



Ohio Revised Code

Section 1337.04 Recording of power of attorney.

Effective: October 24, 2024

Legislation: Senate Bill 94

(A) As used in this section, "real property interest" means a deed, mortgage, land installment contract, or lease.

(B) A power of attorney used for the execution of a real property instrument shall be properly executed and acknowledged by the principal before the execution and acknowledgement of such real property instrument executed by virtue of such power of attorney.

For purposes of this section, if the execution and acknowledgement of the power of attorney is dated the same date as the execution and acknowledgment of the real property instrument, the power of attorney shall be presumed to have been executed and acknowledged before the execution and acknowledgment of the real property instrument.

(C) A power of attorney used for the execution of a real property instrument shall be recorded in the office of the county recorder of the county in which such property is situated, before the recording of the real property instrument executed by virtue of such power of attorney.

For purposes of this section, a power of attorney that is known to have been recorded the same day, but after, the recording of the real property instrument shall be considered to have been recorded before the real property instrument.

If a power of attorney is not recorded before, or is not known to have been recorded on the same day as, the recording of the real property instrument executed by virtue of such power of attorney, the power of attorney may be subsequently placed of record as an attachment to a supporting affidavit made by any person having knowledge of the facts or competent to testify concerning them in open court, so long as the power of attorney was executed and acknowledged not later than the day of the execution of the real property instrument. The supporting affidavit shall include all of the following:

(1) The name of the person appearing by record to be the owner of the property described in the real



property instrument executed by virtue of the power of attorney at the time of the recording of the affidavit;

(2) The permanent parcel number of the property;

(3) The legal description of the property subject to the real property instrument executed by virtue of the power of attorney;

(4) The official record reference of the real property instrument executed by virtue of the power of attorney;

(5) If the power of attorney that the affidavit accompanies is a photocopy of the power of attorney, rather than the original, a statement that the photocopy is a true and accurate copy and a statement regarding why the original is not being recorded.

(D) The county recorder shall record the supporting affidavit in the official records, indexed by the name of the current record owner.

(E) Notwithstanding any contrary provision set forth in this section, a real property instrument executed by virtue of a power of attorney that has been of record for a period of ten years or more shall be presumed valid and of full force and effect if the power of attorney has not been placed of record.

(F) The amendments to this section by S.B. 94 of the 135th general assembly have no effect on the rights of a bona fide purchaser for value who acquired those rights without actual knowledge or constructive notice of the power of attorney, the real property instrument executed by virtue of the power of attorney, or an affidavit that meets the requirements of division (C) of this section.

(G) The amendments to this section by S.B. 94 of the 135th general assembly have no effect on the law of constructive notice or chain of title analysis set forth in *Spring Lakes Ltd. v. O.F.M. Co.*, 12 Ohio St.3d 333 (1984) ; *Ohio Turnpike Commission v. Spellman Outdoor Advertising Services, LLC*, 2010-Ohio-1705 ; and *Spellman Outdoor Advertising Services, LLC v. Ohio Turnpike and Infrastructure Commission*, 2016-Ohio-7152.



(H) The amendments to this section by S.B. 94 of the 135th general assembly shall be given retroactive effect to the fullest extent permitted under Section 28 of Article II, Ohio Constitution. The amendments to this section shall not be given retroactive effect if to do so would affect any accrued substantive right or vested rights in any person or in any real property instrument.