

SECTION VII CONTINUED

STANDARD 3.12

EFFECT OF UNRECORDED DECLARATION OF TRUST, OR DEFECTIVE OR UNRECORDED MEMORANDUM OF TRUST, ON VALIDITY OF CONVEYANCE BY TRUSTEE

The validity of a conveyance of an interest in real estate executed by a trustee of a trust for which neither a Declaration of Trust nor an Affidavit or Memorandum of Trust has been recorded, or for which an Affidavit or Memorandum of Trust which does not satisfy the requirements of R.I.G.L. § 34-4-27 has been recorded, is not for that reason impaired. The interest thereby conveyed shall be considered as effective and as marketable as if a Declaration of Trust or an acceptable Affidavit or Memorandum of Trust had been recorded, provided that (a) five (5) years have elapsed since the conveyance was recorded, and (b) there is no record evidence of a challenge to the validity of the conveyance.

COMMENTS:

- (1) An attorney involved in a current transaction who has been asked to record a conveyance by a trustee, including, but not limited to, a deed or a mortgage, should always insist that an Affidavit or Memorandum of Trust meeting the requirements of R.I.G.L. § 34-4-27 be produced and recorded.
- (2) See Title Standard 7.11 adopted April 28, 2009 regarding the absence of a recorded Affidavit or Memorandum of Trust for a deed executed by a financial institution holding a mortgage as a “trustee”.

History

Approved by the Executive Committee of the Rhode Island Bar Association on April 21, 2014.