

February 19, 1969

SENATE FILE 271

Passed on File

*Pass as
Judiciary 3-19, Amended re
Judiciary 4-9, Now by DeKoster
Amendment, 3-18, Pass 4-22*

By DeKOSTER and DENMAN

Passed Senate, Date 4-4-69 Passed House, Date 5-8-69

Vote: Ayes 51 Nays 0 Vote: Ayes 23 Nays 0

Approved 5-14-69

A BILL FOR

1 An Act relating to the conveyance of an interest in land, and
2 defining marketable record title.

3 *Be It Enacted by the General Assembly of the State of Iowa:*

4 Section 1. As used in this Act:

5 1. "Marketable record title" means a title of record, as
6 indicated in section three (3), which operates to extinguish
7 such interests and claims, existing prior to the effective
8 date of the root of title, as are stated in section five (5).

9 2. "Records" includes probate and other official public
10 records, as well as records in the office of the county re-
11 corder.

12 3. "Recording", when applied to the official public re-
13 cords of a probate or other court, includes filing.

14 4. "Person dealing with the land" includes a purchaser
15 of any estate or interest therein, a mortgagee, a levying
16 or attaching creditor, a land contract vendee, or any other
17 person, corporation, or entity seeking to acquire an estate
18 or interest therein, or impose a lien thereon.

19 5. "Root of title" means that conveyance or other title
20 transaction or other link in the chain of title of a person,
21 purporting to create the interest claimed by such person,
22 upon which he relies as a basis for the marketability of his
23 title, and which was the most recent to be recorded or estab-
24 lished as of a date forty years prior to the time when mar-
25 ketability is being determined. The effective date of the

1 "root of title" is the date on which it is recorded.

2 6. "Title transaction" means any transaction affecting
3 title to any interest in land, including title by will or
4 descent, title by tax deed, or deed by trustee, referee,
5 guardian, executor, administrator, master in chancery, sher-
6 iff, or any other form of deed, or decree of any court, as
7 well as warranty deed, quit claim deed, mortgage, or trans-
8 fer or conveyance of any kind.

9 Sec. 2. This Act shall be liberally construed to effect
10 the legislative purpose of simplifying and facilitating land
11 title transactions by allowing persons to rely on a record
12 chain of title as described in section three (3), subject
13 only to such limitations as appear in section four (4) of
14 this Act.

15 Sec. 3. Any person who has an unbroken chain of title of
16 record to any interest in land for forty years or more, shall
17 be deemed to have a marketable record title to such interest
18 as defined in section one (1), subject only to the matters
19 stated in section four (4). A person shall be deemed to have
20 such an unbroken chain of title when the official public re-
21 cords disclose a conveyance or other title transaction, of
22 record not less than forty years at the time the marketability
23 is to be determined, which said conveyance or other title
24 transaction purports to create such interest, either in:

- 25 1. The person claiming such interest, or
26 2. Some other person from whom, by one or more convey-
27 ances or other title transactions of record, such purported
28 interest has become vested in the person claiming such in-
29 terest; with nothing appearing of record, in either case,
30 purporting to divest such claimant of such purported inter-
31 est.

32 Sec. 4. Such marketable record title shall be subject to:

- 33 1. All interests and defects which are inherent in the
34 muniments of which such chain of record title is formed; pro-
35 vided however, that a general reference in such muniments,

1 or any of them, to easements, use restrictions or other inter-
2 ests created prior to the root of title shall not be sufficient
3 to preserve them, unless specific identification be made there-
4 in of a recorded title transaction which creates such easement,
5 use restriction, or other interest.

6 2. All interest preserved by the filing of proper notice
7 or by possession by the same owner continuously for a period
8 of forty years or more, in accordance with section six (6).

9 3. The rights of any person arising from a period of ad-
10 verse possession or user, which was in whole or in part sub-
11 sequent to the effective date of the root of title.

12 4. Any interest arising out of a title transaction which
13 has been recorded subsequent to the effective date of the root
14 of title from which the unbroken chain of title of record is
15 started; provided such recording shall not revive or give
16 validity to any interest which has been extinguished prior to
17 the time of the recording by the operation of section five (5).

18 5. The exception stated in section eight (8) as to the
19 apparent easements and interests in the nature of easements
20 the existence of which is apparent from or can be proved by
21 physical evidence of its use and as to interests of the United
22 States.

23 Sec. 5. Subject to the matters stated in section four (4),
24 such marketable record title shall be held by its owner and
25 shall be taken by any person dealing with the land free and
26 clear of all interests, claims or charges whatsoever, the
27 existence of which depends upon any act, transaction, event
28 or omission that occurred prior to the effective date of the
29 root of title. All such interests, claims or charges, how-
30 ever denominated, whether legal or equitable, present or
31 future, whether such interest, claims or charges are asserted
32 by a person sui juris or under a disability, whether such per-
33 son is within or without the state, whether such person is
34 natural or corporate, or is private or governmental, are
35 hereby declared to be null and void.

1 Sec. 6.

2 1. Any person claiming an interest in land may preserve
3 and keep effective such interest by filing for record during
4 the forty-year period immediately following the effective
5 date of the root of title of the person whose record title
6 would otherwise be marketable, a notice in writing duly veri-
7 fied by oath or affirmation setting forth the nature of the
8 claim. No disability or lack of knowledge of any kind on
9 the part of anyone shall suspend the running of said forty-
10 year period. Such notice may be filed for record by the
11 claimant or by any other person acting on behalf of any
12 claimant who is:

13 a. Under disability.

14 b. Unable to assert a claim on his own behalf, or

15 c. One of a class, but whose identity cannot be estab-
16 lished or is uncertain at the time of filing such notice
17 of claim for record.

18 2. If the same record owner of any possessory interest in
19 land has been in possession of such land continuously for a
20 period of forty years or more, during which period no title
21 transaction with respect to such interest appears of record
22 in his chain of title, and no notice has been filed by him or
23 on his behalf as provided in subsection one (1), and such
24 possession continues to the time when marketability is being
25 determined, such period of possession shall be deemed equiva-
26 lent to the filing of the notice immediately preceding the
27 termination of the forty-year period described in subsection
28 one (1).

29 Sec. 7. To be effective and to be entitled to record the
30 notice above referred to shall contain an accurate and full
31 description of all land affected by such notice which descrip-
32 tion shall be set forth in particular terms and not by general
33 inclusions; but if said claim is founded upon a recorded in-
34 strument, then the description in such notice may be the same
35 as that contained in such recorded instrument. Such notice

1 shall be filed for record in the office of the county recorder
2 of the county or counties where the land described therein is
3 situated. The recorder of each county shall accept all such
4 notices presented to him which describe land located in the
5 county in which he serves and shall enter and record full
6 copies thereof in the same way that deeds and other instru-
7 ments are recorded, and each recorder shall be entitled to
8 charge the same fees for the recording thereof as are charged
9 for recording deeds. In indexing such notices in his office
10 each recorder shall enter such notices under the grantee in-
11 dexes of deeds in the names of the claimants appearing in
12 such notices. Such notices shall also be indexed under the
13 description of the real estate involved in a book set apart
14 for that purpose to be known as the "claimant's book."

15 Sec. 8. This Act shall not be applied to bar or extinguish
16 any easement or interest in the nature of an easement, the ex-
17 istence of which is apparent from or can be proved by physical
18 evidence of its use; or to bar any right, title or interest of
19 the United States, by reason of failure to file the notice
20 herein required.

21 Sec. 9. Nothing contained in this Act shall be construed
22 to extend the period for the bringing of an action or for the
23 doing of any other required act under any statutes of limita-
24 tions, nor, except as herein specifically provided, to effect
25 the operation of any statutes governing the effect of the
26 recording or the failure to record any instrument affecting
27 land. It is intended that nothing contained in this Act be
28 interpreted to revive or extend the period of filing a claim
29 or bringing an action that may be limited or barred by any
30 other statute.

31 Sec. 10. If the forty-year period specified in this Act
32 shall have expired prior to one year after July 1, 1969, such
33 period shall be extended one year after July 1, 1969.

EXPLANATION OF SENATE FILE 271

The bill provides that a person has a marketable title to an interest in

land if he has an unbroken chain of record title for a period not less than forty years. The bill authorizes one dealing with the record titleholder to rely on the record for the preceding 40-year period. Such a person is declared to be a safe one with which to deal.

Probably the most important objective of this legislation is to shorten the period of title search. The idea is to simplify and improve our system of conveyancing.

The bill should mean a savings to sellers and purchasers of real estate in some instances. This economy would result from the limitations of the necessary period of title search.

Michigan adopted a marketable title Act in 1945 that has been wholeheartedly approved, and which has served as something of a model. The Michigan pattern was followed in South Dakota, Nebraska, North Dakota, and Ohio. This bill proposed for Iowa is based on the Model Marketable Title Act which was drafted in 1960. The Model Act has been adopted in Oklahoma, Florida, and Utah, and has been well accepted.

A number of legal scholars have given this bill their enthusiastic support and approval. It has been described as the "backbone of any comprehensive plan for reform in conveyancing procedure". One of the draftsmen of the bill states that "It may be regarded as the keystone in the arch which constitutes the structure of a modernized system of conveyancing."

- 1 Amend Senate File 271 as follows:
- 2 Amend page 3, line 32, by striking the words "sui juris"
- 3 and inserting in lieu thereof "able to assert a claim
- 4 on his own behalf".

Filed - *Adopted*
February 19, 1969

By DeKOSTER

- 1 Amend Senate File 271 as follows:
- 2 1. By striking section four (4), subsection five (5),
- 3 page 3, and inserting in lieu thereof:
- 4 "5. The exceptions as stated and set forth in section
- 5 eight (8) of this act."
- 6 2. By striking section eight (8) on page 5 and insert-
- 7 ing in lieu thereof:
- 8 "Sec. 8. This act shall not be applied to bar any
- 9 lessor or his successor as a reversioner of his right to
- 10 possession on the expiration of any lease; or to bar or
- 11 extinguish any easement or interest in the nature of an
- 12 easement, the existence of which is apparent from or can be
- 13 proved by physical evidence of its use; or to bar any right,
- 14 title or interest of the United States, by reason of failure
- 15 to file the notice herein required."

Adopted
4-4

Filed - *Adopted 4-4*
March 11, 1969

By MOWRY and DeKOSTER

1 Amend Senate File 271 as follows:

2 1. By striking section four (4), subsection five (5),
3 page 3, and inserting in lieu thereof:

4 "5. The exceptions as stated and set forth in section
5 eight (8) of this act."

6 2. By striking section eight (8) on page 5 and inserting
7 in lieu thereof:

8 "Sec. 8. This act shall not be applied to bar any lessor or
9 his successor as reversioner of his right to possession on the ex-
10 piration of any lease or any lessee or his successor of his rights
11 in and to any lease; or to bar any interest of a mortgagor or a
12 mortgagee or interest in the nature of that of a mortgagor or
13 mortgagee until after such instrument under which such interests
14 are claimed shall have become due and payable, except where such
15 instrument has no due date expressed, where such instrument has
16 been executed by a railroad, railroad bridge, tunnel company, or
17 any public utility or public service company; or to bar or extinguish
18 any easement or interest in the nature of an easement, the exist-
19 ence of which is clearly observable by physical evidence of its
20 use; or to bar or extinguish any easement or interest in the
21 nature of an easement, or any rights appurtenant thereto granted,
22 excepted or reserved by a recorded instrument creating such ease-
23 ment or interest, including any rights for future use, if the
24 existence of such easement or interest is evidenced by the loca-
25 tion beneath, upon or above any part of the land described in
26 such instrument of any pipe, valve, road, wire, cable, conduit,
27 duct, sewer, track, pole, tower, or other physical facility and
28 whether or not the existence of such facility is observable,
29 by reason of failure to file the notice herein required. Nor
30 shall this act be deemed to affect any right, title or interest
31 of the United States, nor any right, title or interest of the
32 state of Iowa or by any department, commission or political
33 subdivision thereof, nor any municipal or quasi municipal
34 corporation under the statutes of the state of Iowa, or school
35 fund mortgage under the provisions of chapter three hundred
36 two (302) of the Code of Iowa."

Filed - *Withdrawn 4-4*
February 26, 1969

By MOWRY

- 1 Amend Senate File 271 as follows:
2 1. By inserting in page 1, line 6, after the figure
3 "(3)" the words "of this Act".
4 2. By inserting in page 1, line 8, after the figure
5 "(5)" the words "of this Act".
6 3. By inserting in page 2, line 12, after the figure
7 "(3)" the words "of this Act".
8 4. By inserting in page 2, line 18, after the figure
9 "(1)" the words "of this Act".
10 5. By inserting in page 2, line 19, after the figure
11 "(4)" the words "of this Act".
12 6. By inserting in page 3, line 8, after the figure
13 "(6)" the words "of this Act".
14 7. By inserting in page 3, line 17, after the figure
15 "(5)" the words "of this Act".
16 8. By inserting in page 3, line 23, after the figure
17 "(14)" the words "of this Act".

*Adopted
4-4*

*Withdrawn
4-4*

~~*[Signature]*~~
4-4

Filed - *Adopted 4-4*
March 19, 1969

By DeKOSTER