

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

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BILL: SB 886

INTRODUCER: Senator Powell

SUBJECT: Errors in Deeds

DATE: January 13, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Elsesser</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>McMillan</u>	<u>McKay</u>	<u>CM</u>	<b>Favorable</b>
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 886 provides that, in certain instances, a deed containing a scrivener’s error in the legal description of property and subsequent deeds containing the same error may be corrected by the filing of a curative notice.

The bill defines the errors or omissions that constitute “scrivener’s errors” and describes the circumstances under which such errors may be corrected by a curative notice. A curative notice corrects all deeds for the same property containing the same scrivener’s error, and releases any cloud or encumbrance that an erroneous deed may have created as to other properties.

The bill takes effect July 1, 2020.

**II. Present Situation:**

Generally, deeds containing scrivener’s errors should be reformed to reflect the true intentions of the parties.<sup>1</sup>

The Florida Statutes do not expressly mention “corrective deeds,” but courts have established a general rule of law allowing for corrective instruments conveying real property. For instance, a deed containing an incorrect description or a misspelling of names may be corrected by a subsequent instrument clearly identified as a correction deed.<sup>2</sup> Corrective deeds need not restate all material portions of the deed being corrected if such portions contain no errors.<sup>3</sup> Corrective deeds and non-erroneous portions of original deeds are “construed together.”<sup>4</sup>

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<sup>1</sup> See *Burke v. Piccone*, 523 So. 2d 664, 665 (Fla. 2d DCA 1988); see also *Brown v. Brown*, 501 So. 2d 24, 26-27 (Fla. 5th DCA 1986); *Gennaro v. Leeper*, 313 So. 2d 70, 72 (Fla. 2d DCA 1975); *Jacobs v. Parodi*, 39 So. 833 (1905).

<sup>2</sup> *Golden v. Hayes*, 277 So. 2d 816, 817 (Fla. 1st DCA 1973).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

A reformation relates back to the time the instrument was originally executed and simply corrects the document's language to read as it should have read all along.<sup>5</sup> The theory of reformation on grounds of mistake is to reform the agreement to reflect what the parties would have agreed to had there been no mistake.<sup>6</sup> Claims for reformation of a deed are subject to a 20-year limitations period.<sup>7</sup> A party seeking reformation of a deed may seek, in the same pleading, quiet title to reflect the correct ownership.<sup>8</sup>

Courts have contemplated remedying alleged defects in deeds through "curative deeds,"<sup>9</sup> although the term is not mentioned in the Florida Statutes.

Errors in the legal description of property, contained in a deed or mortgage existing prior to entry of the final judgment, cannot be remedied by simply amending or correcting the final judgment, but errors in the legal description of the property that occur upon entry of the final judgment itself, and did not exist in a deed or mortgage (or other document conveying or encumbering the property) prior to entry of the final judgment can be corrected through an amended or corrected judgment.<sup>10</sup>

The Florida Statutes describe instances where certain entities may amend errors in the legal description of condominium property. Section 718.110(5), F.S., allows a condominium's board of administration to file an amendment to a condominium declaration if it appears that, due to a scrivener's error, the "common elements" of the condominium have not been distributed equally in the declaration. Similarly, a "termination trustee" charged with terminating a condominium declaration may record an amended plan of termination if the trustee discovers a scrivener's error in the plan, and the amended plan must be executed in the same manner as required for the execution of a deed.<sup>11</sup>

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<sup>5</sup> *Kartzmark v. Kartzmark*, 709 So. 2d 583, 585 (Fla.4th DCA 1998).

<sup>6</sup> *Id.*; "A mistake is mutual when the parties agree to one thing and then, due to either a scrivener's error or inadvertence, express something different in the written instrument." *Circle Mortgage Corp. v. Kline*, 645 So. 2d 75, 78 (Fla. 4th DCA 1994).

<sup>7</sup> Section 95.231, F.S.; *Inglis v. First Union Nat. Bank*, 797 So. 2d 26 (Fla. 1st DCA 2001).

<sup>8</sup> See, e.g., *Rigby v. Liles*, 505 So. 2d 598, 599 (Fla. 1st DCA 1987); see also s. 65.021, F.S.

<sup>9</sup> See *Heartwood 2, LLC v. Dori*, 208 So. 3d 817, 822-23 (Fla. 3d DCA 2017) ("Any alleged defect in the deed into the mortgagor ... should remain for a separate action ... or a curative deed to be obtained from the grantor by consent" (Salter, J., concurring in part and dissenting in part) (emphasis added)).

<sup>10</sup> *Baker v. Courts at Bayshore I Condominium Ass'n, Inc.*, 279 So. 3d 799, 801-02 (Fla. 2d DCA 2019) (emphasis removed); see also *Fed. Nat. Mortg. Ass'n v. Sanchez*, 187 So. 3d 341, 343 (Fla. 4th DCA 2016) (holding in such case that the trial court must first vacate the judgment, the sale and any certificates of title or sale); *Caddy v. Wells Fargo Bank, N.A.*, 198 So. 3d 1149, 1150 (Fla. 4th DCA 2016); *Wells Fargo Bank, N.A. v. Giesel*, 155 So. 3d 411, 414 (Fla. 1st DCA 2014); *Lucas v. Barnett Bank of Lee Cty.*, 705 So. 2d 115, 116 (Fla. 2d DCA 1998); *Fisher v. Villamil*, 56 So. 559, 561-62 (Fla. 1911) ("[W]hen a mortgage misdescribes the property intended to be mortgaged the mistake may be corrected by a proper proceeding before judicial foreclosure; but, if the mistake has been carried into a bill, filed for the purpose of foreclosing such mortgage, into the decree ordering foreclosure, into the advertisement, and into the deed, the purchaser at such foreclosure sale cannot maintain a bill in equity to correct the description of the land as contained in the mortgage, in the decree, and in the deed").

<sup>11</sup> Section 718.117(2)(d), F.S.

### III. Effect of Proposed Changes:

The bill states that a deed containing a “scrivener’s error” conveys title to the “intended real property” as if there had been no error, and states that each subsequent erroneous deed containing the identical scrivener’s error also conveys title as if there had been no error.

The bill defines a “scrivener’s error” as a single error or omission in the legal description of the “intended real property,” i.e. the property which the grantor intended to be conveyed by the deed, that is one of the following:

- an error or omission of one lot or block identification of a recorded platted lot,<sup>12</sup>
- an error or omission of one unit, building, or phase identifications of a condominium or cooperative unit, or
- an error or omission in one directional designation or numerical fraction of a tract of land that is described as a fractional portion of a section, township, or range.<sup>13</sup>

The bill states that deeds containing scrivener’s errors convey title to the intended property as if there had been no error if:

- the grantor held record title to the intended property at the time the deed containing the scrivener’s error was executed,
- the grantor or the erroneous deed did not hold title to any other real property in the same subdivision, condominium, or cooperative development or in the same section, township, or range described in the deed containing the scrivener’s error within 5 years before the record date of that deed,
- the record property is not described exclusively as a metes and bounds legal description, and
- a curative notice evidencing the intended real property to be conveyed by the grantor is recorded in the official records of the county where the intended real property is located.

The bill provides the form for a curative notice, which requires a description of the original erroneous deed and any subsequent deeds containing the same error, a statement that the person filing the notice has confirmed, through an examination of the official county records, that the above-mentioned requirements for conveyance of title were met, and a statement that the real property described in the notice was the property intended to be conveyed by the erroneous deeds.

The bill states that circuit court clerks may accept a curative notice as evidence of a grantor’s intent to convey the intended property, and states that the corrections made by the curative notice relate back to the record date of the original erroneous deed and release any clouds or encumbrances created by the erroneous deeds as to any property other than the intended real property.

The bill states that its remedies are not exclusive and do not abrogate any other remedy under Florida law.

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<sup>12</sup> For the purposes of the bill, transposition of lot and block identifications are considered one error.

<sup>13</sup> For the purposes of the bill, an error or omission in the directional description and numerical fraction of the same call is considered one error.

The bill allows for the correction of errors meeting its definition without having to file a claim for reformation of deed or quiet title action in a court. The bill alters the rule established in case law by more clearly defining the form of a curative deed and narrowing the types of errors that constitute “scrivener’s errors” that may be corrected with a subsequent curative deed. However, because the bill states that its remedies are not exclusive, it appears that deeds containing erroneous legal descriptions of property that do not meet the bill’s definition of “scrivener’s errors” may be remedied through the current method of filing actions for reformation of deed or quiet title. The bill does not specify whether it is subject to the 20-year limitations period that pertains to traditional claims for reformation of deed.

The bill takes effect July 1, 2020.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By filing a curative notice, a property owner may be able to sufficiently clear title to property without the expenses associated with a claim for reformation of deed or a quiet title action.

**C. Government Sector Impact:**

The bill provides a method for correcting scrivener's errors in deeds other than by a claim of reformation of deed or quiet title, and therefore may reduce judicial labor. However, the bill will potentially result in an increase in the workloads of court clerks.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Lines 138-140 of the bill state that the court clerks "may" accept and record curative notices "as evidence of the intent of the grantor in the erroneous deed." The Legislature may wish to revise this sentence to state that the clerks "shall" accept and record the curative notices and that the notices are evidence of the intent of the grantor. As currently drafted, the language appears to give clerks discretion in deciding whether to accept a notice and a duty or authority to evaluate whether the curative notice is evidence of a grantor's intent.

**VIII. Statutes Affected:**

This bill creates section 689.041 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.