

Eeeeeek! An Error!!!!!!

■ Linda M. Hernandez, Florida State Underwriter

We often encounter underwriting issues involving errors in legal descriptions that are not discovered until after a deed **and** mortgage are recorded. We are talking about serious errors—the wrong lot or block number, or maybe an incorrect subdivision name or even the wrong Section, Township, or Range.

There is no “easy fix” to this problem and the solution is a three-step process:

1. You must obtain and record a Corrective Deed from the original grantor to our insured showing the correct legal description. This Corrective Deed should include a recitation that it is given to correct the legal description in Deed recorded in O. R. Book ____, page ____, Public Records of _____ County, Florida. In the alternative, the legal description in the original deed can be lined through and the correct legal typed in the body, **but** it will have to be re-signed by the grantors, re-witnessed, re-acknowledged and re-notarized before it can be re-recorded.
2. You must obtain and record a Quit Claim Deed from our insured to the true owner of the property erroneously described in the deed. In other words, the deed that was prepared with the wrong legal has “clouded” that person’s title, so now you have to remove the “cloud.” The Quit Claim Deed should state that it is given to release any possible interest of the Grantor by virtue of that certain Deed recorded in O. R. Book ____, page ____, Public Records of _____ County, Florida.
3. Last, but certainly not least, you must obtain and record a Corrective Mortgage signed by the mortgagor showing the correct legal

description.
This
Corrective
Mortgage should
state that it is given to
correct the legal description
in Mortgage recorded in O. R. Book
____, page ____, Public Records of
_____ County, Florida. In the
alternative, the legal description in
the original mortgage can be lined
through and the correct legal typed
in the body, **but** it will have to be
re-signed by the mortgagor, re-
witnessed, re-acknowledged and re-
notarized before it can be re-
recorded. In either of these
situations, a Satisfaction of
Mortgage must be recorded to clear
the “cloud” created on the property
erroneously described in the
mortgage **even if** the mortgage has
now been re-recorded or a
Corrective Mortgage recorded to
reflect the correct legal description.

There is still the best alternative, and it is probably the one most often used. The mortgagor and the lender enter into a Partial Release and Mortgage Modification Agreement which provides for the release of the incorrectly encumbered property and transfers the lien of the mortgage to the correct property. When properly prepared, this Partial Release and Mortgage Modification eliminates the need for the Corrective Mortgage, re-recorded Mortgage, or Satisfaction of Mortgage mentioned above. This instrument must be signed by both the lender and the mortgagor and should contain a recitation that it is given to correctly reflect the legal description of the property intended



to be the subject of the mortgage recorded in O. R. Book ____, page ____, Public Records of _____ County, Florida.

ALL these steps are necessary in order to properly address this type of error and insure marketable title to the property. In addition, there is the matter of the potential liability under Florida Statute 697.10 imposed upon “any person (who) has prepared an instrument which due to an inaccurate or improper legal description impairs another person’s title to real property . . .” In any action relating to real property in which the court makes such a finding, “the court may award to the prevailing party all costs incurred by her or him in such action, including reasonable attorney’s fees, and in addition thereto may award to the prevailing party all actual damages that she or he may have sustained as a result of such impairment of title.”

COMMENTS:

We invite your feedback and welcome your suggestions regarding ***“In The Title Corner”*** and the publication of future articles. Address correspondence to:

In The Title Corner
Old Republic National Title
Insurance Co.
100 S. Ashley Drive, Suite 700
Tampa, FL 33602
800-342-5957
Fax: 813-223-3401