SENATE DOCKET, NO. 1246 FILED ON: 1/18/2013

SENATE . . . . . No. 706

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 clarify homestead estates and real estate titles.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Cynthia S. Creem	*First Middlesex and Norfolk*
Jennifer L. Flanagan	*Worcester and Middlesex*

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SENATE . . . . . No. 706

By Ms. Creem, a petition (accompanied by bill, Senate, No. 706) of Cynthia S. Creem and Jennifer L. Flanagan for legislation to clarify homestead estates and real estate titles. The Judiciary.

The Commonwealth of Massachusetts

An Act to clarify homestead estates and real estate titles.

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. Chapter 184 of the General Laws, as appearing in the 2010 official edition, is hereby amended by striking section 7 in its entirety and inserting in place thereof the following section:--

Section 7. (a) A conveyance, mortgage or devise that includes two persons married to each other that does not state a form of tenancy shall create in them a tenancy by the entirety, unless it manifestly appears from the tenor of the instrument that it was intended to create a different form of tenancy.

(b) A conveyance, mortgage or devise of land to two or more persons, none of whom are married to each other, that does not state a form of tenancy shall create in them an estate in common and not in joint tenancy, unless it is expressly stated in such conveyance, mortgage or devise that the grantees or devisees shall take jointly, or as joint tenants, or in joint tenancy, or to them and the survivor of them, or unless it manifestly appears from the tenor of the instrument that it was intended to create an estate in joint tenancy.

(c) A conveyance, mortgage or devise of land to three or more persons that states that they shall take jointly, or as joint tenants, or in joint tenancy, or other words creating a joint tenancy, shall be construed as applying to all of the grantees or devisees, regardless of marital status, unless a contrary intent appears from the tenor of the instrument.

(d) A conveyance, mortgage or devise of land to two persons as tenants by the entirety, who are not married to each other, shall create an estate in joint tenancy and not a tenancy in common.

(e) In the event that a conveyance, mortgage or devise of land does not specify whether the grantees or devisees are married to each other, an affidavit under the penalties of perjury by

23 any person with personal knowledge may be recorded at any time as conclusive proof of such
24 marital status at the time title vested under such instrument.

25 SECTION 2. Section 1 of chapter 188 of the General Laws, as so appearing, is hereby
26 amended by striking the definition of "Owner" and inserting in place thereof the following:--

27 "Owner", a natural person who is a sole owner, joint tenant, tenant by the entirety, tenant
28 in common, life estate holder, remainderman, or holder of a beneficial interest in a trust,
29 including any of the foregoing who is a lessee-shareholder of a residential cooperative housing
30 unit.

31 SECTION 3. Subsection (b) of section 3 of said chapter 188, as so appearing, is hereby
32 amended by striking clause (6) and inserting in place thereof the following:--

33 (6) upon an execution issued from a court of competent jurisdiction to enforce its
34 judgment based upon fraud, duress, undue influence or lack of capacity.

35 SECTION 4. Subsection (d) of section 5 of said chapter 188, as so appearing, is hereby
36 amended by striking the second paragraph, and inserting in place thereof the following
37 paragraph:

38 The estate of homestead of an individual who records a declaration of homestead under
39 section 3 and who subsequently marries shall automatically be deemed to benefit that
40 individual's spouse. Any subsequent recording of a declaration of homestead, without an
41 intervening release, benefitting:

42 (i) the original declarant or a family member identified on a prior declaration on the same
43 home; or

44 (ii) the spouse of that person;

45 shall relate back to the filing date of the earliest recorded declaration, but the provisions
46 of this chapter pursuant to which the later recorded declaration was made shall control the rights
47 of a person identified in a later declaration.

48 SECTION 5. Section 11 of said chapter 188, as so appearing, is hereby amended by
49 striking subsection (a) and inserting in place thereof the following:

50 (a) If a home that is subject to an estate of homestead is sold, whether voluntarily or
51 involuntarily, taken or damaged by fire or other casualty, then the proceeds of any such sale,
52 taking or damage shall be entitled to the protection of this chapter during the following periods:

53 (1) in the event of a sale, whether voluntary or involuntary, or a taking, for a period
54 ending on the date on which the person benefited by the homestead either acquires another home

55 the person intends to occupy as a principal residence or 1 year after the date on which the sale or
56 taking occurred, whichever first occurs; and

57 (2) in the event of a fire or other casualty, for a period ending on:

58 (i) the date upon which the reconstruction or repair to the home is completed or
59 the date on which the person benefited by the homestead acquires another home the person
60 intends to occupy as a principal residence; or

61 (ii) 2 years after the date of the fire or other casualty, whichever first occurs.

62 SECTION 6. Section 12 of chapter 254 of the General Laws, as so appearing, is hereby
63 amended by striking the first paragraph in lines 1 through 57 and inserting in place thereof the
64 following paragraph:--

65 Any person, including the owner, in interest in connection with a written contract covered
66 by section two or section four may cause to be recorded in the registry of deeds in the county or
67 district where the land lies a bond of a surety company authorized to do a surety business in
68 Massachusetts and in a penal sum equal to the contract sum or, if the contract does not contain a
69 contract sum, in a penal sum equal to that person's fair estimate of the contract sum, all as set
70 forth in the certificate on the bond. The bond shall identify the record owner and describe the
71 land in such detail as is required in a common conveyance of land, and shall be in the following
72 form:—

73 Record Owner(s) of Property:
74 _____

75 Know All Men By These Presents:

76 That we _____ of _____ in the County of _____ and
77 Commonwealth of Massachusetts, as principal, and _____ a surety company organized under
78 the laws of _____ and authorized to do business in the Commonwealth as a surety company,
79 are holden and stand firmly bound and obliged unto _____ Register of Deeds for the
80 _____ District, County of _____, in the principal sum of _____ Dollars ($) to
81 be paid unto said Register and his successors in said office, to which payment, well and truly to
82 be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly
83 and severally, firmly by these presents.

84 Whereas, said principal is interested in the erection, alteration, repair or removal of a
85 building or structure on a certain lot of land situated within the ___ Registry District in the
86 Commonwealth, bounded and described as follows:

87 (Insert description)

88 and desires to free said land from liens for all labor and all labor and materials entitled to
89 lien protection under chapter 254 and amendments thereto;

90 Now, therefore, the condition of this obligation is such that if the Principal shall pay for
91 all labor and for all labor and materials entitled to lien protection under chapter 254 and
92 amendments thereto under the contract referred to in the Certificate in this bond, irrespective of
93 any agreement made between him and the owner or any other persons now interested or who
94 may hereinafter be interested therein, then the above written obligation shall be null and void,
95 otherwise to remain in full force and effect.

96 This bond is made for the use and benefit of all persons entitled to file the documents for
97 lien protection as provided in Massachusetts General Laws, chapter 254 and they and each of
98 them are hereby made Obligees hereunder, and in case of the failure of the principal to carry out
99 the provisions of this bond made for their use and benefit they and each of them may sue hereon
100 in their own name.

101 Signed, sealed and delivered this ____ day of ____, (insert year).

102 Principal

103 By

104 Surety

105 By

106 Certificate

107 ____, principal on the above bond, hereby certify that the (estimated) contract price for
108 the proposed work to be performed on the land described in the above bond under a written
109 contract between ____ and ____ dated ____, ____, (insert year), is ____ Dollars ($).

110 (Signed)

111 SECTION 7. Section 14 of said chapter 254, as so appearing, is hereby amended by
112 striking the second paragraph in lines 17 through 44 and inserting in place thereof the following
113 paragraph:

114 The bond identifying the record owner shall be in the following form:

115 Record Owner(s) of Property: _____

116 Know All Men By These Presents:

117 That we, ___ as principal and ___ duly organized to transact business as a surety within
118 the Commonwealth of Massachusetts, as surety, are holden and stand firmly bound and obliged

unto ___ in the penal sum of ___ Dollars ($___), to the payment of which we bind ourselves, our heirs, successors and assigns, jointly and severally by these presents.

Whereas, under date of ___, the said obligee recorded a notice of contract in the registry of deeds, as Instrument #___, in Book ___ at Page ___ upon premises more fully described in said notice, and

Whereas, the principal desires to dissolve said lien in accordance with the provisions of section fourteen of chapter two hundred and fifty-four of the General Laws.

Now, therefore, the condition of this obligation is such that if the said principal shall pay to the said obligee all sums which shall be adjudged in favor of the said obligee in an action brought under the provisions of said section fourteen, this obligation shall be void, otherwise to remain in full force and effect.

In witness whereof, the aforesaid principal and surety have executed this instrument under seal this ___ day of ___ (insert year).

Principal

by_____

Surety

by _____

SECTION 8. Section one shall apply to co-tenancies arising or created prior to, on and after the effective date hereof except with respect to which there appears of record prior to said effective date any final judgment to the contrary by a court of competent jurisdiction. Sections two through five shall apply to estates of homestead arising or created before, on or after said effective date, except with respect to the subject matter of any final judgment to the contrary by a court of competent jurisdiction prior to said effective date.