of _____ County, New
15 Mexico.

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

20 9. The correct information to be inserted or reflected
21 in or the information to be removed from the Original
22 Instrument is as follows:
23 _____
24 _____

25 10. This Affidavit is made under penalty of perjury.

1 FURTHER AFFIANT SAYETH NAUGHT.

2 Dated this _____ day of _____, 20__.

3 _____

4 Name: _____

5 Company Name: _____

6 Title: _____

7 STATE OF _____

8 COUNTY OF _____

9 This instrument was subscribed, sworn to and
10 acknowledged on this _____ day of _____,

11 20__ by _____, as

12 _____ of

13 _____.

14 _____

15 Notary Public

16 (Seal)

17 My commission number: _____

18 My commission expires: _____ ". " _____ HB 250/a
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