

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1275

H.P. 888

House of Representatives, April 4, 2017

**An Act To Amend and Remove the Need for Periodic Update of the
Laws Governing the Validation of Title Defects**

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative CARDONE of Bangor.
Cosponsored by Representative: BAILEY of Saco.

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

2 **Sec. 1. 33 MRSA §352**, as amended by PL 2015, c. 157, §1, is further amended to
3 read:

4 **§352. Defective acknowledgments**

5 A record of a deed or other instrument, including a power of attorney, made ~~prior to~~
6 ~~January 1, 2013~~ for the conveyance of real property, or of any interest in ~~the~~ real
7 property, and recorded for at least 2 years in the registry of deeds of the county or district
8 in which the real property is located is valid and enforceable even if:

9 **1. Acknowledgment.** The acknowledgment: was incomplete or defective in any
10 respect, no acknowledgment appears in the record of the deed, other instrument or power
11 of attorney or no acknowledgment was taken; or

12 ~~A. Was not completed;~~

13 ~~B. Was erroneously taken;~~

14 ~~C. Was taken by a person not having authority to take the acknowledgment or the~~
15 ~~authority of the person taking the acknowledgment was not completely stated or was~~
16 ~~erroneously stated;~~

17 ~~D. Does not reveal whether the authority taking the acknowledgment acted as a~~
18 ~~notary public, a justice of the peace or other duly authorized authority for the taking~~
19 ~~of the acknowledgment;~~

20 ~~E. Was not taken;~~

21 ~~F. Had not been signed by the authority taking the acknowledgment but the authority~~
22 ~~had attached, affixed or stamped the deed or instrument with a seal of authority;~~

23 ~~G. Was taken by the grantor or grantee or by the husband or wife of the grantor or~~
24 ~~grantee;~~

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

27 ~~I. Was taken by an officer authorized to take an acknowledgment but outside the~~
28 ~~territory in which the officer was authorized to act;~~

29 ~~J. Was taken by a person who, at the time of the acknowledgment, had received an~~
30 ~~appointment, election or permission authorizing that person to take the~~
31 ~~acknowledgment, but had not qualified and who has since qualified to take an~~
32 ~~acknowledgment;~~

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

35 ~~L. Was taken in another state or country before a person authorized to take~~
36 ~~acknowledgments and was made on the form of acknowledgment prescribed by the~~
37 ~~laws of the state or country in which the deed or instrument was executed or the~~

1 ~~person taking the acknowledgment failed to affix a proper certificate to the deed or~~
2 ~~instrument, showing that person's authority to act as a magistrate;~~

3 ~~M. Was not signed by a magistrate of this State or any other state or territory of the~~
4 ~~United States, or any foreign country, authorized to take an acknowledgment but was~~
5 ~~complete in every other respect and was signed by an ambassador, minister, charge~~
6 ~~d'affaires, consul, vice consul, deputy consul, consul general, vice consul general,~~
7 ~~consular agent, vice consular agent, commercial agent or vice commercial agent of~~
8 ~~the United States who was not qualified to take an acknowledgment, but has since~~
9 ~~become qualified by law to do so;~~

10 ~~N. Was signed by a magistrate authorized to take an acknowledgment but the~~
11 ~~magistrate's official seal, the names of the grantors, the date and place of~~
12 ~~acknowledgment, the words "personally appeared before me" or a statement that it~~
13 ~~was acknowledged as the grantor's "free act and deed" had been omitted; or~~

14 ~~O. Is in the form of an oath or states merely that the deed or instrument was~~
15 ~~subscribed in the magistrate's presence, or is otherwise informal or incomplete, but~~
16 ~~was signed by a magistrate authorized to take an acknowledgment; or~~

17 **2. Records relating to title to real property.** The records in relating to the title to
18 real property fail to disclose the date when received for record or the records have not
19 been signed by the register of deeds or other duly authorized recording officer for the
20 county or district.

21 **Sec. 2. 33 MRSA §353-A**, as amended by PL 2015, c. 157, §2, is further amended
22 to read:

23 **§353-A. Miscellaneous defects**

24 **1. Omission of consideration; failure to seal.** A deed or other instrument,
25 including a power of attorney, whenever made prior to January 1, 2013 for the
26 conveyance of real property, or any interest in real property, in this State and otherwise
27 valid, except that the deed or instrument does not state any consideration for the real
28 property or was not sealed by the grantors, is valid.

29 **2. Discharge or assignment of mortgage.** A duly recorded satisfaction piece or
30 instrument made prior to January 1, 2013 and recorded for at least 2 years in the registry
31 of deeds of the county or district in which the real property is located with the intent to
32 cancel and discharge or assign a mortgage of real estate, fully identifying the mortgage
33 intended to be canceled and discharged or assigned, but not drawn in accordance with
34 statutory requirements is considered valid.

35 **3. Corporations and other entities organized or attempted to be organized;**
36 **validation of deeds and other instruments.** A corporation or other legal entity
37 organized or attempted to be organized under the laws of this State for more than 20 years
38 prior to January 1, 2013 and not yet declared to be invalid prior to January 1, 2013 is for
39 all intents and purposes a lawful corporation or other legal entity as applicable. The
40 deeds or other instruments of the corporation or other legal entity, given in its corporate
41 or other legal entity name, that affect or convey real estate or any interest in ~~the~~ real estate

1 and that ~~prior to January 1, 2013~~ have been recorded for at least 2 years in the
2 registry of deeds in the county where the real estate is located may not be held invalid by
3 reason of:

4 A. The lack of authority for or informality in their execution or delivery if executed
5 or delivered in good faith by the acting officers or other authorized officials or
6 members of the corporation or other legal entity as applicable;

7 B. The failure to disclose the corporation's or other legal entity's authority for the
8 conveyance of real estate;

9 C. The failure to bear the ~~corporate~~ seal of the corporation or other legal entity;

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

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

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

15 **4. Omission of authorization for conveyance of real estate.** A deed or other
16 instrument for the conveyance of real property, or any interest in the real property
17 executed by a person or persons purporting to act as the agent or attorney of the grantors
18 or their spouses, that has been recorded for at least 20 years in the registry of deeds ~~for~~ of
19 the county or district in which the real property is located ~~more than 40 years prior to~~
20 ~~January 1, 2013~~ is valid even if no power of attorney authorizing and empowering an
21 agent or attorney to make the conveyance or execute and deliver the deed or instrument
22 appears of record, but the real property has in the meantime been occupied, claimed or
23 treated by the grantees or their heirs, successors or assigns as their own property.

24 **5. Discharge of mortgage.** An instrument that has been recorded or written or
25 ~~recorded on the record~~ in the registry of deeds ~~more than 40~~ of the county or district in
26 which the real property is located for at least 20 years prior to January 1, 2013 that is
27 signed or executed by a person or persons purporting to act as the agent or attorney of a
28 mortgagee of real estate and purporting to discharge the mortgage is valid even if no
29 power of attorney authorizing an agent or attorney appears of record.

30 **6. Failure to secure bond or comply with licensing.** In all cases in which an
31 executor, administrator, personal representative, guardian, conservator, trustee, master,
32 receiver or similar officer has been authorized or ordered by a court of probate or other
33 court to distribute, sell or exchange real estate and has distributed, sold or exchanged the
34 real estate, or any interest in the real estate, in accordance with the authority, without first
35 having filed a bond covering the faithful administration and distribution of the ~~sale estate~~
36 when a bond was required by law or has failed to comply with any other prerequisite for
37 the issuance of the license authorizing the distribution, sale or exchange and has given a
38 deed to the distributee or purchaser of the real estate or to the person with whom an
39 exchange was authorized or ordered or when the executor, administrator, personal
40 representative, guardian, conservator, trustee, master, receiver or other officer appointed
41 has acted in that capacity under a decree of any court appointing that person to the office,
42 but the decree of appointment erroneously or inadvertently excused the person from

1 giving bond in that capacity when a bond was required by law and was not in fact given,
2 the deeds and acts previously done are valid.

3 **7. Foreclosure by publication.** In all cases of foreclosure of real estate mortgages
4 by publication, a certificate of the publication of foreclosure made by the mortgagee or by
5 an officer, member, partner or other authorized representative of the mortgagee, if the
6 mortgagee is a corporation or other legal entity, or made by an officer or employee of the
7 newspaper that published the notice recorded ~~on or before January 1, 2013~~ in the registry
8 of deeds of the county or district in which the real property is located is prima facie
9 evidence of the publication of foreclosure to the same extent as if the certificate had in
10 fact been made by the register of deeds and recorded; certificates made by the mortgagee
11 or by an officer, member, partner or other authorized representative of the mortgagee, if
12 the mortgagee is a corporation or other legal entity, or made by an officer or employee of
13 the newspaper that published the notice recorded ~~on or before January 1, 2013~~ in the
14 registry of deeds of the county or district in which the real property is located have the
15 same force and effect as if made by the register of deeds and are valid.

16 **8. Foreclosure by civil action.** All foreclosures commenced on or after October 1,
17 1975 of real estate mortgages executed on or prior to October 1, 1975 using the method
18 of foreclosure set forth in Title 14, sections 6321 to 6324 for which the period of
19 redemption allowed was not less than one year and that would be valid but for the date of
20 execution of the mortgage are valid and effective according to their terms.

21 **9. Abstracts of divorce decrees.** An abstract of a divorce decree recorded in any
22 registry of deeds ~~prior to March 24, 1987~~ on or after August 20, 1955 and otherwise valid
23 that failed to state the residence of any party to the divorce action is valid and has the
24 force and effect of a quitclaim deed releasing all interest in the real estate described in the
25 decree or abstract.

26 **Sec. 3. 33 MRSA §353-B**, as enacted by PL 1981, c. 181, §4 and amended by PL
27 2011, c. 682, §38, is further amended to read:

28 **§353-B. Defects in plats**

29 Any plats of a subdivision approved by the municipal officers of the municipality in
30 which the land is located; that have been recorded ~~prior to January 1, 1970~~ for at least 2
31 years in the registry of deeds for the county or district in which the land is located and
32 otherwise valid, except that the same were not approved by a planning board pursuant to
33 the 1944 Revised Statutes, chapter 80, section 85, as amended, the 1954 Revised Statutes,
34 chapter 91, section 94, as amended, the 1954 Revised Statutes, chapter 90-A, section 61,
35 as amended, or the 1964 Revised Statutes, Title 30, section 4956, as amended, or by the
36 municipal reviewing authority pursuant to Title 30-A, section 4403, as amended, are
37 validated.

38 Any plat or subdivision approved by the planning board of the municipality in which
39 the land is located; that has been recorded ~~prior to January 1, 1970~~ for at least 2 years in
40 the registry of deeds for the county or district in which the land is located and otherwise
41 valid, except that the same ~~were~~ was not approved by the municipal officers pursuant to
42 the 1944 Revised Statutes, chapter 80, section 85, as amended, the 1954 Revised Statutes,

1 chapter 91, section 94, as amended, the 1954 Revised Statutes, chapter 90-A, section 61,
2 as amended, or the 1964 Revised Statutes, Title 30, section 4956, as amended, ~~are~~ or by
3 the municipal reviewing authority pursuant to Title 30-A, section 4403, as amended, is
4 validated.

5 Any plats of a subdivision approved by the planning board or by the municipal
6 officers of the municipality or by both in which the land is located; that have been
7 recorded ~~prior to January 1, 1970~~ in the registry of deeds for the county or district in
8 which the land is located and otherwise valid, except that the approval is not noted
9 thereon pursuant to the 1944 Revised Statutes, chapter 80, section 85, as amended, the
10 1954 Revised Statutes, chapter 91, section 94, as amended, the 1954 Revised Statutes,
11 chapter 90-A, section 61, as amended, ~~or~~ the 1964 Revised Statutes, Title 30, section
12 4956, as amended, or Title 30-A, section 4403, as amended, are validated, ~~provided that if~~
13 the approval by the appropriate board can be substantiated by affidavit recorded in the
14 registry of deeds for the county or district in which the land is located, the recording of
15 the affidavit to be noted on the plat.

16 Any deed or other instrument for the conveyance of real property or any interest
17 therein in the unorganized or deorganized territory, including plantations, in this State,
18 ~~which that~~ was otherwise validly made or placed on record, except that it was made in
19 violation of Title 12, section 687, as enacted by the Public Laws of 1969, chapter 494 and
20 repealed by the Public Laws of 1971, chapter 457, section 7 ~~or~~, made in violation of Title
21 12, section 685-B, subsection 6, as enacted by the Public Laws of 1971, chapter 457,
22 section 5 and amended by the Public Laws of 1971, chapter 544, section 28-G, or made in
23 violation of Title 12, section 685-B, subsection 6-A as enacted by Public Law 1991,
24 chapter 687, section 2 and amended by Public Law 2001, chapter 431, section 4, is
25 validated. All structures on land in the unorganized or deorganized territory, including
26 plantations, ~~which that~~ are not otherwise nuisances, ~~shall~~ may not be deemed to be
27 nuisances merely because they are located upon land conveyed by deed or other
28 instrument ~~which that~~ lacked evidence of the approval of the Maine Land Use Regulation
29 Commission or the Maine Land Use Planning Commission, as applicable, thereon.

30 SUMMARY

31 This bill amends the laws governing the validation of title defects to specify under
32 what circumstances various defects in deeds and other instruments and subdivision plats
33 do not affect title to real property. The bill removes the need for periodic updating of
34 these laws by specifying the applicable lookback period.