

CBA LPRC POSITION REQUEST FORM

The CBA Real Property Section **position request** is as follows:

- 1) Proposed legislative or regulatory concept:

To **PROPOSE** an amendment to Public Act 19-85 to modify the exception to the validating provision from “such instrument fails to state the consideration reflecting fair market value” to “such instrument reflects the granting of an interest in the property for no or nominal consideration” or words to that effect.

- 2) Explanation and rationale for advancing this position:

Public Act 19-85 created a validating provision where an instrument was executed via a power of attorney but the power of attorney was not recorded in the Land Records. The validating provision in Public Act 19-85 includes an exception where the instrument fails to state the consideration reflecting fair market value. The purpose of this exception is to not validate instruments where the property was conveyed for inadequate consideration.

The exception created an anomaly wherein a deed that expressly recites fair market value consideration would be validated, whereas a deed that recites “ten dollars and other good and valuable consideration” would not be validated even though the conveyance tax stamp on the face of the deed reflects fair market value consideration. The proposed amendment would validate both of these situations where the face of the deed reflects consideration reflecting fair market value.

- 3) Is draft regulation, legislation or proposed bill included?

See attached

- 4) What is the date of any legislative hearing, if known? N/A

- 5) Was this position previously approved by the CBA? If so, when does/did it expire?

No

- 6) Is the CBA section or committee seeking to join a previously approved CBA section or committee position? No

- 7) Potential or actual CBA opposition from another CBA section or committee? None expected

- 8) Strength of section position (including process and results of section vote taken on issue):

At its September 24, 2020 Section Meeting, the Section voted to approve the request. There was one dissenting vote.

- 9) Fiscal impact (on the state): None.

- 10) Are you seeking “fast-track” approval? Yes

Subsection (c) of Section 47-36aa

(c) Defect with respect to a power of attorney. (1) Any deed, mortgage, lease, power of attorney, release, assignment or other instrument made for the purpose of conveying, leasing, mortgaging or affecting any interest in real property in this state recorded after January 1, 1997, which instrument is executed pursuant to a recorded power of attorney and contains any one or more of the following defects, is as valid as if it had been executed without the defect unless an action challenging the validity of that instrument is commenced and a notice of lis pendens is recorded in the land records of the town or towns where the instrument is recorded within two years after the instrument is recorded:

(A) The instrument was executed by an attorney-in-fact but was signed or acknowledged by the attorney-in-fact without reference to his or her capacity;

(B) The instrument was executed by an attorney-in-fact but does not reference the power of attorney;

(C) The power of attorney was effective at the time the instrument was executed but is recorded after the instrument is recorded.

(2) Any deed, mortgage, lease, release, assignment or other instrument made for the purpose of conveying, leasing, mortgaging or affecting any interest in real property in this state recorded after January 1, 1997, which instrument is executed pursuant to a power of attorney, but which power of attorney is not recorded on the land records of the town or towns where the instrument is recorded, is as valid as if the power of attorney had been recorded, unless (A) an action is commenced to avoid and set aside such instrument and a notice of lis pendens is recorded in the land records of the town or towns where the instrument is recorded within fifteen years from the date of recording of such instrument, or (B) such instrument fails to reflect [state] the consideration reflecting fair market value. The provisions of this subdivision shall not apply to any conveyance where any deed, mortgage, lease, release, assignment or other instrument is executed by a fiduciary and the fiduciary is the grantee, mortgagee, leasee, releasee or assignee designated in such instrument.