

2012 -- S 2658

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO PROPERTY - FORM AND EFFECT OF CONVEYANCES

Introduced By: Senator Erin P. Lynch

Date Introduced: March 01, 2012

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 **34-11-42. Conveyancing defect. -- (a) Notwithstanding any other statute to the contrary,**
4 any deed, mortgage, lease, power of attorney, release, assignment or other instrument made for
5 the purpose of conveying, leasing, mortgaging or affecting any interest in real property in this
6 state recorded after the effective date hereof, which instrument contains any one or more of the
7 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 records of the municipality or municipalities where the
10 instrument is 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 subdivision
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) Notwithstanding any other statute to the contrary, any deed, mortgage, lease, power of
3 attorney, release, assignment or other instrument made for the purpose of conveying, leasing,
4 mortgaging or affecting any interest in real property in this state recorded after the effective date
5 hereof, which instrument contains any one or more of the following defects or omissions is as
6 valid as if it had 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 instrument conveys an interest in a lot or parcel of land in a subdivision that was
15 not submitted for approval or that was submitted for approval but was not approved;

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

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

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

24 (c) Notwithstanding any other statute to the contrary, any deed, mortgage, lease, power of
25 attorney, release, assignment or other instrument made for the purpose of conveying, leasing,
26 mortgaging or affecting any interest in real property in this state recorded after the effective date
27 hereof, which instrument is executed pursuant to a recorded power of attorney and contains any
28 one or more of the following defects, is as valid as if it had been executed without the defect
29 unless an action challenging the validity of that instrument is commenced and a notice of lis
30 pendens is recorded in the land records of the municipality or municipalities where the instrument
31 is recorded within two (2) 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 his, her or its 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 (d) Notwithstanding any other statute to the contrary, any recorded deed, mortgage, lease,
3 release, assignment or other instrument made for the purpose of conveying, leasing, mortgaging
4 or affecting any interest in real property in this state recorded after the effective date hereof,
5 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 records of the
9 municipality or municipalities where the instrument is recorded within ten (10) years from the
10 date of recording of such instrument.

11 (e) Notwithstanding any other statute to the contrary, any deed, mortgage, lease, power of
12 attorney, release, assignment or other instrument made for the purpose of conveying, leasing,
13 mortgaging or affecting any interest in real property in this state recorded after the effective date
14 hereof, which instrument was executed by an executor, administrator, guardian, trustee,
15 conservator or other fiduciary pursuant to an order or authorization of the probate court and
16 which contains any one or more of the following defects, is as valid as if it had been executed
17 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:

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

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

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

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

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

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 records of the municipality or municipalities
3 where the instrument is recorded within two (2) years after the instrument is recorded.

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

- 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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