

# Affidavit for the Record

by  
Knud E. Hermansen†

An underutilized tool to place information in the registry of deeds is the affidavit for the record. An affidavit is defined as a written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation (see *Black's Law Dictionary*).

Often surveyors lament how the work in preparing a new description goes for naught because the attorney ignores the revised description and uses the original description. For their part, engineers often complain that improvements (especially underground improvements) have not been documented in relation to the property lines. Affidavits can be used to reduce or eliminate these and other problems. Affidavits may be used to record new descriptions, elaborate on information in the record, correct information in the record, warn of potential problems not apparent from the record, update the record, summarize voluminous information, and place previously unrecorded or obscure information on the record. Consequently, affidavits are ideal for providing notice of:

1. the history and transfer of surveying or engineering records that contain information having an effect on boundaries or real property title;
2. municipal actions effecting the title to property (e.g. variances, code interpretations, after-the-fact subdivision approvals)
3. fraudulent alteration of documents such as condominium or subdivision plans;
4. fraudulent or improper recordings (unlicensed practice);
5. previous omissions from earlier recorded plans and records;
6. boundary, fence-line, party wall, and driveway agreements;
7. common exceptions to the standards of practice;
8. corner marker or boundary perpetuations;
9. summary of ancient title information;
10. title by intestacy;
11. testing done or professional opinions rendered regarding real property (e.g. hazardous waste, wetlands, flood plain, subsurface conditions, and soil conditions); and

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12. location and extent of improvements (e.g. underground utilities).

As a result, engineers and surveyors working with real property should become familiar with the use of affidavits and how to use them to expand the public record; thereby providing constructive notice to subsequent reliant parties. Affidavits are not difficult to prepare or record. There is seldom a required format for an affidavit other than such statutory formalities as attested signatures and a proper acknowledgment. However, this is not meant to imply that an affidavit should be prepared and filed without thought, planning, or having an attorney review the affidavit once it has been prepared.

As a general rule, most effective affidavits have a heading that states the type and purpose for the document. This provides the registrar and subsequent researcher with a brief statement used in the index stating the type document recorded. Information within the affidavit is usually recounted using numbered paragraphs that are carefully written to be clear, concise, complete, and accurate. To help with the clarity, each statement or piece of information in the affidavit is prefaced with a sequential number. The information within an affidavit is typically provided in the following order:

1. The name, address, and occupation/position of the preparer (affiant) is usually given at the beginning of the affidavit. In some cases where the events were long ago or memory may be questioned, the age may also be given.

1. We, Julia and Henry McFadden, are the legal and equitable owners of certain real property conveyed to us by deed from Carrol Wingate recorded on the third day of March 1995 and recorded in deed book 1278, page 86, Willomont Registry of Deeds.

or

1. I, Cheryl W. Kilbright, am a licensed surveyor in the State of Zena, license number 12345, currently doing business at 187 Oak Street, Caperton, Zena.

2. Ordinarily following the identity statement, the affiant credentials are given in a statement. In this case, the credentials refer to the motivation or reason for acquiring the information subsequently provided in the affidavit. This credential

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statement is meant to show the subsequent statements are material, the affiant informed, and the information credible. The statement may include the reason for the affiant's familiarity with the property, if the affiant visited the property or read the document, the condition of the property or its documents, the affiant's point of view, reasons for special familiarity, and factors affecting the partisanship of the witness.

2. As owners, we have examined the property and found the description of the property vague and the boundary markers missing or of questionable ancestry and origin. Uncertain of the record boundary location, we have caused William Smith, a licensed surveyor in the State of Zena, to perform a boundary retracement survey and to prepare a revised description and an explanatory report.

or

2. Services were provided in January 1995 to mark, monument, and subdivide a certain parcel in the name of Katherine Wright. The property is located at 118 Market Street, Caperton, Zena; previously described in deed book 1264, page 877, Willomont Registry of Deeds; and further shown as tax parcel 29-19, Caperton municipal tax records.

3. The purpose for recording an affidavit often follows the credential statement. The purpose statement should give the need for executing the affidavit, why the public should be put on notice, and why the affidavit is recorded in the registry of deeds.

3. A revised description was sought in order to perpetuate the common boundaries we share with our neighbors and provide a better description of the property boundaries for our heirs or assigns.

or

3. The subdivision plan containing my signature and seal, after leaving my possession but before being recorded in plan book 18, page 4 has been altered by persons unknown. The alterations were not made under my direction, with my knowledge, or with my permission.

4. Following the purpose statement, there usually follows one or more sequentially numbered or alphabetized factual statements that the affiant provides in order to codify the information, explain the problem, and provide constructive notice to the public. Factual statements may require some organization and logical arrangement. Many times a chronological arrangement will prove satisfactory.

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4. By the 10th day of March 1995, the surveying services were duly performed and a plat, description, and report were given to us in which the property was described as follows:

or

4. The original plan I prepared and still in my possession differs from the plan recorded in the registry of deeds in regard to the position, length, and direction of lot lines identified as follows:

5. After the factual statements, many affidavits go on to provide an intent statement, consequence statement, or professional opinion drawn from the facts previously stated.

5. It was our intent and charge to the surveyor to describe all the property conveyed by the following original description together with any out-conveyances of record or recognized by law.

or

5. It is my professional opinion that the alterations change the appearance, scope, and character of my professional services to such an extent that the truth, accuracy, and credibility of my involvement, analysis, and opinion is placed in doubt.

6. When a consequence or professional opinion statement is provided, a follow-up statement is sometimes provided to give additional information, bolster the credibility of the affiant and previous statements made, or provide the reader of the affidavit with advice.

6. The same or similar original description can be found in the following documents:

or

6. It is my professional opinion and experience that such alterations should be brought to the attention of foreseeable parties that will have cause to rely on this plan and resulting documents.

7. The final statement is often an ending statement. An ending statement simply tells the reader that no further statements are forthcoming in the affidavit. This statement is not always required, seems superfluous, and is often unnecessary. However, many affiants purposely limit the scope of their statements to avoid the appearance of slandering title or a person. Consequently, the reader can be left

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believing there is more to the affidavit - looking for a conclusion or ultimate statement (i.e., "this title is unmarketable"). An ending statement denies further information or affiant's opinion.

7. Further, Affiant saith not.

8. The final portion of the affidavit is the formalities section and is composed of the affiant's attestation, signature, and subscribed acknowledgment. These are ordinarily required for recording and often follow statutory language. The affiant should be sure to include their typed name, address, and telephone number with their signature in case there are questions. Also, most registries file a copy and return the original to the affiant, hence a return address is required.

Executed on this the 13th day of March at Willomont, Caperton County in the State of Zena.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Cheryl W. Kilbright  
Cheryl W. Kilbright  
187 Oak Street,  
Caperton, Zena 00000  
123-456-7890

Caperton County  
State of Zena, ss.

This day before me, the undersigned, a notary public in and for the county and state aforesaid, Cheryl W. Kilbright swears under oath that the statements set forth above are true and correct.

Melissa Smith III  
Melissa Smith III

Notary public in and for the county of Caperton, state of Zena.  
My commission expires the 23rd day of August 1996.

Great care must be exercised when writing statements in order to avoid slandering the title or a person. Generally, opinions by laypersons and speculations should be avoided on an affidavit. The affiant should make sure all statements are true and professional opinions reasonable. In some cases, this means the affiant must leave an ultimate opinion, speculation, or conclusion unstated. The reader may have

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to seek legal counsel for an opinion on their title or draw their own conclusions from the affidavit's existence in the records.

In addition to preparing and executing an affidavit, the person preparing an affidavit should be aware of a few administrative matters when seeking to record an affidavit. Affidavits are not common in many counties and often cause confusion and reservation when presented for recording. Consequently, be prepared to explain the purpose and benefit to be derived from the affidavit. There is usually a cost associated with filing an affidavit. Most registries either charge a flat fee depending on the document or a sliding fee depending on the number of pages and names the affidavit must be indexed under. Another important matter is to inform the Registrar by using a cover memo that states who and how the affidavit is to be indexed. The who and how can usually be answered by providing a list of names of current owners of affected property and whether the affidavit is to be indexed under these names in the grantor index, grantee index, or both. Failure to provide this information will likely result in an affidavit being indexed under the affiant's name even though matters within the affidavit have no relevance to the affiant's land or title. The memo should also ask that the book and page where the affidavit is recorded be cited on the margin of any affected document (margin citation). Finally, to assure the prompt and direct return of the original affidavit, a self-addressed, franked envelope should be provided with the memo.

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## Affidavit for the Record Location of Underground Gas Line

State of Zena

County of Clarity

City of Johnston

1. I, Sarah H. Jones, am a licensed professional engineer (no. 76542-E), employed as field engineer for Hudson Gas Works and Pipeline Company, 387 Industrial Park Circle, Johnston City, Zena 00001.

2. On 2 July 1995, a duly executed easement from **John Smith** to **Hudson Gas Works and Pipeline Company** was recorded in deed book 7987, page 233, allowing the installation, use, and maintenance of a gas pipeline across property described in deed book 7902, page 2. The easement was described as follows:

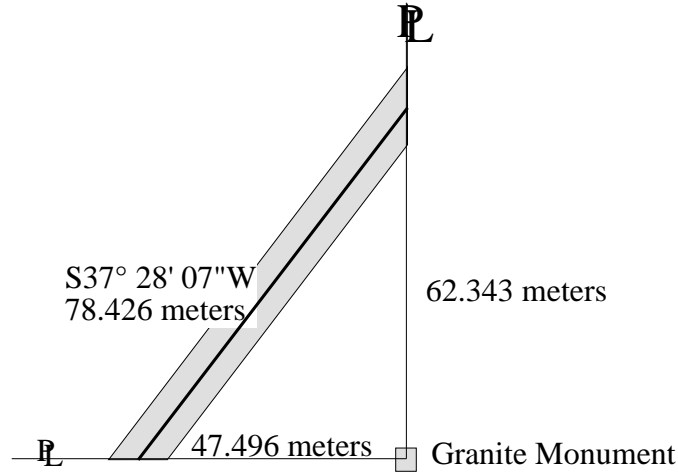
“A 17 meter wide easement across the grantor's property.”

3. On 17 September 1995 a gas pipeline was installed approximately two meters below the existing ground surface with the conduit placed in the center of the

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easement. The conduit is located as follows:

Beginning at a square 10 cm granite monument, reputedly the southeast corner of the property described in deed book 7902, page 2; thence northerly along the easterly property line described in the aforesaid deed, 62.343 meters, to the center of the gas conduit; thence S37° 18' 07"W 78.426 meters to the southerly property line described in the aforesaid deed, lying 47.496 meters from the aforesaid granite monument.



4. Florescent orange posts, protruding approximately one meter above the ground surface, have been placed over the conduit, on or near where the conduit crosses public roads.

Executed on 12th day of November 1995.

I declare under the penalty of perjury that the foregoing is true and correct.

Sarah H. Jones

Sarah H. Jones, field engineer  
Hudson Gas Works and Pipeline Company  
387 Industrial Park Circle  
Johnston City, Zena 00001  
000-555-5632

County of Clarity  
State of Zena, ss.

This day before me, the undersigned a notary public in and for the county and state aforesaid, Sarah H. Jones, acting as an agent for Hudson Gas Works and Pipeline Company, swears under oath that the statements set forth above are true and correct.

John C. Coltrain

John C. Coltrain  
Notary Public

From the office of **Knud E. Hermansen**  
*Surveyor, Civil Engineer, & Counselor at Law*  
R.D.2, 1955 Poplar Street  
Old Town, Maine 04468  
Phone: 207-827-6187

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It is in everyone's best interest to make relevant property information that could effect the title, part of the public records. Many times surveyors, engineers, soil scientists, and others have critical information — affidavits are a way to share the information.

† Knud E. Hermansen is a professor in the School of Engineering Technology, University of Maine. He also operates a consulting firm offering civil engineering, land surveying, and legal services.