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RELATING TO PROPERTY - FORM AND EFFECT OF CONVEYANCES

Introduced By: Representatives Lally, Jackson, and Schadone

Date Introduced: February 02, 2012

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

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

34-11-42. Conveyancing defect. -- (a) Notwithstanding any other statute to the contrary, any deed, mortgage, lease, power of attorney, release, assignment or other instrument made for the purpose of conveying, leasing, mortgaging or affecting any interest in real property in this state recorded after the effective date hereof, which instrument contains any one or more of the following defects or omissions is as valid as if it had been executed without the defect or omission unless an action challenging the validity of that instrument is commenced, and a notice of lis pendens is recorded in the land records of the municipality or municipalities where the instrument is recorded, within two (2) years after the instrument is recorded:

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

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

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

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

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

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

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

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

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

(6) The instrument fails to state the city or town and state in which the real property
described in the instrument is located;

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

c) Notwithstanding any other statute to the contrary, any deed, mortgage, lease, power of
attorney, release, assignment or other instrument made for the purpose of conveying, leasing,
mortgaging or affecting any interest in real property in this state recorded after the effective date
hereof, which instrument is executed pursuant to a recorded power of attorney and contains any
one or more of the following defects, is as valid as if it had been executed without the defect
unless an action challenging the validity of that instrument is commenced and a notice of lis
pendens is recorded in the land records of the municipality or municipalities where the instrument
is recorded within two (2) years after the instrument is recorded;

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

(2) The power of attorney was effective at the time the instrument was executed but is
(d) Notwithstanding any other statute to the contrary, any recorded deed, mortgage, lease, release, assignment or other instrument made for the purpose of conveying, leasing, mortgaging or affecting any interest in real property in this state recorded after the effective date hereof, which instrument is executed by a fiduciary, but which instrument is voidable because the fiduciary is the grantee, mortgagee, lessee, releasee or assignee designated in such instrument, is as valid as if it had been executed without the defect unless an action is commenced to avoid and set aside such instrument and a notice of lis pendens is recorded in the land records of the municipality or municipalities where the instrument is recorded within ten (10) years from the date of recording of such instrument.

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

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

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

(ii) No action challenging the validity of that instrument is commenced and no notice of lis pendens is recorded in the land records of the municipality or municipalities where the instrument is recorded within two (2) years after the instrument is recorded;

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

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

(ii) No action challenging the validity of the instrument is commenced and no notice of lis pendens is recorded in the land records of the municipality or municipalities where the instrument is recorded within two (2) years after the instrument is recorded;

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

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

SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
AN ACT
RELATING TO PROPERTY - FORM AND EFFECT OF CONVEYANCES

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

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