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SIDE SHOTS

Professional Land Surveyors of Colorado

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Statute of the Month

38-51-111, Surveyor's Affidavit of Correction

By Earl Henderson, PLS

The surveyor's affidavit of correction is a very useful, and I think necessary tool. Because let's face it, we've all made scrivener's errors on something or other and it may seem excessive to some to be required to deposit an updated and revised plat because of a transposed number or something similar. But be clear. A surveyor's affidavit of correction is an option, or alternative to depositing a revised plat, not a requirement. If you so choose, you can revise a plat and deposit an updated copy instead of recording a surveyor's affidavit of correction. Sometimes it's actually easier and quicker because it only takes one drafting change and a printer rather than creating a whole new document. And in many instances I think it's advisable to deposit an updated plat. But that's a choice we as professionals have, and make on occasion. For instance, in Boulder County our Land Survey Plats are deposited in the Land Use Department and not the Clerk and Recorder's office. So if an error is discovered on your plat, and you deposit a surveyor's affidavit of correction with the clerk and recorder, that error may not be discovered by the public or other surveyors during their research since it's in a separate location from the plat. It might slip through the cracks. Similarly, even in counties where Land Survey Plats are recorded at the clerk and recorder's office, even though you record a surveyor's affidavit of correction, many people stop their research efforts upon finding a recorded plat and don't take those extra steps to see if a surveyor's affidavit of correction was recorded for each and every plat they find and use. If you recorded a surveyor's affidavit of correction, you're not at fault in that you did what was required of you, but if your true intention is to notify the public (and fellow surveyors) in a way in which they can easily find it, then you may want to consider depositing an updated plat instead of a surveyor's affidavit of correction. We're professionals. It's our responsibility to do what's best, not what's easiest.

38-51-111(1) reads "If an error *described in subsection (2) of this section* is discovered on any *subdivision plat, land survey plat, or any other survey plat or parcel description* duly recorded in the clerk and recorder's office of the county in which the subdivision, land, or parcel is situated, the professional land surveyor of record may prepare and record in that clerk and recorder's office a surveyor's affidavit of correction to correct the error." (*emphasis added*)

You'll notice I emphasized a couple of portions for further clarification. The first emphasized portion we'll discuss later because (2) follows (1), but suffice it to say at this point that there is a specific list of corrections that

are appropriate and allowable for a surveyor's affidavit of correction. The second emphasized portion lists the documents on which those errors can occur. So you can see that the situations in which a surveyor's affidavit of correction is appropriate is limited. Contrary to the popular opinion of many PLS's, clerks, lawyers, etc a surveyor's affidavit of correction cannot be used to correct any and every error on a recorded document. (And as an aside, the statute specifically mentions that the original document has been recorded in the clerk and recorder's office, so a surveyor's affidavit of correction on a Land Survey Plat, deposited at the Land Use Department in Boulder County, as mentioned above, may not even be allowable.) So, if you're considering using a surveyor's affidavit of correction, first take stock of the situation and see if it fits within the parameters allowable. And although this is my opinion, it seems as though the document list is intended to reflect those documents for which the surveyor has ultimate responsibility.

I was recently asked to complete a surveyor's affidavit of correction for a description and exhibit map I created for an easement deed. I chose not to do so. Instead, I told the client I would foot the bill to have a Correction Deed recorded which would be signed by the two parties. My concern was that the easement deed was an agreement between those two parties of which I was not one. And I didn't want to make a correction/change that, no matter how unlikely or inadvertent, could under some unforeseen circumstances, significantly alter the easement deed in such a way that it resulted in something other than what the two parties were intending. By recording a surveyor's affidavit of correction the two parties end up possibly completely unaware that a change has even occurred. But by having them sign a Correction Deed, they are agreeing to the change. Conversely, if a correction is needed for a subdivision plat I may consider a surveyor's affidavit of correction, keeping in mind the issues outlined above of course. And besides, it's at best unclear, but in my opinion an easement deed does not fit within the parameters of (1) & (2).

38-51-111(2) reads "The following errors may be corrected by a surveyor's affidavit of correction:

- (a) Any bearing, distance or elevation that has been omitted or labeled incorrectly;
- (b) Any text that has been misspelled or mislabeled;
- (c) Any error or omission, if the error or omission is ascertainable from the data shown on the recorded plat or parcel description; or

(d) An error within a parcel description shown on a recorded plat.”

That’s it and that’s all. If any correction you need to make doesn’t fit into one of those four situations (and on one of the documents listed in (1)) then you do not have the option to record a surveyor’s affidavit of correction. And notice that (c) & (d) both say “...on a/the recorded plat...” so those only apply to plats and not easement deeds (for instance). Apparently the conditions sound much simpler than they actually are because there are plenty of surveyor’s affidavits of correction recorded that don’t fit into the allowable parameters. And you may find this hard to believe, but the County Clerk doesn’t understand this or know this list by heart. Plenty of us have had the County Clerk request a surveyor’s affidavit of correction be recorded for a particular situation that doesn’t fit the parameters, but as professional it’s our responsibility to either know, or refer to, this list and tell the clerk that we are not able, under the law, to comply with their request. My experience has been that most clerks think a surveyor’s affidavit of correction can be used for anything (possibly even Grandma’s will).

38-51-111(5) reads “Nothing in this section shall be construed to permit changes in courses, distances, or elevations for the purpose of redesigning any lot, tract, or parcel configurations.”

As if (1) & (2) combined aren’t limiting enough, (5) puts additional emphasis on a surveyor’s affidavit of correction that seems to me like it shouldn’t even need

to be there at all. But consider this; is it possible that this statement is really saying, “use your common sense”? (1) & (2), when taken together are essentially saying that correcting scrivener’s errors is what this is for and (5) is essentially saying don’t use this for anything other than scrivener’s errors. Or put another way; The law is clear, now obey the law.

Lastly, I’d like to expand on that not so common sense. A surveyor’s affidavit of correction is an option, but it’s not always the clearest, simplest, easiest, or even the most cost effective option. I once encountered a surveyor’s affidavit of correction for a subdivision plat that was almost 30 pages long. Assuming for the purposes of this example that all those errors fit within the allowable parameters of a surveyor’s affidavit of correction, how could that have been easier, quicker, simpler or more cost effective to create than simply recording an updated plat? And how could that 30 page surveyor’s affidavit of correction have been a more effective way to communicate to the public, the client, and future surveyors the correct situation? It wasn’t of course. (And I haven’t even mentioned that with so many corrections, there’s a likelihood of errors within the corrections.) Is it possible that the surveyor was trying to hide the extent of the errors rather than communicate them? I don’t know. But guess what happened? I was approached by the same client several years later and found the surveyor’s affidavit of correction and had to point it out to that client. Guess who was hired for Phase II?

Be safe out there. ♦

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