

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL 146

**52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

INTRODUCED BY

Ron Griggs

AN ACT

RELATING TO PROPERTY; PROVIDING FOR SCRIVENER'S-ERROR  
AFFIDAVITS TO CORRECT ERRORS IN INSTRUMENTS AFFECTING REAL  
PROPERTY.

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

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

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

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

(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;

underscoring material = new  
~~[bracketed material] = delete~~

underscoring material = new  
~~[bracketed material] = delete~~

1 (4) a metes and bounds description, if  
2 bearings or distances are omitted and as long as the correction  
3 does not add or remove land to the land being described;

4 (5) the spelling of a name;

5 (6) a middle initial, if incorrect or missing;

6 (7) a grantee's address, if omitted in a deed;

7 or

8 (8) the legal type or state of domicile of a  
9 corporation or other legal entity.

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

12 (1) for an error on a deed or other legal  
13 document prepared in conjunction with the closing of a  
14 transaction affecting the title to real property:

15 (a) the licensed attorney who prepared  
16 the original instrument; or

17 (b) the employee of the title insurer or  
18 title insurance agent who completed the form of the original  
19 instrument, if still employed by that insurer or agent and if  
20 licensed under the New Mexico Title Insurance Law;

21 (2) for an error on a mortgage or deed of  
22 trust:

23 (a) a licensed attorney who represents  
24 the mortgagee or beneficiary named in the form of the original  
25 instrument; or

underscoring material = new  
~~[bracketed material] = delete~~

1 (b) a current employee of the mortgagee  
2 or beneficiary named in the form of the original instrument;

3 (3) for an error on a power of attorney or an  
4 easement:

5 (a) a licensed attorney who represents  
6 the principal or grantor of the original instrument; or

7 (b) the principal or grantor of the  
8 original instrument; and

9 (4) for an error on any other writing  
10 affecting title to real estate:

11 (a) a licensed attorney who represents a  
12 party to the original instrument; or

13 (b) the licensed attorney who prepared  
14 the original instrument.

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

16 (1) state that the affiant has actual  
17 knowledge of and is competent to testify to the facts in the  
18 affidavit and contain an acknowledgment that the affiant is  
19 testifying under the penalty of perjury;

20 (2) be sworn to and acknowledged by the  
21 affiant before a person authorized to administer an oath under  
22 New Mexico law;

23 (3) conspicuously identify in its title that  
24 it is a "scrivener's affidavit" or "scrivener's-error  
25 affidavit"; and

1 (4) contain the following information  
2 concerning the original instrument being corrected:

3 (a) the name of the person who or entity  
4 that prepared, completed or was associated with the original  
5 instrument;

6 (b) the names and capacities of all  
7 parties to the original instrument;

8 (c) the recording information, including  
9 the recording date and document, instrument or reception  
10 number, if available, of the original instrument;

11 (d) a brief description of each error in  
12 the original instrument that the affidavit is designed to  
13 correct; and

14 (e) the correct information to be  
15 inserted or reflected in or the information to be removed from  
16 the original instrument.

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

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

21 (2) indexed by the county clerk in the general  
22 index under the names of the original parties to the instrument  
23 as they are identified in the affidavit; and

24 (3) admissible as evidence to the same extent  
25 as a deed or other recorded instrument in an action involving

underscored material = new  
[bracketed material] = delete

1 the original instrument to which it relates or the title to the  
2 real property affected by the original instrument.

3 E. Nothing contained in this section shall be  
4 deemed to:

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

10 (2) require a change to the records of the  
11 county assessor or the county treasurer.

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

14 "SCRIVENER'S-ERROR AFFIDAVIT

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

17 1. I am duly authorized to execute this Affidavit, have  
18 actual knowledge of the matters set forth within this Affidavit  
19 and am competent to testify in a court of law about the facts  
20 stated in this Affidavit.

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

24 [Explain qualifications for eligibility]

25 3. The instrument containing the error that this

underscored material = new  
[bracketed material] = delete

1 Affidavit intends to correct is as follows:

2 "Original Instrument" [Describe the instrument containing the  
3 error]

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

7 5. The Original Instrument was prepared by, completed by  
8 or associated with: \_\_\_\_\_.

9 6. The names and capacities of the parties to the  
10 Original Instrument are:  
11 \_\_\_\_\_  
12 \_\_\_\_\_

13 7. The recording information, including the recording  
14 date and document, instrument or reception number for the  
15 Original Instrument, is as follows: Date of Recording \_\_\_\_\_  
16 Recording information

17 \_\_\_\_\_, in  
18 the real property records of \_\_\_\_\_ County, New Mexico.

19 8. A brief description of each error in the Original  
20 Instrument that this Affidavit is designed to correct:  
21 \_\_\_\_\_  
22 \_\_\_\_\_

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

.202627.1

underscored material = new  
[bracketed material] = delete

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

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)

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