

By: Representative Owen

To: Judiciary A

HOUSE BILL NO. 1343

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

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

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

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

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



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

30 (b) The affidavit of scrivener's error shall be
31 executed and acknowledged by the affiant and verified upon oath or
32 affirmation before a notarial officer, and shall be recordable in
33 the land records in the office of the chancery clerk in the county
34 where the real estate is situated. The affidavit shall recite:

35 (i) the name and Mississippi bar number of the affiant attorney,
36 (ii) the instrument containing clerical error, and (iii) a
37 statement that the affiant is in good standing with The
38 Mississippi Bar, is licensed to practice law in the State of
39 Mississippi, and that his or her license is active at the time of
40 verification or affirmation; or the affiant was in good standing
41 with The Mississippi Bar when the document was recorded, was
42 licensed to practice law in the State of Mississippi when the
43 document was recorded and is retired from the practice of law at
44 the time of verification or affirmation. Any affidavit of



45 scrivener's error recorded that is not executed by an attorney
46 licensed to practice law in the State of Mississippi, and who
47 prepared any document in the chain of title to the subject real
48 property, regardless of the date of recording shall be void.

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

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

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



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

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

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

