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Client Bulletin



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Major Amendment to Ohio's "Curative Statute" for Recorded Real Property Instruments

Amended Substitute Senate Bill 257, which becomes effective April 6, 2017, makes major changes to Ohio's curative statute for instruments recorded in the county recorder's office.

Among those changes:

- to make the statute applicable to any "real property instrument" (defined as a deed, mortgage, installment land contract, lease, memorandum of trust, power of attorney or any instrument accepted by a county recorder per ORC § 317.08)
- creates, upon recording, a rebuttable presumption that the instrument is valid, enforceable and effective in all respects
- provides that an instrument's validity cannot be challenged after it has been recorded for four years (the prior statute required 21 years, the long period, by 11 years, of any state)
- greatly expands, from the prior very limited three types of defects, the defects that are deemed cured, and not subject to challenge, after the instrument has been recorded for four years, to include, but not be limited to, lack of witnesses (where required by the applicable statute), lack of a certificate of acknowledgment, a defective certificate of acknowledgment, or the name of the person with the interest in the real property not appearing in the granting clause but the person signed the instrument without limitation/condition
- creates constructive notice to third parties, notwithstanding defects, immediately upon recording.

Major Amendment to Ohio's "Good Funds Law" for Residential Real Estate Closings

In 1996, Ohio enacted a "Good Funds Law" defining the type of funds that could be accepted by a closing agent in a residential real estate transaction. At the behest of the Ohio Land Title Association, the "Good Funds Law" was amended to address problems with fraudulent checks, including money orders and certified checks brought to closings by buyers.

Effective April 6, 2017, only the following constitute "good funds," which a closing agent may accept for a residential real estate closing conducted in Ohio:

- wire transfers via the real time gross settlement system provided by Federal Reserve banks
- checks drawn on a real estate brokerage's trust account
- government checks or electronic transfers by governmental bodies via the automated clearing house (ACH) system
- cash, personal or business checks, certified checks, money orders or official bank checks drawn on an existing account at a federally insured financial institution **THAT DO NOT, IN THE AGGREGATE, EXCEED \$1,000.**

The net effect of the changes is that in residential real estate closings, the buyer, or a seller who has to bring money in excess of \$1,000 to the closing, is going to have to use a wire transfer to the closing agent of the funds needed to close.

The "Good Funds Law" does not apply to commercial closings, so it is up to the closing agent to determine the type of funds acceptable.

Root Canals, IRS audits, Surgeries, and Probate

I don't know about you, but I do not know of anyone who has ever described any of the procedures in the title to this article as pleasurable. While there is probably no absolute way to avoid a root canal, an IRS audit, or a surgery, there are ways to keep some, if not all, of our assets from going through a probate administration.

Real Estate (Your Home): Having your home titled in the names of both you and your spouse may not ensure that the home will avoid probate upon the first to die. Let's assume for the sake of discussion that Dick and Jane Jones sell their home to William and Mary Smith. The deed might read "From Dick and Jane Jones to William and Mary Smith" or it might read "From Dick and Jane Jones to William and Mary Smith for their joint lives, remainder to the survivor." The phrase "for their joint lives, remainder to the survivor" (the "survivorship language") is the wording that allows for the home to avoid probate. If you discover that your deed does not have the survivorship language, the change can be made very simply by executing a deed transferring the home from yourselves to yourselves for your joint lives with rights of survivorship. There is no real estate transfer tax for this transfer and it can be accomplished rather simply and inexpensively.

Now, what if you are a widow or widower and you want to make sure your home avoids probate upon your death. This can be done by completing a transfer on death designation affidavit designating the beneficiaries of your home upon your death. Once again, this is a simple and inexpensive procedure.

Bank Accounts: Many married couples have bank accounts held as joint tenants with rights of survivorship (JROS), which means the survivor receives the money free of probate. While this is typically fine for most married couples, it can create potential problems if the joint accounts is held by two unmarried individuals and one of the individuals contributed everything to the account. For example, a widow may decide to open a JROS account with her son so that the son can inherit, free of probate, the amount in the account upon her death. Of course, the son will have access to the account during both of their lifetimes and should the son run into financial difficulty and have judgments issued against him, his creditors may try to attach the account. The way to avoid those risks is to open an individual account and specifically name as beneficiaries of the account those you wish to receive the proceeds upon your death. This is called a payable on death designation (POD). It essentially works just like a life insurance policy where there are named beneficiaries and also avoid probate.

Columbus CEO's 2017 Top Lawyers

For the ninth year, Columbus CEO published a list of central Ohio's best attorneys, those peer review rated by Martindale-Hubbell® as "AV Preeminent." Also for the ninth year, the list of "Top Lawyers" included Denny Pegram and Steve Martin. The list included only seven lawyers still actively practicing law with a practice address of "Delaware, Ohio 43015," and of those seven, only Denny and Steve are practicing in the same law firm.

Notice

This bulletin provides general information and is not legal advice. Please contact us if you need legal advice.

If you have friends or associates who you think would enjoy receiving a copy of this Client Bulletin, please feel free to forward it on. Thank you.

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