

SENATE No. 62

To accompany the petition of Samuel H. Longley, president of the Massachusetts Conveyancers' Association, and others for the passage of such legislation as will permit the use of simpler forms in the transfer of real estate. Joint Judiciary.

Commonwealth of Massachusetts.

In the Year One Thousand Nine Hundred and Five.

AN ACT

To simplify the Transfer of Title to Property.

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. In a conveyance of property the
2 word "grant" shall have the full force, meaning
3 and effect of the words "give, grant, bargain, sell
4 and convey," and shall be applied and construed
5 accordingly, but no one of said words shall import
6 any covenant or warranty whatsoever.

1 SECTION 2. In a conveyance of property the
2 word "quitclaim" shall have the full force, mean-

3 ing and effect of the words "convey, remise,
4 release and forever quitclaim," and shall be ap-
5 plied and construed accordingly.

1 SECTION 3. In an assignment of a mortgage
2 of property the word "assign" shall have the full
3 force, meaning and effect of the words "assign,
4 transfer and set over," or any of them, and shall
5 be applied and construed accordingly.

1 SECTION 4. In an assignment of a mortgage
2 the word "mortgage" used as a description of
3 what is thereby assigned shall include the debt,
4 note, money or claim secured, and all the estate
5 conveyed, by the mortgage, subject to the right
6 of redemption, unless a different intention clearly
7 appears in the assignment.

1 SECTION 5. It shall not be necessary, in any
2 instrument affecting the title to land, to express
3 either the payment or the receipt of consideration.
4 The execution and delivery of the instrument
5 shall imply valid consideration to the same extent
6 to which a recital of consideration would imply it.

1 SECTION 6. It shall not be necessary, in any
2 conveyance of property, to employ the clause
3 known as the habendum, or any other clause
4 similar or equivalent thereto, or to express any
5 use. It shall not be necessary to use the words
6 "heir" or "heirs of the body" in any conveyance
7 or reservation to vest an estate in fee simple
8 or fee tail, but the conveyance or reservation shall

9 take effect according to the intention expressed
10 in it, so far as it lawfully may, and shall be
11 deemed to express an intention to vest an estate
12 in fee simple unless it clearly appears in the deed
13 that a less estate is intended.

1 SECTION 7. In every conveyance of property all
2 rights, easements, privileges and appurtenances be-
3 longing to the granted estate shall be included in
4 the property conveyed and passed by the convey-
5 ance, unless the contrary shall be clearly made to
6 appear in the deed, and it shall never be necessary
7 to enumerate or mention them.

1 SECTION 8. In a conveyance of property it
2 shall not be necessary to insert any words of cov-
3 enant in the form heretofore employed, but the
4 words "warranty covenants" shall have the full
5 force, meaning and effect of the words: "And the
6 grantor, for himself and his heirs, executors and
7 administrators, covenants with the grantee, his
8 heirs and assigns, that he is lawfully seized in fee
9 simple of the granted premises; that they are
10 free from all encumbrances; that he has good
11 right to sell and convey the same to the grantee,
12 his heirs and assigns forever, as aforesaid; and
13 that he will, and his heirs, executors and admin-
14 istrators shall, warrant and defend the same
15 to the grantee, and his heirs and assigns forever,
16 against the lawful claims and demands of all per-
17 sons," and shall be construed and applied accord-
18 ingly. Exceptions from such covenant may be
19 made by any apt words.

1 SECTION 9. In such a conveyance the words
2 "quitclaim covenants" shall have the full force,
3 meaning and effect of the words, "and the
4 said grantor, for himself and his heirs, executors
5 and administrators, covenants with said grantee
6 and his heirs and assigns that the premises are
7 free from all encumbrances made by him, and that
8 he will, and his heirs, executors and administrators
9 shall, warrant and defend the same to the said
10 grantee, and his heirs and assigns forever, against
11 the lawful claims and demands of all persons claim-
12 ing by, through or under him, but against none
13 other," and shall be construed and applied accord-
14 ingly. Exceptions from such covenant may be
15 made by any apt words.

1 SECTION 10. It shall not be necessary to men-
2 tion, in any covenant, agreement or condition in
3 a conveyance of, or other instrument affecting,
4 land, the heirs, executors, administrators, suc-
5 cessors or assigns of either party, in order that
6 they may be bound by, included in, or entitled to
7 the benefit of the same; but such heirs, execu-
8 tors, administrators, successors and assigns respec-
9 tively shall, without being mentioned therein, be
10 bound by, included in, and entitled to the benefit
11 of the covenant, agreement or condition in the
12 same manner as if they had been mentioned
13 therein with proper words for that purpose, unless
14 otherwise expressly stated.

1 SECTION 11. The holder of a mortgage of

2 land shall not by virtue of the mortgage have the
3 right to enter upon or to take possession of the
4 mortgaged premises, or to receive the rents or
5 profits thereof, before a breach of the condition,
6 unless it shall be so expressly stated in the mort-
7 gage.

1 SECTION 12. When a mortgage provides that
2 the grantee or the holder of the mortgage shall
3 have the statutory or usual power of sale, then,
4 in case of any breach in the condition of said
5 mortgage, the holder of the mortgage shall have
6 power, operating to the same extent and in the
7 same manner as if it had been expressed in the
8 mortgage, to sell the mortgaged premises, or such
9 part thereof as may then remain subject to the
10 mortgage, together or in parcels, by public auc-
11 tion on or near the same, or at such place as may
12 be designated for that purpose in the mortgage,
13 and to convey the same to the purchaser abso-
14 lutely, and to make any such sale subject to any
15 prior mortgages or charges affecting the prem-
16 ises sold, or upon the terms of all or any of such
17 mortgages or charges then due and payable being
18 paid off out of the purchase money, and such sale
19 shall be a perpetual bar to the right of redemp-
20 tion. But, before selling, the holder of the mort-
21 gage shall publish notice of the time and place of
22 sale once a week for three successive weeks in
23 some newspaper published in the city or town, or,
24 if there be no such newspaper, then in some
25 newspaper published in the county where the

26 mortgaged premises are, and the first of such
27 publications shall be not less than twenty-one
28 days before the day of sale.

1 SECTION 13. The holder of the mortgage, or
2 any person acting in his behalf, may purchase at
3 such sale, unless the contrary is declared in the
4 mortgage.

1 SECTION 14. The holder of the mortgage, out
2 of the money arising from such sale, may retain
3 and pay the expenses incurred in the sale, and all
4 sums which any holder of the mortgage shall
5 properly have paid by reason of any default of
6 the mortgagor or the person entitled to the prop-
7 erty subject to the mortgage, with interest on
8 such sums, and the money then secured by the
9 mortgage, whether then or thereafter payable,
10 and shall pay the residue to the grantor or his
11 assigns on demand. No person other than the
12 holder of the mortgage shall be bound to see to
13 the application of the money arising from such
14 sale.

1 SECTION 15. When any land shall have been
2 sold under the power hereinbefore mentioned or
3 any power contained in the mortgage, an affida-
4 vit or affidavits setting out the events that have
5 happened authorizing the sale, and the things
6 that have been done in the exercise of the power,
7 or any of such events or things, may be made and
8 recorded in the registry of deeds within thirty

9 days after the sale. If any such affidavit be made
10 by a person other than the holder of the mortgage,
11 it shall state that he makes the affidavit by the
12 authority or on behalf of such holder. Such affi-
13 davit or affidavits, or a duly certified copy of the
14 record thereof, shall be evidence of the matters
15 therein contained for the purpose of showing that
16 the sale was authorized by the power and that
17 the power was duly exercised. And the parties
18 may provide in the mortgage that such affidavit
19 or affidavits or copy shall be conclusive evidence
20 in favor of bona fide purchasers as to such mat-
21 ters or any of them.

1 SECTION 16. A mortgage may be discharged
2 by a deed or an instrument in writing acknowl-
3 edging satisfaction or payment of or expressing
4 an intention to discharge the mortgage, and such
5 deed or instrument shall have the same effect as
6 a deed of release, and being acknowledged or
7 proved according to the statute, may be recorded.

1 SECTION 17. Nothing contained in this act
2 shall be construed to invalidate the legal effect of
3 other forms of conveyance.

1 SECTION 18. The fees for recording instru-
2 ments drawn in accordance with the provisions of
3 this act shall be the same as now required by law,
4 but in no case shall the charge for recording a
5 deed of conveyance be less than fifty cents, or for
6 recording a mortgage less than one dollar.

1 SECTION 19. Forms similar to those in the
2 following schedule may be used, and shall be suf-
3 ficient for the purposes therein specified, and they
4 may be adapted to other cases by such variations as
5 circumstances may require, or the parties desire.

SCHEDULE OF FORMS.

I. Warranty Deed.

6 Be it known that I, A. B. of grant unto
7 C. D. of with warranty covenants (the
8 quitclaim deed should be similar in form, but
9 should contain in place of the words "warranty
10 covenants," the words "quitclaim covenants") all
11 that land described as follows: (describing the
12 land). And I, E. B., wife of the said A. B.,
13 release to the grantee all my right of dower and
14 homestead in the premises (or, I have no wife).
15 Witness hand and seal the day of
16 in the year nineteen hundred and three.

(Acknowledgment.)

II. Deed of Mortgage.

17 Be it known that I, A. B., of for dollars
18 to me paid, grant unto C. D., of with warranty
19 covenants all that land described as follows:
20 (describing the land).
21 *Provided*, that if the grantor shall perform and
22 observe all covenants herein and shall pay unto
23 the grantee the sum of dollars, in years
24 from this date, with interest thereon, payable
25 semi-annually, at the rate of per centum per

26 annum, and until such payment shall pay all taxes
27 and assessments now or hereafter laid or assessed,
28 upon the granted premises, or any interest therein,
29 or the debt hereby secured, and shall keep the
30 buildings now or hereafter standing thereon in-
31 sured against fire in such sum (not exceeding the
32 amount hereby secured), in such companies and
33 upon such terms as may be satisfactory to the
34 grantee, and shall make all insurance payable to
35 the grantee in case of loss, and deliver to him the
36 policies, and shall not commit or suffer any strip
37 or waste of the granted premises, then this deed
38 and the grantor's note of even date herewith for
39 said sum, interest and time, payable to the grantee
40 or order, shall be void, and the grantor covenants
41 to faithfully perform the terms of this condition.
42 The grantee shall have the statutory power of
43 sale.

44 And I, E. B., wife of the said A. B., release to
45 the grantee all my rights of dower and homestead
46 in the premises (or, I have no wife).

47 Witness hand and seal the day of
48 in the year nineteen hundred and

(Acknowledgment.)

III. Transfer of a Mortgage.

49 Be it known that I, C. D., the present holder
50 of a mortgage given by A. B. to dated the
51 third of January, nineteen hundred and three, and
52 recorded with Suffolk deeds, book leaf ,
53 assign the said mortgage unto E. F. of

54 Witness my hand and seal the eleventh day of
55 February, in the year nineteen hundred and three.

(Acknowledgment.)

IV. Discharge of a Mortgage.

56 Be it known that I, C. D., the present holder
57 of a mortgage given by A. B. to dated the
58 third of January, nineteen hundred and three,
59 and recorded with Suffolk deeds, book leaf
60 , do acknowledge the satisfaction of the
61 said mortgage.

62 Witness my hand and seal the sixth day of
63 April, in the year nineteen hundred and three.

(Acknowledgment.)

V. Acknowledgment of any Deed.

64 Suffolk, ss.

65 Acknowledged by said A. B. at Boston, the
66 day of , nineteen hundred and three.

67 Before me,

68

G. H.,

69

Justice of the Peace.