

NEW RE-RECORDING STATUTE – EFFECTIVE 10/1/2008

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Effective October 1, 2008, the “re-recording statute” (N.C.G.S. §47-36.1), has been changed. It is no longer allowed for a document to be re-recorded that has any changes or alterations made after the recording of the document and accompanied only by the previously-authorized explanation statement. All language permitting corrections on an original instrument has been deleted from the statute.

In place of the correction process, the statute allows for a Scrivener’s Affidavit to be recorded which is to put others on notice of a typographical or other minor error. The statute does not limit the affidavit to being signed by the draftsman or one of the parties to the original document. ***The Scrivener’s Affidavit does not have the effect of correcting an error.***

The statute does not contain a suggested form of Scrivener’s Affidavit. You may use the Scrivener’s Affidavit found [here](#) as a suggested format subject to your own legal review and interpretation of the statute. This is just for typographical or other minor errors and has no corrective effect.

In order to correct an error (whether it was minor or typographical or not), a corrective instrument must be recorded. This can be done in two ways: First, the actual original document may be corrected and/or changed, the change(s) initialed and then it must ***be re-executed and re-notarized***. In the alternative, a duplicate of the document with the error corrected and denominated as a document of “correction” or “restatement” may be signed by the original parties, notarized and recorded. As it could be difficult, if not impossible, to persuade a lender to return an original recorded document or to produce a duplicate original for re-execution post-closing, you may also consider using the suggested form of modification found [here](#). This ***does*** have the effect of correcting the error and would allow Attorneys Title to insure the transaction with the error having been corrected. It is our opinion that this would not require lender approval and would not have to be signed by the lender as it benefits a lender and allows the policy to be issued without exception for the error.

A third scenario exists where an error has been discovered in a recorded document and has not been corrected with a correction document or modification. For title underwriting purposes, Attorneys Title may be able to insure the transaction without further corrective action. Is the title insurable in spite of the error? If it’s a typo, then it is probably not fatal to the document. If it is the omission of a legal description or an incorrect lot number, then most likely the property which was intended to be conveyed cannot be identified with certainty and it should not be insured. Please call your local Attorneys Title office for advice before initiating corrections and incurring expenses.

NOTE: Beginning October 1, 2008, documents can be re-recorded **ONLY** in their original form (for example, to put it in the correct chain of title order) and a certified copy with no markings or changes can also be recorded for the same purpose. A document that has been altered and re-recorded without taking the additional steps outlined above has no effect.

NOTE: As was true prior to the change, both the notice of an error accomplished by the recording of the Scrivener’s Affidavit and the re-execution or modification document described above do not relate back in time to the original date of recording, but are only effective as of the date and time of the new recording.

G.S. 47-36.1

Notwithstanding G.S. 47-14 and G.S. 47-17, notice of typographical or other minor error in a deed or other instrument recorded with the register of deeds may be given by recording an affidavit. If an affidavit is conspicuously identified as a corrective or scrivener's affidavit in its title, the register of deeds shall index the name of the affiant, the names of the original parties in the instrument, the recording information of the instrument being corrected, and the original parties as they are named in the affidavit. A copy of the previously recorded instrument to which the affidavit applies may be attached to the affidavit and need not be a certified copy. Notice of the corrective information as provided by the affiant is deemed to have been given as of the time the corrective affidavit is registered. Nothing in this section invalidates or otherwise alters the legal effect of any instrument of correction authorized by statute in effect on the date the instrument was registered.

House Bill 545 rewrote G.S. 47-36.1 effective October 1, 2008.