



## Registered Land Modernization

Summary of H.4357, a Redraft of H.1700/S.933 as recommended by the Judiciary Committee

The Massachusetts Land Registration Act, as appearing in Mass. G. L. c.185, was enacted in 1898 (St. 1898, c. 562) Referred to as the Torrens system, “land registration” in Massachusetts is an approach to the establishment and transfer of land ownership whereby the Commonwealth certifies the ownership interest. Most land in Massachusetts is recorded as “unregistered land,” the title to which carries no certification or guarantee from the Commonwealth.

Since 1917 most states have repealed “Torrens,” citing cumbersome administrative processes and limited interest on the part of landowners to submit their titles to land registration. Only six states still have Torrens, but in only three states (Massachusetts, Hawaii and Minnesota) is it still actively used.<sup>1</sup>

Although Torrens proved to be beneficial in its earlier years of implementation, for many property owners the system failed to stay relevant. The increased delays and expense that the system adds to any real estate transaction in registered land often cannot be justified. Title searches have become easier to perform with the digitization of records. Title insurance underwriters are reliable and flexible in delivering reasonably secure title, thus outweighing the benefits of Torrens. The wide availability of title insurance in Massachusetts beginning in the 1970’s amounted to a *de facto* privatization of registered land.<sup>2</sup>

In Massachusetts, since 2000, there has been a procedure for the “withdrawal” of land from registration, as set forth in G. L. c.185, §52, which may convert the title to a “confirmed title.” However, the ability to withdraw land from registration is not currently available to all landowners, but rather is only available if one of five criteria are met. In addition, the current “withdrawal” procedure in Massachusetts requires a review by Land Court staff and the order of a Land Court judge in a process that often takes several months or more to resolve. That is unacceptable in commerce today. In the five other states where Torrens still exists the procedure for withdrawal is easier and less costly. Any landowner, upon the advice of competent counsel, should have the opportunity more easily to withdraw land from registration in Massachusetts.

### What the legislation does

SECTION 1 would conform sect. 16 of MGL c. 183A with the proposed changes in M.G.L. c.185.

SECTION 2 amends M.G.L. c.185, § 52 to provide for the filing with the land court of a complaint and notice of voluntary withdrawal consented to by all the owners of the land. The complaint must identify

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<sup>1</sup> The Torrens System in the United States, Observations on Subsequent Proceedings in the Massachusetts Land Court (Real Estate Bar Association, by Madeleine M. Lafitte, 2022)

<sup>2</sup> Lafitte Idem

any mortgagees, lessees, or option holders of record having an interest in the land. As part of the initial filing, the landowners must provide documentation to establish their ownership of the land.

To expedite the process for approval, as part of the filing with the Court, the owners may also file with the Court written and signed assents from any interest holders who have agreed to the withdrawal.

If the owners request, which is most likely to occur if the owners are pro se, the Court may appoint a title examiner to issue a report to identify the current owners and interest holders.

If an interest holder did not consent when the complaint was filed, a notice must be sent by certified mail to the interest holder. The interest holder has 30 days to object to the requested withdrawal. If no objection has been filed within 30 days following service, a justice of the Court shall approve and endorse the notice of voluntary withdrawal within 30 days following receipt of all required information and documentation.

Where currently the “complaint for withdrawal” is filed before the notices are sent, the proposed legislation would change that to begin the process with the landowner filing the notice of voluntary withdrawal, accompanied by the examiner’s title report and the attorney’s affidavit of notice. If no objection is received after 30 days, the judge shall endorse the notice of voluntary withdrawal.

If an objection is filed by any mortgagee, option holder or lessee of record, the notice of voluntary withdrawal shall be endorsed by a judge unless the court determines there is “good cause” for the objection. That presumption comes right from the current statute.

A notice of voluntary withdrawal that has been endorsed by a judge would be noted on the memorandum of encumbrances for the certificate of title and recorded on the unregistered land side of the registry of deeds, whereupon the land shall become unregistered land. Just as under current law, the owner then shall hold title to the land free of all liens and encumbrances not listed on the memorandum of encumbrances at the time the notice of voluntary withdrawal was so noted; and subject to other statutory exceptions provided for in current law.

SECTION 3 would authorize a Register of Deeds, acting as assistant recorder of the Land Court, to correct a clerical error or omission that was made in the entry of a certificate of title or memorandum thereon, without the necessity of an order of the court in a subsequent proceeding; and otherwise update M.G.L. c.185, § 114.

### Conclusion

Withdrawal of land from the registration system may not be appropriate in all cases. With the advice of competent counsel, the landowner should understand the benefits as well as the shortcomings of land registration before taking that step. Filing of the notice of voluntary withdrawal, accompanied by the examiner’s title report and the attorney’s affidavit of notice, balances the interests of owners, option holders and mortgagees in the process of allowing at will withdrawals. The expedited procedure that this legislation provides, in sections 2 and 3, would be welcomed by parties to sales and other transactions in land that are so often frustrated by the time and expense required by current practice. To that end REBA has worked with other stakeholders and is hopeful of their support for this legislation.

**REBA strongly supports this legislation.**

*For information contact:*

Edward J. Smith, Esq.

[ejs@ejsmithrelaw.com](mailto:ejs@ejsmithrelaw.com)