

As Reported by the Senate State and Local Government Committee

131st General Assembly

Regular Session

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Sub. 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 for 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 is
situated, and is signed and acknowledged by a person with an
interest in the real property that is described in the

instrument, the instrument raises both of the following: 19

(a) A rebuttable presumption that the instrument conveys, 20
encumbers, or is enforceable against the interest of the person 21
who signed the instrument; 22

(b) A rebuttable presumption that the instrument is valid, 23
enforceable, and effective as if in all respects the instrument 24
was legally made, executed, acknowledged, and recorded. 25

(2) The presumptions described in division (B)(1) of this 26
section may be rebutted by clear and convincing evidence of 27
fraud, undue influence, duress, forgery, incompetency, or 28
incapacity. 29

(C) When a real property instrument is of record for more 30
than ~~twenty-one~~ ~~four~~ years in the office of the county recorder 31
of the county within this state in which such real estate is 32
situated from the date of recording of the instrument, and the 33
record shows that there is a defect in ~~such the~~ making, 34
~~execution, or acknowledgment of the instrument, such the~~ 35
instrument and the record thereof shall be cured of ~~such the~~ 36
defect and be effective in all respects as if ~~such the~~ 37
instrument had been legally made, executed, ~~and~~ acknowledged, ~~if~~ 38
~~such defect is due to any one or more of~~ and recorded. The 39
defects may include but are not limited to the following: 40

~~(A) Such (1) The instrument was not properly witnessed.~~ 41

~~(B) Such (2) The instrument contained no certificate of~~ 42
~~acknowledgment.~~ 43

~~(C) (3) The certificate of acknowledgment was is defective~~ 44
~~in any respect.~~ 45

~~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 is 59
situated and filed in the chain of title to the real property 60
provides constructive notice to all third parties of the 61
instrument notwithstanding any defect in the making, execution, 62
or acknowledgment of the real property instrument. 63

(E) Nothing contained in this section operates to 64
discharge the obligation to comply with all provisions of 65
sections 5301.47 to 5301.56 and section 5301.332 of the Revised 66
Code before the extinguishment, abandonment, or forfeiture of an 67
interest in real estate as may be authorized by those sections. 68

(F) Except as otherwise provided in division (E) of this 69
section, this section applies to all real property instruments 70
notwithstanding any other provision of the Revised Code. To the 71
extent that a conflict exists between this section and any other 72
section of the Revised Code, including but not limited to 73
section 1301.401 of the Revised Code, this section controls with 74
respect to any matters addressed in this section. 75

(G) This section shall be given retroactive effect to the 76
fullest extent permitted under Section 28 of Article II, Ohio 77
Constitution. This section shall not be given retroactive effect 78
if to do so would affect any accrued substantive right or vested 79
rights in any person or in any real property instrument. 80

Section 2. That existing section 5301.07 of the Revised 81
Code is hereby repealed. 82