

Wisconsin Passes Bill that Eases Curing of Simple Conveyance Mistakes

The legislation, which was supported by the Wisconsin Land Title Association, could be used as a model for other states.

The Wisconsin legislature passed a law April 20 that allows for the simple curing of minor conveyance errors and helps the title insurance industry maintain the accuracy of public records without going through the courts.

Senate Bill 587, which was signed by the governor in May, allows deeds and mortgages that contain simple mistakes to be fixed by affidavits signed by the seller, buyer and the drafter of the instrument or the person who closed the transaction.

“The new Wisconsin law goes further than most states in identifying errors that can be fixed by affidavits and in explaining the legal effect of the affidavit,” said Bush Nielson, partner at Reinhart Boerner VanDeuren in Waukesha, Wis. “We found the laws around the country to be varied and mostly archaic. This could be a good model for other

states in which title people would like to simplify the curing of minor conveyancing errors.”

Before this bill, no law existed that enabled the use of an affidavit to repair a recorded document that contained an error, according to Craig Haskins, executive vice president of Knight-Barry Title Group in Wisconsin.

“The registers of deeds are the custodians of the public record, but our industry makes sure things are accurate. If we see mistakes we should jump on it and correct it,” Haskins said. “This bill allows us to work behind the scenes and ensure the records are accurate, instead of being forced to file lawsuits to make minor changes.”

The legislation received overwhelming support from several real estate groups, including the state bar. Hal Karas, an attorney with the law firm Whyte Hirschboeck Dudek

and representative of the State Bar Real Property Section RPPT, said the state bar strongly supported the legislation as being helpful to people as well as those who help with real estate transactions.

“We assume that many of these problems arise where a transaction party can no longer be located, or might be uncooperative, as say after a divorce,” he said. “Consequently, getting the actual parties to sign documentation is rarely going to be an effective solution to a problem. The alternative would be to require a party to go to court, which is costly, lengthy, uncertain, and a waste of judge’s time when there are more important things to ask them to decide. So, this legislation is a good compromise between the need to have a speedy and easy resolution of small problems, and the need to make sure such a system is not abused.”

Rose Ottum, the County Register of Deeds in Trempealeau County, Wis., and the president of the Wisconsin Register of Deeds Association, supported the legislation as well.

“The Wisconsin Register of Deeds Association looks forward to this legislation enabling our business partners, as well as our customer base, the ability to record corrective documents based on statutory authority which was not present in the past,” the association said in a statement.

About a decade ago, the Register of Deeds (ROD) created a form

called an Affidavit of Correction (AOC) that was to be used to fix minor errors in recorded documents, according to Haskins. Initially, the AOC was used to fix errors such as changing a portion of the legal description from “thence east 123.87 feet” to “thence east 123.78 feet.” The AOC would be recorded in the ROD office and was thought to repair the document that was previously recorded with the error. In 2007, the Wisconsin Court of Appeals ruled in *Smiljanic v. Niedermeyer* that using AOCs to correct errors is not proper because there is no enabling statute under Wisconsin law. The only way to fix a deed would be with a court action, Haskins said.

Nielson, who is a past WLTA president and past vice chair of the association’s Legislative Committee, represented Doug Smiljanic. In the case, a deed had been fixed by an affidavit 50 years ago. Everyone involved in the sale was dead. The court of appeals held that, since there is no statute allowing a deed to be

fixed by an affidavit, the only way to fix it would be to have a lawsuit.

“We had a lawsuit before the court, and still it would not fix the deed,” Nielson said. “Doug Smiljanic lost his access to a very desirable lake, for which he had paid a lot of money.”

Haskins, who is a Wisconsin Land Title Association board member and the co-chair of the association’s Liaison Committee, said after the ruling, the WLTA, State Bar, Wisconsin Realtors Association, the Wisconsin Registers of Deeds Association and the Wisconsin Real Property Listers met many times to discuss how to create an enabling statute that would both enable the use of a corrective instrument and grandfather in those previously recorded AOCs that met certain criteria.

“We need such a law, because it is cumbersome and expensive to fix a deed or mortgage after the fact,” Nielson said. “People die, move away, become uncooperative, can’t be found or want money just to sign a

document that cures a simple error, such as the name of the subdivision in which the property is located.”

Haskins said the law describes scenarios in which a corrective instrument can be used and importantly, who must sign the instrument. The corrective instrument may be used to correct a legal description (including a distance; angle; direction; unit, or building number or letter; subdivision or condominium name), a party’s name, party’s marital status, homestead information, execution dates, acknowledgments or authentications, and removal of an owner, among other uses of the corrective instrument.

The corrective instrument may be signed by a “person having personal knowledge of the circumstances of the conveyance and of the facts recited in the correction instrument, including the grantor, the grantee, the person who drafted the conveyance that is the subject of the correction instrument, or the person who acted as the settlement agent in the transaction that is the subject of the conveyance, and shall recite the basis for the person’s personal knowledge.”

Haskins said in most cases, the settlement agent or the person who drafted the conveyance can sign the corrective instrument. However, there are times when either the grantor or grantee must sign the corrective instrument including the removal of an owner from the conveyance (the removed party must sign), the addition of a parcel of land to the conveyance (the grantor must sign), and the removal of a parcel of land from the conveyance (the grantee must sign), among other fact scenarios.

Sample Corrective Instrument Solution

0000806

STATE BAR OF WISCONSIN FORM 3 - 1999
QUIT CLAIM DEED

Document Number

DOC # 2023200
Recorded
APR. 08, 2008 AT 05:11PM

This Deed, made between Scott J. Anderson, a single person, Grantor, and Kenneth Scott Anderson, a married person, Grantee. Grantor quit claims to Grantee the following described real estate in Racine County, State of Wisconsin (if more space is needed, please attach addendum):

Lot 12, Block 2, Wilmsham's Addition, according to the recorded plat thereof. Said land being in the City of Racine, County of Racine, State of Wisconsin.

The drafter of the deed inadvertently identified Mr. Anderson as a married person when in fact Mr. Anderson was a single person

JAMES A. LOHMER
RACINE COUNTY
REGISTER OF DEEDS
Fee Amount: \$11.00
Fee Receipt: 77,25-10

Recording Area

Appeals Court Solution

Execution of a new deed signed by the grantor or the commencement of a lawsuit to prove the grantee’s marital status at the time of the conveyance.

Corrective Instrument Solution

A person with personal knowledge of the circumstances of the conveyance and of the facts recited in the instrument can sign a correction instrument which corrects or clarifies a party’s marital status.

Proposed §§706.085(2)(b) and 706.085(1)(b)(2), Wis. Stats.

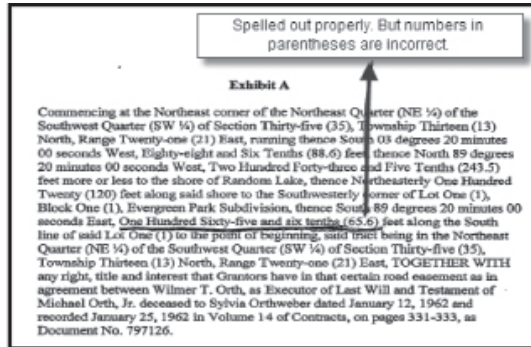
Samples of Corrective Instrument Solution

The law also grandfathers the use of “old” AOCs (pre-enactment of the pending law) if those old AOCs would have been a valid correction instrument under the pending law.

Haskins did some investigating of the Wisconsin real estate records and found hundreds of examples of minor errors that could be fixed with an affidavit. He said there were 13 common errors that should be acceptable to fix without going to court. One example is where the deed showed the buyer as married, but he was really single. Down the road, when the buyer attempts to refinance, the lender will show that the buyer was a married man, and ask “Why didn’t you tell us you were married?” The only way to fix this before the Senate Bill 587 would be to have the seller to sign a new deed, or go to court. If the seller had passed, a judge would have to make a ruling.

“I was shocked how the title industry was able to influence such a change and that with a little hard work, anything is possible,” Haskins said. “Previous to this experience, if someone told me that a brilliant idea can’t be done because it’s not consistent with the law, I would have given up. Now, I know that if something makes sense and there are people who will work hard, things can be changed to make it happen. This is why people need to be engaged with their state land title associations, and on a national level, with the American Land Title Association.”

Note: Reprinted with permission from the American Land Title Association.



Appeals Court Solution	Corrective Instrument Solution
Execution of a new deed or the commencement of a lawsuit to confirm which measurement is correct.	A person with personal knowledge of the circumstances of the conveyance and of the facts recited in the instrument can sign a correction instrument which corrects the legal description in a conveyance, including a distance; angle; direction; bearing; chord; lot, block, unit, or building number or letter; appurtenant easement; section number; township name or number; municipality, county, or state name; range number or meridian; certified survey map number; or subdivision or condominium name.
	<i>Proposed §§706.085(2)(b) and 706.085(1)(a), Wis. Stats.</i>

State Bar of Wisconsin Form 1-2003 WARRANTY DEED		0843652
Document Number	Document Name	RONALD A. VOIGT OZAUKEE COUNTY REGISTER OF DEEDS FORT WASHINGTON, WI TID: 3359
THIS DEED, made between Nick R. Didier, Jr., Peter J. Didier and Patricia L. Didier, husband and wife and William G. Didier and Connie M. Didier, husband and wife		RECORDED ON 06/15/2006 01:34PM
("Grantor," whether one or more), and Hay Hill Property LLC		REC FEE: 15.00 TRNS FEE: 144.00 PAGE#: 3 EXEMPT #: 0
("Grantee," whether one or more).		Recording Area
Grantor for a valuable consideration, conveys to Grantee the following described real estate, together with the rents, profits, fixtures and other appurtenant interests, in Ozaukee County, State of Wisconsin ("Property") (if more space is needed, please attach addendum):		Name and Return Address
See Attached Exhibit A.		
The Grantors inadvertently included land they already sold years prior in this deed with a large amount of other land.		Parcel Identification Number (PIN)
		This is not homestead property. (RM) (is not)

Appeals Court Solution	Corrective Instrument Solution
Execution of a new deed signed by grantee back to the actual owner of the erroneously conveyed property, or the commencement of a lawsuit to judicially reform the deed to remove the parcel in question.	If a parcel is being removed from a conveyance that also correctly conveys other land, only the grantee may sign a correction instrument removing the erroneously conveyed parcel.
	<i>Proposed §706.085(2)(b)(3)(c), Wis. Stats.</i>