

By: Representatives Owen, Stamps

To: Judiciary A

HOUSE BILL NO. 1351

1 AN ACT TO AMEND SECTION 89-5-8, MISSISSIPPI CODE OF 1972, TO
2 REGULATE THE EXECUTION OF SCRIVENER'S ERROR AFFIDAVITS FOR
3 PROPERTY DEEDS; AND FOR RELATED PURPOSES.

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

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

7 89-5-8. (1) Any affidavit containing a statement relating
8 to the identification, the marital status, the heirship, the
9 relation, the death or the time of death of any person who is a
10 party to a document affecting the title to real property, or any
11 affidavit relating to the identification of any corporation or
12 other legal entity which is a party to a document affecting the
13 title to real property, signed by the affiant and verified upon
14 oath or affirmation before a notarial officer, shall be recordable
15 in the land records in the office of the chancery clerk in the
16 county where the real property is situated.

17 (2) (a) Notice of a typographical or other minor error in a
18 document affecting the title to real property may be given by



19 recording an affidavit containing a statement of scrivener's
20 error. If an affidavit is conspicuously identified as an
21 affidavit of scrivener's error, the chancery clerk shall index the
22 affidavit in the general index under the names of the original
23 parties to the document if they are identified in the affidavit,
24 and in the sectional index as provided in the indexing
25 instructions of the affidavit. Notice of the corrective
26 information provided by the affiant is effective upon recordation.
27 An affidavit under this paragraph (a) may be prepared only by an
28 attorney licensed to practice law in this state * * *.

29 (b) * * * The affidavit of scrivener's error shall be
30 executed and acknowledged by the affiant and verified upon oath or
31 affirmation before a notarial officer, and shall be recordable in
32 the land records in the office of the chancery clerk in the county
33 where the real estate is situated. The affidavit shall recite:
34 (i) the name and Mississippi bar number of the affiant attorney,
35 (ii) the instrument containing clerical error, and (iii) a
36 statement that the affiant is in good standing with The
37 Mississippi Bar, is licensed to practice law in the State of
38 Mississippi, and that his or her license is active at the time of
39 verification or affirmation. The chancery clerk shall refuse to
40 record any scrivener affidavit not containing all information
41 required by this paragraph. Any affidavit of scrivener's error
42 recorded that is not executed by an attorney licensed to practice
43 law in the State of Mississippi, and who prepared any document in



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

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

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

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



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

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

76 **SECTION 2.** This act shall take effect and be in force from
77 and after July 1, 2022.

