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2001



SENATE BILL 01-040

BY SENATOR(S) Matsunaka, Dyer (Arapahoe), and Nichol;
also REPRESENTATIVE(S) Smith and Webster.

CONCERNING NOTICE REQUIREMENTS FOR PERSONS HOLDING TITLE TO
PROPERTY IN A REPRESENTATIVE CAPACITY.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 38-30-108, Colorado Revised Statutes, is amended to read:

38-30-108. Conveyances to grantee in a representative capacity.

(1) ~~All instruments~~ AN INSTRUMENT conveying AN INTEREST IN real estate, or interests therein PROPERTY, in which the grantee is described as trustee, agent, conservator, executor, administrator, or attorney-in-fact, PERSONAL REPRESENTATIVE, NOMINEE, CUSTODIAN, or A PERSON ACTING in any other representative capacity, ~~said instruments shall also name the beneficiary~~ DESCRIBE THE REPRESENTATIVE CAPACITY OF SUCH GRANTEE BY ONE OF MORE OF THE FOLLOWING MEANS:

- (a) NAMING THE PERSON so represented; ~~and define~~
- (b) IDENTIFYING THE STATUTE, the trust or other agreement, OR THE

COURT APPOINTMENT under which the grantee is acting; or refer

(c) REFERRING, by proper description to book, page, document number, or file to an instrument, order, decree, or other writing ~~which CONTAINING ANY SUCH DESCRIPTION OF THE REPRESENTATIVE CAPACITY OF THE GRANTEE THAT is of public record~~ RECORDED WITH THE COUNTY CLERK AND RECORDER in the county ~~in which~~ WHERE the ~~land so conveyed~~ REAL PROPERTY is located. ~~in which such matters appear; otherwise~~

(2) IF THE REPRESENTATIVE CAPACITY OF THE GRANTEE IS NOT DESCRIBED AS PROVIDED IN SUBSECTION (1) OF THIS SECTION, the description of a grantee in any such representative capacity in such ~~instruments~~ INSTRUMENT of conveyance shall be ~~considered and held~~ PRESUMED TO BE a description of the person only and shall not be notice of a ~~trust or other~~ THE representative capacity of such grantee.

(3) AFTER THE RECORDING OF AN INSTRUMENT CONVEYING AN INTEREST IN REAL PROPERTY IN WHICH THE GRANTEE IS DESCRIBED AS ACTING IN A REPRESENTATIVE CAPACITY, BUT IN WHICH THE DESCRIPTION OF THE GRANTEE DOES NOT COMPLY WITH SUBSECTION (1) OF THIS SECTION, AND REGARDLESS OF WHETHER SUCH INSTRUMENT OF CONVEYANCE WAS RECORDED PRIOR TO OR AFTER THE EFFECTIVE DATE OF THIS ACT, AN AFFIDAVIT THAT HAS BEEN EXECUTED BY OR ON BEHALF OF SUCH GRANTEE, WHICH REFERS BY PROPER DESCRIPTION BY BOOK, PAGE, DOCUMENT NUMBER, OR FILE TO THE RECORDING INFORMATION OF SUCH INSTRUMENT OF CONVEYANCE AND THAT CONTAINS ONE OF THE DESCRIPTIONS OF THE REPRESENTATIVE CAPACITY OF SUCH GRANTEE DESCRIBED IN SUBSECTION (1) OF THIS SECTION, MAY BE RECORDED WITH THE COUNTY CLERK AND RECORDER OF THE COUNTY WHERE THE REAL PROPERTY IS LOCATED. UPON THE RECORDING OF SUCH AFFIDAVIT, ALL PERSONS SHALL THEREAFTER HAVE NOTICE OF THE REPRESENTATIVE CAPACITY OF SUCH GRANTEE WITH RESPECT TO THE INTEREST IN REAL PROPERTY SO CONVEYED.

SECTION 2. Article 30 of title 38, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

38-30-108.5. Conveyances to trusts - ownership and transfer of property. (1) A TRUST MAY ACQUIRE, CONVEY, ENCUMBER, LEASE, OR OTHERWISE DEAL WITH ANY INTEREST IN REAL OR PERSONAL PROPERTY IN THE NAME OF THE TRUST.

(2) IN ORDER TO EVIDENCE THE EXISTENCE OF A TRUST AND THE AUTHORITY OF ONE OR MORE TRUSTEES TO ACT ON BEHALF OF THE TRUST WITH RESPECT TO AN INTEREST IN REAL PROPERTY HELD IN THE NAME OF THE TRUST, ANY TRUSTEE OF THE TRUST MAY EXECUTE AND RECORD WITH THE COUNTY CLERK AND RECORDER OF THE COUNTY IN WHICH THE REAL PROPERTY IS LOCATED, A STATEMENT OF AUTHORITY PURSUANT TO SECTION 38-30-172 (2).

(3) THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION SHALL ALSO APPLY TO ANY INTEREST IN REAL OR PERSONAL PROPERTY THAT IS ALREADY IN THE NAME OF THE TRUST AS OF THE EFFECTIVE DATE OF THIS ACT. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO BE THE EXCLUSIVE MANNER IN WHICH TITLE TO AN INTEREST IN REAL OR PERSONAL PROPERTY MAY BE HELD BY OR ON BEHALF OF A TRUST, AND TITLE TO AN INTEREST IN REAL OR PERSONAL PROPERTY MAY BE HELD BY OR ON BEHALF OF A TRUST IN ANY OTHER MANNER PERMITTED BY LAW.

SECTION 3. Repeal. 38-30-109, Colorado Revised Statutes, is repealed as follows:

38-30-109. Existing conveyances not notice of beneficiary unless statement filed in five years. ~~After March 16, 1926, all such instruments of conveyance to lands, or interests therein, within the state of Colorado, naming a grantee in such representative capacity and failing to name the beneficiary and defining the trust or other agreement under which the grantee takes title, which has been executed prior to March 16, 1921, shall cease to be notice of such trust or representative capacity of such grantee and shall be considered and held to be a description of the person of the grantee only. This shall not apply if such grantee, or the beneficiary or other interested person, within five years after March 16, 1921, filed for record in the county in which such land is situated, so that such record appears in the chain of title to such land, a statement duly verified setting forth the name of such beneficiary and defining the terms of the trust or other agreement establishing such representative relationship or referring by proper description to an instrument of public record in such county in which such matters shall appear.~~

SECTION 4. 38-30-166 (1), (2), (3), and (6), Colorado Revised Statutes, are amended to read:

38-30-166. Joint ventures - ownership and transfer of property.

(1) Upon compliance with the provisions of subsection (2) of this section, a ~~trust or~~ joint venture may acquire, convey, encumber, lease, ~~and~~ OR otherwise deal with any interest in property in the name of the ~~trust or~~ joint venture set forth in the affidavit required by subsection (2) of this section AND MAY DO SO REGARDLESS OF WHETHER THE AFFIDAVIT IS RECORDED BEFORE OR AFTER THE CONVEYANCE TO THE JOINT VENTURE IS RECORDED. THE PROVISIONS OF THIS SUBSECTION (1) SHALL APPLY TO ANY INTEREST IN PROPERTY ACQUIRED IN THE NAME OF A JOINT VENTURE EITHER BEFORE OR AFTER THE EFFECTIVE DATE OF THIS ACT.

(2) (a) Any ~~trustee of a trust or~~ member of a joint venture may record with the county clerk and recorder of the county in which the interest in property is located an affidavit setting forth the following:

(I) A statement that the affidavit relates to a ~~trust or~~ joint venture; ~~as the case may be;~~

(II) The name of the ~~trust or~~ joint venture; and

(III) The names and addresses of ~~all the trustees of the trust or~~ all of the joint venturers of the joint venture.

(b) The affidavit may set forth a statement that fewer than all of the ~~trustees or~~ joint venturers are authorized to act on behalf of the ~~trust or~~ joint venture in any acquisition, conveyance, encumbrance, lease, or other dealing with an interest in property in the name of the ~~trust or~~ joint venture. If such a statement is included, the affidavit:

(I) Shall designate the ~~trustees or~~ joint venturers or the manner of designating the ~~trustees or~~ joint venturers so authorized;

(II) May express such limitations upon the authority of such ~~trustees or~~ joint venturers as may exist; AND

(III) Shall be executed by ~~all of the trustees or~~ all of the joint venturers named in the affidavit as set forth in paragraph (a) of this subsection (2).

(c) If the affidavit does not contain a statement as set forth in paragraph (b) of this subsection (2), the affidavit shall be executed by at

least one ~~trustee or~~ joint venturer named in the affidavit.

(d) Upon recording, the affidavit shall constitute prima facie evidence of the facts recited therein, the authority of the affiant to execute and record the affidavit, and the authority of the ~~trustees or~~ joint venturers who are thereby empowered to convey or otherwise act on behalf of the ~~trust or~~ joint venture, insofar as the same affect title to any interest in property.

(3) This subsection (3) shall apply only to a ~~trust or~~ joint venture that has recorded an affidavit pursuant to subsection (2) of this section. Where an interest in property is held in the name of a ~~trust or~~ joint venture, such interest shall only be conveyed, encumbered, leased, ~~and~~ OR otherwise dealt with in the name of such ~~trust or~~ joint venture by an instrument executed by ~~all of the trustees or~~ all of the joint venturers named in the affidavit; except that, if the affidavit sets forth a statement as provided for in paragraph (b) of subsection (2) of this section, the ~~trustees or~~ joint venturers designated in such statement or designated in the manner provided in such statement may act in accordance with the statement with respect to such interest in property.

(6) ~~The trustees named in an affidavit may, at any time before July 1, 1993, acquire, convey, encumber, lease, or otherwise deal with any interest in property pursuant to subsections (1) and (3) of this section, as said subsections existed prior to May 14, 1992, if such affidavit:~~

~~(a) Is subscribed and sworn to before July 1, 1992, by one or more trustees of a trust;~~

~~(b) Is recorded before July 1, 1993, pursuant to and in compliance with subsection (2) of this section as it existed prior to May 14, 1992; and~~

~~(c) Does not expressly provide that it is governed by the provisions of this section, as amended.~~

SECTION 5. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Stan Matsunaka
PRESIDENT OF
THE SENATE

Doug Dean
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

Judith Rodrigue
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

Bill Owens
GOVERNOR OF THE STATE OF COLORADO