



The Art of Correction
By Paul Lewis, Title Counsel

Currently, when we think of the word “correction,” we may think of the stock market or the news media. Our common understanding of the definition of the word “correction” is a change that rectifies an error or inaccuracy. A “conveyancer” is defined in Black’s Law Dictionary as one whose business is to prepare deeds and perform other functions relating to the transfer of titles. Law school taught us that conveyancing is an art form and not a mere commodity. In fact, a Google search of “the art of conveyancing” will locate many articles which address this distinction. Generally, the term “art of conveyancing” involves the entire real estate transaction; however, it can also describe, more specifically, the drafting of deeds intended to convey real property.

There was a time when deeds were handwritten or typewritten, resulting in each deed being individually prepared and reviewed. While mistakes were sometimes made, the invention of memory typewriters and then word processors (where many times the deed you were currently preparing was the one saved from your last transaction) caused an increase in mistakes. This change in technology was a reason for the passage of NCGS 47-36.1 in the mid-1980s. In its early version, 47-36.1 was a true corrective statute that was effective on the date of recording the corrective document. The drafting attorney could make the corrections on the original document, and attach a statement explaining the correction and sign it as the drafting attorney. This statute was intended to correct obvious typographical errors or other minor errors. Like all good things, however, its use exceeded its intended purpose. What many fine attorneys at the time considered an obvious typographical error was, upon reflection, a substantial change to the subject matter of the deed. Defective and void deeds were even seemingly brought back to life citing 47-36.1 as authority to do so. Clearly this statute was not intended to affect or change the legal rights of any party and yet, through the justification of an error being typographical, such consequential changes were attempted.

Because of the early abuse and continued misunderstanding of NCGS 47-36.1, it was revised in 2008 and more recently in 2018. This more recent change attempts to clarify what the earlier revision intended: that this affidavit is not a corrective affidavit, but is only to be used for a nonmaterial typographical error or other minor error. The affidavit only serves as a notice of the error and does not correct it at all. So why would anyone use this statute? The statute is intended to be used when your deed is a valid conveyance and the intent of the parties is clear from the four corners of the deed. An easy example is when a grantee’s name is misspelled. The grantee is known with certainty, so the deed is valid. A corrective notice affidavit would let the world know this happened while also putting the correctly spelled name in the index.

NCGS 47-36.1 began as a corrective statute and is now a notice statute. The original need for a mechanism for an attorney to correct these minor mistakes did not go away, so beginning in October 2018, NCGS 47-36.2 became this mechanism. This new statute may only be used for obvious description errors. This new statute does not replace any prior methods to correct documents. Prior methods of corrections, such as correction deeds, reaffirmation, re-execution and reacknowledgement of previously recorded deeds of trust documents, modifications and Affidavits of

Correction of Notarial Certificates are still valid and available methods to affect a correction in the public records.

The authority given to correct an obvious description error is in NCGS 47-36.2(b), which states that an obvious description error in a recorded instrument affecting title to real property may be cured by recording a Curative Affidavit in the register of deeds where the property is located. The definitions for this section are in 47-36.2(a) and an obvious description error is defined as an error in the legal description... contained in an instrument affecting title...recorded in the registry of deeds...that is evidenced by: 1) when one or more descriptive elements are inconsistent with one another, such as the legal description, address, PIN, plat reference or prior deed reference (inconsistency); 2) when the description contains transcribing errors in a metes and bounds description by omitting calls, angles and distances or if calls are reversed (transcribing metes and bounds); 3) when the wrong unit or lot number is used and that unit or lot is not owned by the grantor (lot not owned by grantor) and 4) the instrument omits an exhibit or attachment intended to supply the legal description and the description can be determined by reference to other information in the instrument itself such as a PIN, address or prior deed reference (lack of exhibit). NCGS 47-36(a)(4) goes further to say that this Curative Affidavit cannot be used to correct an error in execution or acknowledgment, an error in defining the estate granted or an error in conveying the wrong property that the grantor also owned at the time of the conveyance. In other words, the statute makes it clear that it cannot be used in an abusive manner.

NCGS 47-36.2(f) is the list of the 10 elements which must be present in a Curative Affidavit.

NCGS 47-36.2(c)-(e) sets out the prerequisite procedures for filing a Curative Affidavit. Basically, notice of intent to file a Curative Affidavit along with a copy of the proposed Curative Affidavit must be sent to certain parties in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. After 45 days from the last person being served and receiving no objection to the Curative Affidavit or dispute of the information contained in the Curative Affidavit, the authorized attorney can file the Curative Affidavit.

Once the Curative Affidavit is properly recorded under 47-36.2(h), it becomes prima facie evidence of the facts stated in the affidavit. The Curative Affidavit also is a true correction of the previously recorded instrument that affects title to real property. The Curative Affidavit relates back to the recording of that previously recorded instrument so that it is as if the previously recorded instrument were correct from the beginning.

The 2018 revision of 47-36.1 and the adoption of 47-36.2 establish tools for the attorney to either point out nonmaterial mistakes that have no bearing on a recorded instrument's validity or to correct mistakes in the recorded instrument's description when the intent of the parties was clear as to the instrument's subject matter. Mistakes that affect the validity of the recorded instrument, where the intent of the parties cannot be determined from the four corners of the document, where the estate conveyed is in error, where the instrument is not properly executed, where the grantor conveyed a property they owned but was not intended to be conveyed or where a metes and bounds description cannot be located will require a more traditional correction.

Every mistake is different and unique just like every instrument you prepare. How you correct mistakes in recorded instruments is just as much of an art form as how you draft instruments.