

FILED MAR 04 1992

SENATE FILE 2272
BY COMMITTEE ON JUDICIARY
subcommittee (p. 548)
(SUCCESSOR TO SSB 2234)

Passed Senate, Date 2/10/92 (p. 694) Passed House, Date 3/10/92 (p. 226)
Vote: Ayes 46 Nays 0 Vote: Ayes 95 Nays 0
Approved March 23, 1992

A BILL FOR

1 An Act relating to the transfers of real estate interests by
2 trustees, limiting claims against such real estate transfers,
3 and providing for the Act's applicability.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 2272

1 Section 1. Section 614.14, Code Supplement 1991, is
2 amended by striking the section and inserting in lieu thereof
3 the following:

4 614.14 RECOVERY OF BENEFICIARY OF TRUST.

5 1. If an interest in real estate is held of record by a
6 trustee, a bona fide purchaser acquires all rights in the real
7 estate which the trustee and the beneficiary of the trust had
8 and any rights of persons claiming by, through or under them,
9 free of any adverse claim.

10 2. A bona fide purchaser is a purchaser for value in good
11 faith and without notice of any adverse claim, who has relied
12 on a current, recorded affidavit in substantially the
13 following form delivered to the purchaser:

14 [Individual trustee]
15 Affidavit in re
16 [insert legal description]

17 I,, being first duly sworn and under oath
18 state of my personal knowledge that:

19 1. I am the trustee under the trust dated,
20 19.., to which the above-described real estate was conveyed to
21 the trustee by, pursuant to an
22 instrument recorded the day of, 19..,
23 recorded in the office of the County Recorder
24 in[insert recording data].

25 2. I am the presently existing trustee under the trust and
26 am authorized to [describe the
27 transfer to be made by the trustee to the bona fide pur-
28 chaser], without any limitation or qualification whatsoever.

29 3. The trust is in existence and I as trustee am author-
30 ized to transfer the interests in the real estate as described
31 in paragraph 2, free and clear of any adverse claims.

32
33 [signature of affiant]

34 Sworn to and subscribed before me by
35 on this day of, 19...

1
2 [Notary Public in and for the
3 State of]

4 [Corporate trustee]

5 Affidavit in re

6 [insert legal description]

7 I,, being first duly sworn and
8 under oath state of my personal knowledge that:

9 1. is the trustee under the trust dated
10, 19.., to which the above-described real estate
11 was conveyed to the trustee by,
12 pursuant to an instrument recorded the day of,
13 19.., recorded in the office of the County
14 Recorder in [insert recording
15 data].

16 2. is the presently existing trustee
17 under the trust and is authorized to
18 [describe the transfer to be made by the trustee to the bona
19 fide purchaser], without any limitation or qualification what-
20 soever, and I am [officer] of the
21 corporate trustee.

22 3. The trust is in existence and
23 as trustee is authorized to transfer the interests in the real
24 estate as described in paragraph 2, free and clear of any ad-
25 verse claims.

26
27 [signature of affiant]

28 Sworn to and subscribed before me by,
29 on this day of, 19...

30
31 [Notary Public in and for the
32 State of]

33 3. As used in this section, "adverse claim" includes a
34 claim that a transfer was or would be wrongful, a claim that a
35 particular adverse person is the owner of or has an interest

1 in the real estate, and a claim that would be disclosed by the
2 examination of any document not of record.

3 4. Unless clearly provided to the contrary by the instru-
4 ment of transfer to a purchaser, a trustee transferring an in-
5 terest in real estate warrants to the transferee all of the
6 following:

7 a. That the trust pursuant to which the transfer is made
8 is duly executed and in existence.

9 b. That the person creating the trust was under no dis-
10 ability or infirmity at the time the trust was created.

11 c. That the transfer by the trustee to the purchaser is
12 effective and rightful.

13 d. That the trustee knows of no facts or legal claims
14 which might impair the validity of the trust or the validity
15 of the transfer.

16 5. a. A person holding an adverse claim arising or
17 existing prior to January 1, 1992, by reason of a transfer of
18 an interest in real estate by a trustee, or a purported
19 trustee, shall not file an action to enforce such claim after
20 December 31, 1993, at law or in equity, in any court to
21 recover or establish any interest in or claim to such real
22 estate, legal or equitable, against the holder of the record
23 title to the real estate.

24 b. An action based upon an adverse claim arising on or
25 after January 1, 1992, by reason of a transfer of an interest
26 in real estate by a trustee, or a purported trustee, shall not
27 be maintained either at law or in equity, in any court to
28 recover or establish any interest in or claim to such real
29 estate, legal or equitable, against the holder of the record
30 title to the real estate, legal or equitable, more than one
31 year after the date of recording of the instrument from which
32 such claim may arise.

33 6. This section shall not be construed to limit any per-
34 sonal action against the trustee or purported trustee.

35 Sec. 2. APPLICABILITY. This section does not apply to an

1 action pending on the effective date of this Act.

2

EXPLANATION

3 This bill strikes the existing 10-year statute of limi-
4 tations on claims to real estate by the beneficiary of a trust
5 and establishes a one-year statute of limitations for adverse
6 claims to real estate conveyed by a trustee. The bill defines
7 a bona fide purchaser of real estate from a trust and
8 establishes rights of adverse claimants against the real
9 estate. The bill also provides forms of affidavits for use by
10 a trustee and creates trustee's warranties when conveying real
11 estate.

12 The bill does not limit lawsuits against trustees. The
13 bill does not apply to actions pending on the effective date
14 of the bill.

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VARN, CH.
SLIFE
PETERSON

SSB 2234
~~JUDICIARY~~ Now -

SENATE FILE 2272
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON STURGEON)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

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10 2. A bona fide purchaser is a purchaser for value in good
11 faith and without notice of any adverse claim, who has relied
12 on a current, recorded affidavit in substantially the
13 following form delivered to the purchaser:

14 [Individual trustee]

15 Affidavit in re

16 [insert legal description]

17 I,, being first duly sworn and under oath
18 state of my personal knowledge that:

19 1. I am the trustee under the trust dated,
20 19.., to which the above-described real estate was conveyed to
21 the trustee by, pursuant to an
22 instrument recorded the day of, 19..,
23 recorded in the office of the County Recorder
24 in[insert recording data].

25 2. I am the presently existing trustee under the trust and
26 am authorized to [describe the
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29 3. The trust is in existence and I as trustee am author-
30 ized to transfer the interests in the real estate as described
31 in paragraph 2, free and clear of any adverse claims.

32

33 [signature of affiant]

34 Sworn to and subscribed before me by
35 on this day of, 19...

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[Notary Public in and for the

State of]

3
4 [Corporate trustee]

5 Affidavit in re

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20 soever, and I am [officer] of the
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33 3. As used in this section, "adverse claim" includes a
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35 particular adverse person is the owner of or has an interest

1 in the real estate, and a claim that would be disclosed by the
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3 4. Unless clearly provided to the contrary by the instru-
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5 terest in real estate warrants to the transferee all of the
6 following:

7 a. That the trust pursuant to which the transfer is made
8 is duly executed and in existence.

9 b. That the person creating the trust was under no dis-
10 ability or infirmity at the time the trust was created.

11 c. That the transfer by the trustee to the purchaser is
12 effective and rightful.

13 d. That the trustee knows of no facts or legal claims
14 which might impair the validity of the trust or the validity
15 of the transfer.

16 5. a. A person holding an adverse claim arising or
17 existing prior to January 1, 1992, by reason of a transfer of
18 an interest in real estate by a trustee, or a purported
19 trustee, shall not file an action to enforce such claim after
20 December 31, 1993, at law or in equity, in any court to
21 recover or establish any interest in or claim to such real
22 estate, legal or equitable, against the holder of the record
23 title to the real estate.

24 b. An action based upon an adverse claim arising on or
25 after January 1, 1992, by reason of a transfer of an interest
26 in real estate by a trustee, or a purported trustee, shall not
27 be maintained either at law or in equity, in any court to
28 recover or establish any interest in or claim to such real
29 estate, legal or equitable, against the holder of the record
30 title to the real estate, legal or equitable, more than one
31 year after the date of recording of the instrument from which
32 such claim may arise.

33 6. This section shall not be construed to limit any per-
34 sonal action against the trustee or purported trustee.

35 Sec. 2. APPLICABILITY. This section does not apply to an

1 action pending on the effective date of this Act.

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EXPLANATION

3 This bill strikes the existing 10-year statute of limi-
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SENATE FILE 2272

AN ACT

RELATING TO THE TRANSFERS OF REAL ESTATE INTERESTS BY TRUSTEES, LIMITING CLAIMS AGAINST SUCH REAL ESTATE TRANSFERS, AND PROVIDING FOR THE ACT'S APPLICABILITY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 614.14, Code Supplement 1991, is amended by striking the section and inserting in lieu thereof the following:

614.14 RECOVERY OF BENEFICIARY OF TRUST.

1. If an interest in real estate is held of record by a trustee, a bona fide purchaser acquires all rights in the real estate which the trustee and the beneficiary of the trust had and any rights of persons claiming by, through or under them, free of any adverse claim.

2. A bona fide purchaser is a purchaser for value in good faith and without notice of any adverse claim, who has relied on a current, recorded affidavit in substantially the following form delivered to the purchaser:

[Individual trustee]

Affidavit in re

[insert legal description]

I,, being first duly sworn and under oath state of my personal knowledge that:

1. I am the trustee under the trust dated, 19..., to which the above-described real estate was conveyed to the trustee by, pursuant to an instrument recorded the day of, 19..., recorded in the office of the County Recorder in [insert recording data].

2. I am the presently existing trustee under the trust and am authorized to [describe the

transfer to be made by the trustee to the bona fide purchaser], without any limitation or qualification whatsoever.

3. The trust is in existence and I as trustee am authorized to transfer the interests in the real estate as described in paragraph 2, free and clear of any adverse claims.

.....
[signature of affiant]

Sworn to and subscribed before me by
on this day of, 19...

.....
[Notary Public in and for the
State of]

[Corporate trustee]

Affidavit in re

[insert legal description]

I,, being first duly sworn and under oath state of my personal knowledge that:

1. is the trustee under the trust dated, 19..., to which the above-described real estate was conveyed to the trustee by, pursuant to an instrument recorded the day of, 19..., recorded in the office of the County Recorder in [insert recording data].

2. is the presently existing trustee under the trust and is authorized to [describe the transfer to be made by the trustee to the bona fide purchaser], without any limitation or qualification whatsoever, and I am [officer] of the corporate trustee.

3. The trust is in existence and as trustee is authorized to transfer the interests in the real estate as described in paragraph 2, free and clear of any adverse claims.

.....
[signature of affiant]

Sworn to and subscribed before me by,
on this day of, 19...

.....
[Notary Public in and for the
State of]

3. As used in this section, "adverse claim" includes a claim that a transfer was or would be wrongful, a claim that a particular adverse person is the owner of or has an interest in the real estate, and a claim that would be disclosed by the examination of any document not of record.

4. Unless clearly provided to the contrary by the instrument of transfer to a purchaser, a trustee transferring an interest in real estate warrants to the transferee all of the following:

- a. That the trust pursuant to which the transfer is made is duly executed and in existence.
- b. That the person creating the trust was under no disability or infirmity at the time the trust was created.
- c. That the transfer by the trustee to the purchaser is effective and rightful.
- d. That the trustee knows of no facts or legal claims which might impair the validity of the trust or the validity of the transfer.

5. a. A person holding an adverse claim arising or existing prior to January 1, 1992, by reason of a transfer of an interest in real estate by a trustee, or a purported trustee, shall not file an action to enforce such claim after December 31, 1993, at law or in equity, in any court to recover or establish any interest in or claim to such real estate, legal or equitable, against the holder of the record title to the real estate.

b. An action based upon an adverse claim arising on or after January 1, 1992, by reason of a transfer of an interest in real estate by a trustee, or a purported trustee, shall not be maintained either at law or in equity, in any court to recover or establish any interest in or claim to such real estate, legal or equitable, against the holder of the record

title to the real estate, legal or equitable, more than one year after the date of recording of the instrument from which such claim may arise.

6. This section shall not be construed to limit any personal action against the trustee or purported trustee.

Sec. 2. APPLICABILITY. This section does not apply to an action pending on the effective date of this Act.

MICHAEL E. GRONSTAL
President of the Senate

ROBERT C. ARNOULD
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2272, Seventy-fourth General Assembly.

JOHN P. DWYER
Secretary of the Senate

Approved *[Signature]* 23, 1992

TERRY E. BRANSTAD
Governor