

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1488

H.P. 1059

House of Representatives, May 3, 1995

An Act to Amend the Real Estate Laws Concerning Validation of Defects.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative WINGLASS of Auburn.
Cosponsored by Representatives: ADAMS of Portland, BOUFFARD of Lewiston, CHIZMAR of Lisbon, DAMREN of Belgrade, DESMOND of Mapleton, ETNIER of Harpswell, FITZPATRICK of Durham, GERRY of Auburn, GOOLEY of Farmington, GUERRETTE of Pittston, JOHNSON of South Portland, JOYNER of Hollis, LINDAHL of Northport, LOVETT of Scarborough, MARVIN of Cape Elizabeth, MITCHELL of Portland, O'GARA of Westbrook, PEAVEY of Woolwich, PINKHAM of Lamoine, POVICH of Ellsworth, ROBICHAUD of Caribou, ROSEBUSH of East Millinocket, SIMONEAU of Thomaston, STONE of Bangor, THOMPSON of Naples, VOLENIK of Sedgwick, WINSOR of Norway, Senators: LORD of York, PINGREE of Knox, STEVENS of Androscoggin.

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

2 Sec. 1. 33 MRSA §352, as amended by PL 1981, c. 181, §1, is
4 repealed and the following enacted in its place:

6 **§352. Defective acknowledgments**

8 A record of a deed or other instrument, including a power of
10 attorney, made prior to January 1, 1990 for the conveyance of
12 real property, or of any interest in the property, and recorded
in the registry of deeds of the county in which the real property
is located is valid and enforceable even if:

14 1. Acknowledgement. The acknowledgment:

16 A. Was not completed;

18 B. Was erroneously taken;

20 C. Was taken by a person not having authority to take the
22 acknowledgment or the authority of the person taking the
acknowledgment was not completely stated or was erroneously
stated;

24 D. Does not reveal whether the authority taking the
26 acknowledgment acted as a notary public, a justice of the
peace or other duly authorized authority for the taking of
28 the acknowledgment;

30 E. Was not taken;

32 F. Had not been signed by the authority taking the
34 acknowledgement but the authority had attached, affixed or
stamped the deed or instrument with a seal of authority;

36 G. Was taken by the grantor or grantee or by the husband or
wife of the grantor or grantee;

38 H. Was taken by a magistrate who was a minor or an
40 interested party or whose term of office had expired at the
time of the acknowledgment;

42 I. Was taken by an officer authorized to take an
44 acknowledgement but outside the territory in which the
officer was authorized to act;

46 J. Was taken by a person who, at the time of the
48 acknowledgment, had received an appointment, election or
permission authorizing that person to take the

2 acknowledgment, but had not qualified and who has since
3 qualified to take an acknowledgement;

4 K. Was authorized by the grantor who was acting as a duly
5 authorized agent or officer of a corporation or in a
6 fiduciary or representative capacity for a corporation;

7 L. Was taken in another state or country before a person
8 authorized to take acknowledgments and was made on the form
9 of acknowledgment prescribed by the laws of the state or
10 country in which the deed or instrument was executed or the
11 person taking the acknowledgement failed to affix a proper
12 certificate to the deed or instrument, showing that person's
13 authority to act as a magistrate;

14 M. Was not signed by a magistrate of this State or any
15 other state or territory of the United States, or any
16 foreign country, authorized to take an acknowledgment but
17 was complete in every other respect and was signed by an
18 ambassador, minister, charge d'affaires, consul,
19 vice-consul, deputy consul, consul general, vice-consul
20 general, consular agent, vice-consular agent, commercial
21 agent or vice-commercial agent of the United States who was
22 not qualified to take an acknowledgment, but has since
23 become qualified by law to do so;

24 N. Was signed by a magistrate authorized to take an
25 acknowledgement but the magistrate's official seal, the
26 names of the grantors, the date and place of acknowledgment,
27 the words "personally appeared before me" or a statement
28 that it was acknowledged as the grantor's "free act and
29 deed" had been omitted; or

30 O. Is in the form of an oath or states merely that the deed
31 or instrument was subscribed in the magistrate's presence,
32 or is otherwise informal or incomplete, but was signed by a
33 magistrate authorized to take an acknowledgement; or

34 2. Records relating to title to real property. The records
35 in relating to the title to real property fail to disclose the
36 date when received for record or the records have not been signed
37 by the register of deeds or other duly authorized recording
38 officer for the county.

39 Sec. 2. 33 MRSA §353-A, as amended by PL 1987, c. 15, §2, is
40 repealed and the following enacted in its place:

41 §353-A. Miscellaneous defects

2 1. Omission of consideration; failure to seal. A deed or
4 other instrument, including a power of attorney, made prior to
6 January 1, 1990 for the conveyance of real property, or any
8 interest in real property, in this State and otherwise valid,
 except that the deed or instrument does not state any
 consideration for the real property or was not sealed by the
 grantors, is valid.

10 2. Discharge or assignment of mortgage. A duly recorded
12 satisfaction piece or instrument made prior to January 1, 1990
14 with the intent to cancel and discharge or assign a mortgage of
 real estate, fully identifying the mortgage intended to be
 canceled and discharged or assigned, but not drawn in accordance
 with statutory requirements is considered valid.

16 3. Corporations organized or attempted to be organized;
18 validation of deeds and other instruments. A corporation
20 organized or attempted to be organized under the laws of this
22 State more than 20 years prior to January 1, 1990 and not
24 declared to be invalid prior to January 1, 1990 is for all
26 intents and purposes a lawful corporation. The deeds or other
 instruments of the corporation, given in its corporate name, that
 affect or convey real estate or any interest in the real estate
 and that prior to January 1, 1990 were recorded in the registry
 of deeds in the county where the real estate is located may not
 be held invalid by reason of:

28 A. The lack of authority for or informality in their
30 execution or delivery if executed or delivered in good faith
 by the acting officers of the corporation;

32 B. The failure to disclose the corporation's authority for
34 the conveyance of real estate;

36 C. The failure to bear the corporate seal;

38 D. A person executing or acknowledging a deed or instrument
 in that person's individual capacity;

40 E. The failure to disclose the official capacity of the
42 person executing the deed or instrument; or

44 F. The failure of the duly authorized corporate officer to
 sign the deed or instrument.

46 4. Omission of authorization for conveyance of real
48 estate. A deed or other instrument for the conveyance of real
50 property, or any interest in the real property executed by a
 person or persons purporting to act as the agent or attorney of
 the grantors or their spouses, that has been recorded in the

2 registry of deeds for the county in which the real property is
4 located more than 40 years prior to January 1, 1990 is valid even
6 if no power of attorney authorizing and empowering an agent or
8 attorney to make the conveyance or execute and deliver the deed
10 or instrument appears of record, but the real property has in the
12 meantime been occupied, claimed or treated by the grantees or
14 their heirs as their own property.

16 **5. Discharge of mortgage.** An instrument written or
18 recorded in the registry of deeds more than 40 years prior to
20 January 1, 1990 that is signed or executed by a person or persons
22 purporting to act as the agent or attorney of a mortgagee of real
24 estate and purporting to discharge the mortgage is valid even if
26 no power of attorney authorizing an agent or attorney appears of
28 record.

30 **6. Failure to secure bond or comply with licensing.** In all
32 cases in which an executor, administrator, guardian, conservator,
34 trustee, master, receiver or similar officer has been authorized
36 or ordered by a court of probate or other court to sell or
38 exchange real estate and has sold or exchanged the real estate,
40 or any interest in the real estate, in accordance with the
42 authority, without first having filed a bond covering the
44 faithful administration and distribution of the sale when a bond
46 was required by law or has failed to comply with any other
48 prerequisite for the issuance of the license authorizing the sale
50 or exchange and has given a deed to the purchaser of the real
estate or to the person with whom an exchange was authorized or
ordered or when the executor, administrator, guardian,
conservator, trustee, master, receiver or other officer appointed
has acted in that capacity under a decree of any court appointing
that person to the office, but the decree of appointment
erroneously or inadvertently excused the person from giving bond
in that capacity when a bond was required by law and was not in
fact given, the deeds and acts previously done are valid.

7. Foreclosure by publication. 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 the mortgagee is a corporation, recorded on
or before January 1, 1990 is 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; certificates made by the mortgagee or by an officer of
the mortgagee, if the mortgagee is a corporation, and recorded on
or before January 1, 1990 have the same force and effect as if
made by the register of deeds and are valid.

8. Foreclosure by civil action. All foreclosures commenced
on or after October 1, 1975 of real estate mortgages executed on

2 or prior to October 1, 1975 using the method of foreclosure set
4 forth in Title 14, sections 6321 to 6324 for which the period of
6 redemption allowed was not less than one year and that would be
8 valid but for the date of execution of the mortgage are valid and
10 effective according to their terms.

12 **9. Abstracts of divorce decrees.** An abstract of a divorce
14 decree recorded in any registry of deeds prior to March 24, 1987
16 and otherwise valid that failed to state the residence of any
18 party to the divorce action is valid and has the force and effect
20 of a quitclaim deed releasing all interest in the real estate
22 described in the decree or abstract.

STATEMENT OF FACT

16 This bill makes changes to the real estate laws concerning
18 validation of defects in order to validate certain deeds or other
20 instruments affecting real estate that contain technical defects
22 made prior to January 1, 1990. This bill also makes technical
changes to the format for clarity in reading the law.