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AB-794 County officers: recorder: record correction. (2017-2018)

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Assembly Bill No. 794

CHAPTER 349

An act to amend Sections 27201 and 27203 of the Government Code, relating to local government.

[Approved by Governor September 28, 2017. Filed with Secretary of State September 28, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 794, Gallagher. County officers: recorder: record correction.

(1) Existing law establishes various county offices, including the office of recorder. Existing law requires the recorder to, among other things, accept for recordation any instrument, paper, or notice that is authorized or required to be recorded, as provided. Existing law requires the recorder to maintain various indices of specified documents and records.

This bill would authorize a person of or related to the record to request that the recorder correct the information contained in an index of a record. The bill would require the recorder to correct that index entry, as specified, if the person making the request provides sufficient evidence to the recorder to determine that there is an error in the index that needs to be corrected.

(2) Existing law provides for liability, including treble damages under specified circumstances, for a recorder to whom an instrument is proved or acknowledged or any paper or notice which may be recorded is delivered for record if the recorder commits specified acts, including neglecting or refusing to make the proper entries in the required indices and altering, changing, obliterating, or inserting any new matter in any records deposited in the recorder's office.

This bill would eliminate the liability of a recorder for altering, changing, obliterating, or inserting any new matter in any records deposited in the recorder's office when the recorder is correcting an indexing error. The bill would instead make the recorder liable for neglecting and refusing to make proper entries in the required indices. The bill would provide that liability for neglecting to make proper entries in the required indices does not prohibit a recorder from correcting an indexing error. The bill would also make the recorder liable for failing to correct an indexing error, as specified.

(3) By adding to the duties of a county recorder, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 27201 of the Government Code is amended to read:

27201. (a) (1) (A) The recorder shall, upon payment of proper fees and taxes, accept for recordation any instrument, paper, or notice that is authorized or required by statute, or court order to be recorded, or authorized or required to be recorded by a local ordinance that relates to the recordation of any instrument, paper, or notice that relates to real property, if the instrument, paper, or notice contains sufficient information to be indexed as provided by statute, meets recording requirements of state statutes and local ordinances, and is photographically reproducible. The county recorder shall not refuse to record any instrument, paper, or notice that is authorized or required by statute, court order, or local ordinance that relates to the recordation of any instrument, paper, or notice that relates to real property to be recorded on the basis of its lack of legal sufficiency.

(B) "Photographically reproducible," for purposes of this division, means all instruments, papers, or notices that comply with standards as recommended by the American National Standards Institute or the Association for Information and Image Management for recording of records.

(2) (A) A person of or related to the record may request that the recorder correct the information contained in an index of a record. The request shall identify the exact location of an error within a specifically identified index entry.

(B) If the person making the request provides sufficient evidence to the recorder to determine that there is an error in the index that needs to be corrected, the recorder shall correct that index entry within 30 business days of receiving the request.

(C) The corrected index entry shall be entered into the public index to reflect both the error and the correction. The recorder shall note that an index entry has been corrected in accordance with local policy.

(b) (1) Each instrument, paper, or notice shall contain an original signature or signatures, except as otherwise provided by law, or be a certified copy of the original.

(2) A facsimile signature shall be accepted on a lien recorded by a governmental agency when that facsimile signature has been officially adopted by that agency. The lien shall have noted on its face a statement to that effect. The officially adopted facsimile signature shall be provided to the county recorder by a letter from the agency. A facsimile signature shall continue to be valid until the agency notifies the county recorder that the facsimile signature has been revoked.

(c) (1) Each instrument, paper, or notice that is rerecorded shall be executed and acknowledged or verified as a new document, in addition to any previous execution and acknowledgment or verification, unless any of the following apply:

(A) The instrument, paper, or notice is otherwise exempted by Section 27287 or any other law.

(B) The instrument, paper, or notice is presented solely to correct a recording sequence. The intent of the parties with regard to the priority of recorded documents shall be controlling regardless of the sequence of recording by a county recorder or the sequence of recording specified in instructions given by a submitter to a county recorder. This subparagraph is declaratory of existing law, and any rerecording of documents to change the sequential numbers assigned to a document by the recorder shall not require the document to be executed and acknowledged or verified as a new document.

(C) (i) The instrument, paper, or notice is presented solely to make a minor correction with a corrective affidavit. The corrective affidavit shall satisfy all of the following:

(I) Be attached to the original recorded instrument, paper, or notice.

(II) Set out the information corrected.

(III) Be certified by the party submitting the affidavit under penalty of perjury.

(IV) Be acknowledged pursuant to Section 27287.

(ii) For purposes of this subparagraph, "minor correction" includes any of the following:

(I) An incorrect or missing address of the party to which the instrument, paper, or notice is to be returned following recording pursuant to Section 27361.6.

(II) A clarification of illegible text pursuant to Section 27361.7.

(III) An incorrect or missing printed or typed name of an individual or entity near the signature pursuant to Section 27280.5.

(IV) An incorrect or missing documentary transfer tax amount due pursuant to Section 11932 of the Revenue and Taxation Code.

(2) Each rerecorded instrument, paper, or notice shall include a cover sheet that complies with Section 27361.6 and shall state the reason for rerecording on the cover sheet.

SEC. 2. Section 27203 of the Government Code is amended to read:

27203. Any recorder to whom an instrument proved or acknowledged according to law or any paper or notice which may by law be recorded is delivered for record is liable to the party aggrieved for the amount of the damages occasioned thereby, if he or she commits any of the following acts:

(a) Neglects or refuses to record the instrument, paper, or notice within a reasonable time after receiving it.

(1) This subdivision shall not apply to an instrument, paper, or notice that the recorder has determined to be an unrecordable document pursuant to this chapter. Nothing in this subdivision shall preclude the application of Section 27201.

(2) The recorder may provide, to any person presenting a document the recorder determines to be an unrecordable document, a form stating that the person has the right to judicial review in a court of competent jurisdiction of the recorder's refusal to record the document. The form shall include a section stating the recorder's reason for refusing the document. The form shall provide notice that it is a public offense to further attempt to record the document without an order of the court as provided by Section 27204. The recorder shall keep a correct copy of the refused document. In the event the document is determined by the court to be a recordable document, the recorder shall pay the filing fees for the review, and shall record the document within a reasonable time.

(b) Records any instrument, paper, or notice, willfully or negligently, untruly, or in any manner other than that prescribed by this chapter.

(c) Neglects or refuses to keep in his or her office the indices required by this chapter.

(d) Alters, changes, obliterates, or inserts any new matter in any records deposited in the recorder's office, unless the recorder is correcting an indexing error. The recorder may make marginal notations on records as part of the recording process.

(e) Refuses to make the proper entries in the indices required by this chapter.

(f) Neglects to make the proper entries in the indices required by this chapter. Nothing in this subdivision prohibits a recorder from correcting an indexing error.

(g) Fails to correct an indexing error pursuant to subparagraph (B) of paragraph (2) of subdivision (a) of Section 27201.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.