

HOUSE No. 1877

The Commonwealth of Massachusetts

PRESENTED BY:

Timothy R. Whelan

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 adoption of the accompanying bill:

An Act relative to the maintenance of private roads, beaches and amenities in municipalities.

PETITION OF:

NAME:

Timothy R. Whelan
Timothy R. Madden

DISTRICT/ADDRESS:

1st Barnstable
Barnstable, Dukes and Nantucket

HOUSE No. 1877

By Mr. Whelan of Brewster, a petition (accompanied by bill, House, No. 1877) of Timothy R. Whelan and Timothy R. Madden relative to the maintenance of private roads, beaches and amenities. Municipalities and Regional Government.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1880 OF 2013-2014.]

The Commonwealth of Massachusetts

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**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**
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An Act relative to the maintenance of private roads, beaches and amenities in municipalities.

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

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

3 SECTION 1: Chapter 84 of the General Laws shall be amended in section 12 by deleting
4 the words, “private way or bridge” in the first line and replacing them with the words, “private
5 way, bridge or other common amenity”.

6 SECTION 2: Chapter 84 of the General Laws shall be amended in section 12 by inserting
7 at the beginning of said section the following:

8 For the purposes of sections 12 through 14 of this chapter, the following terms shall have
9 the following meanings:

10 “Common amenity” shall mean private parks, buildings, recreational facilities, beaches
11 and the like intended for the use by property owners in a private subdivision or area;

12 “Proprietor” as used in this chapter shall mean the “owner” of land abutting a private
13 road and who has the right to use the private road to access his property;

14 “Rightful occupant” shall mean any person other than a proprietor with a lawful right to
15 use a private road, bridge or other private amenity by easement, grant or implication.

16 “Private Road” shall mean a way, whether paved or unpaved, intended primarily for the
17 use of vehicles and shall include any and all appurtenances to such roads or ways, bridges
18 and common amenities including but not limited to roadway rights of way, drainage, abutments,
19 slopes, ramps and approaches and which are not maintained by a city or town.

20 “Servitude or Equitable servitude” for the purposes of section 12 to 14 of this chapter is
21 an obligation of a proprietor or rightful occupant, whether such obligation is actual or implied, to
22 participate financially or otherwise in the maintenance of private roads, bridges or other common
23 amenities in a private subdivision.

24 SECTION 3: Said chapter 84 shall be further amended by adding after section 12, the
25 following new section:

26 Section 12A: Notwithstanding any general or special law to the contrary, an obligation
27 imposed by a recorded document or otherwise for property owners or occupants to be
28 responsible for or to contribute financially or otherwise to the maintenance of roads, bridges,
29 beaches or other common amenities within a private subdivision shall be deemed to have created
30 an equitable servitude and not a condition or restriction.

31 An equitable servitude is created when real property is conveyed intending to create a
32 servitude, or if the requirements of a servitude by necessity are met. The creation of a private
33 road, bridge, other structure, or common amenities such as parks and beaches requiring
34 maintenance within a private development shall be deemed to create a servitude for the
35 maintenance of the private road, bridge, structure, or common amenities. Such servitudes and
36 servitudes by necessity shall continue as long as the need for maintenance continues or as long as
37 the road, bridge, structure or amenity remains private.

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39 SECTION 4: Chapter 84 shall be further amended by adding after section 12A, the
40 following new section:

41 Section 12B: a. Notwithstanding any law or special law to the contrary, the obligation of
42 any person or entity, whose property abuts any private road or roads and bridges, and who has
43 the right to access private roads, bridges, related beaches or other common amenities, or whose
44 property does not abut such private roads, bridges, beaches and other common amenities but who
45 has the use of such private roads, bridges, beaches, or other common amenities by grant or
46 implication, to maintain or contribute to the maintenance of such roads, bridges, beaches or other
47 common amenities shall continue as long as the privilege, right to use or benefit continues and as
48 long as the road or roads, bridges and common amenities remain private regardless of whether
49 any recorded covenants, conditions and restrictions affecting such subdivision, roads, bridges,
50 beaches or other common amenities have expired.

51 b. The process for contribution, collection and maintenance of private roads bridges and
52 other common amenities shall be as stated in any recorded document, relating thereto

53 notwithstanding the fact that any conditions or restrictions imposed by said document have
54 expired by the language of the document or by operation of law unless such process is amended
55 by majority vote of owners and occupants having such rights and obligations. Votes to amend
56 the provisions for collection of funds, increase or decrease in assessments and maintenance of
57 roads, bridges, beaches and other common amenities shall be as stated in the recorded document.
58 If there is no provision in such document for increasing or decreasing amounts to be paid in such
59 document or there was no such document previously recorded, the proprietors and rightful
60 occupants may call a meeting pursuant pursuant to the terms of the recorded document as
61 properly amended, or if no such document was previously recorded, then pursuant to sections 12,
62 13 and 14 of this chapter to determine those issues.

63 c. If no document has been recorded describing the process for determining such
64 maintenance and contributions, proprietors and rightful occupants subject to a servitude shall
65 have the power to create an association of property owners. Such an association may be created
66 by using the provisions of sections 12, 13 and 14 of this chapter. Once an association has been
67 created, all owners and rightful occupants subject to the servitude shall automatically become
68 association members. The association shall establish and follow a formal process, described
69 below, to determine by-laws, maintenance fees and other obligations. No proprietor or rightful
70 occupant shall be required to pay any membership fee as a requirement to belonging to the
71 association. Maintenance fees as determined by the association shall not be deemed to be
72 membership fees.

73 The association shall have a board of directors consisting of three, five, or seven
74 members. The directors shall be proprietors subject to a servitude, and shall be elected by
75 majority vote of the proprietors and rightful occupants subject to the servitude. The directors

76 shall serve a term to be determined by a meeting of proprietors and rightful occupants. The
77 directors shall hold a general meeting at least once per year, wherein proprietors and rightful
78 occupants belonging to the association may be heard. The directors shall reach decisions on by-
79 laws of the association, maintenance, maintenance fees and other powers through a majority vote
80 and such determinations shall be approved or disapproved by a majority of proprietors and
81 rightful occupants at a meeting called for that purpose. Directors may call additional meetings as
82 they deem necessary or at the request of three or more proprietors and rightful occupants. Notice
83 of all meetings shall be mailed by first class mail, postage prepaid, or otherwise delivered to all
84 reasonably known proprietors and rightful occupants at least fourteen days before the meeting.
85 If the directors fail or refuse to call a meeting when required or when petitioned to do so by three
86 or more proprietors and rightful occupants, proprietors and rightful occupants may convene such
87 a meeting pursuant to section 12 of this chapter. Once an association has been created, any
88 meeting of the proprietors and rightful occupants shall be governed by the by-laws and rules
89 established by the association. No duly called meeting of the proprietors and rightful occupants
90 shall be deemed invalid if reasonable efforts were made to notify all proprietors and rightful
91 occupants who were reasonably known at the time the meeting notices were mailed or delivered.

92 An association shall have the power to do anything reasonably necessary to manage the
93 roadways, bridges or other common amenities and administer the servitudes. Such powers shall
94 include the power to raise funds necessary to carry out the functions of the association, and the
95 power to enforce rules and regulations. In addition to seeking court enforcement, the association
96 may adopt reasonable rules and procedures to encourage compliance and deter violations,
97 including the imposition of fines, penalties, late fees, and the withdrawal of privileges to use
98 common recreational and social facilities. The association shall have the power to make

99 substantial alterations, improvements, and additions to the common property. Funds may be
100 raised by levying assessments against the individually owned property, and by charging fees for
101 services or for the use the roads and common amenities by rightful occupants. Such fees must be
102 reasonably related to the costs of the operation and maintenance of the roads, bridges and other
103 amenities. An association shall have the power to manage, acquire, and improve common
104 property. An association shall have the power to sue and be sued. Associations shall have the
105 duty to act fairly towards its members and allow all members to participate in decisions. Actions
106 to collect maintenance and other fees may be taken in the District Court in the district where the
107 property subject to the servitude lies.

108 SECTION 5. This act shall take effect upon its passage.