

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

RELATING TO PROPERTY -- FORM AND EFFECT OF CONVEYANCES

Introduced By: Senators McCaffrey, and Archambault

Date Introduced: March 02, 2017

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 34-11 of the General Laws entitled "Form and Effect of
2 Conveyances" is hereby amended by adding thereto the following section:

3 **34-11-45. Validation of conveyancing defects.**

4 (a) Conveyancing defects. Notwithstanding any other provision of the general or public
5 laws to the contrary, any deed, mortgage, lease, power of attorney, release, assignment or other
6 instrument made for the purpose of conveying, leasing, mortgaging or affecting any interest in
7 real property in this state, which instrument contains any one or more of the following defects or
8 omissions, is as valid as if it had been executed without the defect or omission, unless an action
9 challenging the validity of that instrument is commenced, and a notice of lis pendens is recorded
10 in the land evidence records of the city or town where the instrument is recorded, within two (2)
11 years after the instrument is recorded:

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

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

17 (3) The instrument was made to any grantee not recognized by law to have the capacity to
18 take or hold an interest in real property. Validation of an instrument under this subsection
19 confirms the conveyance to the grantee and any subsequent transfers of the interest by the grantee

1 to any subsequent transferees, their heirs, administrators, legal representatives, successors and
2 assigns.

3 (b) Insubstantial defects. Notwithstanding any provision of the general or public laws to
4 the contrary, any deed, mortgage, lease, power of attorney, release, assignment or other
5 instrument made for the purpose of conveying, leasing, mortgaging or affecting any interest in
6 real property in this state, which instrument contains any one or more of the following defects or
7 omissions is as valid as if it had been executed without the defect or omission:

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

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

12 (3) The instrument transfers an interest in land by reference to a filed map or subdivision
13 plan and the map or plan does not comply as to preparation, form, certification, approval or filing
14 with any requirement of any special or general law, municipal ordinance or regulation;

15 (4) The record does not disclose the date of recording;

16 (5) The instrument fails to state the town and state in which the real property described in
17 the instrument is located; or

18 (6) In the case of a conveyance by a corporation, limited liability company, partnership,
19 limited partnership or limited liability partnership, or by any other entity authorized to hold and
20 convey title to real property within this states, the instrument designates the entity as the grantor
21 but fails to disclose either the authority of or the office or status held in the entity by the
22 individual who executes and acknowledges the instrument.

23 (c) Defect with respect to a power of attorney. Notwithstanding any other provision of the
24 general or public laws to the contrary, any deed, mortgage, lease, power of attorney, release,
25 assignment or other instrument made for the purpose of conveying, leasing, mortgaging or
26 affecting any interest in real property in this state, if the instrument is validly recorded, is
27 executed pursuant to a recorded power of attorney and contains any one or more of the following
28 defects, is as valid as if the instrument had been executed without the defect unless an action
29 challenging the validity of the instrument is commenced and a notice of lis pendens is recorded in
30 the land evidence records of the city or town where the instrument is recorded within two (2)
31 years after the instrument is recorded:

32 (1) The instrument was executed by an attorney-in-fact, but was signed or acknowledged
33 by the attorney-in-fact without reference to their capacity;

34 (2) The power of attorney was effective at the time the instrument was executed, but is

1 recorded after the instrument is recorded.

2 (3) The power of attorney was not effective at the time the instrument was executed, but
3 the grant of the power includes a ratification of all prior acts of the attorney-in-fact.

4 (d) Defect where fiduciary conveyed to self. Notwithstanding any other provision of the
5 general or public laws to the contrary, any recorded deed, mortgage, lease, release, assignment or
6 other instrument made for the purpose of conveying, leasing, mortgaging or affecting any interest
7 in real property in this state, which instrument is executed by a fiduciary, but which instrument is
8 voidable because the fiduciary is the grantee, mortgagee, lessee, releasee or assignee designated
9 in such instrument, is as valid as if it had been executed without the defect unless an action is
10 commenced to avoid and set aside such instrument, and a notice of lis pendens is recorded in the
11 land evidence records of the city or town where the instrument is recorded within ten (10) years
12 from the date of recording of such instrument.

13 (e) Defect with respect to conveyance by fiduciary. Notwithstanding any other provision
14 of the general or public laws to the contrary, any deed, mortgage, lease, power of attorney,
15 release, assignment or other instrument made for the purpose of conveying, leasing mortgaging or
16 affecting any interest in real property in this state recorded after the effective date hereof, which
17 instrument was executed by an executor, administrator, guardian, trustee, conservator or other
18 fiduciary pursuant to an order or authorization of the probate court, and which contains any one
19 or more of the following defects, is as valid as if it had been executed without the defect:

20 (1) The fiduciary failed to post a bond required by the court for the faithful administration
21 and distribution of the proceeds of the sale; provided, either:

22 (i) The fiduciary has accounted for the proceeds of the sale in an administration account
23 that has been approved and accepted by the court after notice and hearing, and from which order
24 of approval and acceptance no appeal has been taken; or

25 (ii) No action challenging the validity of that instrument is commenced and no notice of
26 lis pendens is recorded in the land evidence records of the city or town where the instrument is
27 recorded within two (2) years after the instrument is recorded; or

28 (iii) The estate is closed; and any appeal time therefrom has elapsed.

29 (2) Required notice of the probate court hearing on the application for an order of sale
30 was not given, provided either:

31 (i) The fiduciary has accounted for the proceeds of the sale in an administration account
32 that has been approved and accepted by the court after notice and hearing, and from which order
33 of approval and acceptance no appeal has been taken; or

34 (ii) No action challenging the validity of the instrument is commenced and no notice of

1 lis pendens is recorded in the land evidence records of the city or town where the instrument is
2 recorded within two (2) years after the instrument is recorded; or

3 (iii) The estate is closed; and any appeal time therefrom has elapsed.

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

8 (f) Discharge or assignment of mortgage by out-of-state fiduciary. Notwithstanding any
9 other provision of the general or public laws to the contrary, a discharge or assignment of a
10 mortgage interest in real property in this state held by a nonresident or deceased nonresident that
11 is executed by an out-of-state fiduciary and recorded after the effective date thereof, shall have
12 the same effect as if executed by a fiduciary of this state unless an action contesting the discharge
13 or assignment is commenced and a notice of lis pendens has been recorded in the land evidence
14 records of the city or towns where such release or assignment is recorded within two (2) years
15 after the instrument is recorded.

16 (g) Defect with respect to mortgage foreclosure. Notwithstanding any other provision of
17 the general or public laws to the contrary, a judicial or non-judicial mortgage foreclosure that is
18 subject to any defect of any kind or description that could affect its validity or effectiveness will
19 be deemed as valid and effective as if it had been conducted without such defect unless, within
20 two (2) years from the date of recording of the foreclosure deed evidencing the mortgage
21 foreclosure, or for foreclosure deeds recorded prior to the enactment of this subsection, two (2)
22 years from the effective date of its enactment:

23 (1) An action contesting the validity of the foreclosure is commenced in the superior
24 court for the county in which the real estate described in the mortgage is located; and

25 (2) A notice of lis pendens has been recorded in the land evidence records in each city or
26 town where the foreclosed mortgage is recorded.

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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1 This act would validate certain conveyancing defects in various instruments executed by
2 or affecting grantors, grantees, business entities, powers of attorney, probate fiduciaries, mortgage
3 discharges and foreclosures or certain clerical defects.

4 This act would take effect upon passage.

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