

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 567 Correction of Errors in Deeds

SPONSOR(S): Civil Justice Subcommittee, Altman

TIED BILLS: **IDEN./SIM. BILLS:** SB 886

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Mawn	Luczynski
2) Judiciary Committee	17 Y, 0 N	Mawn	Luczynski

SUMMARY ANALYSIS

A deed is a written instrument conveying land from one party (“grantor”) to another recorded in the public records of the county where the land lies. Deed errors are common, often coming to light when a title company discovers, during a sale of real property, that the seller took possession of the property under an erroneous deed. While some errors are harmless, others are fatal to the conveyance and require corrective action.

A legal description error is one such fatal error, creating a lack of marketable title that could prevent future sale of the property as title insurance companies refuse to insure title to the prospective buyer. However, an erroneous deed may not be re-recorded with the new, correct legal description attached to it, or with information added to the legal description after execution. Instead, Florida law provides that, to correct a legal description error, a corrective deed may be executed by the intended owner and the original grantor and recorded in the public record. A corrective deed need not restate all material portions of the deed being corrected where such portions lack errors, as corrective deeds and non-erroneous portions of original deeds are construed together. Additionally, a court can reform a deed when, due to a mutual mistake, the deed as written does not accurately express the true intention or agreement of the parties and the original grantor refused to correct the deed.

Correcting an erroneous deed can be costly and time-consuming, as such action requires either tracking down the original grantor and getting the grantor to file a corrective deed or bringing a lawsuit in court for deed reformation. However, approximately 40 percent of legal description errors encountered by title insurance companies involve a single error regarding or omission of:

- A lot or block identification in a recorded platted lot;
- One unit, building, or phase identification of a condominium or cooperative; or
- One directional designation or numerical fraction of a tract of land described as a fractional portion of a section, township, or range.

CS/HB 567:

- Defines scrivener’s error to mean a single error or omission in a property’s legal description falling into one of the three categories of deed errors listed above.
- Creates a curative notice to correct a single scrivener’s error in a deed, specifies the form for such notice, and provides that such notice clears any cloud or encumbrance created by the erroneous deed on any property the grantor and grantee did not intend to convey in the erroneous deed.
- Provides that if a party files a curative notice in the specified form, and meets the conditions for filing a curative notice, the erroneous deed conveys title to the property as though there had been no error.

The bill does not appear to have a fiscal impact on state or local governments.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

A deed is a written instrument conveying land from one party (“grantor”) to another recorded in the public records of the county in which the land lies.¹ Errors in deeds are common,² often coming to light when a title company discovers, during a title search conducted for the sale of real property, that the seller took possession of the property from the original grantor under an erroneous deed.³ While some errors are harmless,⁴ others are fatal to the conveyance and require corrective action.⁵

A legal description⁶ error is one such fatal error, creating a lack of marketable title⁷ that could prevent sale of the property as title insurance companies refuse to insure title to the prospective buyer.⁸ However, a defective deed may not be re-recorded with the new, correct legal description attached to it, or with information added to the legal description after execution.⁹ Instead, Florida common law provides that, to correct a legal description error, a corrective deed may be executed by the original grantor and the intended owner and recorded in the public record.¹⁰ A corrective deed need not restate all material portions of the deed being corrected where such portions lack errors, as corrective deeds and non-erroneous portions of original deeds are “construed together.”¹¹

Additionally, a court has the authority to reform a deed when, due to a mutual mistake,¹² the deed as written does not accurately express the true intention or agreement of the parties.¹³ Claims for deed reformation are subject to a 20-year statute of limitations,¹⁴ and the complaint must allege that the plaintiff demanded a corrective deed from the respondent,¹⁵ or to otherwise conform the deed to the parties’ understanding, but the respondent refused.¹⁶ In the same pleading, a party may seek to quiet title to him or herself to reflect the intended ownership of the parcel.¹⁷

¹ Black’s Law Dictionary (11th ed. 2019).

² Data from one title insurance company shows that of the 6,835 claims opened from January 1, 2014, to December 3, 2019, involving Florida properties, 1,901 claims alleged deed errors. See email from Beth A. Vecchioli, Senior Director of Government Consulting, Carlton Fields, Errors in Deeds Bills (Jan. 8, 2020).

³ See Real Property, Probate, and Trust Law Section of the Florida Bar, *White Paper* (June 1, 2019).

⁴ A harmless error will not prevent passage of title or the deed’s legal recordation and may be ignored. An example of a harmless error includes the lack of a date, or an incorrect date, in a deed. The Florida Bar, *Five Tips Every Real Estate Practitioner Should Know About Defective Deeds*, <https://www.floridabar.org/the-florida-bar-journal/five-tips-every-real-estate-practitioner-should-know-about-defective-deeds/> (last visited Jan. 23, 2020).

⁵ See The Florida Bar, *supra* note 4.

⁶ A legal description is a real property description by government survey, metes and bounds, or lot numbers of a recorded plat, which must be complete enough that a particular piece of land can be located and identified. In Florida, every parcel must be ascertained by legal description and cannot rely on property address. Black’s Law Dictionary (6th ed. 1991).

⁷ Marketable title is title free from encumbrances and any reasonable doubt as to its validity, so that a reasonably intelligent person would be willing to accept it. Black’s Law Dictionary, 670 (6th ed. 1991).

⁸ See Email from Martha J. Edenfield, Attorney, Dean, Mead & Dunbar, Fwd: Deed Answers (Nov. 27, 2019).

⁹ *Connelly v. Smith*, 97 So. 2d 865 (Fla. 3d DCA 1957).

¹⁰ *Golden v. Hayes*, 277 So. 2d 816 (Fla. 1st DCA 1988).

¹¹ *Id.*

¹² A mutual mistake occurs when the parties agree to one thing and then, due to either a scrivener’s error or inadvertence, express something different in the deed. *Circle Mortgage Corp. v. Kline*, 645 So. 2d 75, 78 (Fla. 4th DCA 1994).

¹³ *Providence Square Ass’n., Inc. v. Biancardi*, 507 So. 2d 1366, 1369 (Fla. 1987).

¹⁴ S. 95.231, F.S.; *Inglis v. First Union Nat. Bank*, 797 So. 2d 26 (Fla. 1st DCA 2001).

¹⁵ The respondent in a deed reformation action is the other party to the deed.

¹⁶ 8 Fla. Pl. & Pr. Forms § 63:9.

¹⁷ *Rigby v. Liles*, 505 So. 2d 598, 599 (Fla. 1st DCA 1987); See also s. 65.021, F.S.

Correcting an erroneous deed can be costly and time-consuming, as such action requires either tracking down the original grantor and getting the grantor to file a corrective deed or bringing a lawsuit in court for deed reformation. However, approximately 40 percent of legal description errors encountered by title insurance companies involve a single error about or omission of:

- A lot or block identification in a recorded platted lot;
- One unit, building, or phase identification of a condominium or cooperative; or
- One directional designation or numerical fraction of a tract of land described as a fractional portion of a section, township, or range.¹⁸

Effect of Proposed Changes

CS/HB 567 creates a curative notice process, simplifying the mechanism for correcting a single scrivener's error in a deed other than a quitclaim deed ("erroneous deed").¹⁹ For the purposes of the bill, a scrivener's error is a single error or omission in the legal description of the real property the deed intends to convey ("intended property") in no more than one of the following categories:

- A lot or block identification of a recorded platted lot;²⁰
- The unit, building or phrase identifications of a condominium or cooperative unit; or
- A directional designation or numerical fraction of a tract of land described as a fractional portion of a section township or range.

Specifically, if the person who obtained possession of a property under an erroneous deed records a curative notice in the official records of the county in which the intended property lies, the erroneous deed, and each subsequent deed with an identical scrivener's error, conveys title to the intended property as though there had been no error. Thus, the curative notice corrects an erroneous deed and creates marketable, insurable title to the intended property, allowing the property to be sold free and clear of defects without the need to file a corrective deed or bring a deed reformation action. However, a curative notice must be in substantially the same form as set out in the bill and is only permissible if:

- The grantor of the first erroneous deed held record title to the intended property at the time of the first erroneous deed's execution;
- Within 5 years before the erroneous deed's recording, the grantor held title to no other real property in the same subdivision, condominium, or cooperative development or section, township, and range described in the erroneous deed;
- The intended property is not described only by a metes and bounds legal description;
- The recorded corrective notice evidences the grantor's conveyance of the intended real property; and
- The deed only has a single scrivener's error.²¹

Further, the bill requires the clerk of the circuit court where the intended property lies to accept and record a curative notice as evidence of the original grantor's intent to convey the intended property by the erroneous deed and provides that the curative notice remedy is not exclusive, meaning that all existing rights and remedies for correcting an erroneous deed remain available to the parties.²²

The bill provides an effective date of upon becoming law.

¹⁸ See Edenfield, *supra* note 8.

¹⁹ Through a quitclaim deed, a grantor conveys his or her present interest, if any, in a given parcel of real property to a grantee without representing, covenanting, or warranting that the title is good. Legal Information Institute, *Quitclaim Deed*, https://www.law.cornell.edu/wex/quitclaim_deed (last visited Jan. 23, 2020); see also, e.g., *Spreckles v. Brown*, 212 U.S. 2018 (1909).

²⁰ However, the transposition of the lot and block identifications is one error.

²¹ Where a deed contains multiple scrivener's errors, a party must still file a corrective deed or bring a deed reformation action.

²² That is, the parties may file a corrective deed or a party may bring a deed reformation action.

B. SECTION DIRECTORY:

Section 1: Creates s. 694.18, F.S., relating to curative procedure for certain description errors in deeds.

Section 2: Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

By filing a curative notice, a property owner may be able to clear title to property conveyed by an erroneous deed without incurring the expense associated with deed reformation.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 16, 2020, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarified that the clerks of the circuit court must accept a curative notice for filing and corrected a technical error.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.