

HOUSE No. 01368

The Commonwealth of Massachusetts

PRESENTED BY:

Christopher N. Speranzo

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:

Christopher N. Speranzo

DISTRICT/ADDRESS:

3rd Berkshire

HOUSE No. 01368

By Mr. Christopher N. Speranzo of Pittsfield, petition (accompanied by bill, House, No. 01368) of Christopher N. Speranzo relative to title protection for owners of improved land. Joint Committee on the Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ HOUSE
□ , NO. 1566 OF 2009-2010.]

The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven
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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 CHAPTER 183C
- 4 LANDOWNER'S TITLE PROTECTION ACT
- 5 Section 1. This chapter shall be known and may be cited as the Landowner's Title Protection Act.
- 6 Section 2. As used in this chapter, the following words shall, unless the context otherwise
- 7 requires, have the following meanings:

8 "Decree", a decree, judgment or order of any court within the commonwealth including, but not
9 limited to, a decree, judgment or order of the superior court or land court affecting an interest in
10 land or a decree of judgment of the probate court allowing a will or appointing an administrator.

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

18 "Land", any parcel or tract of unregistered land in the commonwealth, together with any and all
19 buildings and other improvements thereon unless such buildings or improvements are expressly
20 excepted therefrom.

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

26 "Recorded", recorded in the appropriate registry of deeds or filed in the appropriate registry of
27 probate.

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

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

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

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

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

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

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

48 (b) any interest or encumbrance which is created by a title transaction prior to
49 the effective date of the origin of title only if the origin of title or subsequent recorded instrument
50 specifically identifies either such prior interest or encumbrance or the instrument in the records

51 wherein the interest or encumbrance was created, but a general reference to a title source such as
52 "for our title see", or "said land is the same described in", or general phrases such as "subject to
53 any rights, easements, restrictions and other matters, of record" or words or phrases of similar
54 import, shall not be deemed a "specific identification therein" so as to preserve such interest or
55 encumbrance;

56 (c) any right or easement granted to owners abutting private ways under section 5 of chapter
57 187;

58 (d) any right or easement granted, excepted or reserved by any instrument, if there is evidence of
59 the existence of such right or easement beneath, upon or above any part of the land described in
60 such instrument, whether or not

61 observable on or above the ground;

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

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

66 (g) any reversionary interest of a lessor, or any interest of a successor of any lessor at the
67 expiration of any lease;

68 (h) any interest of the United States, the commonwealth or any political
69 subdivision, agency, authority or instrumentality of the commonwealth;

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

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

74 (k) any interest or instrument of record which has been created pursuant to section 6 of chapter
75 21E;

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

77 (m) any restriction, easement, condition or license held by any governmental body, as defined in
78 section 26 of chapter 184, if the instrument imposing such restriction, easement, condition or
79 license is duly recorded and indexed in the grantor index in the registry of deeds or registered in
80 the registry district of the land court for the county or district wherein the land lies so as to affect
81 its title, and describes the land by metes and bounds or by reference to a

82 recorded or registered plan showing its boundaries; and

83 (n) all interests preserved in chapter 185.

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

90 Section 6. Notwithstanding the foregoing, any person to whom a decree of confirmation under
91 chapter 185 has been issued shall be deemed to have a good and clear record and marketable title
92 as of the effective date of such decree

93 subject only to the matters set forth in such decree and the matters enumerated in section 46 of
94 chapter 185.

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

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

102 SECTION 2. If the sufficiency period specified in section 3 of chapter 183C of the General
103 Laws would expire prior to January 1, 2012, such period shall be extended so as to expire on
104 January 1, 2012.

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