HOUSE DOCKET, NO. 3432 FILED ON: 1/21/2011

HOUSE . . . . . No. 2818

The Commonwealth of Massachusetts

PRESENTED BY:

Christopher G. Fallon

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act to provide for good faith reliance on a valid power of attorney, estate planning flexibility in the creation of joint tenancies and tenancies by the entirety and reinstatement of joint tenancy upon redemption of a writ of execution.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Christopher G. Fallon	*33rd Middlesex*

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HOUSE . . . . . No. 2818

By Mr. Fallon of Malden, a petition (accompanied by bill, House, No. 2818) of Christopher G. Fallon relative to power of attorney, estate planning and joint tenancies upon redemption of a writ of execution. The Judiciary.

The Commonwealth of Massachusetts

An Act to provide for good faith reliance on a valid power of attorney, estate planning flexibility in the creation of joint tenancies and tenancies by the entirety and reinstatement of joint tenancy upon redemption of a writ of execution.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 5-504 of Chapter 190B of the General Laws, as inserted by section 9 of chapter 521 of the Acts of 2008, is hereby amended by adding after paragraph (b) the following paragraph (c):

(c) No revocation by a principal under a written power of attorney, durable or otherwise, shall revoke or terminate the agency as to the attorney in fact or other person who, without actual knowledge of the revocation, acts in good faith under the power or relies in good faith on acts under the power. Any action so taken or relied upon, unless otherwise invalid or unenforceable, binds the principal and successors in interest of the principal. As to a person other than the attorney in fact, such person shall not be deemed to have actual knowledge unless the revocation is in a writing executed by the principal or a duly appointed personal representative of the principal and is actually received by such person or, in the case of transactions involving real estate or any interest therein, such written revocation is recorded in due course as provided in section 25 of chapter 184.

SECTION 2. Chapter 184 of the General Laws is hereby amended by striking out section 7, as appearing in the 2006 Official Edition, and inserting in place thereof the following section:—

Section 7. 1. A conveyance or devise of any interest in real property to two or more persons or to a person and his or her spouse, except a mortgage or a conveyance or devise in trust, shall create an estate in common and not in joint tenancy, unless it is expressed in such conveyance or devise that the grantees or devisees shall take jointly, or as joint tenants, or in

21 joint tenancy, or to them and the survivor of them, or unless it manifestly appears from the tenor
22 of the instrument that it was intended to create an estate in joint tenancy.

23 2. A conveyance or devise of any interest in real property, to a person and his or her
24 spouse shall, if the instrument creating the conveyance or devise expressly so states, vest in the
25 grantees or devisees a tenancy by the entirety.

26 3. A conveyance or devise of any interest in real property, to a person and his or her
27 spouse which expressly states that the grantees or devisees shall take jointly, or as joint tenants,
28 or in joint tenancy, or to them and the survivor of them shall create an estate in joint tenancy and
29 not a tenancy by the entirety.

30 4. In a conveyance or devise to three or more persons, words creating a joint tenancy
31 shall be construed as applying to all of the grantees or devisees, regardless of marital status,
32 unless a contrary intent appears from the tenor of the instrument.

33 5. A conveyance or devise of any interest in real property, to two persons as tenants by
34 the entirety, who are not married to each other, shall create an estate in joint tenancy and not a
35 tenancy in common.

36 6. A conveyance or devise that expresses an intention to create a joint tenancy or tenancy
37 by the entirety in compliance with this section or section 8 of this chapter shall be given full
38 effect as expressed therein notwithstanding any common law rules to the contrary, including but
39 not limited to the unities of time, title, interest and possession.

40 7. For purposes of this section, a "conveyance" shall include a real property disposition
41 provision in a non-testamentary trust that provides for the vesting of title to any interest in real
42 property without the necessity of an instrument of conveyance from the trustee and a "devise"
43 shall include such a disposition provision in a testamentary trust.

44 SECTION 3. Chapter 184 of the General Laws is hereby amended by striking out section
45 8, as so appearing, and inserting in place thereof the following section:—

46 Section 8. 1. Any interest in real property may be conveyed by a person to himself or
47 herself and one or more other persons as joint tenants in the same manner in which it might be
48 conveyed by him or her to another person. If any such interest in real property is held by more
49 than one person, all or fewer than all of said persons may convey to themselves or fewer than all
50 of themselves, with or without one or more other persons, as joint tenants in a single instrument
51 of conveyance.

52 2. A conveyance of any interest in real property by a person to himself or herself and his
53 or her spouse as joint tenants or as tenants by the entirety or by both spouses to themselves as
54 joint tenants or as tenants by the entirety creates the tenancy so specified irrespective of the form
55 of tenancy in which such spouses held title prior to such conveyance. A tenancy by the entirety

56 may be held in joint tenancy with one or more other tenancies by the entirety and one or more
57 other persons or any combination thereof if so specified in a conveyance or devise of an interest
58 in real property.

59 3. A conveyance or devise expressing an intention to create a joint tenancy in accordance
60 with this section or section 7 of this chapter which expressly provides for unequal proportionate
61 shares of the undivided interest among the joint tenants is valid and shall be given full effect as
62 expressed therein notwithstanding any common law rule to the contrary.

63 SECTION 4. Section 12 of Chapter 236 of the General Laws, as so appearing, is hereby
64 amended by inserting after the existing paragraph the following second paragraph:—

65 However, if the debtor's interest was held in joint tenancy and the debtor or one or more
66 of the other joint co-tenants redeems the property prior to levy and set off or sale and obtains and
67 records an instrument of release or satisfaction from the judgment creditor or an assignee thereof
68 or from the sheriff or the court or, in the event of a levy and set off or sale, if the debtor or one or
69 more of the other joint co-tenants redeems the property accordance with section 33 of this
70 chapter and obtains and records a deed or other instrument of release, said joint tenancy shall be
71 re-established ab initio as though the interest of the debtor had not been taken on execution. If
72 the debtor has deceased prior to redemption and has not otherwise conveyed or encumbered his
73 or her interest in the property so as to permanently sever such interest from the joint tenancy, the
74 other joint co-tenants shall have the right to redeem the property and re-establish the joint
75 tenancy ab initio within one year from the date of death of the decedent debtor. Failure of the
76 co-tenants to so redeem shall render the severance of the decedent debtor's interest permanent
77 and such interest shall thereafter remain held in common for all purposes.

78 SECTION 5. Section 1 of this Act shall apply to transactions under powers of attorney
79 occurring before, on or after the effective date of this Act except with respect to a transaction that
80 has been invalidated by a final decision of a court of competent jurisdiction prior to the effective
81 date of said Section.

82 SECTION 6. Section 2 of this Act shall apply to instruments of conveyance, wills and
83 trusts executed before, on or after the effective date of this Act except with respect to an
84 instrument construed to the contrary by a final decision of a court of competent jurisdiction prior
85 to the effective date of said Section.

86 SECTION 7. The provisions of Section 3 of this Act being intended to clarify the effect
87 of Chapter 93 of the Acts of 1918, Section 2 of Chapter 395 of the Acts of 1954 and Section 1 of
88 Chapter 558 of the Acts of 1975, this section shall apply to instruments executed on or after
89 March 26, 1918; provided that, as to instruments involving conveyances between spouses
90 creating a tenancy by the entirety executed between March 26, 1918, and November 26, 1975,
91 said Section 3 of this Act shall apply to such instruments as of the date of their recording in
92 accordance with the provisions of Chapter 304 of the Acts of 1912 and the provisions of Section

93 8 of Chapter 184 of the General Laws as in effect between August 4, 1954, and November 26,
94 1975; and provided further that said Section 3 shall not apply to any instruments construed to the
95 contrary by a final decision of a court of competent jurisdiction prior to the effective date of said
96 Section 3.

97 SECTION 8. Section 4 of this Act shall apply to any execution that is redeemed on or
98 after the effective date of this Act.