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**TX Supreme Court case decided on 5.14.2021 about the correction of recorded real property instruments.**



### Correcting Errors in Recorded Instruments

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In the pure interest of common sense, the Texas Property Code allows for errors in deed instruments to be corrected informally without the need for a court judgment. Section 5.028 allows any party to correct non-material errors, provided a copy is then served on the parties at interest. Section 5.09 allows for the correction of material errors if “executed by each party to the recorded original instrument of conveyance ... or, if applicable, a party's heirs, successors, or assigns”.

These statutes appear simple enough. For material errors, when the original parties to the instrument are available, they can all get together and sign a correction instrument to fix the error. But what if one of those original parties has already assigned his or her interests to a third party? Does that mean that that correction instrument must be executed by that assignee? Or can the assignor still sign the correction instrument?

The Texas Supreme Court in a 5-4 decision in *Broadway National Bank, Trustee of the Mary Frances Evers Trust v. Yates Energy Corp.*, No. 19-0334 (Tex. May 14, 2021), surprisingly held that the original parties to the original instrument are all that is needed under Section 5.029, even if one of those parties has assigned his or her interests to a third party. The Court took a simplistic reading of the phrase “or, if applicable, a party's heirs, successors, or assigns” to mean these parties need only execute the correction instrument if one or more of the original signatories is no longer available (such as the death of an individual or the dissolution of a corporation). And to the extent that it would be unfair for the assignor to pull the rug out from underneath his or her assignee, the Court noted that Section 5.030 grants *bona fide purchaser* status to those third

parties who acquire title based upon the original instrument, without knowledge of the error, and before the correction instrument is recorded.