

2016 -- S 2365

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

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A N A C T

RELATING TO PROPERTY -- FORM AND EFFECT OF CONVEYANCES

Introduced By: Senators Jabour, Lombardi, Archambault, and McCaffrey

Date Introduced: February 10, 2016

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 **34-11-43. 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 city or town and state in which the real property
16 described in 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 their 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 real
14 property in this state recorded after the effective date hereof, which instrument was executed by
15 an executor, administrator, guardian, trustee, conservator or other fiduciary pursuant to an order
16 or authorization of the probate court and which contains any one or more of the following defects,
17 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:

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 evidence records of the city or town where the instrument is
25 recorded within two (2) years after the instrument is recorded; or

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

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

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

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

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

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

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

13 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 eliminate issues with respect to title to real property where certain issues
2 are otherwise capable of resolution by investigation, preparation and execution of corrective
3 instruments and recording thereof.

4 This act would take effect upon passage.

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