

By: Representative Snowden

To: Judiciary A

HOUSE BILL NO. 762

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 THIRTY-YEAR PERIOD; AND FOR RELATED  
9 PURPOSES.

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

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

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

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

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

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

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

41                   (a) The person claiming such estate; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

184 (Clerk of the Chancery Court)  
185 of \_\_\_\_\_ County, Mississippi,  
186 By (Deputy Clerk)

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

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

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

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

206 **SECTION 10.** If the thirty-year period for filing notice  
207 under the provisions of this act shall have expired prior to July  
208 1, 2005, such period shall be extended to July 1, 2007.

209 **SECTION 11.** Any person whose interest in land is derived  
210 from an instrument or court proceeding recorded subsequent to the  
211 root of title, which instrument or proceeding did not contain a  
212 description of the land in the manner as specified herein, and  
213 whose interest had not been extinguished prior to July 1, 2005,  
214 shall have until July 1, 2007, to file a notice in accordance with  
215 this chapter to preserve the interest.

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

222 **SECTION 13.** This act shall take effect and be in force from  
223 and after July 1, 2004.