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## SENATE BILL NO. 116

Offered January 8, 2014

Prefiled December 30, 2013

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

Patron—Watkins

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, deeds of trust, and mortgages; 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, deed of trust, or mortgage where (i) such parcel is identified and shown as a separate parcel on a recorded subdivision plat; (ii) such error is apparent by reference to other information on the face of such deed, deed of trust, or mortgage or on an attachment to such deed, deed of trust, or mortgage or by reference to other instruments in the chain of title for the property conveyed thereby; and (iii) such deed, deed of trust, or mortgage recites elsewhere the parcel's correct address or tax map identification number. An "obvious description error" includes (a) an error transcribing courses and distances, including the omission of one or more lines of courses and distances or the omission of angles and compass directions; (b) an error incorporating an incorrect recorded plat or a deed reference; (c) an error in a lot number or designation; or (d) an omitted exhibit supplying the legal description of the real property thereby conveyed. An "obvious description error" does not include (1) missing or improper signatures or acknowledgments or (2) any designation of the type of tenancy by which the property is owned or whether or not a right of survivorship exists.*

*"Recorded subdivision plat" means a plat that has been prepared by a land surveyor licensed pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 and recorded in the clerk's office of the circuit court for the jurisdiction where the property is located.*

*"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, deed of trust, or mortgage needing correction was recorded.*

*B. Obvious description errors in a recorded deed, deed of trust, or mortgage 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, deed of trust, or mortgage needing correction was recorded. No correction of an obvious description error shall be inconsistent with the description of the property in any recorded subdivision plat.*

*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, deed of trust, or mortgage 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, deed of trust, or mortgage 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, deed of trust, or mortgage needing correction was recorded, (ii) is contained in the deed, deed of trust, or mortgage needing correction, (iii) has been provided to the attorney as a forwarding address, or (iv) has been established with reasonable certainty by other means. The notice and a copy of the affidavit shall be sent to the property address for the real property conveyed by the deed, deed of trust, or mortgage needing correction. If a locality is a party to the deed, deed of trust, or mortgage, the notice and a copy of the affidavit required by this subsection shall be sent to the county, city, or town attorney for the locality, if any, and if there is no such attorney, then to the chief executive for the locality. If the Commonwealth is a party to the deed, deed of trust, or mortgage, the notice and a copy of the affidavit required by this subsection shall be sent to the Attorney General.*

*D. If, (i) within 30 days after receiving confirmation of delivery of the notice and a copy of the affidavit to all parties to the deed, deed of trust, or mortgage and to the title insurance company, if known, pursuant to subsection C or (ii) within 45 days after delivering the notice and a copy of the*

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59 affidavit to all parties to the deed, deed of trust, or mortgage and to the title insurance company, if  
60 known, pursuant to subsection C, when no confirmation of delivery is received, no written objection is  
61 received from any party disputing the facts recited in the affidavit or objecting to its recordation, the  
62 corrective affidavit may be recorded by the attorney, and all parties to the deed, deed of trust, or  
63 mortgage shall be bound by the terms of the affidavit. The corrective affidavit shall contain (i) a  
64 statement that no objection was received from any party within the applicable period and (ii) a copy of  
65 the notice sent to the parties. The notice shall contain the attorney's Virginia State Bar number that was  
66 in effect at the time the deed, deed of trust, or mortgage was recorded and, if different, at the time the  
67 corrective affidavit is recorded.

68 E. A corrective affidavit that is recorded pursuant to this section operates as a correction of the  
69 deed, deed of trust, or mortgage and relates back to the date of the original recordation of the deed,  
70 deed of trust, or mortgage as if the deed, deed of trust, or mortgage was correct when first recorded. A  
71 title insurance company, upon request, shall issue an endorsement to reflect the corrections made by the  
72 corrective affidavit and shall deliver a copy of the endorsement to all parties to the policy who can be  
73 found.

74 F. The clerk shall record the corrective affidavit in the deed book and, notwithstanding their  
75 designation in the deed, deed of trust, or mortgage needing correction, index the affidavit in the names  
76 of the parties to the deed, deed of trust, or mortgage as grantors and grantees as set forth in the  
77 affidavit. The costs associated with the recording of a corrective affidavit pursuant to this section shall  
78 be paid by the party that records the corrective affidavit. An affidavit recorded in compliance with this  
79 section shall be prima facie evidence of the facts stated therein. Any person who wrongfully or  
80 erroneously records a corrective affidavit is liable for actual damages sustained by any party due to  
81 such recordation, including reasonable attorney fees and costs.

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

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

85 *Corrective Affidavit*

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

89 The undersigned affiant, being first duly sworn, deposes and  
90 states as follows:

91 1. That the affiant is a Virginia attorney.

92 2. That the deed, deed of trust, or mortgage needing correction was made  
93 in connection with a real estate transaction in which \_\_\_\_\_ purchased  
94 real estate from \_\_\_\_\_, as shown in a deed recorded in the Clerk's  
95 Office of the Circuit Court of \_\_\_\_\_, in Deed Book \_\_\_\_\_, Page \_\_\_\_\_,  
96 or as Instrument Number \_\_\_\_\_; or in which real estate was encumbered,  
97 as shown in a deed recorded in the Clerk's Office of the Circuit Court  
98 of \_\_\_\_\_, in Deed Book \_\_\_\_\_, Page \_\_\_\_\_, or as Instrument Number \_\_\_\_\_.

99 3. That the property description in the aforementioned deed, deed of  
100 trust, or mortgage contains an obvious description error.

101 4. That the property description containing the obvious description  
102 error reads: \_\_\_\_\_

103 \_\_\_\_\_  
104 \_\_\_\_\_.

105 5. That the correct property description should read: \_\_\_\_\_  
106 \_\_\_\_\_  
107 \_\_\_\_\_.

108 6. That this affidavit is given pursuant to § 55-109.2 of the Code  
109 of Virginia to correct the property description in the aforementioned  
110 deed, deed of trust, or mortgage and such description shall be as  
111 stated in paragraph 5 above upon recordation of this affidavit  
112 in the Circuit Court of \_\_\_\_\_.

113 7. That notice of the intent to record this corrective affidavit and  
114 a copy of this affidavit was delivered to all parties to the deed,  
115 deed of trust, or mortgage being corrected pursuant to § 55-109.2 of  
116 the Code of Virginia and that no objection to the recordation of this  
117 affidavit was received within the applicable period of time as set

118 forth in § 55-109.2 of the Code of Virginia.

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

120 Notice of Intent to Correct an Obvious Description Error

121 Notice is hereby given to you concerning the deed, deed of trust,  
122 or mortgage described in the corrective affidavit, a copy of which  
123 is attached to this notice, as follows:

124 1. The attorney identified below has discovered or has been advised  
125 of an obvious description error in the deed, deed of trust, or  
126 mortgage recorded as part of your real estate settlement. The error  
127 is described in the attached affidavit.

128 2. The undersigned will record an affidavit to correct such error  
129 unless the undersigned receives a written objection disputing the  
130 facts recited in the affidavit or objecting to the recordation of  
131 the affidavit. Your objections must be sent to the following address:

132 \_\_\_\_\_

133 \_\_\_\_\_

134 \_\_\_\_\_

135 (Name of attorney)

136 \_\_\_\_\_

137 (Signature of attorney)

138 \_\_\_\_\_

139 (Address of attorney)

140 \_\_\_\_\_

141 (Telephone number of attorney)

142 \_\_\_\_\_

143 (Bar number of attorney)