

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
108TH LEGISLATURE  
FIRST REGULAR SESSION

(Filing No. H-847)

HOUSE AMENDMENT "A" to H.P. 1119, L.D. 1337, Bill, "AN ACT to Clarify Actual Notice Under the Recording Laws in Regard to Exceptions and Reservations."

Amend the Bill by striking out everything after the title and inserting in its place the following:

'Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, under Maine Bar Association Title Standard #30 and the case of Sanford v. Stillwell, 101 Me. 466, there are serious questions concerning the marketability of much real estate in the State of Maine; and

Whereas, these questions are preventing conveyances of this real estate, thus causing substantial expense and inconvenience to the sellers, purchasers and mortgagees of this real estate; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

33 MRSA §§201-A and 201-B are enacted to read:

§201-A. Conditions of actual notice

An exception, reservation, or recital in a conveyance, mortgage, devise or other transfer of real property or of any interest therein, shall not constitute actual notice within the meaning of section 201 of any other conveyance, mortgage, devise or other transfer of real property or of any interest therein unless it contains the following:

1. Reference to the volume and page of the registry or probate court record. A reference to the volume and page of the registry or probate court record of the deed or other instrument evidencing such other conveyance, mortgage, devise or other transfer, which record can be found at the time of the recording of the deed or other instrument containing the exception, reservation or recital; or

2. Adequate description. An adequate description by metes and bounds or by reference to the volume and page of the record of a survey plan of the property affected by the exception, reservation or recital, in which case the actual notice shall extend only to the property so described.

Any such exception, reservation or recital lacking such reference or adequate description shall not except, reserve or otherwise affect real property or any interest therein; provided that this section shall not prevent any such exception, reservation or

recital from constituting a waiver, limitation or negation of  
a warranty of title in the document in which the exception,  
reservation or recital occurs, or from being taken into account  
in determining the existence of a contractual obligation  
or condition between the immediate parties to the document in  
which the exception, reservation or recital occurs.

§201-B. Notice; construction of provisions

1. Preservation of claims by filing of notice. Section  
201-A shall apply to an exception, reservation or recital in a  
conveyance, mortgage, devise or other transfer of real property  
or of any interest therein made prior to the effective date  
of this section as well as to those made thereon or thereafter;  
provided that, if and to the extent constitutionally necessary  
to preserve rights, if any, existing at the effective date of  
section 201-A, that section shall not apply to such an  
exception, reservation or recital made previous to the effective  
date of that section, provided that within 2 years of the  
effective date of this section a person claiming such existing  
right, if any, shall have recorded in the registry of deeds  
for the county or district thereof in which the land is located  
the following:

A. The notice provided in subsection 2, and the deed or  
other instrument evidencing the previous conveyance,  
mortgage, devise or other transfer under which he claims,  
if such deed or instrument was not recorded previous to the  
effective date of this section; or

B. The notice provided in subsection 2, if such deed or other instrument under which he claims is lost or if such deed or instrument although recorded previous to the effective date of this section was not recorded previous to the deed or other instrument containing such exception, reservation or recital.

2. Filing of notice; recording fee; indexing. In order for the notice specified in subsection 1 to be effective, it shall contain an adequate description of the property in which the right, title or interest is claimed; a reference to the deed or other instrument on which the claim is based; the name of the current record owner of the property; a specific reference by date of recording and by volume and page numbers to the recorded deed or other instrument containing the exception, reservation or recital; and shall be duly verified by oath taken by any person authorized to perform notarial acts. The register of deeds for the county or district thereof in which the land is located shall accept all such notices presented that describe property located in such county or district and shall enter and record them in the same manner that deeds and other instruments are recorded and shall be entitled to charge the same fee for the recording thereof as is charged for recording deeds. In indexing such notice, the register of deeds shall enter it in the grantee index of deeds under the name of the claimant appearing in the notice, and in the grantor index of deeds under the name of the record owner appearing in the notice. Within a reasonable time after recording such notice, the

register of deeds shall enter upon the margin of the record of the previous instruments referred to by volume and page numbers in such notice the volume and page in which the record of such notice may be found. The person filing the notice shall deliver or mail a copy thereof to the current record owner of the property at the last known address of such owner.

3. Persons under disability; 2-year period not suspended. The notice provided in subsection 1 may be filed for record by the claimant or any other person acting on behalf of any claimant who is under a disability or unable to assert a claim on his own behalf, but no disability or lack of knowledge of any kind shall suspend or extend the period provided for such filing.

4. Statutes of limitations not extended. Nothing contained in section 201-A and in this section shall be construed to extend the period limited for the bringing of any action or for the doing of any other required act or to otherwise extend any statute of limitations; nor shall it be construed as legislative recognition of the existence of any claims that it may bar.

5. Liberal construction. Section 201-A and this section shall be liberally construed to effect the legislative purpose of enhancing the marketability of the title to real property by eliminating the possibility of interests under certain unrecorded or late recorded deeds.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Statement of Fact

The purpose of this amendment is to make the following changes in the language of L. D. 1337.

1. The bill in its present form repeals Title 32 M.R.S.A. § 201, the recording act, but does not entirely replace it, the second paragraph of section 201 as presently existing having been omitted inadvertently from the bill. To repeal the recording act even momentarily creates an unnecessary potential for confusion in the status of recorded documents subsequent to the hiatus. The amendment changes the bill from a repealer and reenactment to an enactment of two new sections, 201-A and 201-B.
2. The amendment spells out in section 201-A, / as renumbered, subsection 2, that an adequate description for purposes of this bill must be one by metes and bounds or by reference to the volume and page of the record of a survey plan. As written, the bill would have left open the possibility for an adequate description under current Maine law to include a description by reference to an unrecorded document which would have defeated the entire purpose of the bill. (See Ouellette v. Daigle, 219 A.2d 545.)
3. The amendment adds a proviso to the last paragraph of section 201-A, as renumbered where the bill states that any exception or reservation lacking a proper reference or description shall not except or reserve or otherwise affect real property. This proviso makes it clear that despite that the indefinite exception or reservation is not operative to except or reserve land from the conveyance within the meaning of Sanford v. Stillwell, 101 Me. 466. the bill will not prevent it from limiting the liability of the grantor under the warranty covenants. The purpose of this portion of the bill was to overrule the holding of Sanford v. Stillwell, but it is not the purpose of the bill to change the existing law in regard to limitations of liability of the grantor on the deed covenants.
4. The amendment clarifies section 201-B, / as renumbered, subsection 1, in regard to which exceptions and reservations are not covered by the bill if an appropriate filing is made within two years of the effective date.
5. The amendment substitutes the word "property" for "land" in a number of places for purposes of uniformity.
6. The amendment adds references in section 201-B, subsections 1 and 2, / to registry districts for those counties with more than one.

7. The amendment clarifies which instruments shall require a marginal notation by the register of deeds under section 201-B, subsection 2.

Filed by Mr. Spencer of Standish.

Reproduced and distributed under the direction of the Clerk of  
the House.  
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