



**TESTIMONY OF MICHAEL J. SIKORA III ON BEHALF OF THE OHIO STATE BAR  
ASSOCIATION IN SUPPORT OF SENATE BILL 257**  
**April 12, 2016**

Chairman Uecker, Vice-chair Hottinger, Ranking member Thomas, and members of the Senate State and Local Government Committee:

Thank you for the opportunity to present testimony on Senate Bill 257. I am Mike Sikora. I am an attorney and title agent, and my practice is focused entirely on real estate matters throughout the State of Ohio. The Ohio State Bar Association respectfully requests your favorable consideration of this Bill that would amend R.C. 5301.07 and modernize Ohio's real property law to promote both the validity of recorded documents and the marketability of title, which is good for business in Ohio.

Ohio's current primary Curative Statute, R.C. 5301.07, is out of touch with the curative statutes of other states throughout the country, which results in court decisions and decisions on transactions that are inconsistent with legal authority throughout the country. The result of this outdated language has been cumbersome transactions and unwarranted litigation involving Ohio real property instruments, such as deeds and mortgages.

The cure period in the current curative statute in Ohio, as passed 55 years ago, is 21 years. Unfortunately, the current Statute is rarely applied and is of little effect. This means that technical defects in a recorded instrument of record can be challenged at any time during 21 years after an instrument is recorded.

Some examples of technical defects are:

- an obvious typo in name;
- missing name in the granting clause but that name is in all other required areas of the document and that person has signed the document;
- inadvertent omission of a certificate of acknowledgment; or
- there is some other defect in the certificate of acknowledgement

Due to the lengthy 21 year curative time period, the current statute encourages delays and challenges mere technical defects in recorded documents. The next closest state has a 10 year cure period. To address these problems, Senate Bill 257 would modernize R.C. 5301.07 in three primary ways:

1. Reinforce the presumption of validity of instruments of record as between the parties to instruments;
2. Reduce the time period for curing certain defects in instruments to four years; and
3. Afford constructive notice to the world of the contents of instruments of record.

These proposed amendments strike a delicate balance between reducing hyper-technical attacks on recorded instruments while maintaining certain substantive formalities that serve a valuable purpose under Ohio law. Under the improved Curative Statute, when a real property instrument has been of record for four years, certain defects will be deemed cured. This will put Ohio in line with the national average for the cure period of real property instruments, which is less than four years.

The median cure period, even including Ohio (at 21 years), is 2 years. The average cure period equals 3.87 years. Swapping Ohio's value from the current 21 year period to the proposed 4 year period reduces the average to 3.48. Therefore, by looking at the average of the states analyzed (including Ohio's current 21 year period and the proposed 4 year period) and the median, the average range falls between 2-3.87 years. These figures are in line with the proposed 4 year period that is set forth in Senate Bill 257.

Senate Bill 257 will also ensure the validity of recorded real property instruments. County Recorders could improve their efficiency by focusing their review on substantive issues. This Bill would also reduce unnecessary legal actions that are sometimes pursued in an effort to invalidate instruments or gain leverage of some sort based on purely technical defects.

Senate Bill 257 has the support of all the following respected Associations: the Ohio State Bar Association; Ohio Association of Realtors; NAIOP of Ohio; and the Ohio Land Title Association. Amending the Curative Statute to modernize it and carefully expand its application would be in the best interests of Ohio lawyers, all participants in the real estate industry, and it would promote and facilitate real estate transactions in general.