

1 H.199

2 Introduced by Representative Grad of Moretown

3 Referred to Committee on

4 Date:

5 Subject: Property; conveyance of real estate; validation of legal instruments

6 Statement of purpose of bill as introduced: This bill proposes to validate legal
7 instruments conveying real estate that contain certain errors related to the use
8 of a power of attorney in connection with the conveyance.

9 An act relating to validating legal instruments used in connection with the
10 conveyance of real estate

11 It is hereby enacted by the General Assembly of the State of Vermont:

12 Sec. 1. 27 V.S.A. § 348 is amended to read:

13 § 348. INSTRUMENTS CONCERNING REAL PROPERTY VALIDATED

14 (a) When an instrument of writing shall have been on record in the office
15 of the clerk in the proper town for a period of 15 years, and there is a defect in
16 the instrument because it omitted to state any consideration therefor or was not
17 sealed, witnessed, acknowledged, validly acknowledged, or because a license
18 to sell was not issued or is defective, the instrument shall, from and after the
19 expiration of 15 years from the filing thereof for record, be valid. Nothing
20 herein shall be construed to affect any rights acquired by grantees, assignees or

1 encumbrancers under the instruments described in the preceding sentence, nor
2 shall this section apply to conveyances or other instruments of writing, the
3 validity of which is brought in question in any suit now pending in any courts
4 of the state.

5 (b) Notwithstanding subsection (a) of this section, any deed, mortgage,
6 lease, power of attorney, release, discharge, assignment, or other instrument
7 made for the purpose of conveying, leasing, mortgaging, or affecting any
8 interest in real property ~~which~~ that contains any one or more of the following
9 errors is valid unless, within three years after the instrument is recorded, an
10 action challenging its validity is commenced, and a copy of the complaint is
11 recorded in the land records of the town where the instrument is recorded:

12 (1) The instrument contains a defective acknowledgment.

13 (2) In the case of a conveyance by a corporation, limited liability
14 company, partnership, limited partnership, or limited liability partnership, or
15 by any other entity authorized to hold and convey title to real property within
16 this state, the instrument designated such entity as the grantor but was signed
17 or acknowledged by an individual in the individual capacity of such person, or
18 fails to disclose the authority of the individual who executes and acknowledges
19 the instrument.

1 (3) The instrument contains an incorrect statement of the date of
2 execution, or contains an execution date, or other date that is later than the date
3 of the recording. In case of such conflict, the date of recording prevails.

4 (4) The instrument does not contain a statement of consideration.

5 (5) The acknowledgement clause of an instrument executed by an
6 attorney-in-fact inaccurately recites the personal appearance of the principal
7 and not the attorney-in-fact who personally appeared on behalf of the
8 principal.

9 (c) Notwithstanding the provisions of subsection (a) of this section, any
10 deed, mortgage, lease, power of attorney, release, discharge, assignment, or
11 other instrument made for the purpose of conveying, leasing, mortgaging, or
12 affecting any interest in real property ~~which~~ that is executed pursuant to a
13 recorded power of attorney and contains one or more of the following errors or
14 omissions is valid as if it had been executed without the error or omission:

15 (1) The instrument was executed by an attorney-in-fact but was signed
16 or acknowledged by the attorney-in-fact without reference to his or her
17 capacity.

18 (2) The instrument was executed by an attorney-in-fact but does not
19 reference the power of attorney.

20 (3) The power of attorney was effective at the time the instrument was
21 executed but is recorded after the instrument is recorded.

1 (d) A release, discharge, or assignment of mortgage interest executed by a
2 commercial lender with respect to a ~~one~~ one- to four-family residential real
3 property, including a residential unit in a condominium or in a common
4 interest community as defined in Title 27A, which recites authority to act on
5 behalf of the record holder of the mortgage under a power of attorney but
6 where the power of attorney is not of record, shall have the same effect as if
7 executed by the record holder of the mortgage unless, within three years after
8 the instrument is recorded, an action challenging the release, discharge, or
9 assignment is commenced and a copy of the complaint is recorded in the land
10 records of the town where the release, discharge, or assignment is recorded.
11 This subsection shall not apply to releases, discharges, or assignments obtained
12 by fraud or forgery.

13 (e) A power of attorney made for the purpose of conveying, leasing,
14 mortgaging, or affecting any interest in real property that has been
15 acknowledged and signed in the presence of at least one witness shall be valid,
16 notwithstanding its failure to comply with 14 V.S.A. § 3503 or the
17 requirements of the Emergency Administrative Rules for Remote Notarial Acts
18 adopted by the Vermont Secretary of State, unless within three years after
19 recording, an action challenging its validity is commenced and a copy of the
20 complaint is recorded in the land records of the town where the power of

1 attorney is recorded. This subsection shall not apply to a power of attorney
2 obtained by fraud or forgery.

3 Sec. 2. EFFECTIVE DATE

4 This act shall take effect on passage.