

1 **REAL PROPERTY RECORDING AMENDMENTS**

2 2008 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Dennis E. Stowell**

5 House Sponsor: Stephen H. Urquhart

7 **LONG TITLE**

8 **General Description:**

9 This bill addresses the recording of documents concerning real property.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ addresses policies and procedures established by a county recorder;
- 13 ▶ requires a county recorder to endorse a document upon acceptance, instead of upon
- 14 receipt;
- 15 ▶ addresses a tenancy by the entirety;
- 16 ▶ requires an affidavit concerning a terminated interest in real property due to death to
- 17 be accompanied by a government-issued document certifying the death;
- 18 ▶ forbids certain documents from being presented for recording;
- 19 ▶ allows the governor or governor's designee to record a notice of acknowledgment of
- 20 an R.S. 2477 right-of-way, with supporting documentation; and
- 21 ▶ makes technical changes.

22 **Monies Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:

28 **17-21-1**, as last amended by Laws of Utah 2003, Chapter 211

29 **17-21-12**, as last amended by Laws of Utah 2007, Chapter 268

- 30 **57-1-5**, as last amended by Laws of Utah 2006, Chapter 236
- 31 **57-1-5.1**, as last amended by Laws of Utah 2007, Chapter 268
- 32 **57-3-105**, as last amended by Laws of Utah 2007, Chapter 268
- 33 **57-3-106**, as last amended by Laws of Utah 2007, Chapters 268 and 287
- 34 **72-5-309**, as last amended by Laws of Utah 2006, Chapter 9

35

36 *Be it enacted by the Legislature of the state of Utah:*

37 Section 1. Section **17-21-1** is amended to read:

38 **17-21-1. Recorder -- Document custody responsibility -- Electronic submission**
39 **procedures and guidelines.**

40 The county recorder:

- 41 (1) is custodian of all recorded documents and records required by law to be recorded;
- 42 (2) shall establish policies and procedures that the recorder considers necessary to
- 43 protect recorded documents and records in the recorder's custody, including determining the
- 44 appropriate method for the public to obtain copies of the public record under Section 17-21-19
- 45 and supervision of those who search and make copies of the public record; and
- 46 (3) may establish procedures and guidelines to govern the electronic submission of
- 47 plats, records, and other documents to the county recorder's office consistent with Title 46,
- 48 Chapter 4, Uniform Electronic Transactions Act.

49 Section 2. Section **17-21-12** is amended to read:

50 **17-21-12. Recording procedures -- Endorsements of entry number required on**
51 **documents.**

- 52 (1) [~~H~~] When a document is accepted by the recorder's office for recording, the
- 53 recorder shall:
- 54 (a) endorse upon the first page of the document an entry number and the time when the
- 55 document was [~~received~~] accepted, noting the year, month, day, hour, and minute of its
- 56 reception, and the amount of fees for recording it; and
- 57 (b) record the document during office hours in the order it was accepted.

58 (2) Each county recorder shall place an entry number or a book and page reference on
59 each page of a document that the recorder accepts for recording only if the original document
60 or a copy of the document is kept as a public record under Section 17-21-3.

61 (3) (a) A county recorder may~~[, but is not required to,]~~ endorse each document that the
62 recorder accepts for recording with a book and page reference.

63 (b) If a county recorder elects not to endorse a document with a book and page
64 reference, the book and page reference may be omitted:

- 65 (i) in each index required by statute; and
- 66 (ii) on each document presented for recording that is required to recite recording data.

67 (4) Subject to Section 17-21-3, the county recorder shall return the document to the
68 person that the recorder considers appropriate.

69 Section 3. Section **57-1-5** is amended to read:

70 **57-1-5. Creation of joint tenancy presumed -- Tenancy in common -- Severance**
71 **of joint tenancy -- Tenants by the entirety.**

72 (1) (a) Beginning on May 5, 1997, every ownership interest in real estate granted to
73 two persons in their own right who are designated as husband and wife in the granting
74 documents is presumed to be a joint tenancy interest with rights of survivorship, unless severed,
75 converted, or expressly declared in the grant to be otherwise.

76 (b) Every ownership interest in real estate that does not qualify for the joint tenancy
77 presumption as provided in Subsection (1)(a) is presumed to be a tenancy in common interest
78 unless expressly declared in the grant to be otherwise.

79 (2) (a) Use of words "joint tenancy" or "with rights of survivorship" or "and to the
80 survivor of them" or words of similar import means a joint tenancy.

81 (b) Use of words "tenancy in common" or "with no rights of survivorship" or
82 "undivided interest" or words of similar import declare a tenancy in common.

83 (3) A sole owner of real property creates a joint tenancy in himself and another or
84 others:

85 (a) by making a transfer to himself and another or others as joint tenants by use of the

86 words as provided in Subsection (2)(a); or

87 (b) by conveying to another person or persons an interest in land in which an interest is
88 retained by the grantor and by declaring the creation of a joint tenancy by use of the words as
89 provided in Subsection (2)(a).

90 (4) In all cases, the interest of joint tenants shall be equal and undivided.

91 (5) (a) Except as provided in Subsection (5)(b), if a joint tenant makes a bona fide
92 conveyance of the joint tenant's interest in property held in joint tenancy to himself or another,
93 the joint tenancy is severed and converted into a tenancy in common.

94 (b) If there is more than one joint tenant remaining after a joint tenant severs a joint
95 tenancy under Subsection (5)(a), the remaining joint tenants continue to hold their interest in
96 joint tenancy.

97 (6) The amendments to this section in Chapter 124, Laws of Utah 1997 have no
98 retrospective operation and shall govern instruments executed and recorded on or after May 5,
99 1997.

100 (7) Tenants by the entirety are considered to be joint tenants.

101 Section 4. Section **57-1-5.1** is amended to read:

102 **57-1-5.1. Termination of an interest in real estate -- Affidavit.**

103 (1) Joint tenancy, tenancy by the entirety, life estate, or determinable or conditional
104 interest in real estate may be terminated by an affidavit that:

105 (a) meets the requirements of Subsection (2); and

106 (b) is recorded in the office of the recorder of the county in which the affected property
107 is located.

108 (2) Each affidavit required by Subsection (1) shall:

109 (a) cite the interest [~~which~~] that is being terminated;

110 (b) contain a legal description of the real property that is affected;

111 (c) reference the entry number and the book and page of the instrument creating the
112 interest to be terminated; and

113 (d) if the termination is the result of a death, have attached as an exhibit, a copy of the

114 death certificate or other document [~~witnessing~~] issued by a governmental agency certifying the
115 death.

116 (3) The affidavit required by Subsection (1) may be in substantially the following form:

117 "Affidavit

118 State of Utah)

119) ss

120 County of _____)

121 I, (name of affiant), being of legal age and being first duly sworn, depose and state as
122 follows:

123 (The name of the deceased person), the decedent in the attached certificate of death or
124 other document witnessing death is the same person as (the name of the deceased person)
125 named as a party in the document dated (date of document) as entry _____ in book _____,
126 page _____ in the records of the (name of county) County Recorder.

127 This affidavit is given to terminate the decedent's interest in the following described
128 property located in _____ County, State of Utah: (description of the
129 property).

130 Dated this _____ day of _____, _____.

131 _____
132 (Signature of affiant)

133 Subscribed to and sworn before me this _____ day of _____,
134 _____.

135 _____
136 Notary public"

137 Section 5. Section **57-3-105** is amended to read:

138 **57-3-105. Legal description of real property and names and addresses required in**
139 **documents.**

140 (1) Except as otherwise provided by statute, a person may not present a document for
141 recording unless ~~[it]~~ the document complies with ~~[the requirements of]~~ this section.

142 (2) A document executed after July 1, 1983, is entitled to be recorded in the office of
143 the recorder of the county in which the property described in the document is located only if the
144 document contains a legal description of the real property [~~affected~~].

145 (3) (a) A document conveying title to real property presented for recording after July 1,
146 1981, is entitled to be recorded in the office of the recorder of the county in which the property
147 described in the document is located only if the document contains the names and mailing
148 addresses of the grantees in addition to the legal description required under Subsection (2).

149 (b) The address of the management committee may be used as the mailing address of a
150 grantee as required in Subsection (3)(a) if the interest conveyed is a timeshare interest as
151 defined by Section 57-19-2.

152 (4) A person may not present and a county recorder may refuse to accept a document
153 for recording if the document does not conform to [~~the requirements of~~] this section.

154 (5) Notwithstanding Subsections (2), (3), and (4), a master form, as defined in Section
155 57-3-201, that does not meet the requirements of Subsections (2) and (3) is entitled to be
156 recorded in the office of the recorder of the county in which the property described in the
157 master form is located if it complies with Part 2, Master Mortgage and Trust Deeds.

158 Section 6. Section **57-3-106** is amended to read:

159 **57-3-106. Original documents required -- Captions -- Legibility.**

160 (1) A person may not present and a county recorder may refuse to accept a document
161 for recording if the document does not comply with this section.

162 [~~(1)~~] (2) (a) Unless otherwise provided, [~~documents~~] a document presented for
163 recording in the office of the county recorder shall:

164 (i) be [~~originals~~] an original;

165 (ii) contain a brief caption on the first page of the document stating the nature of the
166 document; and

167 (iii) contain a legal description of the property as required under Section 57-3-105.

168 (b) If a document is a master form, as defined in Section 57-3-201, the caption required
169 by Subsection [~~(1)~~] (2)(a)(ii) shall state that the document is a master form.

170 ~~[(2)]~~ (3) A court judgment or an abstract of a court judgment presented for recording in
171 the office of the county recorder in compliance with Section 78-22-1 shall:

172 (a) be an original or certified copy; and

173 (b) include the information identifying the judgment debtor as referred to in Subsection
174 78-22-1.5(4) either:

175 (i) in the judgment or abstract of judgment; or

176 (ii) as a separate information statement of the judgment creditor as referred to in
177 Subsection 78-22-1.5(5).

178 ~~[(3) Judgments, abstracts of judgments, and separate information statements]~~

179 (4) A judgment, abstract of judgment, and separate information statement of the
180 judgment creditor ~~[do]~~ does not require an acknowledgment or a legal description to be
181 recorded.

182 ~~[(4)]~~ (5) A foreign judgment or an abstract of a foreign judgment recorded in the office
183 of a county recorder shall include the affidavit as required in Section 78-22a-3.

184 ~~[(5)]~~ (6) Any document recorded in the office of the county recorder to release or
185 assign a judgment lien shall include:

186 (a) the name of any judgment creditor, debtor, assignor, or assignee;

187 (b) the date of recording; and

188 (c) the entry number of the instrument creating the judgment lien.

189 ~~[(6) Documents]~~ (7) A document presented for recording shall ~~[also]~~ be sufficiently
190 legible for the recorder to make certified copies of the document.

191 ~~[(7)]~~ (8) (a) (i) A document that is of record in the office of the appropriate county
192 recorder in compliance with this chapter may not be recorded again in that same county
193 recorder's office unless the original document has been reexecuted by all parties who executed
194 the document.

195 (ii) Unless exempt by statute, an original ~~[documents]~~ document that ~~[are]~~ is reexecuted
196 ~~[must also]~~ shall contain the appropriate acknowledgment, proof of execution, jurat, or other
197 notarial certification for all parties who are reexecuting the document as required by Title 46,

198 Chapter 1, Notaries Public Reform Act, and Title 57, Chapter 2, Acknowledgments.

199 (iii) ~~Documents~~ A document submitted for rerecording shall contain a brief statement
200 explaining the reason for rerecording.

201 (b) A person may not present and a county recorder may refuse to accept a document
202 for rerecording if that document does not conform to ~~the requirements of~~ this section.

203 (c) This Subsection ~~(7)~~ (8) applies only to documents executed after July 1, 1998.

204 ~~(8)~~ (9) Minor typographical or clerical errors in a document of record may be
205 corrected by the recording of an affidavit or other appropriate instrument.

206 ~~(9)~~ (10) Subject to federal bankruptcy law, neither the recordation of an affidavit
207 under Subsection ~~(8)~~ (9) nor the reexecution and rerecording of a document under Subsection
208 ~~(7) shall~~ (8):

209 (a) ~~divest~~ divests a grantee of any real property interest; ~~or~~

210 (b) ~~alter~~ alters an interest in real property; or ~~return~~

211 (c) returns to the grantor an interest in real property conveyed by statute.

212 Section 7. Section **72-5-309** is amended to read:

213 **72-5-309. Acceptance of rights-of-way -- Notice of acknowledgment required.**

214 (1) The governor or the governor's designee may assess whether the grant of the R.S.
215 2477 has been accepted with regard to any right-of-way so as to vest title of the right-of-way in
216 the state and the applicable political subdivision as provided for in Section 72-5-103.

217 (2) If the governor or governor's designee concludes that the grant has been accepted as
218 to any right-of-way, the governor or a designee shall issue a notice of acknowledgment of the
219 acceptance of the R.S. 2477 grant as to that right-of-way.

220 (3) A notice of acknowledgment of the R.S. 2477 grant shall include:

221 (a) a statement of reasons for the acknowledgment;

222 (b) a general description of the right-of-way or rights-of-way subject to the notice of
223 acknowledgment, including the county in which it is located, and notice of where a center-line
224 description derived from Global Positioning System data may be viewed or obtained;

225 (c) a statement that the owner of the servient estate in the land over which the

226 right-of-way or rights-of-way subject to the notice runs or any person with a competing
227 dominant estate ownership claim may file a petition with the district court for a decision
228 regarding the correctness or incorrectness of the acknowledgment; and

229 (d) a statement of the time limit provided in Section 72-5-310 for filing a petition.

230 (4) (a) (i) [~~A notice of acknowledgment may be recorded~~] The governor or the
231 governor's designee may record a notice of acknowledgment, and any supporting affidavit, map,
232 or other document purporting to establish or affect the state's property interest in the
233 right-of-way or rights-of-way, in the office of the county recorder in the county where the
234 right-of-way or rights-of-way exist.

235 (ii) (A) A notice of acknowledgment recorded in the county recorder's office is not
236 required to be accompanied by a paper copy of the center-line description.

237 (B) A paper copy of each center-line description together with the notice of
238 acknowledgment shall be placed in the state archives created in Section 63-2-901 and made
239 available to the public upon request in accordance with Title 63, Chapter 2, Government
240 Records Access and Management Act.

241 (C) An electronic copy of the center-line description identified in a notice of
242 acknowledgment shall be available upon request at:

243 (I) the county recorder's office; or

244 (II) the Automated Geographic Reference Center created in Section 63F-1-506.

245 (b) A notice of acknowledgment recorded in the county recorder's office is conclusive
246 evidence of acceptance of the R.S. 2477 grant upon:

247 (i) expiration of the 60-day period for filing a petition under Section 72-5-310 without
248 the filing of a petition; or

249 (ii) a final court decision that the notice of acknowledgment was not incorrect.