

SENATE No. 694

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia S. Creem

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 adoption of the accompanying bill:

An Act relative to voluntary withdrawal of land from registration.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Cynthia S. Creem

SENATE No. 694

By Ms. Creem, a petition (accompanied by bill, Senate, No. 694) of Cynthia S. Creem for legislation relative to voluntary withdrawal of land from registration. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to voluntary withdrawal of land from registration.

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

1 SECTION 1. Chapter 183A of the General Laws is hereby amended by striking
2 out section 16 and inserting in place thereof the following section:

3 Section 16. The owners of any land may submit the same to the provisions of
4 this chapter by the recording in the registry of deeds of a master deed, or, if all of the land is
5 registered under the provisions of chapter one hundred and eighty-five, by filing the master deed
6 under the provisions of said chapter. If a portion of the land desired to be submitted to the
7 provisions of this chapter is registered land under said chapter one hundred and eighty-five, any
8 such portion may be withdrawn from the provisions of said chapter as provided in section 52
9 thereof of said chapter.

10 SECTION 2. Chapter 185 of the General Laws is hereby amended by striking
11 out section 52 and inserting in place thereof the following section:

12 Section 52. The obtaining of a judgment of registration and the entry of a
13 certificate of title shall be regarded as an agreement running with the land and binding upon the

14 plaintiff and his successors in title that the land shall be and forever remain registered land and
15 subject to this chapter and all acts in amendment thereof, unless withdrawn under this section,
16 and except as provided in section 26 of this chapter.

17 All of the owners of the fee simple estate in all of a parcel of land that has been
18 registered under this chapter, including the commonwealth or any agency, department, board,
19 commission, or authority of the commonwealth or any political subdivision thereof or any
20 authority of any such political subdivision, may voluntarily withdraw the registered land from
21 the provisions of this chapter by filing a notice of voluntary withdrawal, endorsed by a justice of
22 the land court as provided in this section, in the registry district of the land court where the land
23 lies. Such notice of voluntary withdrawal shall be noted on the memorandum of encumbrances
24 for the certificate of title. Upon the filing of such notice, the land shall be deemed withdrawn
25 from the provisions of this chapter and shall become unregistered land, and the owners shall hold
26 title thereto at the time of such filing free of all liens and encumbrances, including adverse
27 possession and prescriptive rights, except those set forth or referred to in section 46 and those
28 noted on the certificate of title or filed for registration before the filing of the notice of voluntary
29 withdrawal, as though a judgment of confirmation without registration had been recorded under
30 section 56A.

31 As used in this section, “notice of voluntary withdrawal” shall mean an
32 instrument in writing signed and acknowledged by all owners of the land to be voluntarily
33 withdrawn, which contains the following information: names and addresses of all owners; the
34 certificate of title number with the registration book and page numbers; the description of the
35 land in the form contained in the certificate of title; and the street address of such land, if any,
36 and which bears the endorsement of a justice of the land court approving the voluntary

37 withdrawal as provided in this section. Upon filing with the land court of a complaint to
38 withdraw land, the plaintiff shall deposit with the recorder a sum sufficient to cover costs of the
39 proceeding. The court shall then appoint one of the examiners of title, who shall make a report to
40 the court as to the identity of the current record owner and of all mortgagees and lessees with
41 interests of record in the land. A justice of the land court shall approve the application and shall
42 endorse the plaintiff's notice of voluntary withdrawal, unless, notice having been given to
43 mortgagees and lessees of record, an outstanding objection has been filed by a mortgagee or
44 lessee of record. Notwithstanding any such outstanding objection, the application may be
45 approved, unless the court determines there is good cause for the objection.

46 An owner of registered land who proposes to submit the land to the provisions
47 of chapter 183A or 183B may set forth in the complaint filed hereunder a request that the court
48 approve the application and endorse the notice of withdrawal subject to the condition that the
49 master deed shall have been, or shall be, presented for recording pursuant to section 16 of
50 chapter 183A in the registry of deeds in which the land is situated, and upon such recording of
51 the master deed and filing of the judgment of withdrawal and entry on the memorandum of
52 encumbrances of the certificate of title, the subject premises shall be so withdrawn.

53 The justices of the land court shall establish rules and practices, including an appropriate
54 filing fee for the application as are necessary to implement this section.