

HOUSE No. 02818

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 bill:

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:

Christopher G. Fallon

DISTRICT/ADDRESS:

33rd Middlesex

HOUSE No. 02818

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

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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:

- 1 SECTION 1. Section 5-504 of Chapter 190B of the General Laws, as inserted by section 9 of
- 2 chapter 521 of the Acts of 2008, is hereby amended by adding after paragraph (b) the following
- 3 paragraph (c):
- 4 (c) No revocation by a principal under a written power of attorney, durable or otherwise, shall
- 5 revoke or terminate the agency as to the attorney in fact or other person who, without actual
- 6 knowledge of the revocation, acts in good faith under the power or relies in good faith on acts
- 7 under the power. Any action so taken or relied upon, unless otherwise invalid or unenforceable,
- 8 binds the principal and successors in interest of the principal. As to a person other than the
- 9 attorney in fact, such person shall not be deemed to have actual knowledge unless the revocation
- 10 is in a writing executed by the principal or a duly appointed personal representative of the

11 principal and is actually received by such person or, in the case of transactions involving real
12 estate or any interest therein, such written revocation is recorded in due course as provided in
13 section 25 of chapter 184.

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

16 Section 7. 1. A conveyance or devise of any interest in real property to two or more persons or
17 to a person and his or her spouse, except a mortgage or a conveyance or devise in trust, shall
18 create an estate in common and not in joint tenancy, unless it is expressed in such conveyance or
19 devise that the grantees or devisees shall take jointly, or as joint tenants, or in joint tenancy, or to
20 them and the survivor of them, or unless it manifestly appears from the tenor of the instrument
21 that it was intended to create an estate in joint tenancy.

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

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

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

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

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

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

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

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

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

54 tenancy in which such spouses held title prior to such conveyance. A tenancy by the entirety
55 may be held in joint tenancy with one or more other tenancies by the entirety and one or more
56 other persons or any combination thereof if so specified in a conveyance or devise of an interest
57 in real property.

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

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

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

75 co-tenants to so redeem shall render the severance of the decedent debtor's interest permanent
76 and such interest shall thereafter remain held in common for all purposes.

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

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

85 SECTION 7. The provisions of Section 3 of this Act being intended to clarify the effect of
86 Chapter 93 of the Acts of 1918, Section 2 of Chapter 395 of the Acts of 1954 and Section 1 of
87 Chapter 558 of the Acts of 1975, this section shall apply to instruments executed on or after
88 March 26, 1918; provided that, as to instruments involving conveyances between spouses
89 creating a tenancy by the entirety executed between March 26, 1918, and November 26, 1975,
90 said Section 3 of this Act shall apply to such instruments as of the date of their recording in
91 accordance with the provisions of Chapter 304 of the Acts of 1912 and the provisions of Section
92 8 of Chapter 184 of the General Laws as in effect between August 4, 1954, and November 26,
93 1975; and provided further that said Section 3 shall not apply to any instruments construed to the
94 contrary by a final decision of a court of competent jurisdiction prior to the effective date of said
95 Section 3.

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