

12105518D

**HOUSE BILL NO. 280****AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Senate Committee for Courts of Justice  
on February 27, 2012)

(Patron Prior to Substitute—Delegate Iaquinto)

A *BILL to amend the Code of Virginia by adding a section numbered 55-109.2, relating to correcting errors in deeds; affidavit.*

**Be it enacted by the General Assembly of Virginia:****1. That the Code of Virginia is amended by adding a section numbered 55-109.2 as follows:**

§ 55-109.2. *Correcting errors in deeds; affidavit.*

A. As used in this section, unless the context requires a different meaning:

"Attorney" means any person licensed as an attorney in Virginia by the Virginia State Bar.

"Corrective affidavit" means an affidavit of an attorney correcting an obvious description error.

"Obvious description error" means an error in a real property parcel description contained in a recorded deed or other instrument that is apparent by reference to such deed or other instrument, or other deeds or other instruments in the chain of title for the property conveyed thereby, including (i) errors incorporating previously recorded plat or deed references; (ii) errors incorporating tax map or other identification numbers assigned by local governments; or (iii) omitted exhibits that supply real property parcel descriptions. An obvious description error does not include (a) missing or improper signatures or acknowledgments, (b) any designation of the type of tenancy by which the property is owned or whether or not a right of survivorship exists, or (c) the adjustment of any boundary line of the property subject to the corrective affidavit that affects any boundary line of property adjacent to the property subject to the corrective affidavit.

"Title insurance company" has the same meaning as set forth in § 38.2-4601, provided that the title insurance company issued a policy of title insurance for the transaction in which the deed or other instrument needing correction was recorded.

B. Obvious description errors in a recorded deed or other instrument purporting to convey or transfer an interest in real property may be corrected by recording an affidavit in the land records of the circuit court for the jurisdiction where the property is located or where the deed or other instrument needing correction was recorded.

C. Prior to recording a corrective affidavit, the attorney seeking to record the affidavit shall deliver a copy of the affidavit to all parties to the deed or other instrument and to the title insurance company, if known, and give notice of the intent to record the affidavit and of each party's right to object to the affidavit. The notice and a copy of the affidavit shall be sent by first-class mail, return receipt requested, or by an overnight delivery service, to the last known address of each party to the deed or other instrument to be corrected and to the title insurance company, if known, that (i) is contained in the land book maintained pursuant to § 58.1-3301 by the jurisdiction where the property is located or where the deed or other instrument needing correction was recorded, (ii) is contained in the deed or other instrument needing correction, (iii) has been provided to the attorney as a forwarding address, or (iv) has been established with reasonable certainty by other means.

D. If, within 30 days after receiving confirmation of delivery of the notice and a copy of the affidavit to all parties to the deed or other instrument and to the title insurance company, if known, pursuant to subsection C, no written objection is received from any party disputing the facts recited in the affidavit or objecting to its recordation, the corrective affidavit may be recorded by the attorney, and all parties to the deed or other instrument shall be bound by the terms of the affidavit. The corrective affidavit shall contain (i) a statement that no objection was received from any party within the 30-day period and (ii) a copy of the notice sent to the parties. The notice shall contain the attorney's Virginia State Bar number that was in effect at the time the deed or other instrument was recorded and, if different, at the time the corrective affidavit is recorded.

E. A corrective affidavit that is recorded pursuant to this section operates as a correction of the deed or other instrument and relates back to the date of the original recordation of the deed or other instrument as if the deed or other instrument was correct when first recorded. A title insurance company, upon request, shall issue an endorsement to reflect the corrections made by the corrective affidavit and shall deliver a copy of the endorsement to all parties to the policy.

F. The clerk shall record the corrective affidavit in the deed book and, notwithstanding their designation in the deed or other instrument needing correction, index the affidavit in the names of the parties to the deed or other instrument as grantors and grantees as set forth in the affidavit. The costs associated with the recording of a corrective affidavit pursuant to this section shall be paid by the party that records the corrective affidavit. An affidavit recorded in compliance with this section shall be prima

60 *facie evidence of the facts stated therein. Any person who wrongfully or erroneously records a*  
61 *corrective affidavit is liable for actual damages sustained by any party due to such recordation.*

62 *G. The remedies under this section are not exclusive and do not abrogate any right or remedy under*  
63 *the laws of the Commonwealth other than this section.*

64 *H. An affidavit under this section may be made in the following form, or to the same effect:*

65 *Corrective Affidavit*

66 *This Affidavit, prepared pursuant to Virginia Code § 55-109.2,*  
67 *shall be indexed in the names of \_\_\_\_\_ (grantor) and*  
68 *\_\_\_\_\_ (grantee), whose addresses are \_\_\_\_\_*

69 *The undersigned affiant, being first duly sworn, deposes and*  
70 *states as follows:*

71 *1. That the affiant is a Virginia attorney.*

72 *2. That the deed or other instrument needing correction was made*  
73 *in connection with a real estate transaction in which \_\_\_\_\_ purchased*  
74 *real estate from \_\_\_\_\_, as shown in a deed recorded in the Clerk's*  
75 *Office of the Circuit Court of \_\_\_\_\_, in Deed Book \_\_\_\_\_, Page \_\_\_\_\_,*  
76 *or as Instrument Number \_\_\_\_\_; or in which real estate was encumbered,*  
77 *as shown in a deed recorded in the Clerk's Office of the Circuit Court*  
78 *of \_\_\_\_\_, in Deed Book \_\_\_\_\_, Page \_\_\_\_\_, or as Instrument Number \_\_\_\_\_.*

79 *3. That the property description in the aforementioned deed or other*  
80 *instrument contains an obvious description error.*

81 *4. That the property description containing the obvious description*  
82 *error reads: \_\_\_\_\_*  
83 *\_\_\_\_\_*  
84 *\_\_\_\_\_.*

85 *5. That the property description should read: \_\_\_\_\_*  
86 *\_\_\_\_\_*  
87 *\_\_\_\_\_.*

88 *6. That this affidavit is given pursuant to § 55-109.2 of the Code*  
89 *of Virginia to correct the property description in the aforementioned*  
90 *deed or other instrument and will reflect the correct property*  
91 *description upon recordation in the Circuit Court of \_\_\_\_\_.*

92 *7. That notice of the intent to record this corrective affidavit and*  
93 *a copy of this affidavit was provided to all parties to the deed*  
94 *or other instrument being corrected pursuant to § 55-109.2 of the*  
95 *Code of Virginia and that no objection to the recordation of this*  
96 *affidavit was received within 30 days of receiving confirmation*  
97 *of delivery of the notice and a*  
98 *copy of this affidavit.*

99 *I. Notice under this section may be made in the following form, or to the same effect:*

100 *Notice of Intent to Correct an Obvious Description Error*

101 *Notice is hereby given to you concerning the deed or other instrument*  
102 *described in the corrective affidavit, a copy of which is attached to*  
103 *this notice, as follows:*

104 *1. The attorney identified below has discovered or has been advised of an*  
105 *obvious description error in the deed or other instrument recorded as part*  
106 *of your settlement. The error is described in the attached affidavit.*

107 *2. The undersigned will record an affidavit to correct such error*  
108 *unless the undersigned receives a written objection disputing the*  
109 *facts recited in the affidavit or objecting to the recordation of*  
110 *the affidavit. Your objections must be sent to the following address:*

111 *\_\_\_\_\_*

112 *\_\_\_\_\_*

113 *(Name of attorney)*

114 *\_\_\_\_\_*

115 *(Signature of attorney)*

116 *\_\_\_\_\_*

117 *(Address of attorney)*

118

119 *(Telephone number of attorney)*

120

121 *(Bar number of attorney)*