

As Introduced

**131st General Assembly
Regular Session
2015-2016**

S. B. No. 257

**Senators Seitz, Skindell
Cosponsor: Senator Eklund**

A BILL

To amend section 5301.07 of the Revised Code to
create a presumption of validity of recorded
real property instruments, reduce the time
period for curing certain defects related to
those instruments, and provide constructive
notice for those instruments.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 5301.07 of the Revised Code be
amended to read as follows:

Sec. 5301.07. ~~When any~~ (A) As used in this section, "real
property instrument" means a deed, mortgage, and installment
contract, lease, memorandum of trust, power of attorney, or any
instrument accepted by the county recorder under section 317.08
of the Revised Code.

(B) (1) When a real property instrument ~~conveying real-
estate, or any interest therein,~~ is delivered to and accepted by
the county recorder of the county in which the real property
described in the instrument is situated, and is signed and
acknowledged by a person with an interest in the real property,

the instrument raises both of the following: 19

(a) A rebuttable presumption that the instrument conveys, encumbers, or otherwise affects the interest of the person who signed the instrument; 20
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(b) A rebuttable presumption that it is valid, enforceable, and effective as if in all respects the instrument was legally made, executed, acknowledged, and recorded. 23
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(2) The presumptions described in division (B)(1) of this section may be rebutted by clear and convincing evidence of fraud, undue influence, duress, forgery, incompetency, or incapacity. 26
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(C) When a real property instrument is of record for more than ~~twenty-one~~ ~~four~~ years in the office of the county recorder of the county ~~within this state~~ in which ~~such the~~ real estate ~~property described in the instrument~~ is situated, and the record shows that there is a defect in ~~such the~~ making, execution, or acknowledgment of the instrument, such instrument and the record thereof shall be cured of such defect and be effective in all respects as if such instrument had been legally made, executed, and acknowledged, ~~if such defect is due to any one or more of~~ and recorded. The defects may include but are not limited to the following: 30
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~~(A)~~ (1) Such instrument was not properly witnessed. 41

~~(B)~~ (2) Such instrument contained no certificate of acknowledgment. 42
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~~(C)~~ (3) The certificate of acknowledgment ~~was~~ is defective in any respect. 44
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~~Any person claiming adversely to such instrument, if not~~ 46

~~already barred by limitation or otherwise, may, at any time~~ 47
~~within twenty one years after the time of recording such~~ 48
~~instrument, bring proceedings to contest the effect of such~~ 49
~~instrument.~~ 50

~~This section does not affect any suit brought prior to~~ 51
~~November 9, 1959 in which the validity of the acknowledgment of~~ 52
~~any such instrument is drawn in question.~~ 53

(4) The name of the person with an interest in the real 54
property does not appear in the granting clause of the 55
instrument, but the person signed the instrument without 56
limitation. 57

(D) A real property instrument when delivered to the 58
county recorder of the county in which the real property 59
described in the instrument is situated and filed in the chain 60
of title to the real property shall be effective and provide 61
constructive notice to all third parties of the instrument 62
notwithstanding any defect in the making, execution, or 63
acknowledgment of the instrument. 64

(E) This section applies to all real property instruments 65
notwithstanding any other provision of the Revised Code. This 66
section controls in the event of a conflict between this section 67
and section 1301.401 of the Revised Code or any other section of 68
the Revised Code with respect to any matters addressed in this 69
section. 70

(F) This section shall be given retroactive effect to the 71
fullest extent permitted under Section 28 of Article II, Ohio 72
Constitution. This section shall not be given retroactive effect 73
if to do so would affect any accrued substantive right or vested 74
rights in any person or in any real property instrument. 75

Section 2. That existing section 5301.07 of the Revised Code is hereby repealed. 76
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