

**SUMMARY OF COMMENTS OF THE SECTION ON  
REAL ESTATE, HOUSING AND LAND USE  
TOGETHER WITH THE SECTION'S COMMITTEES ON COMMERCIAL  
TRANSACTIONS AND LEASING OF THE DISTRICT OF COLUMBIA BAR  
REGARDING D.C. COUNCIL BILL 10-88,  
THE "UNIFORM PROPERTY CONVEYANCING REVISION ACT OF 1993"**

The Section on Real Estate, Housing and Land Use of the District of Columbia Bar makes the following comments on those provisions of the Bill affecting the revision of the District's conveyancing laws.

1. Power of Attorney. The Bill would allow the transfer or encumbrance of real property by the power of attorney. The Section believes this provision will provide additional flexibility in the handling of property transactions and will reduce the inefficiencies and delays inherent in the current system. The Bill will make the District's law uniform with all other jurisdictions in the country. The Bill will facilitate residential and commercial property transactions as well as estate planning. In addition, the Section supports proposed modifications that will require a consumer-oriented notice at the top of every real property power of attorney describing the effect of the power. The modifications also require specific identification of the property to be conveyed. These notice and description requirements are intended to allay fears of the Bill's critics that unsuspecting property holders may be duped out of their land.

2. Elimination of the Corporate Attorney-in-Fact Requirement. The Bill will eliminate the provision in the current law that requires a corporation transferring property to name an attorney-in-fact in the conveyance document. The Section believes this requirement is unnecessary in that any property conveyance signed by a responsible corporate officer has presumably already passed legal muster. The attorney-in-fact requirement has become a trap for the unwary that often leads to unjustifiable delay and inefficiency when the error must be corrected. The Bill will make this aspect of the District's conveyancing law uniform with the rest of the nation.

3. Curative Measures. The Bill will allow harmlessly defective conveyances to become effective despite their defects after a six-month period. The Section believes this provision will allow land titles to be freed of defects that have no substantive impact on the title but nevertheless are costly to correct. Clear title to property is more easily and cheaply conveyed, and the curative measures will provide for a greater number of clear titles.

For the reasons set forth above, the Section on Real Estate, Housing and Land Use urges the Council to support the Bill with the Section's proposed modifications to revise the District's real property conveyancing laws.

DRAFT

June 3, 1993

BY HAND DELIVERY

Honorable James E. Nathanson  
Council of the District of Columbia  
1350 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Re: Proposed Uniform Property Conveyancing  
Revision Act of 1993

Dear Councilman Nathanson:

We are writing to you in support of the proposed Uniform Property Conveyancing Revision Act of 1993 which will, among other things, permit the transfer or encumbrance of real estate by power of attorney. This legislation will substantially facilitate the process for the conveyance of real estate in the District of Columbia. To the best of our collective knowledge, Washington, D.C. is the only jurisdiction which does not permit the transfer of real estate by power of attorney. The inability to convey real estate by a power of attorney often results in significant delay and unnecessary expense to owners of real estate. Additionally, the absence of a power of attorney conveyancing provision significantly affects estate planning. We believe, however, that certain modifications to the proposed legislation will increase its effectiveness and reduce interpretative error. Consequently, we suggest the following changes to the proposed legislation.

First, we are concerned that parties who are executing a power of attorney fully understand the consequences of executing such power. We suggest that the following language be inserted in place of the proposed changes to Section 498 on page two of the proposed statute:

(a) A power of attorney executed by a person specifically authorizing an attorney-in-fact to sell, grant, lease, encumber, release or otherwise convey any interest in real property shall be executed in the same manner as a deed and shall be recorded with or prior to

the instrument executed pursuant to the power of attorney. All powers of attorney executed in accordance with this Section shall contain on the top of the front page, either in capital letters or underscored, the following words:

"THIS POWER OF ATTORNEY SPECIFICALLY AUTHORIZES THE PERSON NAMED BELOW AS MY ATTORNEY-IN-FACT TO DO ONE OR MORE OF THE FOLLOWING: TO SELL, LEASE, GRANT, ENCUMBER, RELEASE OR OTHERWISE CONVEY ANY INTEREST IN MY REAL PROPERTY AND TO EXECUTE A DEED AND ALL OTHER INSTRUMENTS ON MY BEHALF."

(b) All powers of attorney shall specifically identify the real property to which the power of attorney applies by property address and by legal description with the same specificity as required in a deed.

(c) The power to sell, lease, grant, encumber, release, or otherwise convey any interest in real property which is provided in a power of attorney which meets the requirements of this provision shall hereby also give to the attorney-in-fact, without further or more specific reference, the power to execute all other related documents (including without limitation all recordation and transfer tax returns and related forms) necessary to effectuate the sale, lease, or other authorized transaction.

(d) A person executing a deed or other instrument as attorney-in-fact shall sign and acknowledge the instrument as follows:

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[Print Name of Attorney-In-Fact] as Attorney-In-Fact for  
[Print name of Person  
Conveying Interest]

(e) A power of attorney recorded pursuant to Subsection (a) may be revoked by recording an instrument containing the revocation with the Office of the Recorder of Deeds. The recordation of such revocation shall not, however, affect the validity of a previously recorded document executed pursuant to that power of attorney.

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(f) No power of attorney may be recorded unless it bears the certification of an attorney-at-law that the instrument has been prepared by an attorney or under an attorney's supervision.

Second, we suggest that Subsection (b) of the proposed changes to Section 1031 on page 2 of the proposed Amendment be modified to avoid a possible unintended error. The proposed Section allows one party holding an interest as tenant by the entirety to grant its interest in the property to another party. Under D.C. law, an interest in property held as tenants by the entirety may only be conveyed by the other tenant joining in the deed, by decree of the court in connection with a divorce, or by death. Therefore, we propose that Subsection (b) be modified by inserting in line 24 after the word "grantors" the following parenthetical:

"(provided, however, that nothing herein shall permit the transfer, encumbrance, or other disposition of an interest held as a tenant by the entireties without the signature of both such tenants, or their respective attorneys-in-fact)"

Third, Section 499(c) of the proposed act gives affect to certain defective instruments which are recorded among the Land Records of the District of Columbia when no judicial challenge is filed within six (6) months after the instrument in question is recorded. We suggest that the defects cured by such statute include the failure of a corporation to appoint an attorney-in-fact in a deed conveying real property owned by a corporation. Please consider adding the following language as Paragraph (5) to Subsection (a) of Section 499(c):

"(5) if it meets the other requirements above, the failure of a corporation to appoint an attorney-in-fact."

Once you have reviewed these suggested changes, we would be happy to meet with you to discuss any questions or concerns you may have regarding our proposals. This letter shall be deemed to supersede those suggested changes contained in a March 17, 1993, letter to you from the District of Columbia Land Title Association and signed by Alison Rind.

Each of the undersigned plan to address the Council at the hearing scheduled for June 9, 1993, at 2:00 p.m. Hopefully, our appearance is acceptable to you. We look forward to working with you on this project.

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Please note that the views expressed herein are those of the Commercial Leasing and Commercial Transactions Committees and the Real estate, Housing and Land Use Section of the D.C. Bar and those of the D.C. Land Title Association and not those of the D.C. Bar or its Board of Governors.

Sincerely yours,

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Edward A. Bloom, Esq.  
Chairman of the Commercial  
Transactions Committee of the  
Real Estate, Housing and Land  
Use Section of the D.C. Bar

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Kerry L. Iris, Esq.  
Chairman of the Commercial  
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Alison W. Rind, Esq.  
President of the D.C. Land  
Title Association