

# **PRACTICAL ADVICE FOR CLEANING UP TITLE ISSUES**

(A Sampling of Ten Common Issues with Suggested Solutions)

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## I. CORRECTION INSTRUMENTS

1. Background. The current regime of correction instruments in Texas began with the *Myrad* case. *Myrad Properties, Inc. v Lasalle Bank National Association*, 300 S.W.3d 746 (Tex. 2009). In short, this case is about a conveyance arising out of a trustee's sale wherein the trustee had intended to transfer two parcels of land but had left the legal description of the second parcel off the Exhibit A to the deed. Buyer then recorded a correction deed which did include the legal description of the second tract of land. The prior owner of the property who had been foreclosed on, Myrad, sued, asserting that it still owned the second tract of land that had not been described in Exhibit A.

2. Lower courts agreed, but the Texas Supreme Court held that a correction deed could not be used to add an entirely new parcel to a conveyance and concluded the correction deed in this case was void as a matter of law. Helpfully, the Texas Supreme Court included several examples of circumstances in which a correction deed is permissible when made by agreeable parties: correcting inaccurate metes and bounds, description of grantor's capacity, or "correcting some facial imperfection in the title.

The Texas Land Title Association used the Texas Supreme Court's holding and dicta from *Myrad* to craft S.B. 1496, which was passed by the Texas Legislature during the 82<sup>nd</sup> Regular Session in 2011. The bill adds Sections 5.027 through 5.031 to the Texas Property Code, which helpfully codify when and how an instrument of conveyance can be corrected.

3. Can the Instrument be Corrected? If so, how do you do it? First, the instrument to be corrected under these sections must be an instrument of conveyance. Instruments of conveyance include the deed, deed of trust, lease, and easement. Clients might sometimes ask for a correction of a recorded document that is not an instrument of conveyance, like an heirship affidavit.

Second, it is important to determine whether the correction is a material or non-material correction. This will dictate whose signature(s) you will need to obtain on the document. For a non-material correction, a person with personal knowledge of facts relevant to the correction may sign the correction instrument. This could be one of the parties to the instrument, or it could (and often is) be the employee of the title company that closed the sale. To correct a material error, on the other hand, the signatures of all parties to the original instrument are required.

4. Material or Non-Material? What is the difference between a material and a non-material correction? Helpfully, the authors of S.B. 1496 gave us some thoughtful examples. In Texas Property Code Section 5.028, a non-material change is defined as a clerical error that requires: (1) correction of an inaccurate or incorrect element in a legal description, (2) an addition, correction, or clarification of a party's name, a party's marital status, the date on which the conveyance was executed, the recording data for an instrument referenced in the correction instrument, or a fact relating to the acknowledgement or authentication.

Furthermore, a non-material correction can also be an inadvertent error that requires the addition, correction, or clarification of (1) a legal description prepared in connection with the preparation of the original instrument but inadvertently omitted from the original instrument, or (2) an omitted call in a metes and bounds legal description in the original instrument that completes the description of the survey. Finally, a person who executes a correction instrument under this section may execute a correction instrument that provides an acknowledgment or authentication that is required and was not included in the original instrument of conveyance.

5. In Texas Property Code Section 5.029, a material correction can (1) add a buyer's disclaimer of an interest in the real property that is the subject of the original instrument of conveyance, a mortgagee's consent or subordination to a recorded document executed by the mortgagee or an heir, successor, or assign of the mortgage, or real property to a conveyance that correctly conveys other real property (remember *Myrad?*), (2) remove land from a conveyance that correctly conveys other land, or (3) accurately identify a lot or unit number or letter of property owned by grantor that was inaccurately identified as another lot or unit number or letter of property owned by a grantor in the recorded original instrument of conveyance.

In *Tanya L McCabe Trust v. Ranger Energy LLC*, the 1<sup>st</sup> Court of Appeals considered the question of whether or not the omission of a lease from an assignment of multiple leases is a material or non-material correction. 508 S.W.3d 828 (Tex. App-Houston [1st Dist.] pet. Denied). The court reasoned that the situation at hand was analogous to *Myrad*, i.e., that this situation constituted "the addition of land to a conveyance that correctly conveys other land," and that the attempt by one party to record a correction instrument not signed by all parties to the original conveyance was invalid.

It is important to note that both of these lists are not exclusive, and that other errors may be corrected. It is up to the judgment of the drafter to determine if the error can be corrected, and if so, based on the examples provided in the relevant Code provisions, whether the error is material or non-material.

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