

HOUSE No. 1629

By Mr. O’Flaherty of Chelsea, petition of Eugene L. O’Flaherty relative to title protection for owners of improved land. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

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
2 after Chapter 183B the following chapter:—

3 **CHAPTER 183C.**
4 **LANDOWNER’S TITLE PROTECTION ACT.**

5 Section 1. This chapter shall be known and may be cited as the
6 Landowner’s Title Protection Act.

7 Section 2. As used in this chapter, the following words shall,
8 unless the context otherwise requires, have the following mean-
9 ings:—

10 “Decree”, a decree, judgment or order of any court within the
11 Commonwealth including, but not limited to, a decree, judgment or
12 order of the superior court or land court affecting an interest in land
13 or a decree of judgment of the probate court allowing a will or
14 appointing an administrator.

15 “Deed”, any type of instrument of conveyance, except a mortgage
16 or a tax taking by a municipality, including, but not limited to, a
17 warranty, quitclaim, release, foreclosure, fiduciary, or commission-
18 er’s deed, or a sheriff’s deed or tax collector’s deed recorded subse-
19 quent to foreclosure of the right of redemption; or a treasure’s deed
20 of low value land held under tax title, which is recorded subsequent
21 to recording of a decree establishing title pursuant to Section 80B of

22 Chapter 60, and one year has elapsed after recording, in either case
23 without any petition to vacate having been timely filed.

24 “Land”, any parcel or tract of unregistered land in the Common-
25 wealth, together with any and all buildings and other improvements
26 thereon unless such buildings or improvements are expressly
27 excepted therefrom.

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

35 “Recorded”, recorded in the appropriate registry of deeds or filed
36 in the appropriate registry of probate.

37 “Records”, records of the registry of deeds for the county or dis-
38 trict in which the land is located and of any registry of probate in the
39 Commonwealth. “Sufficiency Period”, fifty years, except in those
40 cases where a longer period is required pursuant to the provisions of
41 paragraph (b) of Section 3.

42 “Title transaction”, any transaction affecting title to any interest in
43 land, including, but not limited to, any deed, grant, release, devise,
44 instrument of taking by eminent domain, decree foreclosing redemp-
45 tion form a tax taking and other decree.

46 Section 3. (a) Any person having an interest in land, who has an
47 unbroken chain of title to such interest for the sufficiency period or
48 more, shall be deemed to have a good and clear record and mar-
49 ketable title to that interest, subject only to the provisions of Section
50 4. An unbroken chain of title exists when the records disclose: (i) the
51 origin of title; and (ii) nothing in the records within or subsequent to
52 the origin of title which purports to divest the person claiming the
53 interest.

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

59 Section 4. A good and clear record and marketable title shall be
60 subject to:—

61 (a) any interest or encumbrance which is created by a title trans-
62 action and is within the chain of title of the origin of title on or sub-
63 sequent to the effective date of the origin title.

64 (b) any interest or encumbrance which is created by a title trans-
65 action prior to the effective date of the origin of title only if the
66 origin of title or subsequent recorded instrument specifically identi-
67 fies either such prior interest or encumbrance or the instrument in
68 the records wherein the interest or encumbrance was created, but a
69 general reference to a title source such as “for our title see”, or “said
70 land is the same described in”, or general phrases such as “subject to
71 any rights, easements, restrictions and other matters, of record” or
72 words or phrases of similar import, shall not be deemed a “specific
73 identification therein” so as to preserve such interest or encum-
74 brance;

75 (c) any right or easement granted to owners abutting private ways
76 under Section 5 of Chapter 187;

77 (d) any right or easement granted, excepted or reserved by any
78 instrument, if there is evidence of the existence of such right or ease-
79 ment beneath, upon or above any part of the land described in such
80 instrument, whether or not observable on or above the ground;

81 (e) any right or easement granted, excepted or reserved by any
82 instrument, if there is evidence of the use of such right or easement
83 upon any part of the land;

84 (f) any interest or easement of any public utility corporation or
85 any public service corporation organized and existing under Chapter
86 158 or Chapter 164;

87 (g) any reversionary interest of a lessor, or any interest of a suc-
88 cessor of any lessor at the expiration of any lease;

89 (h) any interest of the United States, the Commonwealth or any
90 political subdivision, agency, authority or instrumentality of the
91 Commonwealth;

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

95 (j) conservation, preservation, agricultural preservation and
96 affordable housing restrictions exempted under the provisions of
97 clause (c) of the first paragraph of Section 26 of Chapter 184;

98 (k) any interest or instrument of record which has been created
99 pursuant to Section 6 of Chapter 21E;(l) any liens created pursuant
100 to Section 13 of said Chapter 21E;

101 (m) any restriction, easement, condition or license held by any
102 governmental body, as defined in Section 26 of Chapter 184, if the
103 instrument imposing such restriction, easement, condition or license
104 is duly recorded and indexed in the grantor index in the registry of
105 deeds or registered in the registry district of the land court for the
106 county or district wherein the land lies so as to affect its title, and
107 describes the land by metes and bounds or by reference to a recorded
108 or registered plan showing its boundaries; and

109 (n) all interests preserved in Chapter 185.

110 Section 5. Except as provided in Section 4, all interests, the exis-
111 tence of which depend upon any title transaction that occurred prior
112 to the effective date of the origin of title, however denominated,
113 whether legal or equitable, present or future, which interests may be
114 asserted by any person, whether or not under a disability, including
115 but not limited to all rights of redemption in the case of taking or
116 sale for the non-payment of real estate taxes, are hereby declared to
117 be null and void with respect to the interest specified in Section 3.

118 Section 6. Notwithstanding the foregoing, any person to whom a
119 decree of confirmation under Chapter 185 has been issued shall be
120 deemed to have a good and clear record and marketable title as of
121 the effective date of such decree subject only to the matters set forth
122 in such decree and the matters enumerated in Section 46 of Chapter
123 185.

124 Section 7. This chapter shall be liberally construed to effectuate
125 the legislative purpose of simplifying and facilitating title transac-
126 tions by allowing persons to rely on a record chain of title as
127 described in Section 3, subject only to such limitations as appear in
128 Section 4.

129 Section 8. Except as herein specifically provided, nothing herein
130 shall be construed to change the period for bringing an action or for
131 doing any other required act under any stature of limitations or to
132 affect the operations of any statute governing the effect of the
133 recording or the failure to record any instrument affecting land.

1 SECTION 2. If the sufficiency period specified in Section 3 of
2 Chapter 183C of the General Laws would expire prior to January 1,

3 2006, such period shall be extended so as to expire on January 1,
4 2006.

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