WEST VIRGINIA CODE CHAPTER 36 ARTICLE 3

WV Legislature

§36-3-1. Seal not necessary in conveyances of land.

The affixing of a seal, or any symbol or word intended to have the effect of a seal, shall not be necessary to give validity to any deed, trust deed, mortgage, or other conveyance of an estate of inheritance or freehold in land, or any estate of any duration therein.

WV Legislature

§36-3-2. Covenant on unsealed conveyances or contracts.

An action of covenant may be maintained on any written conveyance or lease which, under the provisions of section one, article one of this chapter, must be by deed, and which has been executed since the twenty-sixth day of July, nineteen hundred and twenty-one, for the breach of any covenant or warranty or other agreement therein contained, whether such instrument be sealed or unsealed, and every estoppel which would have been created by such writing, if sealed, shall be created by it, though it be unsealed. Such action of covenant may also be maintained upon any contract or agreement for the conveyance of any interest in land, which interest, if conveyed, would be required, by said section one, article one of this chapter, to be conveyed by deed.

WV Legislature

§36-3-3. Other effects of seal.

The affixing of a seal, or any symbol or word intended to have the effect of a seal, to any instrument conveying or agreeing to convey land, or any interest whatever in land, shall not give to such instrument any additional force or effect, either by way of importing a consideration or in any other manner whatsoever, either at law, or in equity, than such instrument would have if it were unsealed.

WV Legislature

§36-3-4. Distinctions between various kinds of deeds abolished.

All distinctions in legal effect between deeds of grant, deeds of bargain and sale, deeds of lease and release, and deeds of covenant to stand seized, are hereby abolished. Any instrument which shows on its face a present intent to pass the title to, or any interest, present or future, in real property, shall, if properly executed and delivered, be given effect according to its manifest intent. No instrument purporting to convey land, or any interest therein, shall fail of effect merely for lack of conformity with the language of sections five, six, seven, eight or nine of this article.

WV Legislature

§36-3-5. Form of deed.

A deed may be made in the following form, or to the same effect: "This deed made the ..... day of ....., in the year ....., between (here insert names of parties), witnesseth: That in consideration of (here state the consideration), the said ..... grants unto the said ..... all, etc. (Here describe the property, and insert covenants or any other provisions.) Witness the following signature."

WV Legislature

§36-3-5a. Easement and right-of-way; description of property; exception for certain public utility facilities and mineral leases.

(a) Any deed or instrument that initially grants or reserves an easement or right-of-way shall describe the easement or right-of-way by any of the following:

(1) Metes and bounds;

(2) Specification of centerline: Provided, That any deed or instrument, executed on or after September 1, 2013, that initially grants or reserves an easement or right-of-way using the centerline method must also include the width;

(3) Station and offset; or

(4) Reference to an attached drawing or plat which may not require a survey or instrument based on the use of the global positioning system which may not require a survey.

(b) Oil and gas, gas storage and mineral leases shall not be required to describe the easement, but shall describe the land on which the easement or right-of-way will be situate by source of title or reference to a tax map and parcel, recorded deed, recorded lease, plat or survey sufficient to reasonably identify and locate the property on which the easement or right-of-way is situate: Provided, That the easement or right-of-way is not invalid because of the failure of the easement or right-of-way to meet the requirements of this subsection or subsection (a) above.

(c) This section does not apply to the construction of a service extension from a main distribution system of a public utility when the service extension is located entirely on, below or above the property to which the utility service is to be provided.

(d) The clerk of the county commission of any county in which an easement or right-of-way is recorded pursuant to this section may only accept for recordation a document that complies with this section and that otherwise complies with the requirements of article one, chapter thirty-nine of this code, without need for a survey or certification under section two-a, article one, chapter thirty-nine of this code.

WV Legislature

§36-3-6. Necessity of consideration in deed of real property.

If a deed of real property is in other respects valid, it shall not fail for want of a payment of consideration, or the recital of a consideration in the deed. No resulting or other trust in favor of the grantor in such deed shall arise from the mere fact that no consideration was paid or recited, if no trust was in fact intended. The foregoing provisions of this section shall not affect in any manner the right of any party to the deed, or any other person, to have such conveyance set aside for fraud, or because of any other circumstance which would render such conveyance invalid as to such person.

WV Legislature

§36-3-7. Effect of words of release in a deed.

Whenever, in any deed, there shall be used the words "The said grantor releases to the said grantee all his claims upon the said lands," or words of like import, such deed shall be construed as if it set forth that the grantor or releasor hath remised, released, and forever quitted claim and by these presents doth remise, release, and forever quit claim unto the grantee or releasee, his heirs and assigns, all right, title and interest whatsoever, both at law and in equity, in or to the lands and premises granted or released, or intended so to be.

WV Legislature

§36-3-8. Form of lease.

A deed of lease may be made in the following form or to the same effect: This deed, made the ..... day of ....., in the year ....., between (here insert the names of the parties), witnesseth: That the said ..... demises unto the said ....., his personal representatives and assigns, all, etc., (here describe the property), from the ..... day of

....., for the term of ....., thence ensuing, the said

..... (the lessee) paying to the said .....

(the lessor) therefor, during the said term, the rent of (here state the rent and mode of payment, and insert covenants, conditions, or any other provisions). Witness the following signature.

WV Legislature

§36-3-9. Form of deed by sheriff or special commissioner.

The deed of a sheriff or special commissioner for real estate sold under the decree, judgment or order of a court may be made in the following form, or to the same effect: This deed, made this ..... day of ....., between A .....

B ....., sheriff of the county of ..... (or special commissioner, as the case may be) of the first part, and C ..... D ....., of the second part, witnesseth: That whereas, the said sheriff (or commissioner) in pursuance of the authority vested in him by a decree (judgment, or order, as the case may be) of the circuit court of the county of ....., made on the ..... day of ....., in a suit in chancery (or an action at law, or otherwise, as the case may be) therein pending, in which E ..... F ..... was plaintiff, and G ..... H ..... was defendant, did sell the real estate hereinafter mentioned and conveyed according to the terms and conditions required by said decree (judgment or order) at which sale the said C .....

D ..... became the purchaser for the sum of .....

dollars. And whereas, the said court by a subsequent decree (or order) made in the case on the ..... day of ....., confirmed the said sale and directed a deed for the said real estate to be made to the said C ..... D ....., by the said sheriff (or commissioner). Now, therefore, this deed witnesseth: That the said A ..... B ....., sheriff (or special commissioner) as aforesaid, doth grant unto the said

C ..... D ....., a certain parcel of real estate situated in the county of ....., and bounded and described as follows (here insert the boundaries, description and quantity, as near as may be). Witness the following signature.

A ..... B ....., sheriff (or special commissioner).

WV Legislature

§36-3-10. Deeds to include buildings, privileges and appurtenances.

Every deed conveying land shall, unless an exception be made therein, be construed to include all buildings, privileges, and appurtenances of every kind belonging to the lands therein embraced.

WV Legislature

§36-3-11. Correcting errors in deeds, deeds of trust, and mortgages; corrective affidavit.

(a) *Definitions.* As used in this section, unless the context requires a different meaning:

(1) "Attorney" means any person licensed as an attorney in West Virginia by the West Virginia State Bar.

(2) "Corrective affidavit" means an affidavit of an attorney correcting an obvious description error.

(3) "Local entity" means any county, city, town, municipality, public utility, or person, including any individual, firm, partnership, association, not-for-profit corporation, or other corporation organized and existing under the laws of the State of West Virginia.

(4) "Obvious description error" means an error in a real property parcel description contained in a recorded deed, deed of trust, or mortgage where:

(A) The parcel is identified and shown as a separate parcel on a recorded subdivision plat;

(B) The error is apparent by reference to other information on the face of the deed, deed of trust, or mortgage, or on an attachment to the deed, deed of trust, or mortgage, or by reference to other instruments in the chain of title for the property conveyed thereby; and

(C) The deed, deed of trust, or mortgage recites elsewhere the parcel's correct address or tax map identification number.

(D) An "obvious description error" includes:

(i) An error transcribing courses and distances, including the omission of one or more lines of courses, and distances or the omission of angles and compass directions;

(ii) An error incorporating an incorrect recorded plat or a deed reference;

(iii) An error in a lot number or designation; or

(iv) An omitted exhibit supplying the legal description of the real property thereby conveyed.

(E) An "obvious description error" does not include:

(i) Missing or improper signatures or acknowledgments; or

(ii) Any designation of the type of tenancy by which the property is owned or whether or not a right of survivorship exists.

(5) "Recorded subdivision plat" means a plat that has been prepared by a professional land surveyor licensed pursuant to W. Va. Code §30-13A-1 *et seq.* of this code and recorded in the

WV Legislature

clerk's office of the circuit court for the jurisdiction where the property is located.

(6) "Title insurance" has the same meaning as set forth in W. Va. §33-1-10(f)(4) of this code.

(7) "Title insurance company" means the company that issued a policy of title insurance for the transaction in which the deed, deed of trust, or mortgage needing correction was recorded.

(b) Obvious description errors in a recorded deed, deed of trust, or mortgage purporting to convey or transfer an interest in real property may be corrected by recording a corrective affidavit in the office of the clerk of the county commission of the county where the property is situated or where the deed, deed of trust, or mortgage needing correction was recorded. A correction of an obvious description error shall not be inconsistent with the description of the property in any recorded subdivision plat.

(c) Prior to recording a corrective affidavit, notice of the intent to record the corrective affidavit, of each party's right to object to the corrective affidavit, and a copy of the corrective affidavit shall be served upon:

(1) All parties to the deed, deed of trust, or mortgage, including the current owner of the property;

(2) The attorney who prepared the deed, deed of trust, or mortgage, if known and if possible;

(3) To the title insurance company, if known;

(4) To the adjoining property owners;

(5) To the property address for the real property conveyed by the deed, deed of trust, or mortgage needing correction;

(6) If a local entity is a party to the deed, deed of trust, or mortgage, the notice and a copy of the corrective affidavit required by this subsection, to the county, city, or town attorney for the local entity, if any, and if there is no such attorney, then to the chief executive for the local entity. For the purposes of this section, the term "party" includes any local entity that is a signatory; and

(7) If the State of West Virginia is a party to the deed, deed of trust, or mortgage, the notice and a copy of the corrective affidavit required by this subsection, to the Attorney General and to the director, chief executive officer, or head of the state agency or chairman of the board of the state entity in possession or that had possession of the property.

(d) The notice and a copy of the corrective affidavit shall be delivered by personal service, sent by certified mail, return receipt requested, or delivered by a commercial overnight delivery service or the United States Postal Service, and a receipt obtained, to the last known address of each party to the deed, deed of trust, or mortgage to be corrected that:

WV Legislature

(1) Is admitted to record in the office of the clerk of the county commission of the county in which the property is situate and where the deed, deed of trust, or mortgage needing correction was recorded;

(2) Is contained in the deed, deed of trust, or mortgage needing correction;

(3) Has been provided to the attorney who prepared the deed, deed of trust, or mortgage as a forwarding address; or

(4) Has been established with reasonable certainty by other means and to all other persons and entities to whom notice is required to be given.

(e) If no written objection is received from any party disputing the facts recited in the corrective affidavit or objecting to its recordation within 30 days after personal service, or receipt of confirmation of delivery of the notice and copy of the corrective affidavit, the attorney may record the corrective affidavit, and all parties to the deed, deed of trust, or mortgage are bound by the terms of the corrective affidavit.

(f) The corrective affidavit shall:

(1) Be notarized;

(2) Contain a statement that no objection was received from any party within the specified time period;

(3) Confirm that a copy of the notice was sent to all the parties; and,

(4) Contain the attorney’s West Virginia State Bar number.

(g) A corrective affidavit recorded pursuant to this section operates as a correction of the deed, deed of trust, or mortgage and relates back to the date of the original recordation of the deed, deed of trust, or mortgage as if the deed, deed of trust, or mortgage was correct when first recorded.

(h) A title insurance company, upon request, shall issue an endorsement to reflect the corrections made by the corrective affidavit and shall deliver a copy of the endorsement to all parties to the policy who can be found.

(i) The clerk shall record the corrective affidavit in the deed book or other book in which deeds are recorded in the county and, notwithstanding their designation in the deed, deed of trust, or mortgage needing correction, index the corrective affidavit in the names of the parties to the deed, deed of trust, or mortgage as grantors and grantees as set forth in the corrective affidavit. A corrective affidavit recorded in compliance with this section is prima facie evidence of the facts stated in the corrective affidavit.

(j) Costs associated with the recording of a corrective affidavit pursuant to this section shall

WV Legislature

be paid by the party that records the corrective affidavit.

(k) Any person who wrongfully or erroneously records a corrective affidavit is liable for actual damages sustained by any party due to the recordation, including reasonable attorney fees and costs.

(l) The remedies under this section are not exclusive and do not abrogate any right or remedy under the laws of the State of West Virginia other than this section.

(m) A corrective affidavit under this section may be made in the following form, or to the same effect:

Corrective Affidavit

This corrective affidavit, prepared pursuant to West Virginia Code §36-3-11, shall be indexed in the names of ..... (grantor(s)) whose addresses are ..... and ..... (grantee(s)), whose addresses are ..... The undersigned affiant, being first duly sworn, deposes and states as follows:

1. That the affiant is a West Virginia attorney.

2. That the deed, deed of trust, or mortgage needing correction was made in connection with a real estate transaction in which ..... purchased real estate from ....., as shown in a deed recorded in the office of the clerk of the county commission of ..... County, West Virginia, in Deed Book ...., Page ...., or as Instrument Number ....; or in which real estate was encumbered, as shown in a deed recorded in the office of the clerk of the county commission of ..... County, West Virginia, in Deed Book ...., Page ...., or as Instrument Number .....

3. That the property description in the aforementioned deed, deed of trust, or mortgage contains an obvious description error.

4. That the property description containing the obvious description error reads:

.....

.....

5. That the correct property description should read:

.....

.....

6. That this corrective affidavit is given pursuant to West Virginia Code §36-3-11 to correct the property description in the aforementioned deed, deed of trust, or mortgage, and such description shall be as stated in paragraph 5 above upon recordation of this corrective

WV Legislature

affidavit in the office of the clerk of the county commission of ..... County, West Virginia.

7. That notice of the intent to record this corrective affidavit and a copy of this corrective affidavit was delivered to all parties to the deed, deed of trust, or mortgage being corrected pursuant to West Virginia Code §36-3-1 and that no objection to the recordation of this corrective affidavit was received within the applicable period of time as set forth in West Virginia Code §36-3-1.

.....

(Name of attorney)

.....

(Signature of attorney)

.....

(Address of attorney)

.....

(Telephone number of attorney)

.....

(Bar number of attorney)

The foregoing affidavit was acknowledged before me

This ..... day of ....., 20...., by

.....

Notary Public

My Commission expires .....

Notary Registration Number: .....

(n) Notice under this section may be made in the following form, or to the same effect:

Notice of Intent to Correct an Obvious Description Error

Notice is hereby given to you concerning the deed, deed of trust, or mortgage described in the corrective affidavit, a copy of which is attached to this notice, as follows:

WV Legislature

1. The attorney identified below has discovered or has been advised of an obvious description error in the deed, deed of trust, or mortgage recorded as part of your real estate settlement. The error is described in the attached affidavit.

2. The undersigned will record an affidavit to correct such error unless the undersigned receives a written objection disputing the facts recited in the affidavit or objecting to the recordation of the affidavit. Your objections must be sent within 30 days of receipt of this notice to the following address:

.....

(Address)

.....

(Name of attorney)

.....

(Signature of attorney)

.....

(Address of attorney)

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(Telephone number of attorney)

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(Bar number of attorney)

WV Legislature