



**H.B. 279**

124th General Assembly  
(As Introduced)

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

---

**BILL SUMMARY**

- Eliminates the requirement that deeds, mortgages, land contracts, leases and memoranda of leases of real property interests, memoranda of trust, certain recordable powers of attorney, other recordable instruments relating to mortgages, land contracts, and leases of real property, and other instruments pertaining to registered land be signed and acknowledged in the presence of two witnesses who must attest the signing and subscribe their names to the attestation.
- Repeals the provisions creating an irrebuttable presumption that any recorded mortgage is properly executed regardless of any actual or alleged defect in the witnessing or acknowledgment on the mortgage unless certain circumstances apply and that that actual or alleged defect does not render the mortgage ineffective for purposes of constructive notice.

---

**CONTENT AND OPERATION**

**Signing and attestation by witnesses of deeds, mortgages, land contracts, leases of real property interest, and memoranda of trust**

**Existing law**

Under the Law on Conveyances and Encumbrances, a deed, mortgage, land contract, or lease of any interest in real property and a memorandum of trust must be signed by the grantor, mortgagor, vendor, or lessor in the case of a deed, mortgage, land contract, or lease or must be signed by the settlor and trustee in the case of a memorandum of trust. *The signing must be acknowledged by the grantor, mortgagor, vendor, or lessor, or by the settlor and trustee, in the presence of two witnesses who must attest the signing and subscribe their names to the attestation.* The signing must 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 Ohio, or a county auditor, county engineer, notary public, or mayor, who must certify the acknowledgment and subscribe the officials' name to the certificate of the acknowledgment. (R.C. 5301.01.)

A memorandum of trust must be executed by the settlor and trustee of the trust, *attested by witnesses*, and acknowledged by the settlor and trustee of the trust as described in the prior paragraph (R.C. 5301.255(A)(1)). A deed, mortgage, or lease of a married person's interest in real property must be signed, *attested*, acknowledged, and certified as described in the prior paragraph R.C. 5301.04).

### **Operation of the bill**

The bill eliminates the requirement that the signing of a deed, mortgage, land contract, or lease of any interest in real property must be acknowledged by the grantor, mortgagor, vendor, or lessor, and that the signing of a memorandum of trust must be acknowledged by the settlor and trustee, in the presence of two witnesses and that the witnesses must attest the signing and subscribe their names to the attestation. The bill deletes the specific requirement that a memorandum of trust must be attested by witnesses. (R.C. 5301.01 and 5301.255(A).)

The bill also deletes the requirement that a deed, mortgage, or lease of a married person's interest in real property must be attested (R.C. 5301.04).

### **Powers of attorney**

#### **Existing law**

The following provisions of existing law apply to certain powers of attorney:

(1) A power of attorney for the conveyance, mortgage, or lease of a real property interest must be signed, *attested*, acknowledged, and certified as provided in R.C. 5301.01 (requirements for deeds, mortgages, land contracts, and real property leases) (R.C. 1337.01).

(2) A power of attorney for the transfer of personal property or the transaction of business relating to that type of transfer, in order to be admitted of record, must be signed, *witnessed*, and acknowledged in the same manner as deeds and mortgages under R.C. 5301.01 (R.C. 1337.06).

(3) In a county in which the county recorder has determined to use the microfilm process, the recorder may require that all cancellations, releases, or

other actions affecting recorded powers of attorney be by separate instrument, signed, *witnessed*, and acknowledged as provided by R.C. 5301.01 (R.C. 1337.10).

### **Operation of the bill**

The bill deletes the requirements that the power of attorney described above in paragraph (1) be attested and that the instruments described in paragraphs (2) and (3), above, be witnessed (R.C. 1337.01, 1337.06, and 1337.10).

### **Instruments pertaining to leases**

#### **Existing law**

The following provisions of the Law on Conveyances and Encumbrances apply to certain instruments pertaining to leases:

(1) In lieu of the recording of a lease, there may be recorded a memorandum of that lease, executed, *attested*, and acknowledged in accordance with R.C. 5301.01 (requirements for deeds, mortgages, land contracts, and real property leases) (R.C. 5301.251).

(2) Except in counties where deeds or other separate instruments are required, a lease, whether or not renewable forever, 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 the cancellation, partial release, or assignment on the original lease, or upon the margin of the record of the original lease, and by signing it. That cancellation, partial release, or assignment need not be *witnessed* or acknowledged, but if written on the margin of the record, the signing must be attested to by the recorder. A lease, whether or not renewable forever, that is recorded in any county recorder's office, also may be canceled, partially released, or assigned by deed or by other separate instrument acknowledged and *witnessed* as provided in R.C. 5301.01. (R.C. 5301.33.)

#### **Operation of the bill**

The bill eliminates the requirements that a memorandum of lease described above in paragraph (1) be attested and that a cancellation, partial release, or assignment of a lease by deed or by other separate instrument as described in paragraph (2), above, be witnessed. It deletes the provision in paragraph (2), above, that the cancellation, partial release, or assignment written on the original lease or upon the margin of the record of the original lease need not be witnessed. (R.C. 5301.251 and 5301.33.)

## **Instruments relating to mortgages**

### **Existing law**

The following provisions of the Law on Conveyances and Encumbrances apply to certain instruments relating to mortgages:

(1) A mortgage may be assigned or partially released by a separate instrument of assignment or partial release, acknowledged and *witnessed* as provided by R.C. 5301.01 (requirements for deeds, mortgages, land contracts, and real property leases) (R.C. 5301.32).

(2) A mortgage must be discharged upon the record of the mortgage by the county recorder when there is presented to the recorder a certificate executed by the mortgagee or the mortgagee's assigns, acknowledged and *witnessed* as provided in R.C. 5301.01 certifying that the mortgage has been fully paid and satisfied (R.C. 5301.34).

(3) The priority of the lien of a mortgage may be waived to the extent specified by the holder of the mortgage in favor of any lien, mortgage, lease, easement, or other interest in the property covered by the mortgage, by writing the waiver of priority on the original mortgage and signing it, by writing the waiver of priority upon the margin of the record of the mortgage and signing it, or by a separate instrument acknowledged and *witnessed* as provided by R.C. 5301.01. The waiver, if written upon the mortgage or upon the margin of the record of the mortgage, need not be acknowledged or *witnessed*, but if written upon the margin of the record, the signing must be attested by the county recorder. (R.C. 5301.35.)

### **Operation of the bill**

The bill eliminates the requirement that the instruments described above in paragraphs (1) and (2) and the waiver of the priority of the lien of a mortgage by a separate instrument as described above in paragraph (3) be witnessed. It deletes the provision that if the waiver of the priority of a lien is written upon the mortgage or upon the margin of the record, the signing need not be witnessed. (R.C. 5301.32, 5301.34, and 5301.35.)

## **Instruments pertaining to land contracts**

### **Existing law**

Except in counties where deeds or other instruments are required, a land contract 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 the cancellation, partial release, or assignment on the original land contract

or upon the margin of the record of the land contract and by signing it. The cancellation, partial release, or assignment need not be *witnessed* or acknowledged, but if written on the margin of the record, the signing must be attested to by the county recorder. A land contract that is recorded in the office of the county recorder also may be cancelled, partially released, or assigned by deed or by other separate instrument, acknowledged and *witnessed* as provided in R.C. 5301.01 (requirements for deeds, mortgages, land contracts, and real property leases). (R.C. 5301.331.)

### **Operation of the bill**

The bill eliminates the requirement that a cancellation, partial release, or assignment of a land contract by deed or by other separate instrument be witnessed. It deletes the provision that the cancellation, partial release, or assignment written on the original land contract or upon the margin of the record of the original land contract need not be witnessed. (R.C. 5301.331.)

### **Lease of lands appropriated by Congress**

#### **Existing law**

The Law on Conveyances and Encumbrances provides that its provisions do not affect the validity of any lease of lands appropriated by Congress for the support of schools or for ministerial purposes for any term not exceeding ten years or of any other lands for any term not exceeding three years or require that lease to be *attested*, acknowledged, or recorded (R.C. 5301.08).

#### **Operation of the bill**

The bill deletes the provision that the Law on Conveyances and Encumbrances does not require the above described lease to be attested (R.C. 5301.08).

### **Instruments pertaining to registered land under Chapter 5309.**

#### **Existing law**

The following provisions of the Registration of Land Titles Law apply to certain types of instruments:

(1) The holder of any mortgage, encumbrance, lease, charge, or lien upon registered land may execute to a transferee an assignment for the whole or any part of the mortgage, encumbrance, lease, charge, or lien, by endorsement of the assignment on the original instrument of encumbrance, the holder's duplicate, the mortgagee's certified copy of a mortgage, or by a separate instrument *witnessed*

and acknowledged as required by R.C. 5301.01 (requirements for deeds, mortgages, land contracts, and real property leases) (R.C. 5309.51).

(2) A deed or instrument constituting a person an attorney in fact to convey, transfer, charge, or deal with registered land or an interest in registered land must be signed by the person making it and *witnessed* and acknowledged as provided in R.C. 5301.01 (R.C. 5309.75 and R.C. 5309.74—not in the bill).

### **Operation of the bill**

The bill deletes the requirement that the instruments described above in paragraphs (1) and (2) be witnessed (R.C. 5309.51 and 5309.75).

### **Presumption of proper execution of mortgage**

#### **Existing law**

Under the Real Property Law, any recorded mortgage is irrebuttably presumed to be properly executed, regardless of any actual or alleged defect in the witnessing or acknowledgment on the mortgage, unless one of the following applies (R.C. 5301.234(A)):

- (1) The mortgagor, under oath, denies signing the mortgage.
- (2) The mortgagor is not available, but there is other sworn evidence of a fraud upon the mortgagor.

Evidence of an actual or alleged defect in the witnessing or acknowledgment on the mortgage is not evidence of fraud upon the mortgagor and does not rebut the presumption that a recorded mortgage is properly executed (R.C. 5301.234(B)).

The recording of a mortgage is constructive notice of the mortgage to all persons, including without limitation, a subsequent bona fide purchaser or any other subsequent holder of an interest in the property. An actual or alleged defect in the witnessing or acknowledgment on the recorded mortgage does not render the mortgage ineffective for purposes of constructive notice. (R.C. 5301.234(C).)

### **Operation of the bill**

The bill outright repeals the above provisions of R.C. 5301.234.

**Other changes**

The bill makes several technical changes to update the terminology in the Revised Code sections amended by the bill. Most of these sections date back to the 1950's to the 1970's.

---

**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	05-29-01	p. 485

h0279-i.124/kl