

MISSISSIPPI LEGISLATURE
2024 Regular Session
To: Judiciary A
By: Representative Owen

House Bill 1343

(As Sent to Governor)

AN ACT TO AMEND SECTION 89-5-8, MISSISSIPPI CODE OF 1972, TO AUTHORIZE ATTORNEYS WHO HAVE RETIRED FROM THE PRACTICE OF LAW TO CORRECT A SCRIVENER'S ERROR MADE BY THE ATTORNEY WHILE STILL PRACTICING LAW; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 89-5-8, Mississippi Code of 1972, is amended as follows:

89-5-8. (1) Any affidavit containing a statement relating to the identification, the marital status, the heirship, the relation, the death or the time of death of any person who is a party to a document affecting the title to real property, or any affidavit relating to the identification of any corporation or other legal entity which is a party to a document affecting the title to real property, signed by the affiant and verified upon oath or affirmation before a notarial officer, shall be recordable in the land records in the office of the chancery clerk in the county where the real property is situated.

(2) (a) Notice of a typographical or other minor error in a document affecting the title to real property may be given by recording an affidavit containing a statement of scrivener's error. If an affidavit is conspicuously identified as an affidavit of scrivener's error, the chancery clerk shall index

the affidavit in the general index under the names of the original parties to the document if they are identified in the affidavit, and in the sectional index as provided in the indexing instructions of the affidavit. Notice of the corrective information provided by the affiant is effective upon recordation. An affidavit under this paragraph (a) may be prepared only by an attorney licensed to practice law in this state.

(b) The affidavit of scrivener's error shall be executed and acknowledged by the affiant and verified upon oath or affirmation before a notarial officer, and shall be recordable in the land records in the office of the chancery clerk in the county where the real estate is situated. The affidavit shall recite: (i) the name and Mississippi bar number of the affiant attorney, (ii) the instrument containing clerical error, and (iii) a statement that the affiant is in good standing with The Mississippi Bar, is licensed to practice law in the State of Mississippi, and that his or her license is active at the time of verification or affirmation; or the affiant was in good standing with The Mississippi Bar when the document was recorded, was licensed to practice law in the State of Mississippi when the document was recorded and is retired from the practice of law at the time of verification or affirmation. Any affidavit of scrivener's error recorded that is not executed by an attorney licensed to practice law in the State of Mississippi, and who prepared any document in the chain

of title to the subject real property, regardless of the date of recording shall be void.

(c) The chancery clerk shall make a marginal notation on the document to which the affidavit refers.

(3) Where title to homestead property is in the titled spouse, the nontitled spouse, in lieu of joining the titled spouse in executing a conveyance, mortgage, deed of trust or other encumbrance upon a homestead, may file an affidavit of nonhomestead verified upon oath or affirmation that either: (a) the nontitled spouse, together with the titled spouse, freely and voluntarily abandoned the old homestead and secured and currently together occupy a new homestead residence; or (b) the nontitled spouse freely and voluntarily separated from the titled spouse with no intent to return to the titled spouse or to reside with the titled spouse, either temporarily or permanently, on the titled spouse's homestead, and the nontitled spouse currently maintains and occupies a separate residence.

(4) A person who knowingly makes or causes to be made a false statement in an affidavit is guilty of perjury and liable for the actual damages suffered or incurred by any person as a result or consequence of the making of or reliance upon the false affidavit. The court may award punitive damages, costs and attorney's fees.

(5) From and after July 1, 2021, an affidavit recorded under this section must include a description of the real property covered by the affidavit.

(6) Any affidavit so recorded, or a certified copy thereof, shall be admissible as evidence in any action involving the document to which it relates or the title to the real property affected by the document and shall be prima facie evidence of the facts stated therein and the marketability of the title to real property.

SECTION 2. This act shall take effect and be in force from and after July 1, 2024.
