

HOUSE No. 1367

By Mr. Randall of Framingham, petition of Charles W. Blood, William I. Randall and others for legislation to protect land titles from uncertain and obsolete restrictions. Legal Affairs.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Sixty.

AN ACT TO PROTECT LAND TITLES FROM UNCERTAIN AND OBSOLETE RESTRICTIONS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 184 of the General Laws is hereby
2 amended by adding at the end thereof the following four new
3 sections:—

4 *Section 26.* No restriction limiting the use of any lot of
5 land or construction thereon imposed after December thirty-
6 first, nineteen hundred and sixty, by covenant, agreement or
7 otherwise in any deed, will or other recorded instrument shall
8 be enforceable:—

9 (a) By owners of any land intended to have the benefit not
10 adjoining the lot unless the lot restricted and the land intended
11 to be benefited are both described in the instrument imposing
12 the restriction by reference to a recorded plan or plans showing
13 them; or

14 (b) After thirty years from the imposition of the restriction,
15 regardless of any later date specified for its termination, unless
16 either (1) the restriction is part of a common scheme and pro-
17 vision is made therein for extension for further periods of not
18 more than twenty years at a time by then owners of record of
19 fifty per cent or more than fifty per cent of the restricted area
20 including the lot, and such an extension is recorded in accord-
21 ance with such provision before the expiration of the thirty
22 years and names or is signed by one or more of the persons then
23 appearing of record to own the lot, and twenty years have not
24 thereafter expired without the recording of a further like ex-

25 tension: or (2) a notice of restriction is recorded before the
26 expiration of the thirty years, and twenty years have not ex-
27 pired without the recording of a further notice of restriction.
28 A notice of restriction under this section shall not extend the
29 period of enforceability unless it (1) is signed by a person
30 then entitled to the benefit of the restriction and describes his
31 land, if any, so entitled, (2) describes the land subject to the
32 restriction or identifies it by specifying a recorded plan and the
33 place of record thereof and the lot identification thereon and if
34 registered specifies the number of the certificate or certificates
35 of title affected, (3) names one or more of the persons then
36 appearing of record to own the lot, and (4) it specifies the place
37 in the public records where the instrument imposing the re-
38 striction is recorded, and the name of the person or persons
39 imposing it.

40 *Section 27.* No restriction limiting the use of any lot of land
41 or construction thereon imposed before January first, nineteen
42 hundred and sixty-one, by covenant, agreement or otherwise
43 in any deed, will or other recorded instrument shall be en-
44 forceable after the expiration of fifty years from its imposition
45 unless a notice of restriction is recorded before the expiration
46 of such fifty years or before January first, nineteen hundred
47 and sixty-two, whichever is later, and in case of such notice
48 twenty years have not expired without the recording of a
49 further notice of restriction. No notice of restriction in this
50 section shall be effective to extend the period of enforceability
51 unless —

52 (a) It meets the requirements of section twenty-six, except
53 that if the names of persons appearing of record to own the
54 lot are not known to the persons giving notice, it shall name
55 those so known and also the person or persons shown by the
56 records of the tax assessors at the last prior assessment date to
57 be the owner or owners; and

58 (b) It specifies, if not otherwise given in the description, the
59 city or town and in Boston also the district, in which the lot is
60 situated, and the way or ways, public or open to public use, on
61 which it abuts or nearest to which it is located, and its street
62 number or numbers, if any.

63 *Section 28.* Notices of restrictions under sections twenty-
64 six and twenty-seven and extensions of restrictions under sec-
65 tion twenty-six shall be indexed in the grantor indexes under

66 the names of all persons named therein as owners whether ap-
67 pearing of record or assessed. A single notice may be given
68 with respect to any number of lots subject to a common restric-
69 tion. Notices of restrictions under section twenty-seven shall
70 also be indexed in a special index which each register shall
71 maintain arranged alphabetically by city or town and district,
72 and within each city, town or district, by the ways named, in
73 which are listed the books and pages of record of the notices of
74 restriction and of the instruments therein specified as creating
75 them and the persons named as imposing them, or a common
76 name for such restrictions or the subdivision in which they are
77 imposed if specified in the notice. The recording of a notice of
78 restriction shall not entitle any person to enforce the restric-
79 tion other than the person giving the notice and those claiming
80 under him, and shall not permit enforcement against any land
81 not described or identified by such a notice, properly indexed,
82 except that in case of restrictions imposed as part of a common
83 scheme applicable to four or more lots, a notice under section
84 twenty-seven by the owners of record of fifty per cent or more
85 of the area restricted, or of any block or section thereof shall
86 extend the time of enforceability equally for all the owners
87 otherwise entitled in the area, block or section as the case may
88 be. Neither this section nor section twenty-six or twenty-
89 seven nor any notice or extension recorded pursuant thereto
90 shall entitle any person to enforce a restriction who would not
91 otherwise be entitled to do so nor apply to covenants in leases
92 or mortgages.

93 *Section 29.* No restriction limiting the use of any lot of land
94 or construction thereon by covenant, agreement or otherwise
95 in any deed, will or other recorded instrument shall be declared
96 or be determined to be enforceable if at the time the enforce-
97 ability of the restriction is brought in question it appears that
98 the restriction is of no actual and substantial benefit to the
99 person seeking its enforcement or seeking a declaration or de-
100 termination of its enforceability, either because the purpose of
101 the restriction has already been accomplished or, by reason of
102 changed conditions or other cause, its purpose is not capable
103 of accomplishment, or for any other reasons. When the relief
104 against such a restriction is sought in an action to quiet title
105 or to obtain a declaration with respect to enforceability of a
106 restriction or to determine an adverse claim arising from the

107 restriction, or is sought by way of defence or counterclaim in
108 an action to enforce the restriction or to obtain a declaration
109 with respect to its enforceability, or to register or confirm the
110 title to the lot in question free from such restrictions, if the
111 court shall find that the restriction is of no actual and sub-
112 stantial benefit to the persons seeking its enforcement or seeking
113 a declaration or determination of its enforceability, either be-
114 cause the purpose of the restriction has already been accom-
115 plished or, by reason of changed conditions or other cause, its
116 purpose is not capable of accomplishment, or for any other
117 reason, it may adjudge that the restriction is not enforceable
118 by injunction, or in appropriate cases the court may decree
119 that it shall be completely extinguished upon payment to the
120 person or persons who otherwise would be entitled to enforce
121 it in the event of a breach at the time of the action, of such
122 damages, if any, as such person or persons will sustain from
123 the extinguishment of the restriction.

1 SECTION 2. Section 3 of chapter 184A of the General Laws
2 is hereby amended by deleting the third and fourth sentences
3 thereof.