

By: Representative Snowden

To: Judiciary A

HOUSE BILL NO. 826

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, 2007, such period shall be extended to July 1, 2009.

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, 2007,
214 shall have until July 1, 2009, 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, 2006.