



# CHICAGO BULL

(5-31-2016, CHICAGO TITLE NC BLAWG)

## Common Mistakes – June 2016 Edition

Here at title insurance HQ, we get to see all kinds of mistakes. If it wasn't for the errors, half of the reason for title insurance would disappear. We see minor, normal, and crazy bad mistakes. Every single one has a fix, ranging from "yes, I'll continue to insure" to "sorry, but we need to commence a \$30,000 suit to fix the problem." I prefer the former, but that doesn't mean we don't sometimes see the latter. In no specific order, here are some of the more common ones we have seen this year:

- Wrong Plat reference due to amended plat: Usually not a huge deal, right? The big issues come when they modified the actual dimensions of the lot with the plat amendment. The huge issues come when neighboring lots have been conveyed out differently. Some by the old plat, some by the new one. This creates gaps, overlaps, and other nightmares that have to be corrected with the participation of multiple parties and lenders.
- Foreclosures and lack of notice: *Dear title insurer, we are asking you to insure over the failure of the foreclosure to notify half of the actual owners of the property.* It seems more and more common, especially in situations involving estates, that owners of the property are not completely noticed. How do you fix that? Waiver of notice? Quitclaim deed? As always, be wary of 2015 FEO 2 regarding [waiver of rights of notice](#).
- Appropriate Lien Affidavits: We still have ongoing confusion on when to use which lien affidavit. And by "we", I mean "here in my office." And by that I mean me. One of the biggest issues is knowing when there should be a mechanics' lien agent ("MLA") appointed. The short rule of thumb is that unless you are able to sign a NCLTA [form 1](#) (no work and nothing contracted within the last 120 days) then there *probably* should be a mechanics' lien agent appointed on the LiensNC [website](#). If you are closing a construction loan or construction is anticipated immediately after closing (or already in process), then the MLA must be or have been appointed prior to closing. Depending on your construction situation, you should be submitting NCLTA [form 5's](#), along with [6's](#) (waivers) or [7's](#) (subordinations). As always, Chicago Title underwriting counsel would be happy to discuss your specific situation.
- [NCGS 47-36.1](#) misuse: The corrective affidavit that is no longer a corrective affidavit. When they changed the statute some (now many) years ago, the document or instrument referenced by this statute became little more than a notice instrument. It doesn't actually fix anything (unlike the notarial [affidavit of correction](#)). It just adds more information to what already should have been ascertained. "Elizabeth" being misspelled as "Elizaberth" is the easiest example. "Lot 48" vs "Lot 4B" maybe, but that depends on what else is in the document. It gets stickier when there is a change to a legal description. It gets super-gluey when there is a wholesale substitution of a legal description. While we try to be lenient when accepting these sort of "corrective" documents, there are some things that will require an actual corrective measure to fix. Please contact us any time you are using a corrective affidavit. [As of August 31, 2018, see the revised statutes under [S.L. 2017-110](#).]

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