

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Eugene L. O'Flaherty

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to provide landowner's title protection.

PETITION OF:

NAME:

Eugene L. O'Flaherty

DISTRICT/ADDRESS:

2nd Suffolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1629 OF .]

The Commonwealth of Massachusetts

—————
In the Year Two Thousand and Nine
—————

AN ACT TO PROVIDE LANDOWNER'S TITLE PROTECTION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws are hereby amended by inserting after Chapter 183B
2 the following chapter:

3
4 CHAPTER 183C
5 LANDOWNER'S TITLE PROTECTION ACT

6
7 Section 1. This chapter shall be known and may be cited as the Landowner's Title
8 Protection Act.

9
10 Section 2. As used in this chapter, the following words shall, unless the
11 context otherwise requires, have the following meanings:

12
13 "Decree", a decree, judgment or order of any court within the commonwealth
14 including, but not limited to, a decree, judgment or order of the superior court
15 or land court affecting an interest in land or a decree of judgment of the
16 probate court allowing a will or appointing an administrator.

17
18 "Deed", any type of instrument of conveyance, except a mortgage or a tax taking
19 by a municipality, including, but not limited to, a warranty, quitclaim,
20 release, foreclosure, fiduciary, or commissioner's deed, or a sheriff's deed or
21 tax collector's deed recorded subsequent to foreclosure of the right of
22 redemption; or a treasure's deed of low value land held under tax title, which
23 is recorded subsequent to recording of a decree establishing title pursuant to
24 section 80B of chapter 60, and one year has elapsed after recording, in either
25 case without any petition to vacate having been timely filed.

26
27 "Land", any parcel or tract of unregistered land in the commonwealth, together
28 with any and all buildings and other improvements thereon unless such buildings

29 or improvements are expressly excepted therefrom.

30

31 "Origin of title", a title transaction, other than a devise or probate court
32 decree as to an intestacy or the allowance of a will, in the chain of title,
33 containing language or, in the case of a decree, provisions sufficient to create
34 or transfer the interest in land which forms the basis for the title to such
35 land, and which was the most recent as of that date which is the beginning of
36 the sufficiency period prior to the date on which the sufficiency is being
37 determined.

38

39 "Recorded", recorded in the appropriate registry of deeds or filed in the
40 appropriate registry of probate.

41

42 "Records", records of the registry of deeds for the county or district in which
43 the land is located and of any registry of probate in the commonwealth.

44 "Sufficiency Period", fifty years, except in those cases where a longer period
45 is required pursuant to the provisions of paragraph (b) of section 3.

46

47 "Title transaction", any transaction affecting title to any interest in land,
48 including, but not limited to, any deed, grant, release, devise, instrument of
49 taking by eminent domain, decree foreclosing redemption from a tax taking and
50 other decree.

51

52 Section 3. (a) Any person having an interest in land, who has an unbroken chain
53 of title to such interest for the sufficiency period or more, shall be deemed to
54 have a good and clear record and marketable title to that interest, subject only
55 to the provisions of section 4. An unbroken chain of title exists when the
56 records disclose: (i) the origin of title; and (ii) nothing in the records
57 within or subsequent to the origin of title which purports to divest the person
58 claiming the interest.

59

60 (b) If, within fifty years preceding the date on which the sufficiency of title
61 is being determined, there appear to have been no title transaction, other than
62 a devise or probate court decree as to an intestacy or the allowance of a will,
63 relating to such interest or the land it affects, the sufficiency period shall
64 be seventy-five years.

65

66 Section 4. A good and clear record and marketable title shall be subject to:

67

68 (a) any interest or encumbrance which is created by a title transaction and is
69 within the chain of title of the origin of title on or subsequent to the
70 effective date of the origin title.

71

72 (b) any interest or encumbrance which is created by a title transaction prior to
73 the effective date of the origin of title only if the origin of title or
74 subsequent recorded instrument specifically identifies either such prior
75 interest or encumbrance or the instrument in the records wherein the interest or
76 encumbrance was created, but a general reference to a title source such as "for
77 our title see", or "said land is the same described in", or general phrases such
78 as "subject to any rights, easements, restrictions and other matters, of record"
79 or words or phrases of similar import, shall not be deemed a "specific
80 identification therein" so as to preserve such interest or encumbrance;

81

82 (c) any right or easement granted to owners abutting private ways under section
83 5 of chapter 187;

84

85 (d) any right or easement granted, excepted or reserved by any instrument, if
86 there is evidence of the existence of such right or easement beneath, upon or
87 above any part of the land described in such instrument, whether or not
88 observable on or above the ground;

89
90 (e) any right or easement granted, excepted or reserved by any instrument, if
91 there is evidence of the use of such right or easement upon any part of the
92 land;

93
94 (f) any interest or easement of any public utility corporation or any public
95 service corporation organized and existing under chapter 158 or chapter 164;

96
97 (g) any reversionary interest of a lessor, or any interest of a successor of any
98 lessor at the expiration of any lease;

99
100 (h) any interest of the United States, the commonwealth or any political
101 subdivision, agency, authority or instrumentality of the commonwealth;

102
103 (i) the rights of any person arising from a twenty-year period of adverse
104 possession or prescriptive use, which period was in whole or in part subsequent
105 to the date of origin of title;

106
107 (j) conservation, preservation, agricultural preservation and affordable housing
108 restrictions exempted under the provisions of clause (c) of the first paragraph
109 of section 26 of chapter 184;

110
111 (k) any interest or instrument of record which has been created pursuant to
112 section 6 of chapter 21E;

113
114 (l) any liens created pursuant to section 13 of said chapter 21E;

115
116 (m) any restriction, easement, condition or license held by any governmental
117 body, as defined in section 26 of chapter 184, if the instrument imposing such
118 restriction, easement, condition or license is duly recorded and indexed in the
119 grantor index in the registry of deeds or registered in the registry district of
120 the land court for the county or district wherein the land lies so as to affect
121 its title, and describes the land by metes and bounds or by reference to a
122 recorded or registered plan showing its boundaries; and

123
124 (n) all interests preserved in chapter 185.

125
126 Section 5. Except as provided in section 4, all interests, the existence of
127 which depend upon any title transaction that occurred prior to the effective
128 date of the origin of title, however denominated, whether legal or equitable,
129 present or future, which interests may be asserted by any person, whether or not
130 under a disability, including but not limited to all rights of redemption in the
131 case of taking or sale for the non-payment of real estate taxes, are hereby
132 declared to be null and void with respect to the interest specified in section
133 3.

134
135 Section 6. Notwithstanding the foregoing, any person to whom a decree of
136 confirmation under chapter 185 has been issued shall be deemed to have a good
137 and clear record and marketable title as of the effective date of such decree
138 subject only to the matters set forth in such decree and the matters enumerated
139 in section 46 of chapter 185.

140

141 Section 7. This chapter shall be liberally construed to effectuate the
142 legislative purpose of simplifying and facilitating title transactions by
143 allowing persons to rely on a record chain of title as described in section 3,
144 subject only to such limitations as appear in section 4.

145
146 Section 8. Except as herein specifically provided, nothing herein shall be
147 construed to change the period for bringing an action or for doing any other
148 required act under any statute of limitations or to affect the operations of any
149 statute governing the effect of the recording or the failure to record any
150 instrument affecting land.

151
152 SECTION 2. If the sufficiency period specified in section 3 of chapter 183C of
153 the General Laws would expire prior to January 1, 2006, such period shall be
154 extended so as to expire on January 1, 2006.

155
156 SECTION 3. This act shall take effect upon its passage and shall apply to
157 instruments executed on, after and prior to said date.

158
159
160