

As Reported by the Senate Judiciary--Civil Justice Committee

**127th General Assembly
Regular Session
2007-2008**

S. B. No. 134

Senator Faber

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A BILL

To amend sections 5301.01 and 5301.255 of the Revised Code to provide that memoranda of trust be executed and acknowledged only by the trustee of the trust instead of both the settlor and trustee.

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

Section 1. That sections 5301.01 and 5301.255 of the Revised Code be amended to read as follows:

Sec. 5301.01. (A) A deed, mortgage, land contract as referred to in division (A)(2)(b) of section 317.08 of the Revised Code, or lease of any interest in real property and a memorandum of trust as described in division (A) of section 5301.255 of the Revised Code shall be signed by the grantor, mortgagor, vendor, or lessor in the case of a deed, mortgage, land contract, or lease or shall be signed by the ~~settlor and~~ trustee in the case of a memorandum of trust. The signing shall be acknowledged by the grantor, mortgagor, vendor, or lessor, or by the ~~settlor and~~ trustee, before a judge or clerk of a court of record in this state, or a county auditor, county engineer, notary public, or mayor, who shall certify the acknowledgement and subscribe the official's name to the certificate of the acknowledgement.

(B)(1) If a deed, mortgage, land contract as referred to in

division (A)(2)(b) of section 317.08 of the Revised Code, lease of 21
any interest in real property, or a memorandum of trust as 22
described in division (A) of section 5301.255 of the Revised Code 23
was executed prior to February 1, 2002, and was not acknowledged 24
in the presence of, or was not attested by, two witnesses as 25
required by this section prior to that date, both of the following 26
apply: 27

(a) The instrument is deemed properly executed and is 28
presumed to be valid unless the signature of the grantor, 29
mortgagor, vendor, or lessor in the case of a deed, mortgage, land 30
contract, or lease or of the settlor and trustee in the case of a 31
memorandum of trust was obtained by fraud. 32

(b) The recording of the instrument in the office of the 33
county recorder of the county in which the subject property is 34
situated is constructive notice of the instrument to all persons, 35
including without limitation, a subsequent purchaser in good faith 36
or any other subsequent holder of an interest in the property, 37
regardless of whether the instrument was recorded prior to, on, or 38
after February 1, 2002. 39

(2) Division (B)(1) of this section does not affect any 40
accrued substantive rights or vested rights that came into 41
existence prior to February 1, 2002. 42

Sec. 5301.255. (A) A memorandum of trust that satisfies both 43
of the following may be presented for recordation in the office of 44
the county recorder of any county in which real property that is 45
subject to the trust is located: 46

(1) The memorandum shall be executed by the ~~settlor and~~ 47
trustee of the trust and acknowledged by the ~~settlor and~~ trustee 48
of the trust in accordance with section 5301.01 of the Revised 49
Code. 50

(2) The memorandum shall state all of the following:	51
(a) The names <u>name</u> and addresses <u>address</u> of the settlor and trustee of the trust;	52 53
(b) The date of execution of the trust;	54
(c) The powers specified in the trust relative to the acquisition, sale, or encumbering of real property by the trustee or the conveyance of real property by the trustee, and any restrictions upon those powers.	55 56 57 58
(B) A memorandum of trust that satisfies divisions (A)(1) and (2) of this section also may set forth the substance or actual text of provisions of the trust that are not described in those divisions.	59 60 61 62
(C) A memorandum of trust that satisfies divisions (A)(1) and (2) of this section shall constitute notice only of the information contained in it.	63 64 65
(D) Upon the presentation for recordation of a memorandum of trust that satisfies divisions (A)(1) and (2) of this section and the payment of the requisite fee prescribed in section 317.32 of the Revised Code, a county recorder shall record the memorandum of trust as follows:	66 67 68 69 70
(1) Unless division (D)(2) of this section applies, in the record of deeds described in division (A)(1) of section 317.08 of the Revised Code, if the memorandum of trust describes specific real property, or in the record of powers of attorney described in division (A)(3) of that section, if the memorandum of trust does not describe specific real property;	71 72 73 74 75 76
(2) If the county recorder records instruments in accordance with division (C) of section 317.08 of the Revised Code, in the official records described in that division.	77 78 79
Section 2. That existing sections 5301.01 and 5301.255 of the	80

Revised Code are hereby repealed.

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