

By: Representative Snowden

To: Judiciary A

HOUSE BILL NO. 1463

1 AN ACT TO CREATE THE MISSISSIPPI MARKETABLE RECORD TITLE ACT;
2 TO DEFINE CERTAIN TERMS; TO PROVIDE FOR MARKETABLE RECORD TITLE
3 AND THE SUSPENSION OF APPLICABILITY; TO PROVIDE EXCEPTIONS TO
4 MARKETABILITY; TO PROVIDE FOR INTERESTS EXTINGUISHED BY MARKETABLE
5 TITLE; TO PROVIDE FOR THE FILING OF NOTICE; TO SPECIFY THE
6 CONTENTS OF NOTICE; TO PROVIDE FOR LIMITATIONS OF ACTIONS AND
7 RECORDING ACTS; TO PROHIBIT THE FILING OF FALSE CLAIMS; TO PROVIDE
8 FOR AN EXTENSION OF THE 30-YEAR PERIOD; AND FOR RELATED PURPOSES.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

10 SECTION 1. This act shall be referred to as the "Mississippi
11 Marketable Record Title Act."

12 SECTION 2. The following words and phrases shall have the
13 meanings ascribed herein, unless the context clearly indicates
14 otherwise:

15 (a) "Person" as used herein denotes singular or plural,
16 natural or corporate, private or governmental, including the state
17 and any political subdivision or agency thereof, as the context
18 for the use thereof requires or denotes.

19 (b) "Root of title" means any title transaction
20 purporting to create or transfer the estate claimed by any person
21 and which is the last title transaction to have been recorded at
22 least thirty (30) years prior to the time when marketability is
23 being determined. The effective date of the root of title is the
24 date on which it was recorded.

25 (c) "Title transaction" means any recorded instrument
26 or court proceeding which affects title to any estate or interest
27 in land and which describes the land sufficiently to identify its
28 location and boundaries.

29 SECTION 3. Any person having the legal capacity to own land
30 in this state, who, alone or together with his or her predecessors
31 in title, has been vested with any estate in land of record for
32 thirty (30) years or more, shall have a marketable record title to
33 such estate in said land, which shall be free and clear of all
34 claims except the matters set forth as exceptions to marketability
35 in Section 4 of this act. A person shall have a marketable record
36 title when the public records disclose a record title transaction
37 affecting the title to the land which has been of record for not
38 less than thirty (30) years purporting to create such estate
39 either in:

40 (a) The person claiming such estate; or

41 (b) Some other person from whom, by one or more title
42 transactions, such estate has passed to the person claiming such
43 estate, with nothing appearing of record, in either case,
44 purporting to divest such claimant of the estate claimed.

45 SECTION 4. Such marketable record title shall not affect or
46 extinguish the following rights:

47 (a) Estate or interest, easements and use restrictions
48 disclosed by and defects inherent in the muniments of the title on
49 which said estate is based beginning with the root of title;
50 provided, however, that a general reference in any of such
51 muniments to easements, use restrictions or other interests
52 created prior to the root of title shall not be sufficient to
53 preserve them unless specific identification by reference to book
54 and page of record or by name of recorded plat be made therein to
55 a recorded title transaction which imposed, transferred or
56 continued such easement, use restrictions or other interests;
57 subject, however, to the provisions of paragraph (e).

58 (b) Estates, interests, claims or charges, or any
59 covenant or restriction, preserved by the filing of a proper
60 notice in accordance with the provision hereof.

61 (c) Rights of any person in possession of the lands, so
62 long as such person is in such possession.

63 (d) Estates, interests, claims or charges arising out
64 of a title transaction which has been recorded subsequent to the
65 effective date of the root of title.

66 (e) Recorded or unrecorded easements or rights,
67 interest or servitude in the nature of easements, rights-of-way
68 and terminal facilities, including those of a public utility or of
69 a governmental agency, so long as the same are used and the use of
70 any part thereof shall except from the operation hereof the right
71 to the entire use thereof. No notice need be filed in order to
72 preserve the lien of any mortgage or deed of trust or any
73 supplement thereto encumbering any such recorded or unrecorded
74 easements, or rights, interest or servitude in the nature of
75 easements, rights-of-way and terminal facilities. However,
76 nothing herein shall be construed as preserving to the mortgagee
77 or grantee of any such mortgage or deed of trust or any supplement
78 thereto any greater rights than the rights of the mortgagor or
79 grantor.

80 (f) Rights of any person in whose name the land is
81 assessed on the county tax rolls for such period of time as the
82 land is so assessed and which rights are preserved for a period of
83 three (3) years after the land is last assessed in such person's
84 name.

85 (g) State title to lands beneath navigable waters
86 acquired by virtue of sovereignty

87 SECTION 5. Subject to the matters stated in Section 4 of
88 this act, such marketable record title shall be free and clear of
89 all estates, interest, claims or charges whatsoever, the existence
90 of which depends upon any act, title transaction, event or
91 omission that occurred prior to the effective date of the root of
92 title. All such estates, interests, claims or charges, however
93 denominated, whether such estates, interests, claims or charges

94 are or appear to be held or asserted by a person sui juris or
95 under a disability, whether such person is within or without the
96 state, whether such person is natural or corporate, or is private
97 or governmental, are hereby declared to be null and void, except
98 that this act shall not be deemed to affect any right, title or
99 interest of the United States, the State of Mississippi, or any of
100 its officers, boards, commissions or other agencies reserved in
101 the patent or deed by which the United States, the State of
102 Mississippi or any of its agencies parted with title.

103 SECTION 6. (1) Any person claiming an interest in land or
104 desiring to preserve any covenant or restriction or any portion of
105 a covenant or restriction may preserve and protect the same from
106 extinguishment by the operation of this act by filing for record,
107 during the thirty-year period immediately following the effective
108 date of the root of title, a notice, in writing, in accordance
109 with the provisions hereof, which notice shall have the effect of
110 so preserving such claim of right or such covenant or restriction
111 or portion of such covenant or restriction for a period of not
112 longer than thirty (30) years after filing the same unless again
113 filed as required herein. No disability or lack of knowledge of
114 any kind on the part of anyone shall delay the commencement of or
115 suspend the running of said thirty-year period. Such notice may
116 be filed for record by the claimant or by any other person acting
117 on behalf of any claimant who is:

118 (a) Under a disability,
119 (b) Unable to assert a claim on his or her behalf, or
120 (c) One (1) of a class, but whose identity cannot be
121 established or is uncertain at the time of filing such notice of
122 claim for record.

123 (2) It shall not be necessary for the owner of the
124 marketable record title, as herein defined, to file a notice to
125 protect his or her marketable record title.

126 SECTION 7. (1) To be effective, the notice referred to in
127 this act shall contain:

128 (a) The name or description of the claimant desiring to
129 preserve a claim or any covenant or restriction and the name and
130 particular post office address of the person filing the notice.

131 (b) The name and post office address of an owner, or
132 the name and post office address of the person in whose name said
133 property is assessed on the last completed tax assessment roll of
134 the county at the time of filing, who, for the purpose of such
135 notice, shall be deemed to be an owner.

136 (c) A full and complete description of all land
137 affected by such notice, which description shall be set forth in
138 particular terms and not by general reference, but if said claim
139 is founded upon a recorded instrument or a covenant or a
140 restriction, then the description in such notice may be the same
141 as that contained in such recorded instrument or covenant or
142 restriction, provided the same shall be sufficient to identify the
143 property.

144 (d) A statement of the claim showing the nature,
145 description and extent of such claim or, in the case of a covenant
146 or restriction, a copy of the covenant or restriction, except that
147 it shall not be necessary to show the amount of any claim for
148 money or the terms of payment.

149 (e) If such claim is based upon an instrument of record
150 or a recorded covenant or restriction, such instrument shall be
151 sufficiently described to identify the same, including reference
152 to the book and page in which the same is recorded.

153 (f) Such notice shall be acknowledged in the same
154 manner as deeds are acknowledged for record.

155 (2) Such notice shall be filed with the Chancery Clerk of
156 the county or counties where the land described therein is
157 situated. The clerk shall enter, record and index said notice in
158 the same manner that deeds are entered, recorded and indexed, as

159 though the claimant were the grantee in the deed and the purported
160 owner were the grantor in a deed, and the clerk shall charge the
161 same fees for recording thereof as are charged for recording
162 deeds.

163 (3) The chancery clerk shall, upon such filing, mail by
164 registered or certified mail to the purported owner of said
165 property, as stated in such notice, a true copy thereof and shall
166 enter on the original, before recording the same, a certificate
167 showing such mailing. For preparing the certificate, the claimant
168 shall pay to the clerk a service charge in the sum of One Dollar
169 (\$1.00), plus the actual postage cost for the mailing, in addition
170 to the regular recording charges for the recordation of land
171 deeds, and together with regular charges for all photocopies, if
172 any, necessary to comply with this section. If the notice names
173 purported owners having more than one (1) address, the person
174 filing the same shall furnish a true copy for each of the several
175 addresses stated, and the clerk shall send one (1) such copy to
176 the purported owners named at each respective address. Such
177 certificate shall be sufficient if the same reads substantially as
178 follows:

179 I hereby certify that I did on this ___ day of
180 _____, 20___, mail by registered (or certified) mail a
181 copy of the foregoing notice to each of the following at
182 the address stated:

183 (Clerk of the Chancery Court)
184 of _____ County, Mississippi,
185 By (Deputy Clerk)

186 (4) Failure of any purported owner to receive the mailed
187 notice shall not affect the validity of the notice or vitiate the
188 effect of the filing of such notice.

189 SECTION 8. Nothing contain in this act shall be construed to
190 extend the period for the bringing of an action or for the doing
191 of any other act required under any statute of limitations or to

192 affect the operation of any statute governing the effect of the
193 recording or the failure to record any instrument affecting land.
194 This law shall not vitiate any curative statute.

195 SECTION 9. No person shall use the privilege of filing
196 notices under this act for the purpose of asserting false or
197 fictitious claims to land; and in any action relating thereto if
198 the court shall find that any person has filed a claim when such
199 person either knew or reasonably should have known such claim to
200 be false or fictitious, the court shall award to the prevailing
201 party all costs incurred by her or him in such action, including a
202 reasonable attorney's fee, and in addition thereto may award to
203 the prevailing party all damages that he or she may have sustained
204 as a result of the filing of such notice of claim.

205 SECTION 10. If the thirty-year period for filing notice
206 under the provisions of this act shall have expired prior to July
207 1, 2002, such period shall be extended to July 1, 2002.

208 SECTION 11. Any person whose interest in land is derived
209 from an instrument or court proceeding recorded subsequent to the
210 root of title, which instrument or proceeding did not contain a
211 description of the land in the manner as specified herein, and
212 whose interest had not been extinguished prior to July 1, 2002,
213 shall have until July 1, 2004, to file a notice in accordance with
214 this chapter to preserve the interest.

215 SECTION 12. This act shall be liberally construed to effect
216 the legislative purpose of simplifying and facilitating land title
217 transactions by allowing persons to rely on a record title as
218 described in Section 3 of this act, subject only to such
219 limitations as appear in Section 4 of this act. This act shall be
220 supplemental to all general laws involving titles.

221 SECTION 13. This act shall take effect and be in force from
222 and after July 1, 2001.