

2015 -- H 5612

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

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A N A C T

RELATING TO PROPERTY -- FORM AND EFFECT OF CONVEYANCES

Introduced By: Representatives Ackerman, Shekarchi, Keable, Blazejewski, and Lally

Date Introduced: February 25, 2015

Referred To: House 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           **34-11-43. Validation of conveyancing defects. – (a) Conveyancing defects.**  
4   Notwithstanding any other statute to the contrary, any deed, mortgage, lease, power of attorney,  
5   release, assignment or other instrument made for the purpose of conveying, leasing, mortgaging  
6   or affecting any interest in real property in this state, which instrument contains any one or more  
7   of the following defects or omissions is as valid as if it had been executed without the defect or  
8   omission unless an action challenging the validity of that instrument is commenced, and a notice  
9   of lis pendens is recorded in the land evidence records of the city or town where the instrument is  
10   recorded, within two (2) years after the instrument is recorded:

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

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

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

1 assigns.

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

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

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

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

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

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

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

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

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

32 (2) The power of attorney was effective at the time the instrument was executed but is  
33 recorded after the instrument is recorded;

34 (3) The power of attorney was not effective at the time the instrument was executed, but

1 the grant of the power includes a ratification of all prior acts of the attorney-in-fact.

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

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

18 (1) The fiduciary failed to post a bond required by the court for the faithful administration  
19 and distribution of the proceeds of the sale, provided either: (i) The fiduciary has accounted for  
20 the proceeds of the sale in an administration account that has been approved and accepted by the  
21 court after notice and hearing, and from which order of approval and acceptance no appeal has  
22 been taken; or (ii) No action challenging the validity of that instrument is commenced and no  
23 notice of lis pendens is recorded in the land evidence records of the city or town where the  
24 instrument is recorded within two (2) years after the instrument is recorded; or (iii) The estate is  
25 closed; and any appeal time therefrom has elapsed.

26 (2) Required notice of the probate court hearing on the application for an order of sale  
27 was not given; provided either: (i) The fiduciary has accounted for the proceeds of the sale in an  
28 administration account that has been approved and accepted by the court after notice and hearing,  
29 and from which order of approval and acceptance no appeal has been taken; or (ii) No action  
30 challenging the validity of the instrument is commenced and no notice of lis pendens is recorded  
31 in the land evidence records of the city or town where the instrument is recorded within two (2)  
32 years after the instrument is recorded; or (iii) The estate is closed; and any appeal time therefrom  
33 has elapsed;

34 (3) The fiduciary failed to recite in the instrument the basis of the authority by which the

1 fiduciary acted, provided that no action challenging the validity of the instrument is commenced  
2 and no notice of lis pendens is recorded in the land evidence records of the city or town where the  
3 instrument is recorded within two (2) years after the instrument is recorded.

4 (f) Discharge or assignment of mortgage by out-of-state fiduciary. Notwithstanding any  
5 other statute to the contrary, a discharge or assignment of a mortgage interest in real property in  
6 this state held by a nonresident or deceased nonresident that is executed by an out-of-state  
7 fiduciary and recorded after the effective date hereof, shall have the same effect as if executed by  
8 a fiduciary of this state unless an action contesting the discharge or assignment is commenced and  
9 a notice of lis pendens has been recorded in the land evidence records of the city or town where  
10 such release or assignment is recorded within two (2) years after the instrument is recorded.

11 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 the conveyance of real estate interests where the instrument of
- 2 conveyance contains a minor defect.
- 3           This act would take effect upon passage.

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