

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1045

H. P. 876

House of Representatives, February 26, 1981

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

EDWIN H. PERT, Clerk

Presented by Representative Soule of Westport.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Update and Revise the Validation of Defects Act.

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

Sec. 1. 33 MRSA § 352, as amended by PL 1971, c. 469, § 1, is further amended to read:

§ 352. Defective acknowledgments

All records of all deeds and other instruments, including powers of attorney, heretofore made prior to January 1, ~~1970~~ 1980, 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~~ the 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~~ the 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 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~~ the county or other duly authorized recording officer, such records are validated.

Sec. 2. 33 MRSa § 353, as last amended by PL 1973, c. 266, is repealed.

Sec. 3. 33 MRSa § 353-A is enacted to read:

**§ 353-A. Miscellaneous defects**

**All deeds and other instruments, including powers of attorney, made prior to January 1, 1980 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, 1980 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, 1980, and not prior to January 1, 1980 declared to be invalid, shall be held to all intents 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 prior to January 1, 1980 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 previously recorded or spread at length in the books of record in the registry of deeds for the county in which the real property lies, prior to January 1, 1980, which deed or other instrument of the 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, 1980, 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 the real property lies more than 40 years prior to January 1, 1980, 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, 1980, 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. In all cases in which an executor, administrator, guardian or conservator or trustee,

master or receiver or similar officer has been authorized or ordered by a court of probate or other competent court to sell or exchange real estate and has sold or exchanged such real estate, or any interest therein in accordance with such authority, without first having filed a bond covering the faithful administration and distribution of the avails of such sale when such bond is required by law or has failed to comply with any other prerequisite for the issuance of the license authorizing such sale or exchange, and has given a deed thereof to the purchaser of the same or to the person with whom such exchange was authorized or ordered; or where such executor, administrator, guardian, conservator, trustee, master or receiver, or other similar officer, appointed, has acted in such capacity under a decree of any such court appointing him to such office, but which such decree of appointment erroneously or by inadvertence excused him from giving bond in such capacity when such bond is required by law and not in fact given, such deeds and acts previously done are validated.

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, 1980 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, 1980 shall have the same force and effect as if made by the register of deeds, in the first instance, and are validated.

Sec. 4. 33 MRSA § 353-B is enacted to read:

**§ 353-B Defects in plats**

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, chapter 80, section 85, as amended, the 1954 Revised Statutes, chapter 91, section 94, as amended, the 1954 Revised Statutes, chapter 90-A, section 61, as amended, or the 1964 Revised Statutes, Title 30, section 4956, as amended, are validated.

Any plat or 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, chapter 80, section 85, as amended, the 1954 Revised Statutes, chapter 91, section 94, as amended, the 1954 Revised Statutes, chapter 90-A, section 61, as amended or the 1964 Revised Statutes, Title 30, section 4956, as amended, are validated.

Any plats of a subdivision approved by the planning board or by the municipal officers of the municipality or by both 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 approval is not noted thereon pursuant to the 1944 Revised Statutes, chapter 80, section 85, as amended, the 1954 Revised Statutes, chapter 91, section 94, as amended, the 1954 Revised Statutes, chapter 90-A, section 61, as amended, or the 1964 Revised Statutes, Title 30, section 4956, as amended, are validated, provided that the approval by the appropriate board can be substantiated by affidavit recorded in the registry of deeds for the county in which the land is located, the recording of the affidavit to be noted on the plat.

Any deed or other instrument for the conveyance of real property or any interest therein in the unorganized or deorganized territory, including plantations, in this State, which was otherwise validly made or placed on record, except that it was made in violation of Title 12, section 687, as enacted by the public laws of 1969, chapter 494 and repealed by the public laws of 1971, chapter 457, section 7 or made in violation of Title 12, section 685-B, subsection 6, as enacted by the public laws of 1971, chapter 457, section 5 and amended by the public laws of 1971, chapter 544, section 28-G, is validated. All structures on land in the unorganized or deorganized territory, including plantations, which are not otherwise nuisances, shall not be deemed to be nuisances merely because they are located upon land conveyed by deed or other instrument which lacked evidence of the approval of the Maine Land Use Regulation Commission thereon.

#### STATEMENT OF FACT

The purpose of this bill is to update the Validation of Defects Act in order to validate certain instruments containing technical defects which were made prior to January 1, 1980.