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SENATE BILL NO. 116
FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by Senator Watkins
on January 29, 2014)

(Patron Prior to Substitute—Senator Watkins)

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.

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, including the current owner of the property; to the attorney who prepared the deed, deed of trust, or mortgage, if known and if possible; 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. For an affidavit to correct an obvious description error in a deed as described in clause (a) of subsection A, notice and a copy of the affidavit shall also be provided to any owner of property adjoining a line to be corrected. The notice and a copy of the affidavit shall be delivered by personal service or sent by certified mail, return receipt requested, to the last known address of each party to the deed, deed of trust, or mortgage 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 and 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, and to all other persons and entities to whom notice is required to be given. 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 and to the director, chief executive officer, or head of the state agency or chairman of the board of the state entity in possession or that had possession of the property.

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60 D. If, within 30 days after personal service or receiving confirmation of delivery of the notice and a
 61 copy of the affidavit to all parties to the deed, deed of trust, or mortgage, including the current owner
 62 of the property; to the attorney who prepared the deed, deed of trust, or mortgage, if known and if
 63 possible; to the title insurance company, if known; and to the adjoining property owners, if necessary,
 64 pursuant to subsection C, no written objection is received from any party disputing the facts recited in
 65 the affidavit or objecting to its recordation, the corrective affidavit may be recorded by the attorney,
 66 and all parties to the deed, deed of trust, or mortgage shall be bound by the terms of the affidavit. The
 67 corrective affidavit shall contain (i) a statement that no objection was received from any party within
 68 the period and (ii) a copy of the notice sent to the parties. The notice shall contain the attorney's
 69 Virginia State Bar number. The corrective affidavit shall be notarized.

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

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

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

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

87 Corrective Affidavit

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

91 The undersigned affiant, being first duly sworn, deposes and
 92 states as follows:

- 93 1. That the affiant is a Virginia attorney.
- 94 2. That the deed, deed of trust, or mortgage needing correction was made
 95 in connection with a real estate transaction in which _____ purchased
 96 real estate from _____, as shown in a deed recorded in the Clerk's
 97 Office of the Circuit Court of _____, in Deed Book ____, Page ____,
 98 or as Instrument Number ____; or in which real estate was encumbered,
 99 as shown in a deed recorded in the Clerk's Office of the Circuit Court
 100 of _____, in Deed Book ____, Page ____, or as Instrument Number ____.
- 101 3. That the property description in the aforementioned deed, deed of
 102 trust, or mortgage contains an obvious description error.

103 4. That the property description containing the obvious description
 104 error reads: _____
 105 _____

106 _____.
 107 5. That the correct property description should read: _____
 108 _____
 109 _____.

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

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

119 affidavit was received within the applicable period of time as set
120 forth in § 55-109.2 of the Code of Virginia.

121 _____
122

123 (Name of attorney)

124 _____
125

126 (Signature of attorney)

127 _____
128

129 (Address of attorney)

130 _____
131

132 (Telephone number of attorney)

133 _____
134

135 (Bar number of attorney)

136 The foregoing affidavit was acknowledged before me
137 This ____ day of ____, 20__, by _____

138 _____
139

140 Notary Public

141 My Commission expires _____
142

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

144 Notice of Intent to Correct an Obvious Description Error

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

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

152 2. The undersigned will record an affidavit to correct such error
153 unless the undersigned receives a written objection disputing the
154 facts recited in the affidavit or objecting to the recordation of
155 the affidavit. Your objections must be sent within 30 days of
156 receipt of this notice to the following address:

157 _____
158

159 _____
160

161 (Name of attorney)

162 _____
163

164 (Signature of attorney)

165 _____
166

167 (Address of attorney)

168 _____
169

170 (Telephone number of attorney)

171 _____
172

173 (Bar number of attorney)