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HOUSE BILL 250

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

INTRODUCED BY

Greg Nibert

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:

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

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

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1 [~~1~~] (a) a legal description, such as
2 the omission of one or more words;

3 [~~2~~] (b) the name of a subdivision;

4 [~~3~~] (c) the recording information for
5 a plat;

6 [~~4~~] (d) a metes and bounds description
7 [~~if bearings or distances are omitted and as long as the~~
8 ~~correction does not add or remove land to the land being~~
9 ~~described] or sectionalized legal description; provided that
10 the description shall reference a recorded instrument
11 reflecting the correct description, if available;~~

12 [~~5~~] (e) the spelling of a name;

13 [~~6~~] (f) a middle initial, if incorrect
14 or missing;

15 [~~7~~] (g) a grantor's or grantee's
16 address, if omitted in a [~~deed~~] recorded instrument;

17 (h) a party's marital status;

18 (i) a missing exhibit or addendum; or

19 [~~8~~] (j) the legal type or state of
20 domicile of a corporation or other legal entity.

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

23 (1) for an error [~~on a deed or other legal~~
24 ~~document prepared in conjunction with the closing of a~~
25 ~~transaction affecting the title to]~~ or omission on a recorded

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1 instrument involving real property:

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

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

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

10 ~~[(2) for an error on a mortgage or deed of~~
11 ~~trust:~~

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

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

17 (d) a landman who filled in the form or
18 provided the description for the original instrument; or

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

24 ~~[(3)]~~ (2) for an error on a power of attorney
25 ~~[or an easement]:~~

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

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

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

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

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

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

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

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

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

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

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

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1 instrument;

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

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

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

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

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

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

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

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

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

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

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

8 (2) require a change to the records of the
9 county assessor or the county treasurer.

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

12 "SCRIVENER'S-ERROR AFFIDAVIT

13 I, _____ ("Affiant"),
14 being first duly sworn, state under oath:

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

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

22 [Explain qualifications for eligibility]

23 3. The instrument containing the error that this
24 Affidavit intends to correct is as follows:

25 "Original Instrument" [Describe the instrument containing the
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1 error]

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

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

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

11 7. The recording information, including the recording
12 date and document, instrument or reception number for the
13 Original Instrument, is as follows: Date of Recording _____
14 Recording information
15 _____, in
16 the real property records of _____ County, New Mexico.

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

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

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

2 FURTHER AFFIANT SAYETH NAUGHT.

3 Dated this _____ day of _____, 20__.

4 _____

5 Name: _____

6 Company Name: _____

7 Title: _____

8 STATE OF [~~NEW MEXICO~~] _____

9 COUNTY OF _____

10 This instrument was subscribed, sworn to and acknowledged

11 on this _____ day of _____, 20__ by

12 _____, as

13 _____ of

14 _____.

15 _____

16 Notary Public

17 (Seal)

18 My commission number: _____

19 My commission expires: _____"."