

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL 562  
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 4, after the first “of” insert “providing that failure to name any trustee in a deed of trust does not have any effect on an instrument under certain circumstances;”; in line 6, after “sale” insert “or assent to decree”; in line 8, after “individual;” insert “providing that the individual selling the property under a power of sale need not be named in the mortgage or deed of trust;”; in line 9, after the second “the” insert “trustee or”; in line 10, after the first “the” insert “instrument or the”; in the same line, after the second “the” insert “mortgagee or beneficiary of the deed of trust to appoint an”; strike beginning with “in” in line 11 down through “substitution” in line 12 and substitute “appointments or substitutions”; in line 12, strike “the” and substitute “a trustee or an”; in line 13, after “term;” insert “providing for the application of this Act;”; and in line 18, after “Section” insert “4-109 and”.

AMENDMENT NO. 2

On page 1, after line 23, insert:

“4-109.

(a) If an instrument was recorded before January 1, 1973, any failure of the instrument to comply with the formal requisites listed in this section has no effect, unless the defect was challenged in a judicial proceeding commenced by July 1, 1973.

(b) If an instrument is recorded on or after January 1, 1973, whether or not the instrument is executed on or after that date, any failure to comply with the formal requisites listed in this section has no effect unless it is challenged in a judicial proceeding commenced within six months after it is recorded.

(Over)

(c) For the purposes of this section, the failures in the formal requisites of an instrument are:

- (1) A defective acknowledgment;
- (2) A failure to attach any clerk's certificate;
- (3) An omission of a notary seal or other seal;
- (4) A lack of or improper acknowledgment or affidavit of consideration, agency, or disbursement; [or]
- (5) An omission of an attestation; OR
- (6) A FAILURE TO NAME ANY TRUSTEE IN A DEED OF TRUST."

On page 2, in line 7, after "SALE" insert "OR ASSENT TO DECREE"; after line 8, insert:

"(3) THE INDIVIDUAL SELLING THE PROPERTY UNDER A POWER OF SALE NEED NOT BE NAMED IN THE MORTGAGE OR DEED OF TRUST.";

in lines 9 and 13, strike "(3)" and "(4)", respectively, and substitute "(4)" and "(5)", respectively; in line 10, after the second "THE" insert "TRUSTEE OR THE"; in line 11, after "INVALIDATE" insert "THE INSTRUMENT OR"; in the same line, after the second "THE" insert "MORTGAGEE OR BENEFICIARY OF THE DEED OF TRUST TO APPOINT AN"; in line 13, after "THE" insert "APPOINTMENT OR"; in line 14, strike "THE" and substitute "A TRUSTEE OR AN"; and strike beginning with "A" in line 15 down through "PROCEEDING" in line 16 and substitute "THE APPOINTMENTS OR SUBSTITUTIONS FROM TIME TO TIME".

AMENDMENT NO. 3

On page 2, after line 23, insert:

“SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply retroactively and shall be applied to and interpreted to affect any mortgage or deed of trust on record or recorded on or after June 1, 2010.”;

in line 24, strike “2.” and substitute “3.”; and in line 25, strike “October” and substitute “June”.