

SENATE FLOOR SUBSTITUTE FOR
SENATE BILL 426

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

AN ACT

RELATING TO PROPERTY; ENACTING A NEW SECTION OF CHAPTER 47,
ARTICLE 1 NMSA 1978 TO PROVIDE 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:

"[NEW MATERIAL] USE OF SCRIVENER'S ERROR AFFIDAVITS.--

A. As used in this section, "scrivener's error
affidavit" means an affidavit to correct a drafting error or
clerical error relating to:

(1) a defect in a legal description, such as
the omission of one or more words;

(2) a clerical error, an error in the name of
a subdivision or the recording information for a plat or

1 omitted bearings or distances in a metes and bounds
2 description, as long as the correction does not add or remove
3 land to the land being described;

4 (3) a misspelling of a name or an incorrect or
5 missing middle initial;

6 (4) an omitted address for the grantee under a
7 deed; or

8 (5) an error in the type of legal entity or
9 state of domicile of a corporation or other legal entity.

10 B. A scrivener's error affidavit shall be executed
11 by only:

12 (1) a licensed attorney who prepared the
13 original instrument, or by a current employee of the title
14 insurer or title insurance agent who completed the form of the
15 original instrument and who is licensed under the New Mexico
16 Title Insurance Law, for an error on a deed or other legal
17 document prepared in conjunction with the closing of the
18 transaction affecting the title to real property;

19 (2) a current employee of the mortgagee or
20 beneficiary named in the form of the original instrument, or by
21 a licensed attorney who represents the mortgagee or beneficiary
22 named in the form of the original instrument, for an error on a
23 mortgage or deed of trust;

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

1 principal or grantor of the original instrument, for an error
2 on a power of attorney or an easement; or

3 (4) a licensed attorney who represents a party
4 to the original instrument or who prepared the original
5 instrument, for an error on any other writing affecting title
6 to real estate.

7 C. A scrivener's error affidavit shall:

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

12 (2) be sworn to and acknowledged by the
13 affiant before a person authorized to administer an oath under
14 the laws of this state;

15 (3) conspicuously identify the document in its
16 title that it is a "scrivener's affidavit" or "scrivener's
17 error affidavit"; and

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

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

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

25 (c) the recording information, including

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1 the recording date and document, instrument or reception
2 number, if available, of the original instrument;

3 (d) a brief description of each error in
4 the original instrument that the scrivener's error affidavit is
5 designed to correct; and

6 (e) the correct information to be
7 inserted or reflected in the original instrument.

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

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

12 (2) indexed by the county clerk in the general
13 index under the names of the original parties to the instrument
14 as they are identified in the scrivener's error affidavit; and

15 (3) admissible as evidence to the same extent
16 as a deed or other recorded instrument in an action involving
17 the original instrument to which it relates or the title to the
18 real property affected by the original instrument.

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

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

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

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

5 "SCRIVENER'S ERROR AFFIDAVIT

6 I, _____ ("Affiant"),
7 being first duly sworn, state under oath:

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

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

15 [Explain qualifications for eligibility]

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

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

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

25 6. The names and capacities of the parties to the

underscoring material = new
[bracketed material] = delete

1 Original Instrument are:

2 _____
3 _____

4 7. The recording information, including the recording
5 date and document, instrument or reception number for the
6 Original Instrument, is as follows: Date of Recording _____
7 Recording information
8 _____, in
9 the real property records of _____ County, New Mexico.

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

14 9. The correct information to be inserted, removed or
15 reflected in the Original Instrument is as follows:
16 _____
17 _____

18 10. This Affidavit is made under penalty of perjury.
19 FURTHER AFFIANT SAYETH NAUGHT.
20 Dated this _____ day of _____, 20__.

21 _____
22 Name: _____
23 Company Name: _____
24 Title: _____

25 STATE OF NEW MEXICO

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[bracketed material] = delete

1 COUNTY OF _____

2 This instrument was sworn to and acknowledged on this

3 _____ day of _____, 20__ by

4 _____, as

5 _____ of

6 _____.

7 _____

8 Notary Public

9 (Seal)

10 My commission expires: _____"."

underscored material = new
[bracketed material] = delete

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