

HOUSE BILL 250

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Greg Nibert

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

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.--

.224433.4AIC February 28, 2023 (9:12pm)

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A. As used in this section HJC→:←HJC HJC→,←HJC

HJC→(1) "landman" means a land professional who is certified or registered by a nationally recognized land professional organization; and

(2)←HJC "scrivener's-error affidavit" means an affidavit to correct a minor drafting or clerical error or omission in a recorded instrument, including:

HJC→[(1)]←HJC HJC→(1)←HJC HJC→(a)←HJC  
a legal description, such as the omission of one or more words;

HJC→[(2)]←HJC HJC→(2)←HJC HJC→(b)←HJC  
the name of a subdivision;

HJC→[(3)]←HJC HJC→(3)←HJC HJC→(c)←HJC  
the recording information for a plat;

HJC→[(4)]←HJC HJC→(4)←HJC HJC→(d)←HJC  
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~~] or sectionalized legal description; provided that the description shall reference a recorded instrument reflecting the correct description, if available;

HJC→[(5)]←HJC HJC→(5)←HJC HJC→(e)←HJC  
the spelling of a name;

HJC→[(6)]←HJC HJC→(6)←HJC HJC→(f)←HJC  
a middle initial, if incorrect or missing;

HJC→[(7)]←HJC HJC→(7)←HJC HJC→(g)←HJC

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a grantor's or grantee's address, if omitted in a [~~deed~~]  
recorded instrument;

HJC→(h)←HJC HJC→(8)←HJC a party's  
marital status;

HJC→(i)←HJC HJC→(9)←HJC a missing  
exhibit or addendum; or

[~~(8)~~] HJC→(j)←HJC HJC→(10)←HJC the  
legal type or state of domicile of a corporation or other legal  
entity.

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

(1) for an error [~~on a deed or other legal~~  
~~document prepared in conjunction with the closing of a~~  
~~transaction affecting the title to~~] or omission on a recorded  
instrument involving real property:

(a) the licensed attorney who prepared  
the original instrument; [~~or~~]

(b) the employee of the title insurer or  
title insurance agent who completed the form of the original  
instrument [~~if still employed by that~~];

(c) an employee of a title insurer or  
title insurance agent [~~and if~~] licensed [~~under~~] pursuant to the  
New Mexico Title Insurance Law;

[~~(2)~~] ~~for an error on a mortgage or deed of~~  
~~trust~~;

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

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

(d) a HJC→landman←HJC HJC→land professional who is certified or registered by a nationally recognized land professional organization and←HJC who filled in the form or provided the description for the original instrument; or

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

~~[(3)]~~ (2) for an error on a power of attorney ~~[or an easement]:~~

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

(b) the principal or grantor of the original instrument. [and

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

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

~~(b) the licensed attorney who prepared the original instrument]~~

C. A scrivener's-error affidavit shall:

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

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

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

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

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

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

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

(d) a brief description of each error in the original instrument that the affidavit is designed to

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correct; and

(e) the correct information to be inserted or reflected in or the information to be removed from 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 in which 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 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; and

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

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

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

(2) require a change to the records of the

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county assessor or the county treasurer.

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

"SCRIVENER'S-ERROR AFFIDAVIT

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

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

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

[Explain qualifications for eligibility]

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

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

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

6. The names and capacities of the parties to the Original Instrument are:

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

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

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

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

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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] \_\_\_\_\_

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

This instrument was subscribed, sworn to and acknowledged  
on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by

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

\_\_\_\_\_ of

\_\_\_\_\_.

\_\_\_\_\_

Notary Public

(Seal)

My commission number: \_\_\_\_\_

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