Re-recording / E-recording CORRECTION? CURE?

Errors in Recorded Instruments
Revised GS 47-36.1
New GS 47-36.2

Chicago Title CLE Seminar
Securing the Castle 2019

FIRST: A Note about E-Recording!

E-record EXACT SAME DOCUMENT you would personally present to the Register of Deeds in hand –

NOT A COPY OR EMAILED SCAN!

Once e-recorded, the "original" of *that* recorded document is digital, no longer the paper version!

For more details, go to webinar:

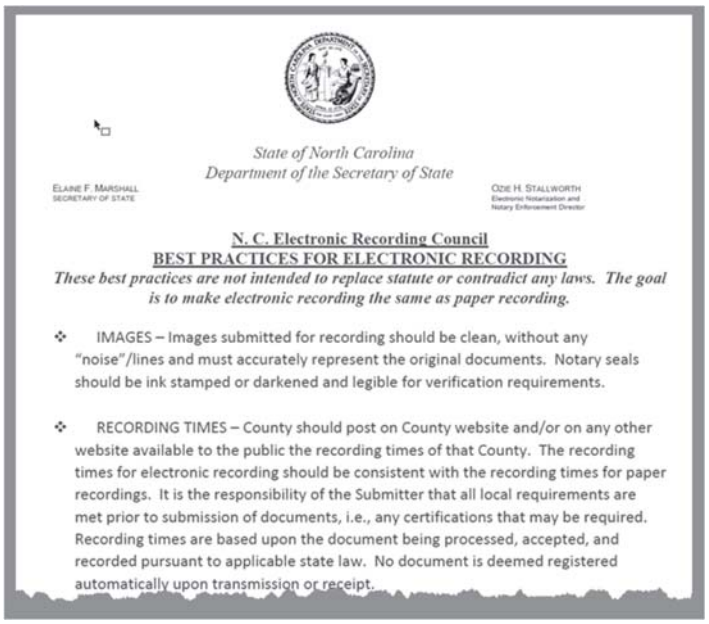
https://www.ncclosingattorneybestpractices.org/resources.html

- E-recording is a Delivery method
- Requirements same as “paper” (just through vendor)
  - Originals held by Submitter
- Expedite recordings, especially in multiple counties & states
- Minimize the “gap” for gap closings
- Title examination “gap” in updating between availability and currency of physical filings and records
  - expanding in paper and electronic world

N.C. Electronic Recording Council (ERC)

--

Best Practices for Electronic Recordings



State of North Carolina
Department of the Secretary of State

ELAINE F. MARSHALL
SECRETARY OF STATE

OZIE H. STALLWORTH
Electronic Notarization and Notary Enforcement Director

N. C. Electronic Recording Council
BEST PRACTICES FOR ELECTRONIC RECORDING

These best practices are not intended to replace statute or contradict any laws. The goal is to make electronic recording the same as paper recording.

- IMAGES – Images submitted for recording should be clean, without any “noise”/lines and must accurately represent the original documents. Notary seals should be ink stamped or darkened and legible for verification requirements.

- RECORDING TIMES – County should post on County website and/or on any other website available to the public the recording times of that County. The recording times for electronic recording should be consistent with the recording times for paper recordings. It is the responsibility of the Submitter that all local requirements are met prior to submission of documents, i.e., any certifications that may be required. Recording times are based upon the document being processed, accepted, and recorded pursuant to applicable state law. No document is deemed registered automatically upon transmission or receipt.

CHICAGO BULL
REVISED 8-31-2018

CORRECTIONS, RE-RECORDINGS & CURES: 2018 EDITION

Distinctions between "clerical" or "typographical" error corrections, substantive correction and curative documents, "re-recordings" of the original documents are often misunderstood and confused by those who draft, those who execute and those who record them. N.C. Gen. Stat. §§ 47-36.1 and 47-36.2 address these distinctions, as expanded in 2018 (described below).

1. **Typographical or minor errors ONLY:** Notice may be given by recording a Corrective Notice Affidavit, signed under penalties of perjury, under REVISED G.S. 47-36.1, Correction of errors in recorded instruments, effective 8/31/2018, as follows:

§ 47-36.1. Notice of errors in recorded instruments of title

(a) Notwithstanding G.S. 47-14 and G.S. 47-17, notice of a nonmaterial typographical or other minor error in a deed or other instrument recorded with the register of deeds may be given by recording a corrective notice affidavit. For purposes of this section, an error that would affect the respective rights of any party to the instrument is not a nonmaterial typographical or minor error. If a corrective notice affidavit is conspicuously identified as a corrective notice 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 for which the corrective notice is being given, and the original parties as they are named in the affidavit. A copy of the previously recorded instrument to which the corrective notice affidavit applies may be attached to the corrective notice affidavit and need not be a certified copy. To the extent the correction is inconsistent with the originally recorded instrument, and only to that extent, notice of the corrective information as provided by the affiant in the corrective notice affidavit is deemed to have been given as of the time the corrective notice 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.

A suggested *Corrective Notice or Scrivener's Affidavit for Notice of Typographical or Minor Error* form is attached.

If at first you don't succeed, record, record again!

1. **Nonmaterial Minor Typographical error → *Corrective Notice Affidavit***
2. **Rerecording original→ NO CHANGES! (G.S. 47-14(a))**
3. **Certified copy recording → NO CHANGES! (G.S. 47-31)**
4. **"Obvious Description Error" → *Curative Affidavit* (G.S. 47-36.2)**
5. **Correction / curative document**

   (deed of correction, re-acknowledgement, release, …)

Corrective Notice (or Scrivener's) Affidavit G.S. 47-36.1

- Minor clerical (non-material) errors ONLY
- No original document needed → SAVES $$$, time and risk of lost document
- *MAY* attach original or marked up copy for clarification
- Affiant not limited to prior closing attorney or draftsperson
- Provides assurance to later attorney certifying title
- *DOES NOT RELATE BACK regarding changes!*

CORRECTIVE NOTICE OR SCRIVENER'S AFFIDAVIT FOR
NOTICE OF TYPOGRAPHICAL OR MINOR ERROR
[N.C.G.S. 47-36.1(a)]

Prepared by: _____

Each undersigned Affiant, jointly and severally, being first duly sworn, hereby swears or affirms that the _____ (name or type of instrument) recorded on _____ (date) in Book _____ Page _____, _____ County Registry, by and between _____ (original parties) contained typographical or minor error(s); and this Affidavit is made to give notice of the below corrective information:

Affiant is knowledgeable of the agreement and the intention of the parties in this regard. Affiant is the (check one)

____ Drafter or preparer of the previously recorded instrument
____ Closing attorney for transaction involving the previously recorded instrument
____ Attorney for grantor/mortgagor named above in the previously recorded instrument
____ Owner of the property described in the previously recorded instrument
____ Other (Explain: _____)

A copy of the previously recorded instrument (in part or in whole) (___) is / (___) is not attached.

_____ Signature of Affiant
Print or Type Name:_____

_____ Signature of Affiant
Print or Type Name:_____

State of _____ County of _____

Signed and sworn to (or affirmed) before me, this the ____ day of _____, 20___.

My Commission Expires:

_____ Notary Public

_____ Notary's Printed or Typed Name

[Notarial Seal]

"AN ERROR THAT WOULD AFFECT THE RESPECTIVE RIGHTS OF ANY PARTY TO THE INSTRUMENT IS *NOT* A NONMATERIAL TYPOGRAPHICAL OR MINOR ERROR."

Curative Affidavit for Obvious Description Error G.S. 47-36.2

- Authorized Attorney
- "Obvious Description Error" Def.
- Notice to interested parties required
- NEW Statutory "safe harbor" forms:
  (1) "Notice of Intent to Correct Obvious Description Error"
  (2) "Curative Affidavit"

EFFECTIVE AUG. 31, 2018

Authorized Attorney G.S. 47-36.2

Licensed to practice law under G.S. Ch. 84 AND EITHER:

a. Drafted the instrument to be corrected.
b. Attorney for a party to the transaction involving the error, such as:
   i. grantor or grantee in a deed;
   ii. grantor/mortgagor, beneficiary (or assignee)/mortgagee or trustee (or substitute trustee) of record of mortgage or deed of trust;
   iii. assignor or assignee in an assignment of leases, rents, or profits; or
   iv. any party to an instrument affecting title to real property.
c. Attorney retained / authorized by title insurer that either
   i. issued title insurance policy for the property & transaction with the error or a subsequent transaction OR
   ii. proposes to issue a title insurance policy in reliance on a Curative Affidavit hereunder.

Obvious Description Error G.S. 47-36.2

a. One or more of the following, as stated in the instrument, are <u>inconsistent</u> in that one or more identify the property incorrectly, and the error is made apparent by reference to other <u>information contained in the instrument</u>, contained in an attachment to the instrument, or contained in <u>another instrument in the chain of title</u> for the subject parcel, including a recorded plat:

1. The legal description of the property.
2. The physical address of the property.
3. The tax map identification number of the property.
4. A plat reference.
5. A prior deed reference.

Obvious Description Error G.S. 47-36.2

b. The legal description of the real property in the instrument contains one or more errors transcribing courses and distances, including, for example, the omission of one or more lines of courses and distances, the omission of angles and compass directions, or the reversal of courses.

c. The instrument contains an error in a lot or unit number or designation, and the lot or unit described is not owned by the grantor, trustor, mortgagor, or assignor at the time the instrument is executed.

d. The instrument omits an exhibit, attachment, or other descriptive information intended to supply the legal description of the subject property, and the correct legal description may be determined by reference to other information contained in the instrument, including, but not limited to, one or more of the items described in sub-subdivision a. of this subdivision.

Obvious Description Error Is *NOT* ...

(i) missing or improper signatures or acknowledgements;

(ii) any designation of the type of ownership interest or right of survivorship; or

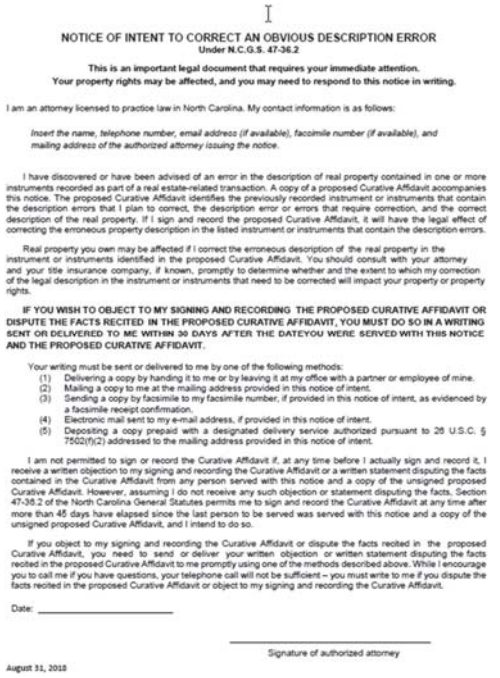
(iii) any error in the legal description that operates to convey any interest in real property that the grantor, trustor, mortgagor, or assignor owned at the time of conveyance but did not intend to convey.

Procedure

- Notice of Intent to Correct an Obvious Description Error *with* unsigned proposed Curative Affidavit
  - Served (like summons) on
    - Parties to the instrument
    - Current mortgagees, beneficiaries, assignees of "recorded instrument of title that may be adversely affected by the recording of the curative affidavit"
    - Current record owner
    - Attorney who prepared instrument to be cured
    - Any title insurance company that insured transaction with error, in subsequent transaction or proposes to insure
  - By authorized attorney
- 30 days to object
- If no objection, attorney records Curative Affidavit after 45 days
  - Relates back to original transaction
- If objection, must pursue other curative methods

Notice of Intent to Correct an Obvious Description Error

EFFECTIVE AUG. 31, 2018



NOTICE OF INTENT TO CORRECT AN OBVIOUS DESCRIPTION ERROR
Under N.C.G.S. 47-36.2

This is an important legal document that requires your immediate attention.
Your property rights may be affected, and you may need to respond to this notice in writing.

I am an attorney licensed to practice law in North Carolina. My contact information is as follows:

Insert the name, telephone number, email address (if available), facsimile number (if available), and mailing address of the authorized attorney issuing the notice.

I have discovered or have been advised of an error in the description of real property contained in one or more instruments recorded as part of a real estate-related transaction. A copy of a proposed Curative Affidavit accompanies this notice. The proposed Curative Affidavit identifies the previously recorded instrument or instruments that contain the description errors that I plan to correct, the description error or errors that require correction, and the correct description of the real property. If I sign and record the proposed Curative Affidavit, it will have the legal effect of correcting the erroneous property description in the listed instrument or instruments that contain the description errors.

Real property you own may be affected if I correct the erroneous description of the real property in the instrument or instruments identified in the proposed Curative Affidavit. You should consult with your attorney and your title insurance company, if known, promptly to determine whether and the extent to which my correction of the legal description in the instrument or instruments that need to be corrected will impact your property or property rights.

IF YOU WISH TO OBJECT TO MY SIGNING AND RECORDING THE PROPOSED CURATIVE AFFIDAVIT OR DISPUTE THE FACTS RECITED IN THE PROPOSED CURATIVE AFFIDAVIT, YOU MUST DO SO IN A WRITING SENT OR DELIVERED TO ME WITHIN 30 DAYS AFTER THE DATEYOU WERE SERVED WITH THIS NOTICE AND THE PROPOSED CURATIVE AFFIDAVIT.

Your writing must be sent or delivered to me by one of the following methods:
(1) Delivering a copy by handing it to me or by leaving it at my office with a partner or employee of mine.
(2) Mailing a copy to me at the mailing address provided in this notice of intent.
(3) Sending a copy by facsimile to my facsimile number, if provided in this notice of intent, as evidenced by a facsimile receipt confirmation.
(4) Electronic mail sent to my e-mail address, if provided in this notice of intent.
(5) Depositing a copy prepaid with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) addressed to the mailing address provided in this notice of intent.

I am not permitted to sign or record the Curative Affidavit if, at any time before I actually sign and record it, I receive a written objection to my signing and recording the Curative Affidavit or a written statement disputing the facts contained in the Curative Affidavit from any person served with this notice and a copy of the unsigned proposed Curative Affidavit. However, assuming I do not receive any such objection or statement disputing the facts, Section 47-36.2 of the North Carolina General Statutes permits me to sign and record the Curative Affidavit at any time after more than 45 days have elapsed since the last person to be served was served with this notice and a copy of the unsigned proposed Curative Affidavit, and I intend to do so.

If you object to my signing and recording the Curative Affidavit or dispute the facts recited in the proposed Curative Affidavit, you need to send or deliver your written objection or written statement disputing the facts recited in the proposed Curative Affidavit to me promptly using one of the methods described above. While I encourage you to call me if you have questions, your telephone call will not be sufficient – you must write to me if you dispute the facts recited in the proposed Curative Affidavit or object to my signing and recording the Curative Affidavit.

Date: _____

_____
Signature of authorized attorney

August 31, 2018

Curative Affidavit

CURATIVE AFFIDAVIT
[N.C.G.S. 47-36.2]
This curative affidavit should be indexed as a "subsequent instrument" pursuant to N.C.G.S. 161-14.1.

I, _____ certify as follows:

1. This curative affidavit is recorded pursuant to N.C.G.S. 47-36.2 to correct an obvious description error contained in a previously recorded instrument as defined in N.C.G.S. 47-36.2(a)(4).
2. I am an attorney licensed to practice law in North Carolina. I am an "authorized attorney" as defined in N.C.G.S. 47-36.2(a)(1).
3. The instrument or instruments containing an obvious description error requiring correction is/are identified as follows:

   Insert here the following information regarding each instrument to be corrected: the title of the instrument, the parties to the instrument, and the recording data for the instrument.
4. The obvious description error contained in the instrument(s) to be corrected is identified or described as follows:

   Insert here the erroneous description that requires correction.
5. The erroneous property description is corrected to read as follows:

   Insert here the correct description of the real property.
6. I have served a copy of a notice of my intent to sign and record this curative affidavit and a copy of this curative affidavit, unsigned, on all persons entitled to notice pursuant to N.C.G.S. 47-36.2(c). Service on each such person was properly effected in a manner prescribed for the service of a summons in accordance with Rule 4(j) or Rule 4(j5) of the North Carolina Rules of Civil Procedure, and more than 45 days have elapsed since the last person to be served was served. By signing and recording this affidavit, I certify that I did not receive from any person so served any written objection to the recordation of this curative affidavit or any written statement disputing the facts recited in this curative affidavit.

August 31, 2018

EFFECTIVE AUG. 31, 2018

Unaltered Re-recording of Original Document – G.S. 47-36.1(b)

Must:

(a) be conspicuously marked on the 1st page by the submitter as a "re-recording"
- **not altered in any way**

(b) clearly display the original recording stamp verifying previously recorded.

N.C.G.S. 47-14(a).

Unaltered Certified Copy

- **Will be recorded based upon the prior recorder's certification.**
- **If document is altered:**
  - **Prior register's certification would have no legal effect; and**
  - **Submission would arguably be a mis-representation to the current registrar since it is no longer a truly certified copy.**

G.S. 47-31(a), effective 10/1/08
G.S. 47-36.1(b)

Re-affirmation, Re-execution and Re-Acknowledgement of Previously Recorded Documents

AFFIDAVIT FOR REAFFIRMATION, RE-EXECUTION AND REACKNOWLEDGMENT OF PREVIOUSLY RECORDED _____ (name or type of instrument)

Prepared by: _____

The undersigned hereby reaffirms and reacknowledges the terms and conditions of that certain _____ (name or type of original instrument being reaffirmed and reacknowledged) recorded on _____ (date) in Book ____ Page ____, _____ County Registry, by and between _____ [original parties], which terms and conditions are incorporated herein by reference as if fully set forth.

The undersigned hereby acknowledges that the purpose for the recording of this reaffirmation, re-execution and reacknowledgment of said instrument is:

To the extent not inconsistent herewith, the undersigned hereby ratifies and reaffirms the terms, conditions and conveyances contained in the above-referenced instrument incorporated herein by reference.

IN WITNESS WHEREOF, the undersigned has duly executed this instrument, this the ____ day of _____ 20___.

(Entity Name)

By: _____ (SEAL)
Print/Type Name: _____
Title: _____

Print/Type Name: _____ (SEAL)

Print/Type Name: _____

_____ County of _____

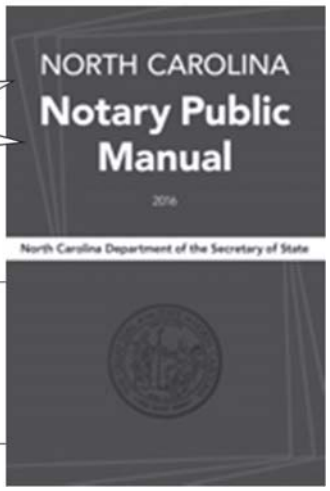
_____ was signed and sworn to (or affirmed) before me by _____ person(s), which person(s) acknowledging to

Date Checked

SAVE MONEY!

SAVE TIME!

New & completely revised!!



Defective notarial certificates

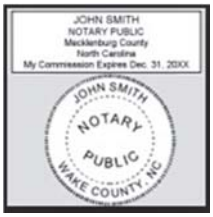
Affidavit of Correction of Notarial Certificate – G.S. 47-36.1(c)

- … solely to correct a notarial certificate made by that notary public
- … on an instrument already recorded

Affidavit
- must identify the correction and
- may attach a new acknowledgment completed as of the date the original acknowledgment took place

Deemed attached to the original recording, priority remains the date and time originally recorded.

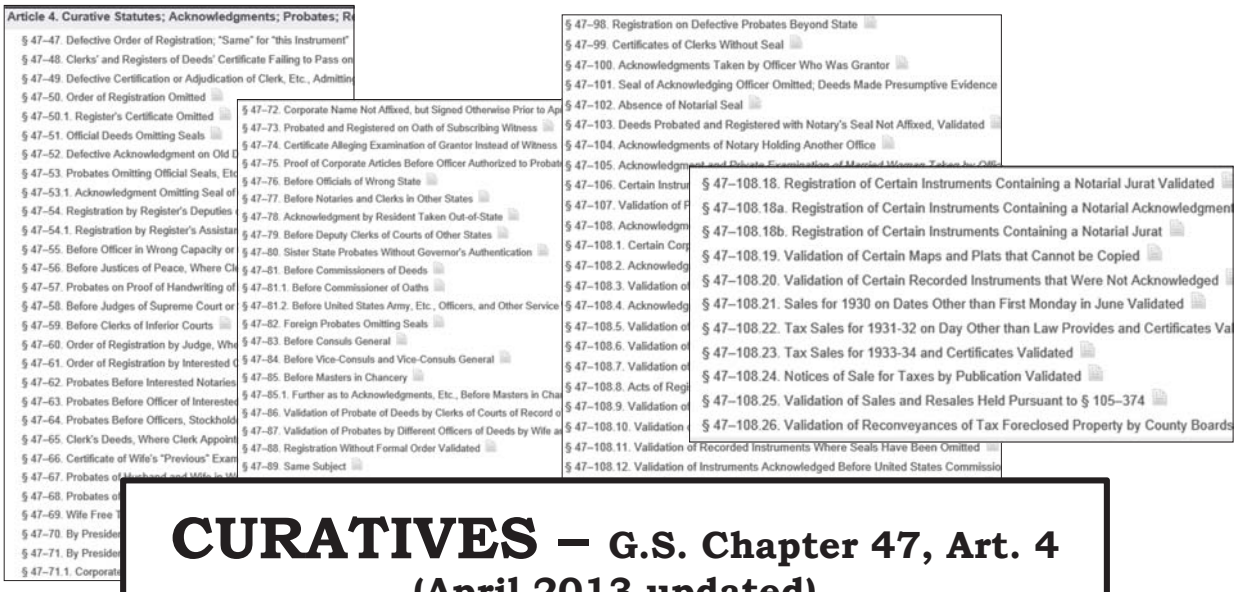
Notary Curatives



- G.S. 10B-37(f) & 10B-68 noncompliant notarial seal
- G.S. 10B-65, if notarial certificate has a seal, effective through 4/1/2013:
  - Pre-qualification and post-expiration notarizations
  - Date of expiration of notarial commission
  - Illegible seal
  - incorrect spelling of notary's name on seal or
  - name on seal or commission inconsistent with signature
  - Notarial certificate states the correct day and month but lacks a year or states an incorrect year. (before April 1, 2013)
  - Pre-12/1/05 acknowledgments with notarial seal.
- G.S. 10B-67 & G.S. 10B-68 – erroneous commission expiration, so long as lawfully commissioned

Notary Curatives (cont'd)

- **G.S. 10B-68 – Technical defects (not affect sufficiency, validity or enforceability):**
  - **absence of the legible appearance of the notary's name exactly as shown on the notary's commission**
  - **affixation of the notary's seal near the signature of the principal or subscribing witness rather than near the notary's signature,**
  - **minor typographical mistakes in the spelling of the principal's name,**
  - **failure to acknowledge the principal's name exactly as signed by including or omitting initials, or**
  - **failure to specify the principal's title or office, if any.**
- **G.S. 10B-99: PRESUMPTION OF REGULARITY!**
- **G.S. 47-41.2 Technical defects in probate or notarial certificate**
- **G.S. 47-97 & G.S. 47-97.1 Corporate officer's name error (effec. 4/1/13)**



CURATIVES – G.S. Chapter 47, Art. 4
(April 2013 updated)

EFFECTIVE AUG. 31, 2018

New G.S. § 47-108.28: 7-year curative provision

- Recorded in the county where the property is situated
- Not corrected within 7 years after instrument recorded
- Lacks any of the following:
  - Proper notary acknowledgement
  - Proper recital of consideration
  - Residence of a party
  - Address of the property
  - Address of a party
  - Date
  - Date of any instrument secured by the instrument

New AUTOMATIC CURATIVE

EFFECTIVE AUG. 31, 2018

NEW G.S. § 47-108.28(b)(2):

The name of a grantor, trustor, mortgagor, assignor, borrower, or other person with an interest in the property does not appear in any part of the instrument, but the person executed the instrument without limitation or qualification. The person who executed the instrument without limitation or qualification shall be deemed to have conveyed or encumbered (as applicable) any interest or right such person then had in the property conveyed or encumbered by the terms of the instrument.

… however, *NOT* APPLICABLE …

NEW G.S. § 47-108.28(c):

Nothing in this section is intended to modify any provisions of law pertaining to:

- **the competency or infancy of the grantor or**
- **the provisions of G.S. Chapter 22 (Statute of Frauds) or**
- **to limit any remedies available under the laws of this State.**

Substantive alterations

- **Changing core information**
- **May affect constructive notice and priority of a document**
- **Require traditional curative instruments.**
  - **Signed by relevant parties**
  - **New originals**
  - **Additional documents, such as:**
    - **modification, substitution of collateral, release deed, subordination, ratification, reaffirmation**
    - **Reaffirmation, Re-Execution & Re-acknowledgment of Previously Executed Instrument**

Traditional "Cures"

The "True" Correction Deed

******This conveyance is subject to the Deed of Trust given by Grantees herein in favor of _____ [beneficiary] recorded in Book ___, Page ___, _____ County Registry, and this conveyance is also subject to any subsequent matters incurred by Grantees herein or the liens of which attached to the property subsequent or due to the conveyance to them on _____ [original deed date] which may affect title to the property described herein. ******

****** This corrective deed is given to validate and ratify the earlier conveyance from the Grantor herein to the Grantee herein, recorded in Book ___, Page ___, _____ County Registry, and is being signed by _____ Grantors therein, and correcting [HERE INSERT THE LEGAL ISSUE WITH THE PRIOR DEFECTIVE CONVEYANCE.]**

Forms forms & more forms!!

www.northcarolina.ctic.com