

COMMONWEALTH OF MASSACHUSETTS
LAND COURT

DEPARTMENT OF THE TRIAL COURT

**CHECKLISTS FOR VOLUNTARY WITHDRAWAL OF LAND FROM
THE REGISTRATION SYSTEM UNDER THE PROVISIONS OF
CHAPTER 185, SECTION 52, AS AMENDED**

The Checklists address voluntary withdrawal of both publicly and privately owned land from the provisions of G.L. c. 185, § 52. Since the Land Court Guidelines were last updated (as of February 27, 2009), G.L. c. 185, § 52 has been amended. Therefore, until such time as the Land Court Guidelines are further updated by the Court, the Checklists set forth herein should serve as guidance when filing for voluntary withdrawal pursuant to G.L. c. 185, § 52.

With all voluntary withdrawals under the statute, a Subsequent Petition (commonly referred to as an “S-Petition”) must be filed with the Land Court. The Checklists outlined below, (one addressing publicly owned land and one addressing privately owned land) set forth the materials to be submitted and the procedures to be followed to process the Subsequent Petition for Voluntary Withdrawal.

A. Land owned by the Commonwealth, or an agency, department, board, commission or authority of the Commonwealth, or any political subdivision thereof, or any authority of any such political subdivision may have their land withdrawn from registration pursuant to the following procedures:

1. The public entity which has acquired the registered land must file a Complaint. This Complaint is to be drafted by the Plaintiff and is not the Complaint referred to in the following section dealing with privately owned land (and is therefore not the form of Complaint on the Land Court website).

(a) The Complaint should include a brief description of the public entity, including the source, whether statutory or otherwise, of the public entity's designation/authority.

(b) In those cases where the ownership of the land derives from an eminent domain taking, and a new Certificate of Title has not issued in the name of the public entity, the Complaint may combine the eminent domain aspect of the case with the voluntary withdrawal. As with all eminent domain taking Subsequent Petitions, the Complaint must allege compliance with all the requirements of Massachusetts General Laws, Chapter 79, relative to said taking.

2. File (a) an attested copy of the Certificate of Title or (b) if the Certificate of Title has not been prepared, an attested copy of the deed(s) into the current owner, and a copy of the most recent prior Certificate of Title.
3. The filing fee for the Subsequent Petition is \$50.00.
4. Title examination by a Land Court examiner is required. The Court will appoint an examiner pursuant to SJC Rule 1:07. (Any request for a non-sequential appointment in accordance with the Rule must be made at the time of filing the Complaint.) When the Court appoints an examiner, it will send the Title Examiner Appointment Letter to Plaintiff's attorney, who is responsible for sending the Title Examiner Appointment Letter to the examiner, together with a copy of the Complaint.
5. The title examination should run from the date of the outstanding Certificate of Title and list all of the owners, mortgagees, and lessees, with an address for each.
6. Notice to all mortgagees and lessees of record is required. If Plaintiff does not submit the assents of all mortgagees and lessees, a citation will be issued. Upon receipt of assents from all those entitled to notice, or their default, the case will be treated as an uncontested matter, and presented to the Court for its consideration. The Court will determine if further submissions or a hearing are required. If any party notified files an

opposition to the Complaint, the case will be treated as a contested case, to be resolved according to the penultimate sentence of § 52.

7. A Court Order will issue for the withdrawal of the land from the provisions of Chapter 185.

B. Registered Land owners, other than public entities, who qualify under the statute, may have their land withdrawn from registration pursuant to the following procedures:

1. Plaintiffs (all the owners of the property) must file a Complaint for Voluntary Withdrawal of Land from the Registration System, signed by either the registered owners or their attorney. The basic form of Complaint is available on the Land Court website, but must be augmented with allegations and exhibits, as necessary (see below).
2. Plaintiffs must file a Notice of Voluntary Withdrawal of Land from the Registration System (“Notice of Voluntary Withdrawal”), signed and acknowledged by all owners. The form is available on the Land Court website.
3. The filing fee for the Subsequent Petition is \$50.00.
4. File (a) an attested copy of the Certificate of Title or (b) if the Certificate of Title has not been prepared, an attested copy of the deed(s) into the current owner, and a copy of the most recent prior Certificate of Title.
5. Plaintiffs may voluntarily withdraw their land under the statute, as amended, as follows:

if at least one of the following is shown: **(i)** the registered land constitutes less than all of the total area of a single parcel or of 2 or more contiguous parcels in common ownership; **(ii)** the registered land consists of less than 10 per cent of the portion of the land area to which an original certificate of title pertains and the rest of the land area to which that certificate pertains was conveyed under this chapter since the original registration; **(iii)** the owners of the registered land

have submitted the land or satisfy the court that the owners shall submit the land to chapter 183A or 183B or shall create interests in the land to which said chapter 183B is applicable under section 3 of chapter 760 of the acts of 1987 or satisfy the court that the owners shall create those interests; **(iv)** the owners of the registered land establish that the registered land is improved with an occupied building not used or occupied as or in connection with, and not designed or intended for use or occupancy as or in connection with, a 1-to-4 family residential dwelling; or **(v)** the court finds that the owners of the registered land have demonstrated other good cause for withdrawal under this section including, but not limited to, economic hardship by reason of the land being registered which may include the burdens and expenses of further dividing the registered land into lots for separate conveyance (G.L. c. 185, § 52)

Sections (i) (contiguous and in common ownership) & (ii) (less than 10%) under the statute:

- (a) In cases under sections (i) and (ii) of the statute, Plaintiffs must submit proof that their situation falls within the applicable section by attaching to the Complaint relevant plans and deeds, which support the allegations in the Complaint. There will be a review by the Survey Department of all Complaints filed under sections (i) and (ii). (The Court may require a certificate from a registered engineer or land surveyor for verification.)
- (b) There is no longer a requirement that registered land constitute less than 50% of the total area of a single parcel or of two or more contiguous parcels in common ownership.

Section (iii) (G.L. c. 183A & G.L. c. 183B) under the statute:

- (a) In cases where Plaintiffs allege they have submitted the land to the provisions of Chapters 183A or 183B, Plaintiffs must submit proof of the facts alleged.

(b) In cases where the land is to be submitted to Chapters 183A or 183B, there is no longer a requirement that the master deed, or other timeshare document, be approved by the Court and registered prior to withdrawal. Plaintiffs must have “. . . submitted the land or satisfy the court that the owners shall submit the land to chapter 183A or 183B or shall create interests in the land to which said chapter 183B is applicable under section 3 of chapter 760 of the acts of 1987 or satisfy the court that the owners shall create those interests.” (G.L. c. 185, § 52 (iii))

- i. Plaintiffs’ or Plaintiffs’ attorney will provide the Land Court with an affidavit of intention to record a master deed and associated condominium documents.
- ii. The Notice of Voluntary Withdrawal will only be approved conditional upon the recording of a master deed on the unregistered side.
- iii. Registry District personnel will ascertain that the master deed has been recorded or will oversee its recording contemporaneously with the registration of the Notice of Voluntary Withdrawal.
- iv. The recording sheet that is provided to the Registry Districts, by the Land Court, on which they report the document number of the Notice of Voluntary Withdrawal, will now contain a section in which the recording information of the master deed will also be reported.

Section (iv) (occupied, commercial building) under the statute:

(a) Plaintiffs may “. . . establish that the registered land is improved with an occupied building not used or occupied as or in connection with, and not designed or intended for use or occupancy as or in connection with, a 1-to-4 family residential dwelling.” (G.L. c. 185, § 52 (iv))

(b) Once established to the satisfaction of the Court, withdrawal will be allowed.

(c) Supporting documentation may include, but is not limited to, Assessor's records, surveys, photographs, and/or affidavits.

Section (v) (good cause) under the statute:

(a) When voluntary withdrawal is sought for "other good cause," the Complaint must set forth, with specificity, the grounds upon which the Court is asked to find "good cause."

(b) Under this section, the Court will determine, based upon the facts and circumstances, the existence of hardship *prior* to the appointment of an outside title examiner.

6. Title examination by a Land Court examiner is required. The Court will appoint an examiner pursuant to SJC Rule 1:07. (Any request for a non-sequential appointment in accordance with the Rule must be made at the time of filing the Complaint.) When the Court appoints an examiner, it will send the Title Examiner Appointment Letter to Plaintiffs' attorney, who is responsible for sending the Title Examiner Appointment Letter to the examiner, together with a copy of the Complaint.
7. The title examination should run from the date of the outstanding Certificate of Title and list all of the owners, mortgagees, and lessees, with an address for each.
8. Notice to all mortgagees and lessees of record is required. If Plaintiffs do not submit the assents of all mortgagees and lessees, a citation will be issued. Upon receipt of assents from all those entitled to notice, or their default, the case will be treated as an uncontested matter, and presented to the Court for its consideration. The Court will determine if further submissions or a hearing are required. If any party notified files an opposition to the Complaint, the case will be treated as a contested case, to be resolved according to the penultimate sentence of Section 52.

9. Upon the filing with the Court's Land Registration District of the Notice of Voluntary Withdrawal endorsed by a Justice of the Land Court, it will be noted on the Certificate of Title, which then will be canceled, the land described in the Notice of Voluntary Withdrawal shall be deemed withdrawn and shall become unregistered land, and the owners shall hold title thereto at the time of such filing "free of all liens and encumbrances existing as of the time of filing of the notice, including adverse possession and prescriptive rights, as though a judgment of confirmation without registration effective as of the time of filing of the notice had been recorded under section 56A; provided, however, that the owners shall not hold title free of the encumbrances set forth or referred to in section 46 and those noted on the certificate of title or filed for registration before the filing of the notice of voluntary withdrawal." (G.L. c. 185, § 52)
10. The Chief Title Examiner and Survey Department will receive, from the local Registry District, verification of the filing of the Notice of Voluntary Withdrawal, with the document number and date of filing, and the verification will be docketed in the Subsequent Petition case.
11. Plaintiffs' attorney should be aware that they may want to record the Notice of Voluntary Withdrawal of Land from the Registration System on the unregistered side of the Registry to provide a starting point for the title on the unregistered side. A "Register This Copy," a "Record This Copy," and a "Copy" (the Copy is for the Attorney's records) of the endorsed Notice of Voluntary Withdrawal are provided by the Land Court.

Caveat: Please note that any authority documents for the registered owner(s) will be necessary at the time of the registration of the endorsed Notice of Voluntary Withdrawal.