

LC02334

**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2002**

**A N A C T**

**RELATING TO PROPERTY**

Introduced By: Representatives Lewiss, Hogan, Lally, and Anguilla

Date Introduced: February 05, 2002

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 34 of the General Laws entitled "Property" is hereby amended by  
2 adding thereto the following chapter:

CHAPTER 48

VALIDATING CONVEYANCES

5 **34-48-1. Short title.** -- This chapter shall be known and may be cited as "The Rhode  
6 Island Validating Conveyances Act of 2002."

7 **34-48-2. Conveyancing defects.** -- Any deed, mortgage, lease, power of attorney,  
8 release, discharge, partial release, assignment or other instrument made for the purpose of  
9 conveying, leasing, mortgaging or affecting any interest in real property in this state recorded  
10 before January 1, 2000, which instrument contains any one (1) or more of the following defects  
11 or omissions is as valid as if it had been executed without the defect or omission unless an action  
12 challenging the validity of that instrument is commenced and a notice of lis pendens is recorded  
13 in the land evidence records of the city or town where the instrument is recorded within two (2)  
14 years after the instrument is recorded:

15 (1) The instrument contains a defective acknowledgment or no acknowledgment;

16 (2) In the case of a conveyance by a corporation, limited liability company, partnership,  
17 limited partnership, or limited liability partnership, or by any other entity authorized to hold and  
18 convey title to real property within this state, the instrument designated such entity as the grantor  
19 but was signed or acknowledged by an individual in the individual capacity of such person; or

1           (3) The instrument was made to any grantee not recognized by law to have the capacity to  
2 take or hold an interest in real property. Validation of an instrument under this section confirms  
3 the conveyance to the grantee and any subsequent transfers of the interest by the grantee to any  
4 subsequent transferees, their heirs, successors and assigns.

5           **34-48-3. Insubstantial defects. --** Any deed, mortgage, lease, power of attorney, release,  
6 discharge, partial release, assignment or other instrument made for the purpose of conveying,  
7 leasing, mortgaging or affecting any interest in real property in this state recorded before January  
8 1, 2000, which instrument contains any one (1) or more of the following defects or omissions is  
9 as valid as if it had been executed without the defect or omission:

10           (1) The instrument contains an incorrect statement of the date of execution or omits the  
11 date of execution;

12           (2) The instrument contains an execution date or other date that is later than the date of  
13 recording;

14           (3) The instrument transfers an interest in land by reference to a recorded map or  
15 subdivision plan and the map or plan does not comply with any statutory requirement as to form,  
16 certification, approval or recording;

17           (4) The instrument conveys an interest in a lot or parcel of land in a subdivision that was  
18 not submitted for approval or that was submitted for approval but was not approved;

19           (5) The record does not disclose the date of recording;

20           (6) The instrument does not disclose any statutorily required signature or stamp of the  
21 recorder of deeds;

22           (7) The instrument does not contain a statement of consideration; or

23           (8) In the case of a conveyance by a corporation, limited liability company, partnership,  
24 limited partnership or limited liability partnership, or by any other entity authorized to hold and  
25 convey title to real property within this state, the instrument designated such entity as the grantor  
26 but fails to disclose the authority of the individual who executes and acknowledges the  
27 instrument.

28           **34-48-4. Defects with respect to a power of attorney. --** Any deed, mortgage, lease,  
29 release, assignment or other instrument made for the purpose of conveying, leasing, mortgaging  
30 or affecting any interest in real property in this state recorded before January 1, 2000, which  
31 instrument is executed pursuant to a recorded power of attorney and contains any one (1) or more  
32 of the following defects, is as valid as it had been executed without the defect unless an action  
33 challenging the validity of that instrument is commenced and a notice of lis pendens is recorded  
34 in the land evidence records of the city or town where the instrument is recorded within two (2)

1 years after the instrument is recorded:

2 (1) The instrument was executed by an attorney-in-fact but was signed or acknowledged  
3 by the attorney-in-fact without reference to his or her capacity;

4 (2) The instrument was executed by an attorney-in-fact but does not reference the power  
5 of attorney;

6 (3) The power of attorney was effective at the time the instrument was executed but is  
7 recorded after the instrument is recorded; or

8 (4) The power of attorney was never recorded in the land evidence records.

9 **34-48-5. Defects where fiduciary conveyed to self. -- Any deed, mortgage, lease,**  
10 **release, assignment or other instrument made for the purpose of conveying, leasing, mortgaging**  
11 **or affecting any interest in real property in this state recorded before January 1, 2000, which**  
12 **instrument is executed by a fiduciary, but which instrument is voidable because the fiduciary is**  
13 **the grantee, mortgagee, leasee, releasee, or assignee designated in such instrument, is as valid as**  
14 **if it had been executed without the defect unless an action is commenced to avoid and set aside**  
15 **such instrument and a notice of lis pendens is recorded in the land evidence records of the city or**  
16 **town where the instrument is recorded within ten (10) years from the date of recording of such**  
17 **instrument.**

18 **34-48-6. Defects with respect to conveyance by fiduciary. -- Any deed, mortgage,**  
19 **lease, power of attorney, release, assignment or other instrument made for the purpose of**  
20 **conveying, leasing, mortgaging or affecting any interest in real property in this state recorded**  
21 **before January 1, 2000, which instrument was executed by an executor, administrator, guardian,**  
22 **trustee, conservator or other fiduciary pursuant to an order or authorization of the probate court**  
23 **and which contains any one (1) or more of the following defects, is as valid as if it had been**  
24 **executed without the defect:**

25 (1) The fiduciary failed to post a bond required by the court for the faithful administration  
26 and distribution of the proceeds of the sale, provided either: (i) the fiduciary has accounted for the  
27 proceeds of the sale in an administration account that has been approved and accepted by the  
28 court after notice and hearing, and from which order of approval and acceptance no appeal has  
29 been taken, or (ii) no action challenging the validity of that instrument is commenced and no  
30 notice of lis pendens is recorded in the land evidence records of the city or town where the  
31 instrument is recorded within two (2) years after the instrument is recorded;

32 (2) Required notice of the probate court hearing on the application for an order of sale  
33 was not given, provided either (i) the fiduciary has accounted for the proceeds of the sale in an  
34 administrative account that has been approved and accepted by the court after notice and hearing,

1 and from which order of approval and acceptance no appeal has been taken, or (ii) no action  
2 challenging the validity of the instrument is commenced and no notice of lis pendens is recorded  
3 in the land evidence records of the city or town where the instrument is recorded within two (2)  
4 years after the instrument is recorded; or

5 (3) The fiduciary failed to recite in the instrument the basis of the authority by which the  
6 fiduciary acted, provided no action challenging the validity of the instrument is commenced and  
7 no notice of lis pendens is recorded in the land evidence records of the city or town where the  
8 instrument is recorded within two (2) years after the instrument is recorded.

9 **34-48-7. Release or assignment of mortgage by out-of-state fiduciary. --** A release or  
10 assignment of a mortgage interest held by a nonresident or deceased nonresident in real property  
11 in this state executed by an out-of-state fiduciary shall have the same effect as if executed by an  
12 out-of-state fiduciary of this state notwithstanding that no ancillary has been filed in this state  
13 unless an action contesting the release or assignment is commenced and a notice of lis pendens  
14 has been recorded in the land records of the city or town where such release or assignment is  
15 recorded within two (2) years after the instrument is recorded.

16 **34-48-8. Foreclosure defects. --** Any foreclosure deed made for the purpose of  
17 conveying any interest in real property in this state recorded before January 1, 2000, which  
18 instrument contains any one (1) or more of the following defects or omissions, or any foreclosure  
19 deed accompanied by an affidavit of sale under power of sale of mortgage which discloses any  
20 one or more of the following defects or omissions is as valid as if it had been executed without  
21 the defect or omission in the foreclosure sale unless an action challenging the validity of that  
22 instrument is commenced and notice of lis pendens is recorded in the land evidence records of the  
23 city or town where the instrument is recorded within two (2) years after the instrument is  
24 recorded:

25 (1) Lack of proper notice of the auction sale given to interested parties;

26 (2) Failure to conduct the auction sale in the time and manner required by the power of  
27 sale;

28 (3) Defects and irregularities in the auction sale;

29 (4) Failure of the mortgage deed to contain the words “with mortgage covenants,”  
30 “statutory condition,” or “statutory power of sale”;

31 (5) Lack of proper references in the foreclosure deed, assignments or advertisements to  
32 the correct recording information of the original mortgage;

33 (6) The absence of any assignment, certificate of merger, or power of attorney  
34 documenting the authority of the foreclosing party to conduct a foreclosure sale;

1           (7) The recording of an assignment of the mortgage being foreclosed after the  
2 commencement of foreclosure advertisements;

3           (8) Failure of the affidavit of sale to specify that the mortgagor was in default of the  
4 mortgage obligations at the time of the sale; that the premises was sold at public auction; that the  
5 sale was conducted by a licensed auctioneer; that the grantee named in the foreclosure deed was  
6 the highest bidder; that the dollar amount of the highest bidder; that the mortgagor was not in the  
7 military service; that notice was given as now or heretofore specified by the general laws of  
8 Rhode Island;

9           (9) Lack of proper identification of the mortgaged premises to be sold in the mortgage  
10 foreclosure advertisement as now or heretofore specified by the general laws of Rhode Island; or

11           (10) Lack of compliance with any material condition precedent to the exercise of the  
12 power of sale now or heretofore specified in the general laws of Rhode Island.

13           **34-48-9. Severability. --** If any provision of this chapter or the application thereof to any  
14 person or circumstances is held invalid, such invalidity shall not affect other provisions or  
15 applications of the chapter, which can be given effect without the invalid provision or application,  
16 and to this end the provisions of this chapter are declared to be severable.

17           SECTION 2. This act shall take effect upon passage.

=====  
LC02334  
=====

EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO PROPERTY

\*\*\*

- 1 This act would validate conveyances which contain certain defects or omissions.
- 2 This act would take effect upon passage.

=====  
LC02334  
=====

