SENATE DOCKET, NO. 1224 FILED ON: 1/18/2013

SENATE . . . . . No. 700

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia S. Creem

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:

An Act to provide landowners title protection.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Cynthia S. Creem	*First Middlesex and Norfolk*
Ruth B. Balser	*12th Middlesex*

SENATE DOCKET, NO. 1224 FILED ON: 1/18/2013

SENATE . . . . . No. 700

By Ms. Creem, a petition (accompanied by bill, Senate, No. 700) of Cynthia S. Creem and Ruth B. Balser for legislation to provide landowners title protection. The Judiciary.

The Commonwealth of Massachusetts

An Act to provide landowners 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:

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

CHAPTER 183D

LANDOWNER'S TITLE PROTECTION ACT

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

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

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

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

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

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

29 "Recorded", recorded in the appropriate registry of deeds or filed in the appropriate
30 registry of probate.

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

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

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

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

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

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

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

51 (b) any interest or encumbrance which is created by a title transaction prior to

52 the effective date of the origin of title only if the origin of title or subsequent recorded
53 instrument specifically identifies either such prior interest or encumbrance or the instrument in
54 the records wherein the interest or encumbrance was created, but a general reference to a title

55 source such as "for our title see", or "said land is the same described in", or general phrases such
56 as "subject to any rights, easements, restrictions and other matters, of record" or words or phrases
57 of similar import, shall not be deemed a "specific identification therein" so as to preserve such
58 interest or encumbrance;

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

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

64 observable on or above the ground;

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

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

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

71 (h) any interest of the United States, the commonwealth or any political

72 subdivision, agency, authority or instrumentality of the commonwealth;

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

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

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

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

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

86 recorded or registered plan showing its boundaries; and

87 (n) all interests preserved in chapter 185.

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

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

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

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

105 SECTION 2. If the sufficiency period specified in section 3 of chapter 183C of the
106 General Laws would expire prior to January 1, 2015, such period shall be extended so as to
107 expire on January 1, 2015.

108 SECTION 3. This act shall take effect January 1, 2014 and shall apply to instruments
109 executed on, after and prior to said date.