

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

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Legislative Document

No. 1337

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H. P. 1119

House of Representatives, March 29, 1977

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

EDWIN H. PERT, Clerk

Presented by Mr. Hobbins of Saco.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-SEVEN

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AN ACT to Clarify Actual Notice Under the Recording Laws in Regard to  
Exceptions and Reservations.

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

Sec. 1. 33 MRSA § 201 is repealed and the following enacted in its place:  
§ 201. Priority of recording

1. Priorities. No conveyance of an estate in fee simple, fee tail or for life, or lease for more than 2 years or for an indefinite term is effectual against any person except the grantor, his heirs and devisees, and persons having actual notice thereof unless the deed or lease is acknowledged and recorded in the registry of deeds within the county where the land lies, and if the land is in 2 or more counties then the deed or lease shall be recorded in the registry of deeds of each of such counties, and in counties where there are 2 or more registry districts then the deed or lease shall be recorded in the district legal for such record. Conveyances of the right, title or interest of the grantor, if duly recorded, shall be as effectual against prior unrecorded conveyances, as if they purported to convey an actual title. All recorded deeds, leases or other writtent instruments regarding real estate take precedence over unrecorded attachments and seizures.

2. 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 this section of any other conveyance, mortgage, devise or other transfer of real property or of any interest therein unless it contains the following:

A. 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

B. An adequate description 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.

Sec. 2. 33 MRSA § 201-A is enacted to read:

§ 201-A. Notice; construction of provisions

1. Preservation of claims by filing of notice. Section 201, subsection 2, 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; except that, if and to the extent constitutionally necessary to preserve rights, if any, existing at the effective date of this section, section 201, subsection 2, shall not apply to conveyances, mortgages, devises or other transfers of real property or of any interest therein made previous to the deed or other instrument containing such exception, reservation or recital, 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 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 the 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 land in which the right, title or interest is claimed; the name of the person on whose behalf such 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 land; 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 in which the land is located shall accept all such notices presented that describe land located in such county 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 instrument referred to 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 land 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, subsection 2, 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, subsection 2, and this section shall be liberally construed to effect the legislative purpose of enhancing the marketability of the title to land by eliminating the possibility of interests under certain unrecorded or late recorded deeds.

#### STATEMENT OF FACT

The purpose of this bill is to render marketable land titles that contain a deed in the chain of title that "excepts from this conveyance any portions heretofore conveyed" or similar language. Such titles may be considered unmarketable because the reference to previous conveyances is too vague for the title examiner to locate such previous conveyances and determine their effect, if any, on the title being examined. The case of **Sanford vs. Stillwell** 101 Me. 466 (1906) holds that a deed containing such an exception passes no title to the portions previously conveyed by unrecorded deed and the case therefore implies that the grantee in a deed containing the exception has "actual notice" of the previous but unrecorded conveyance.

The bill solves this problem by clarifying the Maine recording laws to indicate that the above-quoted or similar language does not constitute actual notice of a previous conveyance and therefore the usual protection of the recording laws will apply. To provide actual notice of a previous conveyance and to operate as an exception or reservation the language shall make specific reference to the recorded previous conveyance or else shall specifically describe the land excepted or reserved.

The bill specifically makes this clarification retroactive and includes a 2-year filing period to preserve any vested rights should the appropriate court of law construe any such rights to have existed at the time of the enactment of the bill.