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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:

"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;
- (4) a metes and bounds description, if
bearings or distances are omitted and as long as the
correction does not add or remove land to the land being
described;
- (5) the spelling of a name;
- (6) a middle initial, if incorrect or
missing;
- (7) a grantee's address, if omitted in a
deed; or

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

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

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

8 (a) the licensed attorney who prepared
9 the original instrument; or

10 (b) the employee of the title insurer
11 or title insurance agent who completed the form of the
12 original instrument, if still employed by that insurer or
13 agent and if licensed under the New Mexico Title Insurance
14 Law;

15 (2) for an error on a mortgage or deed of
16 trust:

17 (a) a licensed attorney who represents
18 the mortgagee or beneficiary named in the form of the
19 original instrument; or

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

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

24 (a) a licensed attorney who represents
25 the principal or grantor of the original instrument; or

1 (b) the principal or grantor of the
2 original instrument; and

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

5 (a) a licensed attorney who represents
6 a party to the original instrument; or

7 (b) the licensed attorney who prepared
8 the original instrument.

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

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

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

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

20 (4) contain the following information
21 concerning the original instrument being corrected:

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

25 (b) the names and capacities of all

1 parties to the original instrument;

2 (c) the recording information,
3 including the recording date and document, instrument or
4 reception number, if available, of the original instrument;

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

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

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

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

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

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

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,
15 New 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 NEW MEXICO

8 COUNTY OF _____

9 This instrument was sworn to and acknowledged on this

10 _____ day of _____, 20__ by

11 _____, as

12 _____ of

13 _____.

14 _____

15 Notary Public

16 (Seal)

17 My commission expires: _____ " . " _____

18 _____

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