

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

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**Legislative Document**

**No. 1415**

H. P. 1028

House of Representatives, March 9, 1971

Referred to Committee on Judiciary. Sent up for concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Tyndale of Kennebunkport.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-ONE

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**AN ACT** Relating to Validation of Certain Instruments and Recording of  
Plats of Subdivisions of Land in Municipalities.

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Be it enacted by the People of the State of Maine, as follows:

**Sec. 1. R. S., T. 33, § 352, amended.** Section 352 of Title 33 of the Revised Statutes is amended to read as follows:

**§ 352. Defective acknowledgments**

All records of all deeds and other instruments, including powers of attorney, heretofore made prior to January 1, ~~1957~~ 1970, for the conveyance of real property in this State, or of any interest therein, and recorded or written out at length in the books of record in the registry of deeds of the county in which said real property lies, the acknowledgment of which was not completed, or was erroneously taken, or was taken by a person not having authority to take such acknowledgment, or where the authority of the person taking such acknowledgment was not completely stated, or was erroneously stated, or where it does not appear whether the authority taking such acknowledgment acted as a notary public, a justice of the peace or other duly authorized authority for the taking of such acknowledgment, or where no acknowledgment of such deed or other instrument was taken, or where the authority taking such acknowledgment had not signed the same but had attached or had affixed or had stamped thereon his seal of authority, or where the acknowledgment was taken by the grantor or grantee, or by the husband or wife of the grantor or grantee, or the acknowledgment was taken by a magistrate who was a minor, or an interested party or whose term of office had expired at the time of such acknowledgment, or an acknowledgment of which was taken by a proper

officer but outside of the territory in which he was authorized to act, or was taken before any person who, at the time of such acknowledgment had received an appointment, election or permission authorizing him to take such acknowledgment, but had not qualified, but who has since such time duly qualified, or where the grantor was acting as a duly authorized agent or in a fiduciary or representative capacity, or was acting as an officer of a corporation and acknowledged said instrument individually, or where the acknowledgment was taken without the State before any person authorized to take acknowledgments, and using the form of acknowledgment prescribed by the laws of the state or country in which such instrument was executed, or such person has failed to affix to such instrument a proper certificate, showing his authority to act as such magistrate; or where such acknowledgment was not signed by a magistrate of this State or any other state or territory of the United States, or any foreign country, authorized to take such acknowledgment, but such acknowledgment was signed by an ambassador, minister, charge d'affaires, consul, vice-consul, deputy consul, consul-general, vice-consul-general, consular agent, vice-consular-agent, commercial agent or vice-commercial agent of the United States in any foreign country, who was not qualified to take such acknowledgment, but has since become qualified by law to do so, but which acknowledgment was complete in every other respect; or where the acknowledgment was signed by a proper magistrate but there has been omitted therefrom, his official seal, if he had one, or the names of the grantors, the date and place of acknowledgment, or the words, "personally appeared before me," or a statement that it was acknowledged as the grantor's "free act and deed;" or such certificate of acknowledgment is in the form of an oath, or states merely that the said instrument was subscribed in his presence, or is otherwise informal or incomplete, if signed by a proper magistrate; and all records in any such registry of instruments relating to the title to real property which fail to disclose the date when received for record or the record of which has not been signed by the register of deeds for said county or other duly authorized recording officer, such records are validated.

**Sec. 2. R. S., T. 33, § 353, amended.** The first 6 sentences of section 353 of Title 33 of the Revised Statutes, as amended by chapter 120 of the public laws of 1965, are further amended to read as follows:

All deeds and other instruments, including powers of attorney, heretofore made prior to January 1, ~~1967~~ 1970 for the conveyance of real property in this State or any interest therein, and otherwise valid except that the same omitted to state any consideration therefor or that the same were not sealed by the grantors or any of them, are validated. Every duly recorded satisfaction piece or instrument made prior to January 1, ~~1967~~ 1970 with intent to cancel and discharge or assign a mortgage of real estate, fully identifying the mortgage so intended to be canceled and discharged or assigned, but not drawn in formal accordance with statutory requirements, shall be held a valid discharge or assignment of such mortgage and a release or assignment of the mortgaged interest in such real estate. All corporations organized or attempted to be organized under and by virtue of any of the statutes of this State more than 20 years prior to January 1, ~~1967~~ 1970, and not heretofore, between April 15, 1927 and January 1, ~~1967~~ 1970 declared to be invalid, shall be held to all in-

tents and purposes as if the same had in all respects been properly and rightfully organized and existing as lawful corporations, and the deeds or other instruments of such corporations organized or attempted to be organized, given in their corporate names, affecting real estate in this State or conveying the same, and heretofore between April 15, 1927 and January 1, ~~1967~~ 1970 recorded, or written out at length upon the books of record in the registry of deeds in the county in which such real estate lies, shall not be held invalid by reason of any lack of authority or informality for or in their execution or delivery, if taken bona fide from the acting officers of such corporation or attempted organization as such, which such taking shall be presumed, but such corporations, attempted organizations as such, with such deeds and their records made as aforesaid, are validated. Any deed or other instrument made for the purpose of conveying real property in this State or any interest therein, and heretofore recorded or spread at length in the books of record in the registry of deeds for the county in which said real property lies, prior to January 1, ~~1967~~ 1970, which said deed or other instrument or said records fail to disclose authority by such corporation for the conveyance of such real estate, or which deed or other instrument fails to bear the corporate seal, or is executed or acknowledged by the person executing such deed in his individual capacity, or which fails to disclose the official capacity of the person executing such deed, or which was not signed by the officer duly authorized to sign such deed, with its record made as aforesaid, is validated. All deeds and other instruments made prior to January 1, ~~1967~~ 1970, for the conveyance of real property in this State, or any interest therein and executed by a person or persons purporting to act as the agent or attorney of the grantors, their spouses, or any of them, which such deeds have been recorded or written at length in the books of record in the registry of deeds for the county in which said real property lies more than 40 years prior to January 1, ~~1967~~ 1970, but no power of attorney authorizing and empowering such agent or attorney to make such conveyance or execute and deliver such deed, appears of record, but such real estate has in the meantime been occupied, claimed or treated by the grantees and those claiming by, through or under them as other property of like kind and similarly situated would be held or claimed by the owners thereof, shall be held to all intents and purposes as if executed and delivered under and by virtue of proper power of attorney duly recorded and given for the purpose, and the records thereof are validated. All instruments written or recorded in the books of record in the registry of deeds in the county in which the real estate affected thereby lies, more than 40 years prior to January 1, ~~1967~~ 1970, signed or executed by any person or persons purporting to act as the agent or attorney of the holder of any mortgage of real estate and purporting to operate as a discharge of such mortgage, shall be held as if executed and delivered under and by virtue of a proper power of attorney given for the purpose, although no power of attorney authorizing such agent or attorney thereto shall appear of record, and the records thereof are validated.

**Sec. 3. R. S., T. 33, § 353, amended.** The last paragraph of section 353 of Title 33 of the Revised Statutes, as enacted by chapter 158 of the public laws of 1967 and as amended by section 83 of chapter 544 of the public laws of 1967, is further amended to read as follows:

In all cases of foreclosure of real estate mortgages by publication, a certificate of the publication of foreclosure made by the mortgagee or by an officer of the mortgagee, if a corporation, recorded on or before January 1, ~~1968~~ 1970 shall be prima facie evidence of the publication of foreclosure to the same extent as if the certificate had in fact been made by the register of deeds and recorded; such certificates made by the mortgagee or by an officer of the mortgagee, if a corporation, and recorded on or before January 1, ~~1968~~ 1970 shall have the same force and effect as if made by the register of deeds, in the first instance, and are hereby validated.

Sec. 4. R. S., T. 33, § 353, amended. Section 353 of Title 33 of the Revised Statutes, as amended, is further amended by adding at the end 2 new paragraphs to read as follows:

Any plats of a subdivision approved by the municipal officers of the municipality in which the land is located, recorded prior to January 1, 1970 in the registry of deeds for the county in which the land is located and otherwise valid, except that the same were not approved by a planning board pursuant to the 1944 Revised Statutes of Maine, chapter 80, section 85, as amended, the 1954 Revised Statutes of Maine, chapter 91, section 94, as amended, the 1954 Revised Statutes of Maine, chapter 90-A, section 54, as amended, or the 1964 Revised Statutes of Maine, Title 30, section 4956, as amended, are hereby validated.

Any plats of a subdivision approved by the planning board of the municipality in which the land is located, recorded prior to January 1, 1970 in the registry of deeds for the county in which the land is located and otherwise valid, except that the same were not approved by the municipal officers pursuant to the 1944 Revised Statutes of Maine, chapter 80, section 85, as amended, the 1954 Revised Statutes of Maine, chapter 91, section 94, as amended, the 1954 Revised Statutes of Maine, chapter 90-A, section 61, as amended, or the 1964 Revised Statutes of Maine, Title 30, section 4956, as amended, are hereby validated.

#### STATEMENT OF FACT

This legislation is sought as a result of the fact that over the past 26 years there have existed in the State of Maine statutes intended to regulate the planning and development of subdivisions located in municipalities of the State. The intent of these statutes has been basically the same, but they have varied considerably with respect to specific provisions relating to the approval of subdivision plats.

This situation has made it, in effect, impossible for anyone to determine with certainty whether or not a plan in a given instance has been approved by the proper authority. It also, as a practical matter, is very difficult to determine which of the various statutes referred to in the proposed legislation was adopted by a particular municipality. The result has been to create con-

fusion and doubt as to whether plans recorded in the records of the registries of deeds for the several counties of the State are properly recorded. This proposed legislation is designed to remove only such doubts and confusion as may exist with respect to plans recorded in the several registries of deeds of the State which bear the approval of either the municipal officers or the planning board of a municipality. It does not attempt to validate any subdivision plats of record which bear no approval or the approval of officials other than either the municipal officers or a municipal planning board. This legislation does not purport to validate plats of record which otherwise fail to comply with the laws of the State of Maine in force and effect as of the date of recordation.