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HOUSE BILL NO. 280

Offered January 11, 2012

Prefiled January 10, 2012

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

Patron—Iaquinto

Referred to Committee for Courts of Justice

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 under Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1, or any entity described in § 54.1-3902, provided that the attorney is noted on the deed or other instrument needing correction as having prepared the deed or other instrument.

"Corrective affidavit" means an affidavit of an attorney, settlement agent, or title insurance company 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 transcribing courses and distances, including the omission of one or more lines of courses and distances or the omission of angles or compass directions; (ii) errors incorporating previously recorded plat or deed references; (iii) errors incorporating tax map or other identification numbers assigned by local governments; or (iv) omitted exhibits that supply real property parcel descriptions. An obvious description error does not include missing or improper signatures or acknowledgments or any designation of the type of tenancy by which the property is owned or whether or not a right of survivorship exists.

"Settlement agent" has the same meaning as set forth in § 55-525.16, provided that the settlement agent provided escrow, closing, or settlement services for the transaction in which the deed or other instrument needing correction was recorded.

"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, settlement agent, or title insurance company seeking to record the affidavit shall deliver a copy of the affidavit to all parties to the deed or other instrument 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 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, settlement agent, or title insurance company as a forwarding address; or (iv) has been established with reasonable certainty by other means.

D. If, within 30 days after sending the notice and a copy of the affidavit to all parties to the deed or other instrument 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, settlement agent, or title insurance company 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. If the party seeking to record the corrective affidavit is an attorney or a settlement agent, the notice shall contain the attorney's Virginia State Bar number or the settlement agent's registration number, issued by the Virginia State Bar or the Virginia State Corporation Commission, that was in effect at the time the deed or other instrument was recorded and, if different, at the time the corrective

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59 affidavit is recorded.

60 E. A corrective affidavit that is recorded pursuant to this section operates as a correction of the deed
61 or other instrument and relates back to the date of the original recordation of the deed or other
62 instrument as if the deed or other instrument was correct when first recorded.

63 F. The clerk shall record the corrective affidavit in the deed book and, notwithstanding their
64 designation in the deed or other instrument needing correction, index the affidavit in the names of the
65 parties to the deed or other instrument as grantors and grantees as set forth in the affidavit. The costs
66 associated with the recording of a corrective affidavit pursuant to this section shall be paid by the
67 attorney, settlement agent, or title insurance company that records the corrective affidavit. An affidavit
68 recorded in compliance with this section shall be prima facie evidence of the facts stated therein. Any
69 person who wrongfully or erroneously records a corrective affidavit is liable for actual damages
70 sustained by any party due to such recordation.

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

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

74 Corrective Affidavit

75 This Affidavit, prepared pursuant to Virginia Code § 55-109.2,
76 shall be indexed in the names of _____ (grantor) and
77 _____ (grantee), whose addresses are _____.

78 The undersigned affiant, being first duly sworn, deposes and
79 states as follows:

80 1. That the affiant is:

81 a. A Virginia attorney who prepared the deed or other instrument
82 needing correction;

83 b. An employee of _____, the settlement agent for the
84 transaction in which the deed or other instrument needing
85 correction was recorded; or

86 c. An employee of _____, the title insurance company that
87 issued a policy of title insurance for the transaction in which
88 the deed or other instrument needing correction was recorded.

89 2. That the deed or other instrument needing correction was made
90 in connection with a real estate transaction in which _____ purchased
91 real estate from _____, as shown in a deed recorded in the Clerk's
92 Office of the Circuit Court of _____, in Deed Book _____, Page _____,
93 or as Instrument Number _____.

94 3. That the property description in the aforementioned deed or other
95 instrument contains an obvious description error.

96 4. That the property description containing the obvious description
97 error reads: _____

98 _____
99 _____.

100 5. That the property description should read: _____

101 _____
102 _____.

103 6. That this affidavit is given pursuant to § 55-109.2 of the Code
104 of Virginia to correct the property description in the aforementioned
105 deed or other instrument and will reflect the correct property
106 description upon recordation in the Circuit Court of _____.

107 7. That notice of the intent to record this corrective affidavit and
108 a copy of this affidavit was provided to all parties to the deed
109 or other instrument being corrected pursuant to § 55-109.2 of the
110 Code of Virginia and that no objection to the recordation of this
111 affidavit was received within 30 days of providing notice and a
112 copy of this affidavit.

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

114 Notice of Intent to Correct an Obvious Description Error

115 Notice is hereby given to you concerning the deed or other instrument
116 described in the corrective affidavit, a copy of which is attached to

this notice, as follows:

1. The attorney, settlement agent, or title insurance company identified below has discovered or has been advised of an obvious description error in the deed or other instrument recorded as part of your settlement. The error is described in the attached affidavit.
2. The undersigned will record an affidavit to correct such error unless the undersigned receives a written objection disputing the facts recited in the affidavit or objecting to the recordation of the affidavit. Your objections must be sent to the following address:

(Name of attorney, settlement agent, or title insurance company)

(Signature of attorney or of employee of settlement agent or title insurance company)

(Address of attorney, settlement agent, or title insurance company)

(Telephone number of attorney, settlement agent, or title insurance company)

(Bar number or registration number of attorney or settlement agent)