

## **Caution, Take Time to Deliberate with Regard to the Most Overused Corrective Statute**

By Gary Whaley, Esq.

A relatively recent case from the State of Florida, *Resort of Indian Spring, Inc. v. Indian Springs Country Club, Inc.*, 747 So.2d 974 (Fla.App. 4 Dist. 1999) and numerous telephone inquiries regarding the re-recording of a deed with an incorrect legal description, demonstrates that one needs to proceed with caution and deliberation prior to making use of N.C. Gen. Stat. § 47-36.1 in an attempt to correct an improper legal description. North Carolina General Statute 47-36.1 provides in part that "an obvious typographical or other minor error in a deed or other instrument recorded with the register of deeds may be corrected by re-recording the original instrument with the correction clearly set out on the face of the instrument and with a statement of explanation attached."

In the 1999 Florida case, apparently the deed conveyed more property than was intended to be conveyed. Evidently, a vague and ambiguous contract started the series of events rolling that led to the case. The buyers' attorney testified that the office facility included in the deed was not intended to be a part of the conveyance. Also the surveyor signed an affidavit of scrivener's error, however, the court said that the seller was unable to obtain reformation of a deed based on scrivener's error.

The only North Carolina case interpreting this statute to date, *Green v. Crane*, 96 N.C.App. 654 (1990) similarly, an error in the description of the property to be conveyed could not be corrected by the simple re-recording of a new description to include the omitted tract. The court stated that inadvertently leaving out a six-acre tract is not an obvious typographical or other minor error. *Green* had to do with a matter where a tract of land had been agreed to be made subject to restrictive covenants. Following the agreement, the six-acre tract was inadvertently omitted from the declaration. The defendants re-recorded the declaration and amended the property description to contain the six-acre tract. The court took the position that this re-recording was ineffective, as the omission of a tract of land is not an obvious typographical or other minor error.

A typical situation that arises when the deed purports to convey Lot 21 when in actuality the contract was for Lot 12 and the developer owned both lots. Following the line of reasoning in these cases, the court may be willing to say that this is not an obvious typographical error. Therefore, the prudent method of correcting that mistake would be to obtain a reconveyance of the conveyed property to the developer and have the developer convey out the proper lot in a separate instrument. Of course, depending on what was involved in each transaction, one may need to obtain release deeds and new deeds of trust to completely correct the transaction.

Similarly because one of the essential elements in a deed is a Grantee capable of holding title to land, a deed to a Grantee that does not exist, may not be an obvious typographical error. The prudent manner in which to correct such an instrument would be to simply file

a new document with an explanation that the prior Grantee did not exist and therefore the deed was an ineffective conveyance.

At times, making use of N.C. Gen. Stat. § 47-36.1 is the only alternative to attempting to correct a problem and show the intent of the grantor. However, this method is not without its risks and pitfalls and it is advisable, especially where a description is clearly in error and the grantee is wrong, to proceed to correct the error as if N.C. Gen. Stat. § 47-36.1 did not exist.