

COMMENTS OF THE DISTRICT OF COLUMBIA BAR'S DIVISION 15
(REAL ESTATE, HOUSING AND LAND USE) ON BILL NO 6-310,
THE REAL PROPERTY CONVEYANCING REVISION ACT

Division 15 of the District of Columbia Bar comprises attorneys concerned with the law of real estate, housing and land use. The Division encourages the District of Columbia Council to adopt the Real Property Conveyancing Revision Act. The views we express represent only those of Division 15 (Real Estate, Housing and Land Use) and not those of the District of Columbia Bar or its Board of Govenors.

The Act would repeal antiquated provisions of the District of Columbia Code that serve no useful purpose. The Act would also adopt new laws to facilitate and simplify real estate conveyancing. In the Division's view, the Act is long overdue.

One focus of the Act is to modernize the law of acknowledgements. The Act would retain the essential principle that a deed may not be recorded unless it is first acknowledged before a notary public or other designated officer. This requirement provides assurance that a recorded deed is genuine. However, the Act would revise existing provisions of the D.C. Code that require acknowledgments to contain outdated and unrealistic language. The Act would also cure recorded deeds that are technically defective because of an improper form of acknowledgement.

Other provisions of the Act would allow deeds to be executed pursuant to a recorded power of attorney and would permit a personal representative of an estate to convey property, if authorized by the decedent's will, without going through the expensive process of obtaining a court order.

We expect that the Act will be non-controversial. The Act would not impair the substantive rights of any party, but it would remove technical anachronisms that make real estate transactions unduly complex and expensive. Equally important, the Act would help many property owners in the District of Columbia by clearing clouds on title that have been caused by technical violations of the District's outdated acknowledgment laws.

We would like to address briefly the main titles of the Act.

Title I would allow a property owner to record a power of attorney authorizing another person to deed real estate on his behalf. This practice is permitted in Maryland, Virginia, and most other States, but is prohibited by statute in the District of Columbia. We think that District of Columbia citizens should be allowed to act through a power of attorney in real estate transactions, just as they may in other transactions. To assure that such power of attorney would be genuine, the Act would require the power of attorney to be in writing and to be

acknowledged and recorded in the same manner as a deed. The requirement that a power of attorney be recorded is also necessary to enable title searchers to develop a complete chain of title for real estate that has been deeded by power of attorney.

Title II of the Bill would repeal the unnecessary requirement -- found only in the District of Columbia -- that a deed by a corporation must be acknowledged by an attorney-in-fact named in the deed. We have discussed this topic with many District of Columbia real estate lawyers, and none could think of any justification for the requirement. The existing law serves only to embarrass attorneys and corporations that are unfamiliar with the fine points of the 1901 statute regarding acknowledgements. The proposed revisions are entirely in order.

Title III would remove common law restrictions on conveyances in which the grantor is also a grantee. These restrictions serve no useful purpose. The new statute allows property owners to have real estate titled in the form of ownership they desire without using straw deeds.

Title IV would permit a decedent's personal representative to convey real property without a court order if: (i) the will authorizes such action and waives bond; or (ii) all interested parties agree in writing to the conveyance and waive bond. The

Law Revision Commission states that this clarifies the intent of the District of Columbia Probate Code.

We agree in principle to the proposed clarification, but have reservations concerning the second circumstance in which such a conveyance would be permitted. A title examiner could not be certain that the written consent of all parties had been obtained unless: (i) the written consent is made part of the Court's probate records; (ii) the Court has determined the identity of all interested parties; and (iii) the signatures of the parties have been acknowledged to verify their authenticity. We therefore believe that the written consent provision might prove to be unworkable from a practical standpoint.

Title V provides for the curing of existing recorded deeds that have technical defects in the acknowledgement and for the curing of future deeds that contain such defects and are not challenged within six months after recording. We endorse Title V. Once a deed has been recorded, it provides notice to the world of the owner's interest in the property. This should be so even if the deed has a mistake in the acknowledgement, for the deed is still on record for all to see. By curing defective acknowledgements, the Act would remedy a great injustice under existing law, which sometimes causes a property owner's title to be clouded because of an insubstantial defect in a prior deed to

the property. However, the curative provisions of the Act would not validate forged deeds. The Act would protect only actual property owners whose title might be clouded because of a technical defect.

Title VI of the Bill would adopt the Uniform Law on Notarial Acts. The Uniform Law focuses on the substance of a notarial acts, rather than on their form; it reflects a substantial improvement over current law, which elevates form over substance.

For example, under existing law the Recorder of Deeds will not accept a deed if the acknowledgement fails to state that the person acknowledging the deed was "personally well known" to the notary or "proved on the oath of credible witnesses" to be the person who executed the deed. In contrast to existing law, the Act would recognize the notary's seal as sufficient proof that the notary had ascertained the identity of the person who acknowledged the deed. In modern times, the notarial process frequently is not based on the notary's personal knowledge of the grantor or on the "oath of credible witnesses". Instead, the notary examines the picture and signature on the grantor's drivers license or identification card. The Act would recognize modern practices and abolish the need for unrealistic recitals in acknowledgements.

DIVISION 15 STEERING COMMITTEE

James Bruce Davis, Chairman
Committee on Legislation