

As Introduced

**124th General Assembly
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H. B. No. 279

REPRESENTATIVES Faber, Cates, Schaffer, Seitz, G. Smith, Kearns

A B I L L

To amend sections 1337.01, 1337.06, 1337.10, 5301.01, 1
5301.04, 5301.08, 5301.251, 5301.255, 5301.32, 2
5301.33, 5301.331, 5301.34, 5301.35, 5309.51, and 3
5309.75 and to repeal section 5301.234 of the 4
Revised Code to eliminate the requirement that 5
deeds, mortgages, land contracts, leases and 6
memoranda of leases of real property, memoranda of 7
trust, certain powers of attorney, and other 8
recordable instruments and transactions pertaining 9
to real property be signed and attested to in the 10
presence of witnesses. 11

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

Section 1. That sections 1337.01, 1337.06, 1337.10, 5301.01, 12
5301.04, 5301.08, 5301.251, 5301.255, 5301.32, 5301.33, 5301.331, 13
5301.34, 5301.35, 5309.51, and 5309.75 of the Revised Code be 14
amended to read as follows: 15

Sec. 1337.01. A power of attorney for the conveyance, 16
mortgage, or lease of any interest in real property ~~must~~ shall be 17
signed, ~~attested~~, acknowledged, and certified as provided in 18
section 5301.01 of the Revised Code. 19

Sec. 1337.06. A power of attorney for the transfer of 20

personal property or the transaction of business relating ~~thereto~~ 21
to the transfer of personal property, in order to be admitted to 22
record as provided in section 1337.07 of the Revised Code, ~~must~~ 23
shall be signed, ~~witnessed~~, and acknowledged in the same manner as 24
deeds and mortgages under section 5301.01 of the Revised Code. 25
When so executed, acknowledged, and recorded, a copy of the record 26
~~thereof~~, certified by the county recorder, with ~~his~~ the recorder's 27
official seal affixed ~~thereto~~ to it, shall be received in all 28
courts and places within this state as prima-facie evidence of the 29
existence of ~~such~~ that instrument and as conclusive evidence of 30
the existence of ~~such~~ that record. 31

Sec. 1337.10. The county recorder shall charge the same fee 32
for the recording of a power of attorney authorizing the transfer 33
of personal property or the transaction of business relating 34
~~thereto~~ to the transfer of personal property, the indexing ~~thereof~~ 35
of that instrument, and for making a certified copy of the record 36
of ~~such~~ the instrument, ~~as he~~ that the recorder is allowed by 37
section 317.32 of the Revised Code to charge for ~~like~~ similar 38
services in regard to other instruments. 39

In a county in which the county recorder has determined to 40
use the microfilm process as provided by section 9.01 of the 41
Revised Code, the recorder may require that all cancellations, 42
releases, or other actions affecting recorded powers of attorney 43
be by separate instrument, signed, ~~witnessed~~, and acknowledged as 44
provided by section 5301.01 of the Revised Code. The original 45
instrument bearing the proper endorsement may be used as ~~such~~ that 46
separate instrument. Any ~~such~~ cancellations, releases, or other 47
actions described in this section shall be recorded in the books 48
in which the powers of attorney were recorded. The fee for ~~such~~ 49
recordation shall be as set forth in this section. 50

Sec. 5301.01. A deed, mortgage, land contract as referred to 51

in division (B)(2) of section 317.08 of the Revised Code, or lease 52
of any interest in real property and a memorandum of trust as 53
described in division (A) of section 5301.255 of the Revised Code 54
shall be signed by the grantor, mortgagor, vendor, or lessor in 55
the case of a deed, mortgage, land contract, or lease or shall be 56
signed by the settlor and trustee in the case of a memorandum of 57
trust. ~~The signing shall be acknowledged by the grantor,~~ 58
~~mortgagor, vendor, or lessor, or by the settlor and trustee, in~~ 59
~~the presence of two witnesses, who shall attest the signing and~~ 60
~~subscribe their names to the attestation.~~ The signing shall be 61
acknowledged by the grantor, mortgagor, vendor, or lessor, or by 62
the settlor and trustee, before a judge or clerk of a court of 63
record in this state, or a county auditor, county engineer, notary 64
public, or mayor, who shall certify the acknowledgement and 65
subscribe ~~his~~ the official's name to the certificate of the 66
acknowledgement. 67

Sec. 5301.04. A deed, mortgage, or lease of any interest of a 68
married person in real property ~~must~~ shall be signed, ~~attested,~~ 69
acknowledged, and certified as provided in section 5301.01 of the 70
Revised Code. 71

Sec. 5301.08. Sections 5301.01 to 5301.45, ~~inclusive,~~ of the 72
Revised Code do not affect the validity of any lease of lands 73
appropriated by congress for the support of schools or for 74
ministerial purposes for any term not exceeding ten years or of 75
any other lands for any term not exceeding three years or require 76
~~such~~ that lease to be ~~attested,~~ acknowledged, or recorded. 77

Sec. 5301.251. In lieu of the recording of a lease, there may 78
be recorded a memorandum of ~~such~~ that lease, executed, ~~attested,~~ 79
and acknowledged in accordance with section 5301.01 of the Revised 80
Code ~~which.~~ The memorandum of lease shall contain the names of the 81

lessor and the lessee and their addresses as set forth in ~~said the~~ 82
lease, a reference to ~~such the~~ lease with its date of execution, a 83
description of the leased premises with such certainty as to 84
identify the property, including the reference provided for in 85
section 5301.011 of the Revised Code, ~~and~~ the term of the lease, 86
together with any rights of renewal or extension ~~thereof of the~~ 87
lease, and the date of commencement of the term or the manner of 88
determining the ~~same~~ commencement of the term as set forth in ~~such~~ 89
the lease. 90

A memorandum of lease ~~thus that is~~ entitled to be so recorded 91
~~may~~ also may set forth any other provisions contained in the 92
lease, or the substance ~~thereof~~ of those provisions, and shall be 93
constructive notice of only that information contained in ~~such the~~ 94
memorandum. 95

Sections 317.08, 5301.251, and 5301.33 of the Revised Code 96
shall not be construed to affect the ~~enforcibility~~ enforceability, 97
validity, or legal effect of instruments recorded in ~~said those~~ 98
lease records prior to August 9, 1963. 99

Sec. 5301.255. (A) A memorandum of trust that satisfies both 100
of the following may be presented for recordation in the office of 101
the county recorder of any county in which real property that is 102
subject to the trust is located: 103

(1) The memorandum shall be executed by the settlor and 104
trustee of the trust, ~~attested by witnesses~~, and acknowledged by 105
the settlor and trustee of the trust in accordance with section 106
5301.01 of the Revised Code. 107

(2) The memorandum shall state all of the following: 108

(a) The names and addresses of the settlor and trustee of the 109
trust; 110

(b) The date of execution of the trust; 111

(c) The powers specified in the trust relative to the 112
acquisition, sale, or encumbering of real property by the trustee 113
or the conveyance of real property by the trustee, and any 114
restrictions upon those powers. 115

(B) A memorandum of trust that satisfies divisions (A)(1) and 116
(2) of this section also may set forth the substance or actual 117
text of provisions of the trust that are not described in those 118
divisions. 119

(C) A memorandum of trust that satisfies divisions (A)(1) and 120
(2) of this section shall constitute notice only of the 121
information contained in it. 122

(D) Upon the presentation for recordation of a memorandum of 123
trust that satisfies divisions (A)(1) and (2) of this section and 124
the payment of the requisite fee prescribed in section 317.32 of 125
the Revised Code, a county recorder shall record the memorandum of 126
trust as follows: 127

(1) Unless division (D)(2) of this section applies, in the 128
record of deeds described in division (A) of section 317.08 of the 129
Revised Code, if the memorandum of trust describes specific real 130
property, or in the record of powers of attorney described in 131
division (C) of that section, if the memorandum of trust does not 132
describe specific real property; 133

(2) If the county recorder records instruments in accordance 134
with division (F) of section 317.08 of the Revised Code, in the 135
official records described in that division. 136

Sec. 5301.32. A mortgage may be assigned or partially 137
released by a separate instrument of assignment or partial 138
release, acknowledged ~~and witnessed~~ as provided by section 5301.01 139
of the Revised Code. The separate instrument of assignment or 140
partial release shall be recorded in the book provided by section 141

5301.34 of the Revised Code for the recording of satisfactions of mortgages, ~~and the~~. The county recorder shall be entitled to charge the fee for that recording as provided by section 317.32 of the Revised Code for recording deeds. The signature of a person on the assignment or partial release may be a facsimile of that person's signature. A facsimile of a signature on an assignment or partial release is equivalent to and constitutes the written signature of the person for all requirements regarding mortgage assignments or partial releases.

In a county in which the recorder has determined to use the microfilm process as provided by section 9.01 of the Revised Code, the recorder may require that all assignments and partial releases of mortgages be by separate instruments. The original instrument bearing the proper endorsement may be used as the separate instrument.

An assignment of a mortgage shall contain the then current mailing address of the assignee.

Sec. 5301.33. Except in counties where deeds or other separate instruments are required as provided in this section, a lease, whether or not renewable forever, ~~which~~ that is recorded in any county recorder's office, may be canceled or partially released by the lessor and lessee, or assigned by either of them, by writing ~~such~~ the cancellation, partial release, or assignment on the original lease, or upon the margin of the record ~~thereof~~ of the original lease, and by signing it. ~~Such~~ That cancellation, partial release, or assignment need not be ~~witnessed or~~ acknowledged, but if written on the margin of the record, the signing ~~thereof must~~ shall be attested to by the recorder. ~~Such~~ The assignment by the lessee, whether it is upon the lease, or upon the margin of the record ~~thereof~~ of the lease, or by separate instrument, shall transfer all interest held by the lessee under the lease in the premises described ~~therein~~ in the lease, unless

otherwise stated in the lease or in the assignment. For copying 174
~~such the~~ cancellation, partial release, or assignment upon the 175
margin of the record, if written upon the original instrument, or 176
for attesting it, if written upon the margin of the record, the 177
recorder shall charge the fee provided by section 317.32 of the 178
Revised Code for recording the assignment and satisfaction of 179
mortgages. 180

A lease, whether or not renewable forever, ~~which that~~ is 181
recorded in any county recorder's office, ~~may~~ also may be 182
canceled, partially released, or assigned by deed or by other 183
separate instrument acknowledged ~~and witnessed~~ as provided in 184
section 5301.01 of the Revised Code. Unless in the form of a deed, 185
a separate instrument of cancellation, partial release, or 186
assignment shall be recorded in the record of leases provided for 187
by section 317.08 of the Revised Code ~~and the~~. The recorder shall 188
charge the fee for ~~such that~~ recording as provided in section 189
317.32 of the Revised Code for recording deeds. 190

~~When~~ If a lease has been canceled, partially released, or 191
assigned by deed or by other separate instrument and ~~such that~~ 192
deed or other separate instrument recites the recorder's file 193
number of the original lease or the volume and page of the record 194
~~wherein in which~~ the original lease is recorded, the recorder 195
shall note on the margin of the record of the original lease the 196
recorder's file number of ~~such the~~ deed or other separate 197
instrument or the volume and page of the record ~~wherein in which~~ 198
the same is recorded. 199

"Lessor" and "lessee" as used in this section include an 200
assignee of the interest of either. "Lease" as used in this 201
section includes a memorandum of lease provided for by section 202
5301.251 of the Revised Code. This section does not permit the 203
assignment of any lease ~~whose if the~~ assignment is prohibited by 204
the terms ~~thereof~~ of the lease. 205

In a county in which the county recorder has determined to use the microfilm process as provided by section 9.01 of the Revised Code, the recorder may require that all cancellations, partial releases, and assignments of leases be by deed or other separate instrument. The original instrument bearing the proper endorsement may be used as such separate instrument.

Sec. 5301.331. Except in counties where deeds or other instruments are required as provided in this section, a land contract ~~which~~ that is recorded in the office of the county recorder may be cancelled, partially released by the vendor and vendee, or assigned by either of them by writing ~~such~~ the cancellation, partial release, or assignment on the original land contract or upon the margin of the record ~~thereof~~ of the original land contract, and by signing it. ~~Such~~ That cancellation, partial release, or assignment need not be ~~witnessed~~ or acknowledged, but if written on the margin of the record, the signing ~~thereof~~ must shall be attested to by the county recorder. ~~Such~~ The assignment by the vendee, whether it is on the land contract or upon the margin of the record ~~thereof~~ of that contract, or by separate instrument, shall transfer the right held by the vendee under the land contract in the premises described ~~therein~~ in the contract unless otherwise stated in the land contract or in the assignment. For copying ~~such~~ the cancellation, partial release, or assignment upon the margin of the record, or for attesting it, if written upon the margin of the record, the recorder shall charge the fee provided by section 317.32 of the Revised Code for recording the assignment and satisfaction of mortgages.

A land contract ~~which~~ that is recorded in the office of the county recorder may also be cancelled, partially released, or assigned by deed or by other separate instrument, acknowledged ~~and~~ witnessed as provided in section 5301.01 of the Revised Code. Unless in the form of a deed, a separate instrument of

cancellation, partial release, or assignment shall be recorded in 238
the book provided by section 5301.34 of the Revised Code for 239
recording satisfactions of mortgages, ~~and the~~. The recorder shall 240
charge the fee for ~~such that~~ record as provided for in section 241
317.32 of the Revised Code for record fees. 242

~~When~~ If a land contract has been cancelled, partially 243
released, or assigned by deed or other separate instrument, and 244
~~such that~~ deed or other separate instrument recites the recorder's 245
file number of the original land contract or the volume and page 246
of the record ~~wherein~~ in which the original land contract is 247
recorded, the recorder shall note on the margin of the original 248
land contract the recorder's file number of ~~such the~~ deed or other 249
separate instrument or the volume and page of the record ~~wherein~~ 250
in which the same is recorded. 251

"Vendor" and "Vendee" as used in this section include an 252
assignee of the interest of either. This section does not permit 253
the assignment of any land contract ~~whose~~ if the assignment is 254
prohibited by the terms ~~thereof~~ of the land contract. 255

In a county where the county recorder has determined to use 256
the microfilm process as provided by section 9.01 of the Revised 257
Code, the recorder may require that all cancellations, partial 258
releases, and assignments of land contracts be by deed or other 259
separate instrument. The original instrument bearing the proper 260
endorsement may be used as such separate instrument. 261

Sec. 5301.34. A mortgage ~~must~~ shall be discharged upon the 262
record ~~thereof~~ of the mortgage by the county recorder when there 263
is presented to ~~him~~ the county recorder a certificate executed by 264
the mortgagee or ~~his~~ the mortgagee's assigns, acknowledged ~~and~~ 265
~~witnessed~~ as provided in section 5301.01 of the Revised Code, or 266
when there is presented to ~~him~~ the recorder a deed of release 267
executed by the governor as provided in section 5301.19 of the 268

Revised Code, certifying that the mortgage has been fully paid and 269
satisfied. In addition to the discharge on the records by the 270
recorder, such certificate shall be recorded in a book kept for 271
that purpose by the recorder. ~~Such~~ The recorder is entitled to the 272
fees for such recording as provided by section 317.32 of the 273
Revised Code for recording deeds. 274

Sec. 5301.35. The priority of the lien of a mortgage may be 275
waived to the extent specified by the holder ~~thereof~~ of the lien 276
in favor of any lien, mortgage, lease, easement, or other interest 277
in the property covered by the mortgage, by writing ~~such~~ the 278
waiver of priority on the original mortgage and signing it, by 279
writing ~~such~~ the waiver of priority upon the margin of the record 280
of ~~said~~ that mortgage and signing it, or by a separate instrument 281
acknowledged ~~and witnessed~~ as provided by section 5301.01 of the 282
Revised Code. ~~Such~~ That waiver, when recorded upon the margin of 283
the record of ~~such~~ the mortgage, or when recorded as a separate 284
instrument, is constructive notice to all persons dealing with 285
either the property described in ~~said~~ that mortgage or the 286
mortgage itself from the date of filing ~~said~~ the waiver for 287
record. ~~Such~~ The waiver, if written upon ~~said~~ the mortgage or upon 288
the margin of the record ~~thereof~~ of the mortgage, need not be 289
acknowledged ~~or witnessed~~, but if written upon the margin of the 290
record, the signing ~~must~~ shall be attested by the county recorder. 291

If ~~said~~ the waiver of priority is by separate instrument, it 292
shall be recorded in the book provided by section 5301.34 of the 293
Revised Code for the recording of satisfactions of mortgages. For 294
~~such~~ the recording, the county recorder may charge the fee as 295
provided by section 317.32 of the Revised Code for recording 296
deeds. For entering any ~~such~~ waiver of priority upon the margin of 297
the record of ~~said~~ the mortgage, or for attesting it, the recorder 298
is entitled to the fees for recording ~~such~~ those waivers of 299
priority ~~as~~ that are charged for assignments or satisfactions of 300

mortgages under section 317.32 of the Revised Code. 301

In a county in which the county recorder has determined to 302
use the microfilm process as provided by section 9.01 of the 303
Revised Code, the recorder may require that all waivers of 304
priority of mortgages be made by separate instrument. The original 305
instrument bearing the proper ~~indorsement~~ endorsement may be used 306
as such separate instrument. 307

Sec. 5309.51. The holder of any mortgage, encumbrance, lease, 308
charge, or lien upon registered land may execute to a transferee 309
an assignment for the whole or any part ~~thereof of the mortgage,~~ 310
encumbrance, lease, charge, or lien, by ~~indorsement~~ endorsement of 311
~~such the~~ assignment on the original instrument of encumbrance, the 312
holder's duplicate, the mortgagee's certified copy of a mortgage, 313
or by a separate instrument ~~witnessed and~~ acknowledged as required 314
by section 5301.01 of the Revised Code. The assignment of only a 315
part ~~only must~~ of the mortgage, encumbrance, lease, charge, or 316
lien shall state whether the part transferred is to be given 317
priority, be deferred, or rank equally with the remaining part. 318
When ~~such that~~ assignment is filed with the county recorder and 319
the assignor produces the instrument of encumbrance ~~which he that~~ 320
the assignor holds, if ~~such that~~ instrument is the original 321
instrument or one of the original duplicates ~~thereof of the~~ 322
instrument, and in the case of a mortgage when the assignor 323
produces the "mortgagee's certified copy," if ~~such that~~ copy was 324
issued and delivered, the recorder, being satisfied that the 325
assignment is properly made and should be registered, shall 326
register ~~such the~~ assignment by entering a memorial of the part 327
transferred, the date of transfer, the name, residence, and 328
post-office address of the transferee, how ~~such the~~ part 329
transferred is to rank with the remaining part, and the file 330
number upon the register ~~where such in which the~~ instrument 331
creating the charge is registered, and in case of assignment by 332

separate instrument, upon the original instrument. ~~On the~~ 333
~~instrument of assignment the~~ The recorder shall indorse ~~endorse on~~ 334
the instrument of assignment the exact time of filing and the 335
volume and folium of the register ~~where~~ in which the assignment is 336
registered. If the original instrument of encumbrance, or one of 337
the duplicates ~~thereof of the instrument~~, is recorded, the 338
assignee ~~may~~, on payment of the recorder's fees ~~therefor~~, may have 339
~~such that~~ assignment copied on the margin of the record of the 340
instrument assigned, or copied in a separate volume and noted on 341
the margin of the record of the instrument assigned, if the 342
recorder keeps any such separate volume for the record of 343
assignments and ~~transfer, the~~ transfers. ~~The~~ record of ~~such that~~ 344
assignment ~~to~~ shall be noted on the indexes of the instrument 345
assigned. If the original instrument of encumbrance or one of the 346
original duplicates ~~thereof of the instrument~~, ~~indorsed~~ endorsed 347
by the recorder, or a mortgagee's certified copy of the mortgage, 348
is outstanding in the hands of the encumbrancer, lessee, or their 349
assigns, no entry or memorial of an assignment or transfer of ~~such~~ 350
~~that~~ instrument or security of any part ~~thereof of the instrument~~ 351
shall be made by the recorder without the production of ~~such the~~ 352
original instrument, or the ~~indorsed~~ endorsed original duplicate 353
~~thereof of the instrument~~, or the mortgagee's certified copy. 354

Waivers of the priority of lien of mortgages may be 355
registered subject to the requirements of this section as to 356
assignments. 357

Sec. 5309.75. The deed or instrument constituting a person an 358
attorney in fact shall contain: 359

(A) The full name of the party appointing, and of the person 360
appointed, and the residence and post-office address of each; 361

(B) The number of the outstanding certificate of title, and 362
the volume and folium of the register; 363

(C) A description of the land, ~~which~~ that shall be the same 364
as given in the certificate of title; 365

(D) A brief statement of the powers conferred upon the 366
attorney in fact. 367

~~Such~~ That deed or instrument shall be signed by the person 368
making it ~~and witnessed~~ and acknowledged as provided in section 369
5301.01 of the Revised Code. 370

Section 2. That existing sections 1337.01, 1337.06, 1337.10, 371
5301.01, 5301.04, 5301.08, 5301.251, 5301.255, 5301.32, 5301.33, 372
5301.331, 5301.34, 5301.35, 5309.51, and 5309.75 and section 373
5301.234 of the Revised Code are hereby repealed. 374