



News & Types: Client Advisories

When a Recorded Document Contains an Error

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Practices: Real Estate

So, you've entered into a contract to sell your house. You've made all the repairs, repainted all the walls, and have begun packing. Or your company is selling a real estate asset. The contract has been entered into, the buyer is ready to begin renovations and schedule a closing. Oh no! You find out that there is an error in the way title is held in the property. Either there is a name misspelling in the Deed, or the legal description is incorrect (even just missing one word), or it is discovered that someone else's mortgage was recorded with your legal description attached. That document error must be corrected, and quickly, before you can close on the sale of the property. In Cook County, Illinois, what can you do?

What was previously termed "re-recording" is now referred to as a "Corrective Recording." There are four options to correct an error in a recorded document. You can choose to: (i) prepare a Corrective document; (ii) prepare a Scrivener's Affidavit; (iii) prepare a Corrective Recording Affidavit; or (iv) obtain a Court Order.

Obtaining a Court Order is the most successful way to correct a recorded document, however, it can be time-consuming and expensive. A Court Order is usually used if a case is already before a Judge, such as a foreclosure, probate, or if there is a title dispute. The original or a certified copy of the Court Order is acceptable for recording and must include the Property Identification Number (PIN), legal description, prior document number and date it was recorded.

Another way to correct a recorded document is to prepare a Corrective document. The title of this document must begin with the word "Corrective." The Corrective document must contain all requirements the original document needed. For example, it must be executed by all of the original parties, submitted with a grantor/grantee statement, exempt stamps from a municipality (if any), as well as a MyDec. If a mortgage is being corrected, a new Illinois Anti-Predatory Lending Certificate must be obtained. If a Chicago deed is being corrected, a new Water Certificate must be obtained.

A Corrective Recording Affidavit can be utilized but must be signed by all of the original parties. If any party is deceased, then a death certificate must be attached for that party. The Corrective Recording Affidavit does not require the original document, or a certified copy, and instead explains the error and the correction and includes a notice and agreement to the change. The original Grantor, Grantee and the Affiant preparing the Affidavit must all execute it. The Affidavit cannot be executed by an agent, proxy, attorney-in-fact, closing attorney or a title company, unless they have a specific power of attorney authorizing the execution of the Corrective Recording Affidavit.

Preparation of a Scrivener's Affidavit is simply an attestation prepared by an Affiant to the effect that Affiant believes an error was made and should be corrected. The Scrivener's Affidavit cannot include an original or certified copy of the document being corrected. It can include an exhibit (such as a legal description) identifying the necessary correction. This is a stand-alone document so it must include the PIN and legal description, as well as the prior document number and recordation date.