§ 47-36.2. Cure of obvious description errors in recorded instruments.

(a) The following definitions apply to this section, unless the context requires a different meaning:

(1) Authorized attorney. – An individual licensed to practice law under Chapter 84 of the General Statutes, who is one of the following:

a. The attorney who drafted the instrument containing the obvious description error to be corrected.

b. Any attorney for a party to the transaction for which the instrument containing the obvious description error was recorded, including, for example, but not limited to, the attorney for (i) the grantor or grantee in a deed; (ii) the mortgagor or mortgagee in a mortgage; (iii) the grantor or trustor in a deed of trust; (iv) the trustee or duly appointed substitute trustee in a deed of trust; (v) the beneficiary of record in a deed of trust or the assignee of record of the beneficiary's interest; (vi) the assignor or assignee in an assignment of leases, rents, or profits; or (vii) any party to an instrument affecting title to real property.

c. An attorney retained or authorized by either a title insurance company or title insurance agent that either (i) has issued a policy of title insurance covering the subject property in the transaction in which the error occurred or in any subsequent transaction or (ii) proposes to issue a policy of title insurance in reliance on a curative affidavit recorded or to be recorded in accordance with the provisions of this section.

(2) Curative affidavit. – An affidavit executed by an authorized attorney to correct an obvious description error.

(3) Notice of intent. – A notice issued by an authorized attorney of the authorized attorney's intent to sign and record a curative affidavit.

(4) Obvious description error. – An error in the legal description of real property that is contained in an instrument affecting title to real property recorded in the office of the register of deeds in the county in which the real property or any part or parts thereof is located that is evidenced by any of the following:

a. One or more of the following, as stated in the instrument, are inconsistent in that one or more identify the property incorrectly, and the error is made apparent by reference to other information contained in the instrument, contained in an attachment to the instrument, or contained in another instrument in the chain of title for the subject parcel, including a recorded plat:

1. The legal description of the property.
2. The physical address of the property.
3. The tax map identification number of the property.
4. A plat reference.
5. A prior deed reference.

b. The legal description of the real property in the instrument contains one or more errors transcribing courses and distances, including, for example, the omission of one or more lines of courses and distances, the omission of angles and compass directions, or the reversal of courses.

c. The instrument contains an error in a lot or unit number or designation, and the lot or unit described is not owned by the grantor, trustor, mortgagor, or assignor at the time the instrument is executed.

d. The instrument omits an exhibit, attachment, or other descriptive information intended to supply the legal description of the subject property, and the correct legal description may be determined by reference to other information contained in the instrument, including, but not limited to, one or more of the items described in sub-subdivision a. of this subdivision.

The term "obvious description error" does not include and shall not apply to (i) missing or improper signatures or acknowledgements; (ii) any designation of the type of ownership interest or right of survivorship; or (iii) any error in the legal description that operates to convey any interest in real property that the grantor, trustor, mortgagor, or assignor owned at the time of conveyance but did not intend to convey.

(5) Recorded plat. – A plat that has been prepared by a professional land surveyor licensed pursuant to Chapter 89C of the General Statutes and has been recorded with the register of deeds in the county where the property is situated.

(6) Recording data. – The book and page number or document number that indicates where an instrument is recorded in the office of the register of deeds.

(7) Title insurance agent. – A person or entity licensed by the Commissioner of Insurance and contractually authorized by one or more title insurance companies to issue commitments and policies on behalf of said title insurance company and that has issued or proposes to issue a policy of title insurance covering real property described in a recorded instrument needing correction.

(8) Title insurance company. – A company certified pursuant to Article 26 of Chapter 58 of the General Statutes that has issued or proposes to issue a policy of title insurance covering real property described in a recorded instrument needing correction.

(b) Notwithstanding G.S. 47-14 and G.S. 47-17, obvious description errors in a recorded instrument affecting title to real property may be cured by recording a curative affidavit with the register of deeds in every county where the real property is situated.

(c) Prior to recording a curative affidavit as described in subsection (b) of this section, the authorized attorney seeking to record the affidavit shall serve a notice of intent and a copy of the unsigned proposed curative affidavit on the persons identified in this subsection. Service of the notice of intent and copy of the unsigned proposed curative affidavit shall be made in any manner prescribed for the service of a summons in accordance with Rule 4(j) or Rule 4(j5) of the North Carolina Rules of Civil Procedure. The persons entitled to service of the notice of intent and a copy of the unsigned proposed curative affidavit pursuant to this subsection are as follows:

(1) All parties to the instrument that is the subject of the curative affidavit. In the case of a deed of trust, the parties to the instrument shall include the grantor or trustor named in the deed of trust, the beneficiary of record, and any assignee of the beneficiary known to the party filing the curative affidavit or its authorized attorney, but need not include the trustee named in the deed of trust or any substitute trustee.

(2) Any current record mortgagee, record beneficiary, record assignee, or record secured party in any mortgage, deed of trust, assignment of leases, rents or profits, UCC fixture filing, or other recorded instrument of title that may be adversely affected by the recording of the curative affidavit. For the purposes of this subdivision, "instruments of title" means any instrument, recorded after the date of recordation of the instrument that is the subject of the curative affidavit, that affects title or constitutes the chain of title to real property, including, but not limited to, all deeds, wills, estate documents evidencing

transfer of title, plats, surveys, easements, rights-of-way, outstanding mortgages and deeds of trust, judicial orders or decrees, and documents evidencing intestate succession.

(3) The current record owner of the real property.

(4) The attorney who prepared the instrument that is the subject of the curative affidavit, if known.

(5) Any title insurance company, if applicable and known, and title insurance agent, if applicable and known, that (i) issued a policy of title insurance covering the subject property in the transaction in which the error occurred or in any subsequent transaction or (ii) proposes to issue a policy of title insurance in reliance on the proposed curative affidavit.

(6) The current record owners of all adjoining properties that may be adversely affected by the recording of the curative affidavit, the current record holders of any mineral or timber rights that may be adversely affected by the recording of the curative affidavit, and the record holders of any easement rights that may be adversely affected by the recording of the curative affidavit.

(d) Each person served with the notice of intent and a copy of the unsigned proposed curative affidavit described in subsection (c) of this section that wishes to object to the recordation of the proposed curative affidavit or dispute the facts recited in the proposed curative affidavit must do so in a writing sent in any manner provided for under subsection (e) of this section to the authorized attorney within 30 days after the service of the documents upon that person. The authorized attorney may sign and record the proposed curative affidavit at any time after more than 45 days have elapsed since the last person to be served was served with the notice of intent and a copy of the unsigned proposed curative affidavit. However, the authorized attorney may not record the proposed curative affidavit if, at any time before recording the proposed curative affidavit, the authorized attorney receives a written objection to the recordation of the proposed curative affidavit or a written statement disputing the facts recited in the proposed curative affidavit from any person served with the notice of intent and a copy of the unsigned proposed curative affidavit.

(e) In complying with any requirement for objecting to the recordation of the proposed curative affidavit or disputing the facts recited in the proposed curative affidavit pursuant to this section, the objection or document disputing the facts must be addressed to the authorized attorney and shall be delivered by at least one of the following methods:

(1) Delivering a copy to the authorized attorney by handing it to the authorized attorney, or by leaving it at the authorized attorney's office with a partner or employee of the authorized attorney.

(2) Mailing a copy to the authorized attorney's mailing address provided in the notice of intent.

(3) Sending a copy by facsimile to the authorized attorney's facsimile number provided in the notice of intent, as evidenced by a facsimile receipt confirmation.

(4) Email addressed to the authorized attorney's email address provided in the notice of intent.

(5) Depositing a copy prepaid with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) addressed to the authorized attorney's mailing address provided in the notice of intent.

(f) An affidavit is sufficient as a curative affidavit if it does all of the following:

(1) Contains a statement that the curative affidavit should be indexed as a "subsequent instrument" pursuant to G.S. 161-14.1.

(2) Contains a statement that the curative affidavit is recorded pursuant to this section to correct an obvious description error contained in a previously recorded instrument.

(3) Contains a statement that the affiant is an attorney licensed to practice law in North Carolina and is an authorized attorney pursuant to subdivision (1) of subsection (a) of this section.

(4) Identifies each instrument subject to the curative affidavit by stating the title of the instrument, the parties to the instrument, and the recording data for the instrument.

(5) Identifies the obvious description error contained in each instrument subject to the curative affidavit.

(6) Corrects the obvious description error by stating the correct property description.

(7) Contains a statement that the affiant served a copy of the notice of intent required by subsection (c) of this section and a copy of the unsigned proposed curative affidavit on all persons entitled to notice pursuant to subsection (c) of this section and that service on each such person was properly effected in a manner prescribed for the service of a summons in accordance with Rule 4(j) or Rule 4(j5) of the North Carolina Rules of Civil Procedure.

(8) Contains a statement that more than 45 days have elapsed since the last person to be served was served, and that before signing and recording the curative affidavit, the affiant did not receive from any person so served any written objection to the recordation of the curative affidavit or any written statement disputing the facts recited in the curative affidavit.

(9) Provides the name, telephone number, email address (if available), facsimile number (if available), and mailing address of the affiant.

(10) Is signed and sworn to or affirmed by the authorized attorney as affiant before a notary public, with an appropriate jurat completed by the notary public that conforms to the requirements of Chapter 10B of the General Statutes.

(g) A curative affidavit recorded pursuant to this section in the office of the register of deeds in the county where the real property is located shall operate as a correction of the instrument being corrected that relates back to, and is effective as of, the date the instrument being corrected was originally recorded in the office of the register of deeds, with the same effect as if the description of the property was correct when the instrument was first recorded, and all parties to the instrument being corrected shall be bound by the terms contained in the recorded curative affidavit and the instrument being corrected.

(h) Upon payment of the appropriate recordation fee, the register of deeds shall accept a curative affidavit for recording unless the curative affidavit (i) is submitted by a method or in a medium not authorized for registration by the register of deeds under applicable law, (ii) is not signed by the affiant and sworn to or affirmed as required by law for an affidavit or affirmation, or (iii) lacks a proper jurat. A copy of the previously recorded instrument to which the curative affidavit applies may be attached to or recorded with the curative affidavit and need not be a certified copy. The register of deeds shall not be required to verify or make inquiry concerning (i) the truth of the matters stated in any curative affidavit or (ii) the authority of the person executing any curative affidavit to do so. The register of deeds shall index the curative affidavit in the name of the affiant and in the names of the various parties, other than a trustee or substitute trustee named in a deed of trust, to each instrument being corrected as both grantees and grantors, irrespective of their designation in the instrument being corrected. The costs associated with the recording of a curative affidavit pursuant to this section shall be paid by the party submitting the affidavit to the register of deeds.

(i) A curative affidavit recorded in compliance with this section shall be prima facie evidence of the facts stated therein. Any person who wrongfully or erroneously records a curative affidavit is liable for actual damages sustained by any party as a result of the recordation, including reasonable attorneys' fees and costs.

(j) The remedies prescribed by this section are not exclusive and do not abrogate any rights or remedies otherwise available under the laws of this State, including any rights or remedies under G.S. 47-36.1.

(k) No particular phrasing is required for a curative affidavit. A curative affidavit in substantially the following form, when properly completed, is sufficient to satisfy the requirements of subsection (f) of this section:

"Curative Affidavit

This curative affidavit should be indexed as a "subsequent instrument" pursuant to G.S. 161-14.1.

I, _____ , certify as follows:

1. This curative affidavit is recorded pursuant to G.S. 47-36.2 to correct an obvious description error contained in a previously recorded instrument.

2. I am an attorney licensed to practice law in North Carolina. I am an "authorized attorney" as defined in G.S. 47-36.2(a)(1).

3. The instrument or instruments containing an obvious description error requiring correction are identified as follows:

Insert here the following information regarding each instrument to be corrected: the title of the instrument, the parties to the instrument, and the recording data for the instrument.

4. The obvious description error contained in the instrument(s) to be corrected is identified or described as follows:

Insert here the erroneous description that requires correction.

5. The erroneous property description is corrected to read as follows:

Insert here the correct description of the real property.

6. I have served a copy of a notice of my intent to sign and record this curative affidavit and a copy of this curative affidavit, unsigned, on all persons entitled to notice pursuant to G.S. 47-36.2(c). Service on each such person was properly effected in a manner prescribed for the service of a summons in accordance with Rule 4(j) or Rule 4(j5) of the North Carolina Rules of Civil Procedure, and more than 45 days have elapsed since the last person to be served was served. By signing and recording this affidavit I certify that I did not receive from any person so served any written objection to the recordation of this curative affidavit or any written statement disputing the facts recited in this curative affidavit.

7. My contact information is as follows:

Insert here the affiant's name, telephone number, email address (if available), facsimile number (if available), and mailing address.

Date: _____

_____

Signature of Affiant

COUNTY OF _____ , STATE OF _____

The foregoing curative affidavit was sworn to or affirmed and subscribed before me this day by _____ .

Date: _____

_____

Signature of Notary Public

Official Seal

_____ ,Notary Public

Print or Type Notary's Name

My commission expires:_____ "

(*l*) The form of the notice of intent to be given as described in subsection (c) of this section shall be substantially as follows (including capitalization and bold typeface as shown):

"NOTICE OF INTENT TO CORRECT AN OBVIOUS DESCRIPTION ERROR

This is an important legal document that requires your immediate attention. Your property rights may be affected, and you may need to respond to this notice in writing.

I am an attorney licensed to practice law in North Carolina. My contact information is as follows:

Insert the name, telephone number, email address (if available), facsimile number (if available), and mailing address of the authorized attorney issuing the notice.

I have discovered or have been advised of an error in the description of real property contained in one or more instruments recorded as part of a real estate-related transaction. A copy of a proposed Curative Affidavit accompanies this notice. The proposed Curative Affidavit identifies the previously recorded instrument or instruments that contain the description errors that I plan to correct, the description error or errors that require correction, and the correct description of the real property. If I sign and record the proposed Curative Affidavit, it will have the legal effect of correcting the erroneous property description in the listed instrument or instruments that contain the description errors.

Real property you own may be affected if I correct the erroneous description of the real property in the instrument or instruments identified in the proposed Curative Affidavit. You should consult with your attorney and your title insurance company, if known, promptly to determine whether and the extent to which my correction of the legal description in the instrument or instruments that need to be corrected will impact your property or property rights.

IF YOU WISH TO OBJECT TO MY SIGNING AND RECORDING THE PROPOSED CURATIVE AFFIDAVIT OR DISPUTE THE FACTS RECITED IN THE PROPOSED CURATIVE AFFIDAVIT, YOU MUST DO SO IN A WRITING SENT OR DELIVERED TO ME WITHIN 30 DAYS AFTER THE DATE YOU WERE SERVED WITH THIS NOTICE AND THE PROPOSED CURATIVE AFFIDAVIT.

Your writing must be sent or delivered to me by one of the following methods:

(1) Delivering a copy by handing it to me or by leaving it at my office with a partner or employee of mine.

(2) Mailing a copy to me at the mailing address provided in this notice of intent.

(3) Sending a copy by facsimile to my facsimile number, if provided in this notice of intent, as evidenced by a facsimile receipt confirmation.

(4) Email sent to my email address, if provided in this notice of intent.

(5) Depositing a copy prepaid with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) addressed to the mailing address provided in this notice of intent.

I am not permitted to sign or record the Curative Affidavit if, at any time before I actually sign and record it, I receive a written objection to my signing and recording the Curative Affidavit or a written statement disputing the facts contained in the Curative Affidavit from any person served with this notice and a copy of the unsigned proposed Curative Affidavit. However, assuming I do not receive any such objection or statement disputing the facts, Section 47-36.2 of the North Carolina General Statutes permits me to sign and record the Curative Affidavit at any time after more than 45 days have elapsed since the last person to be served was served with this notice and a copy of the unsigned proposed Curative Affidavit, and I intend to do so.

If you object to my signing and recording the Curative Affidavit or dispute the facts recited in the proposed Curative Affidavit, you need to send or deliver your written objection or written statement disputing the facts recited in the proposed Curative Affidavit to me promptly using one of the methods described above. While I encourage you to call me if you have questions, your telephone call will not be sufficient – you must write to me if you dispute the facts

recited in the proposed Curative Affidavit or object to my signing and recording the Curative Affidavit.

Date: _____

_____

Signature of authorized attorney"

(m) Nothing in this section requires that a curative affidavit be attached to an original or certified copy of a previously recorded instrument that is unchanged but rerecorded. Nothing in this section requires that a curative affidavit be attached to a copy of a previously recorded instrument that includes identified corrections or an original execution by a party or parties of the corrected instrument after the original recording with proof or acknowledgment of their execution of the correction of the instrument.

(n) The period prescribed for the commencement of an action contesting the validity or efficacy of a curative affidavit recorded under this statute shall be one year from the date of recordation of the curative affidavit. This subsection does not apply to an action for damages sustained by any party as a result of the wrongful or erroneous recordation of a curative affidavit as provided in subsection (i) of this section. (2017-110, s. 2; 2021-91, s. 12; 2025-25, s. 29(1).)