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## Report of Committee on Comprehensive Curative Act

Wyoming State Bar

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Code and has proven very satisfactory. The Utah statute reads as follows:

“In all cases where the estate left by a deceased person has descended from another deceased person whose estate has never been probated, or where two or more deceased persons held property during their lifetime as tenants in common, and neither estate has been probated, and where the heirs are the same, the court may grant letters of administration upon such estates jointly, and they may be administered the same as if they were but one estate.”

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## REPORT OF COMMITTEE ON COMPREHENSIVE CURATIVE ACT

October 18, 1946.

The report of your committee on a Comprehensive Curative Act for the validation of deeds and other instruments affecting the title to real estate will be brief for the reason that the question has been discussed before and most of you have had an opportunity to read the Nebraska Comprehensive Curative Act and the papers leading up to its passage. Also, we are all more or less familiar with the purpose and effect of such acts.

The Nebraska Comprehensive Curative Act was passed in 1941 and was the result of intensive study by a committee of the Nebraska Bar assisted by Dean Emeritus Henry H. Foster of the Nebraska College of Law and Rufford G. Patton, author of Patton on Titles. From a number of Nebraska attorneys we have found that the act is workable and effective and as was said last year by the chairman of the committee which drafted the act it—

“is practical in the very simplicity of its application, dependable in its careful respect for constitutional limitations, and at the same time probably as comprehensive in its scope as one could be made without leaving the course charted by constitutional compass. Its full usefulness is now in the hands of the Bar.”

We have curative acts in Wyoming the latest being Chapter 46, Session Laws of Wyoming, 1935, which has been beneficial but which is limited in its scope by being fragmentary and in being applicable only to specific defects and not formal defects generally. It is further fast becoming antiquated being effective, even in its limited scope, to defects in deeds or conveyances prior to January 1, 1925, over twenty-one years ago.

We have been able to locate only one decision of our Supreme Court based on this Act. In the case of *Black v. Beagle* (1943) 59

Wyo. 268, 140 P. (2d) 594, the decision was based, in part, on the curative act.

The Nebraska Comprehensive Curative Act is brief, yet it is broad enough as to the nature of the formal defects covered as to include in suitable, general language all kinds of defects in all kinds of deeds and instruments affecting real estate. Further, it eliminates the use of specific dates substituting a definite bulk period of time, ten years, to which the cure would operate for all time to come, making it unnecessary for future Legislatures to act on the question and quite possibly giving us a hodgepodge of conflicting and inconclusive legislation which would tend to confuse rather than clarify.

As stated before, we have based our proposed Act on the Nebraska Act as it appears to be ably drawn and effective in use—also we will then find Nebraska decisions on their Act at least persuasive. We have made a few additions which seemed to increase the effectiveness of the Act insofar as Wyoming is concerned. Consequently, we present to you herewith the proposed act.

It is the recommendation of your committee that the passage of this Bill and its Enactment be approved by the Wyoming State Bar with the direction that it be referred to the appropriate committee to be then presented to the next Legislature with the Bar's recommendation that it be passed. Further, that each member of the Bar contact the legislative delegation in his or her county urging the enactment of this legislation.

Respectfully submitted,

C. H. Harkins, W. J. Wehrli,  
and R. Dwight Wallace.

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## A BILL

for

AN ACT validating deeds and other instruments which have been recorded for more than ten years as to formal defects therein; defining formal defects; providing that such deeds or instruments shall impart notice and that they, the record thereof or duly authenticated copies shall be competent evidence.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WYOMING:

Section 1. When any instrument of writing, in any manner affecting or purporting to affect the title of real estate, has been, or may hereafter be recorded for a period of ten years in the office of

the *county clerk and ex-officio register of deeds of the county* wherein such real estate is situated, and such instrument, or the record thereof, because of defect, irregularity or omission, fails to comply in any respect with any statutory requirement or requirements relating to the execution, attestation, acknowledgment, certificate of acknowledgment, recording or certificate of recording, such instrument and the record thereof shall, notwithstanding any or all such defects, irregularities and omissions, be fully legal, valid, binding and effectual for all purposes to the same extent as though such instrument had, in the first instance, been in all respects duly executed, attested, acknowledged and recorded.

Section 2. The defects, irregularities and omissions mentioned in Section 1 hereof shall include all defects and irregularities in respect to formalities of execution and recording, and all defects and irregularities in, as well as the entire lack or omission of attestation, acknowledgment, certificate of acknowledgments, or certificate of recording, and shall apply with like force to instruments whether or not the real estate involved in homestead; *and, shall apply to instruments in which the marital status of any grantor is not given, to those which fail to contain a clause expressly releasing or waiving the right of homestead, and to those which do not have a certificate of acknowledgment including a release and waiver of the right of homestead.*

Section 3. From and after its validation by the operation of Section 1 hereof, such instrument shall impart notice to subsequent purchasers, encumbrancers, and all other persons whomsoever so far as and to the same extent that the same is recorded, notwithstanding such defects, irregularities or omissions; and such instrument, the record thereof, or a duly authenticated copy shall be competent evidence to the same extent as such instrument would have been competent if valid in the first instance.

Section 4. This act shall be known as, "The Comprehensive Curative Act", and may be quoted and cited as such.

Section 5. The provisions of this act shall be cumulative and in addition to all other like acts and statutes previously enacted.

Section 6. This Act shall take effect and be in force from and after its passage.