

## WFG Underwriting Bulletin



To: All New Mexico Policy Issuing Agents of WFG National Title Insurance Company  
From: Underwriting Department  
Date: July 1, 2016  
Bulletin No. NM 2016-12  
Subject: New Legislation: Scrivener's Error Affidavit

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Please be advised that new Senate Bill 146, authorizing the use of a "Scrivener's-Error Affidavit, is effective July 1, 2016. The following is a comprehensive recap of the bill and not the bill in its entirety. Please contact New Mexico state underwriting counsel if you have questions or if you are relying on such an affidavit to insure title under a WFG National Title Insurance Company policy.

- A. A Scrivener's-Error Affidavit may be used to correct a drafting or clerical errors in:
- (1) a legal description, such as omission of a word(s);
  - (2) the name of a Subdivision;
  - (3) plat recording information;
  - (4) a metes & bounds description, if bearings or distances are omitted, but may not increase or decrease the land described;
  - (5) spelling of a name;
  - (6) a missing or incorrect middle initial;
  - (7) a missing or incorrect grantee's address; and
  - (8) the legal type or domicile of a legal entity.
- B. The affidavit can only be executed by:
- (1) For error on a legal instrument prepared in connection with a closing of a transaction affecting title to real property:
    - (a) the licensed attorney who prepared the instrument;
    - (b) an individual licensed agent employee of a title agent or underwriter who completed the instrument, if still employed by the title agent or underwriter;
  - (2) For error on a mortgage or deed of trust:
    - (a) a licensed attorney who represents the lender named in the original instrument; or
    - (b) a current employee of the lender named in the original instrument;

- (3) For error on a power of attorney or easement:
  - (a) a licensed attorney who represents the principal or grantor of the original instrument; or
  - (b) the principal or grantor of the original instrument; and
- (4) For any other writing affecting title to real property:
  - (a) a licensed attorney who represents a party to the original instrument; or
  - (b) the licensed attorney who prepared the original instrument.

C. An affidavit shall:

- (1) state that the affiant has actual knowledge and is competent to testify to the facts in the affidavit and contain an acknowledgment that the testimony is under penalty of perjury;
- (2) be sworn to and acknowledged before a notary public;
- (3) conspicuously be titled a "scrivener's affidavit" or "scrivener's-error affidavit";
- (4) contain the following information:
  - (a) name of person or entity that prepared, completed or was associated with the original instrument;
  - (b) the names & capacities of all parties to the original instrument;
  - (c) the recording information of the original instrument;
  - (d) a brief description of the error; and
  - (e) the correct information to be inserted, reflected or removed.

D. The affidavit shall be:

- (1) recorded;
- (2) indexed under the names of the parties to the original instrument; and
- (3) admissible as evidence to the same extent as any other recorded instrument in an action concerning the original instrument or title to the real property affected thereby.

E. This section shall not;

- (1) prohibit any other manner of correcting errors to writings affecting title to real property; or
- (2) require a change to the records of the county assessor or treasurer.

The statutory form is included with this bulletin.

[Scrivener's Error Affidavit](#)

**NOTE: The information contained in this Bulletin is intended solely for the use of employees of WFG National Title Insurance Company, its title insurance agents and approved attorneys. Disclosure to any other person is expressly prohibited unless approved in writing by the WFG National Title Insurance Company's Underwriting Department.**

**The Agent may be held responsible for any loss sustained as a result of the failure to follow the standards set forth above.**