

CHAPTER 98

**PROPERTY**

**HOUSE BILL 03-1194**

BY REPRESENTATIVE(S) White and Rippy;  
also SENATOR(S) Kester, Fitz-Gerald, Taylor, and Windels.

**AN ACT**

**CONCERNING REAL PROPERTY INSTRUMENTS FILED WITH A COUNTY CLERK AND RECORDER.**

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

**SECTION 1.** 38-35-116 (1) and (2), Colorado Revised Statutes, are amended to read:

**38-35-116. Variances in names in instruments affecting the title to real property.** (1) (a) The middle name or the initial of a middle name appearing in a name contained in an instrument affecting the title to real property or in a signature or an acknowledgment ~~thereto~~ shall be deemed prima facie to be a material part of such name.

(b) ONE OR MORE OF THE FOLLOWING variances between any two instruments affecting the title to the same real property ~~both of which have been of record for a period of more than three years in the office of the county clerk and recorder of the county in which such real property is situated, with respect to the names of persons named in the respective instruments or in acknowledgments thereto or in the signatures thereto, arising from the full first name appearing in one and only the initial letter of that first name appearing in the other, or from a full middle name appearing in one and only the initial letter of that middle name appearing in the other, or from the initial letter of a middle name appearing in one and not appearing in the other, irrespective of which one of the two instruments in which any of such variances occurred was prior in point of time to the other and irrespective of whether the instruments were executed or originated before or after April 17, 1941,~~ shall not destroy or impair the presumption that the person so named in one of said instruments ~~was the same person as the one so named in the other of said~~ IS THE SAME PERSON IN BOTH instruments: ~~which would exist if the names in the two instruments were identical and;~~

*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

(I) THE FULL FIRST NAME APPEARING IN ONE AND ONLY THE INITIAL LETTER OF THAT FIRST NAME APPEARING IN THE OTHER;

(II) A FULL MIDDLE NAME APPEARING IN ONE AND ONLY THE INITIAL LETTER OF THAT MIDDLE NAME APPEARING IN THE OTHER;

(III) THE INITIAL LETTER OF A MIDDLE NAME APPEARING IN ONE AND NOT APPEARING IN THE OTHER; OR

(IV) A FULL MIDDLE NAME APPEARING IN ONE AND NOT APPEARING IN THE OTHER.

(c) In spite of ~~any such~~ A variance DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (1), the person so named in ~~one of the said two~~ BOTH instruments shall be presumed to be the same person as ~~the one so named in the other~~ until such time as the contrary appears, and until such time, ~~either or both of such instruments, or the record thereof~~ OF SUCH INSTRUMENTS, OR A certified copy of the record ~~thereof~~ OF SUCH INSTRUMENTS shall be admissible in evidence ~~in the same manner~~ as though the names in the two instruments were identical.

(2) ~~Variances between any two instruments affecting the title to the same real property, both of which have been of record for a period of more than twenty years in the office of the county clerk and recorder of the county in which such real property is situated, with respect to the names of persons named in the respective instruments or in acknowledgments thereto or in the signatures thereto arising from a combination of any two of the following three variances, to wit: The full first name appearing in one and only the initial letter of that first name appearing in the other; a full middle name appearing in one and only the initial letter of that middle name appearing in the other; and the initial letter of a middle name appearing in one and not appearing in the other, irrespective of which one of the two instruments in which such combination of variances occurred was prior in point of time to the other and irrespective of whether the instruments were executed or originated before or after April 17, 1941, shall not destroy or impair the presumption that the person so named in one of said instruments was the same person as the one so named in the other of said instruments which would exist if the names in the two instruments were identical, and in spite of such combination of variances, the person so named in one of said two instruments shall be presumed to be the same person as the one so named in the other until such time as the contrary appears, and until such time, either or both of such instruments or the record thereof or certified copy of the record thereof shall be admissible in evidence in the same manner as though the names in the two instruments were identical.~~

**SECTION 2.** 38-35-107, Colorado Revised Statutes, is amended to read:

**38-35-107. Recitals in deeds prima facie evidence - when.** All recitals contained in deeds, powers of attorney, agreements, or other instruments in writing conveying, encumbering, or affecting title to real property ~~which~~ THAT have remained of record in the office of the county clerk and recorder of the county where the real property affected is situated for a period of twenty years shall be accepted and received as prima facie evidence of the facts recited therein. This section shall not apply to the recitals, exceptions, and reservations described in section 38-35-108 AND AFFIDAVITS DESCRIBED IN SECTION 38-35-109 (5).

**SECTION 3.** 38-35-109, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**38-35-109. Instrument may be recorded - validity of unrecorded instruments - liability for fraudulent documents.** (5) (a) AN AFFIDAVIT, EXECUTED UNDER PENALTY OF PERJURY, STATING FACTS ENUMERATED UNDER PARAGRAPH (b) OF THIS SUBSECTION (5) AND MADE BY A PERSON WHO HAS ACTUAL KNOWLEDGE OF, AND IS COMPETENT TO TESTIFY IN A COURT OF COMPETENT JURISDICTION ABOUT, THE FACTS IN SUCH AFFIDAVIT MAY AFFECT THE TITLE TO REAL PROPERTY WITHIN THE STATE AND MAY BE RECORDED IN THE OFFICE OF THE COUNTY CLERK AND RECORDER IN THE COUNTY IN WHICH THE REAL PROPERTY IS SITUATED.

(b) WHEN RECORDED, AN AFFIDAVIT AS DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (5), OR A CERTIFIED COPY OF SUCH AFFIDAVIT, SHALL CONSTITUTE PRIMA FACIE EVIDENCE OF ONE OR MORE OF THE FOLLOWING FACTS:

(I) THE NAME, AGE, IDENTITY, RESIDENCE, OR SERVICE IN THE ARMED FORCES OF ANY PARTY;

(II) WHETHER THE LAND EMBRACED IN ANY CONVEYANCE OR ANY PART OF SUCH LAND OR RIGHT THEREIN HAS BEEN IN THE ACTUAL POSSESSION OF ANY PARTY OR PARTIES WITHIN THE CHAIN OF TITLE;

(III) IF FURNISHED BY A REGISTERED SURVEYOR, A STATEMENT OR SURVEY THAT RECONCILES CONFLICTS AND AMBIGUITIES IN DESCRIPTIONS OF LAND IN RECORDED INSTRUMENTS;

(IV) A SCRIVENER'S ERROR.

(c) AN AFFIDAVIT FILED UNDER THIS SUBSECTION (5) SHALL STATE THAT THE AFFIANT HAS ACTUAL KNOWLEDGE OF, AND IS COMPETENT TO TESTIFY TO THE FACTS IN THE AFFIDAVIT AND SHALL INCLUDE A DESCRIPTION OF THE LAND, THE TITLE THAT MAY BE AFFECTED BY FACTS STATED IN SUCH AFFIDAVIT, A REFERENCE TO AN INSTRUMENT OF RECORD CONTAINING SUCH DESCRIPTION, THE NAME OF THE PERSON APPEARING BY THE RECORD TO BE THE OWNER OF SUCH LAND AT THE TIME OF THE RECORDING OF THE AFFIDAVIT, AND AN ACKNOWLEDGMENT THAT THE AFFIANT IS TESTIFYING UNDER PENALTY OF PERJURY. THE RECORDER SHALL INDEX THE AFFIDAVIT IN THE NAME OF THE RECORD OWNER.

**SECTION 4. Effective date - applicability.** (1) 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.

(2) The provisions of this act shall apply to real property documents filed or of record on or after the applicable effective date of this act.

Approved: April 1, 2003