

SENATE No. 877

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia Stone 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 making technical changes to the laws regulating a certain notarial act.

PETITION OF:

NAME:

Cynthia Stone Creem

DISTRICT/ADDRESS:

First Middlesex and Norfolk

SENATE No. 877

By Ms. Creem, a petition (accompanied by bill, Senate, No. 877) of Cynthia Stone Creem for legislation to make technical changes to the laws regulating a certain notarial act. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 811 OF 2017-2018.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act making technical changes to the laws regulating a certain notarial act.

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. Section 42 of chapter 183 of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by striking out, in line 8, the word “voluntary”.

3 SECTION 2. Said section 42 of said chapter 183, as so appearing, is hereby further
4 amended by striking out, in line 10, the words “voluntary or free”.

5 SECTION 3. Forms (13), (14) and (15) of the Appendix in said chapter 183, as so
6 appearing, are hereby amended by striking out the word “free”, each time it appears.

7 SECTION 4. Section 1 of chapter 222 of the General Laws is hereby amended by striking
8 out the definitions of “Acknowledgment,” “Affirmation,” “Jurat,” “Oath,” and “Signature
9 witnessing,” and inserting in place thereof the following definitions:-

10 “Acknowledgment”, a notarial act in which an individual, at a single time and place
11 appears, in person, in the physical presence of a notary public, is identified by the notary public
12 through satisfactory evidence of identity and presents a document to the notary public and
13 indicates that the individual has executed the document for the purposes stated therein and, if
14 applicable, that the individual signed in a representative capacity and did so as the act of the
15 represented person or entity.

16 "Affirmation", a notarial act, or part thereof, that is legally equivalent to an oath and in
17 which an individual, at a single time and place appears, in person, in the physical presence of a
18 notary public, is identified by the notary public through satisfactory evidence of identity and the
19 individual makes a vow of truthfulness or fidelity under the penalties of perjury without invoking
20 a deity.

21 “Jurat”, a notarial act in which an individual, at a single time and place appears, in
22 person, in the physical presence of a notary public, is identified by the notary public through
23 satisfactory evidence of identity and: (i) presents a document; (ii) signs the document in the
24 physical presence of the notary public and (iii) takes an oath or affirmation before the notary
25 public vouching for the truthfulness or accuracy of the contents of the signed document.

26 “Oath”, a notarial act, or part thereof, that is legally equivalent to an affirmation and in
27 which an individual, at a single time and place, appears in person in the physical presence of a
28 notary public, is identified by the notary public through satisfactory evidence of identity and
29 takes a vow of truthfulness or fidelity under the penalties of perjury by invoking a deity.

30 “Signature witnessing”, a notarial act in which an individual, at a single time and place,
31 appears, in person, in the physical presence of a notary public, is identified by the notary public

32 through satisfactory evidence of identity and presents a document and signs the document in the
33 physical presence of the notary public.”

34 SECTION 5. Section 15 of said chapter 222, as so appearing, is hereby amended by
35 striking out, in line 15, the word “voluntarily”.

36 SECTION 6. Said section 15 of said chapter 222, as so appearing, is hereby further
37 amended by striking out, in line 21, the word “voluntary”.

38 SECTION 7. Section 20 of said chapter 222, as so appearing, is hereby amended by
39 striking out, in lines 21 and 22, the words “voluntary or free”.

40 SECTION 8. Notwithstanding any general or special law to the contrary, an instrument or
41 document that was recorded or filed in a registry of deeds before the effective date of this act that
42 was not executed by the grantor shall not be presumed to be invalid if the instrument or
43 document was executed or acknowledged by an attorney or representative acting with legal
44 authority on behalf of the grantor.

45 SECTION 9. Notwithstanding any general or special law to the contrary, an instrument or
46 document that was recorded or filed in a registry of deeds before the effective date of this act that
47 did not contain a formal statement or form acknowledging that the grantor, or an attorney or
48 representative acting with legal authority on behalf of the grantor, executed the instrument or
49 document voluntarily or freely shall not be presumed to be invalid for failing to contain such a
50 formal statement or form.

51 SECTION 10. Notwithstanding any general or special law to the contrary, an instrument
52 or document that was recorded or filed in a registry of deeds before the effective date of this act

shall not be presumed to be invalid for failing to use the forms provided in section 15 or the appendix to chapter 183 of the General Laws or in chapter 222 of the General Laws if the instrument or document provides another form of acknowledgment, jurat, signature witnessing or copy certification that: (i) is required or allowed by a court rule, form or directive, including, with respect to documents presented for filing with the land court and its land registration districts, the rules, forms, directives and guidelines of the land court; (ii) is required by any general or special law including, but not limited to, section 2-504 of chapter 190B of the General Laws, any federal law or any regulation adopted pursuant to any such law; (iii) is in a form provided by another state, if the document shall be filed or recorded in or governed by the laws of that other state; or (iv) appears on a printed form that contains an express prohibition against altering such form.

SECTION 11. Notwithstanding any general or special law to the contrary, the following provisions shall apply to an instrument or document that was recorded or filed in a registry of deeds before the effective date of this act and that has a form of acknowledgment, jurat, signature witnessing or copy certification that is substantially similar in legal meaning and effect to the texts of the several forms provided in the appendix to chapter 183 of the General Laws or in chapter 222 of the General Laws: (i) the failure of such an instrument or document to contain the forms of acknowledgment, jurat, signature witnessing or copy certification set forth in section 15 of said chapter 222 or otherwise to comply with the requirements of sections 8 to 23, inclusive, of said chapter 222 shall not have any effect on the validity of the underlying instrument or document or the recording of the underlying instrument or document; (ii) the failure of such an instrument or document to contain the forms of acknowledgment, jurat, signature witnessing or copy certification set forth in said section 15 of said chapter 222 shall not be the basis of a

76 refusal to accept the instrument or document for filing, recordation, registration or acceptance by
77 a third party; (iii) the failure of such an instrument or document executed in a representative
78 capacity to contain an acknowledgment that the instrument or document was also the voluntary
79 or free act and deed of the principal or grantor shall not affect the validity of the underlying
80 document or the recording of the document.