

CHAPTER 319

PROPERTY

HOUSE BILL 13-1307

BY REPRESENTATIVE(S) Kagan, Gardner, Buckner, Fields, Hullinghorst, Labuda, McLachlan;
also SENATOR(S) Guzman, Aguilar.

AN ACT

CONCERNING THE EFFECT OF THE INCLUSION OF A LEGAL DESCRIPTION ON THE VALIDITY OF DOCUMENTS AFFECTING TITLE TO REAL PROPERTY.

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

SECTION 1. In Colorado Revised Statutes, 38-35-122, **add** (3.5), (4), and (5) as follows:

38-35-122. Inclusion of street address and assessor information with legal description - inclusion of legal description - effect - validity of recording - interests in property - legislative declaration. (3.5) Legislative declaration.

(a) THE GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT IN *IN RE RIVERA*, 2012 CO 43 (ALSO REFERRED TO AS *SENDER V. CYGAN*), THE COLORADO SUPREME COURT HELD THAT A RECORDED DEED OF TRUST THAT COMPLETELY OMITTS A LEGAL DESCRIPTION IS DEFECTIVELY RECORDED AND CANNOT PROVIDE CONSTRUCTIVE NOTICE TO A SUBSEQUENT PURCHASER OF ANOTHER PARTY'S SECURITY INTEREST IN THE PROPERTY.

(b) BY ENACTING HOUSE BILL 13-1307, ENACTED IN 2013, IT IS THE INTENT OF THE GENERAL ASSEMBLY TO CLARIFY, FOR PARTIES THAT CURRENTLY HAVE AN INTEREST IN REAL PROPERTY OR THAT WILL ACQUIRE AN INTEREST IN REAL PROPERTY IN THE FUTURE, THAT, NOTWITHSTANDING THE HOLDINGS AND CONCLUSIONS IN *IN RE RIVERA*, THE FACT THAT A RECORDED DOCUMENT OMITTS A LEGAL DESCRIPTION IS NOT, BY ITSELF AND WITHOUT REGARD TO THE TOTALITY OF THE CIRCUMSTANCES, DETERMINATIVE OF WHETHER THE DOCUMENT:

- (I) IS VALID AGAINST ANY PERSON OBTAINING RIGHTS IN THE REAL PROPERTY; OR
- (II) IS VALID OR INVALID.

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

(4) THE FACT THAT A DOCUMENT PURPORTING TO AFFECT TITLE TO REAL PROPERTY, WHETHER RECORDED BEFORE OR AFTER THE EFFECTIVE DATE OF THIS SECTION, DOES NOT CONTAIN OR INCLUDE A LEGAL DESCRIPTION OF THE REAL PROPERTY MAY, IN THE TOTALITY OF THE CIRCUMSTANCES, BUT DOES NOT NECESSARILY:

(a) RENDER DEFECTIVE, INVALID, OR VOID THE RECORDING OF THE DOCUMENT IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF THE COUNTY WHERE THE REAL PROPERTY IS SITUATED; OR

(b) DETERMINE WHETHER THE DOCUMENT IS VALID AGAINST A PERSON OBTAINING RIGHTS IN THE REAL PROPERTY.

(5) THE FACT THAT A DOCUMENT PURPORTING TO AFFECT TITLE TO REAL PROPERTY, WHETHER EXECUTED BEFORE OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (5), DOES NOT CONTAIN OR INCLUDE A LEGAL DESCRIPTION OF THE REAL PROPERTY MAY, IN THE TOTALITY OF THE CIRCUMSTANCES, BUT DOES NOT NECESSARILY, DETERMINE WHETHER THE DOCUMENT IS VALID OR INVALID.

SECTION 2. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2014 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 28, 2013