

**Local Government Mandate Statement
Kentucky Legislative Research Commission
2025 Regular Session**

Part I: Measure Information

Bill Request #:	854	Bill #:	HB 256/HCS 1
Document ID #:	4727	Sponsor:	Representative Patrick Flannery
Bill Title:	AN ACT relating to marketable title.		

Unit of Government: City County Urban-County
 Charter County Consolidated Local Unified Local

Office(s) Impacted: County Clerks

Requirement: Mandatory Optional

Effect on Powers & Duties: Modifies Existing Adds New Eliminates Existing

Other Fiscal Statement(s) that may exist: Actuarial Analysis Corrections Impact
 Health Benefit Mandate State Employee Health Plan

Part II: Bill Provisions and the Estimated Fiscal Impact Relating to Local Government

HB 256/HCS-1 would establish a statutory framework for marketable record title in Kentucky by creating new sections within KRS Chapter 381. Section 1 would define "marketable record title" as a title of record that operates to extinguish claims existing before the effective date of the root of title. The "root of title" would be defined as the most recent recorded title transaction that has been on record for at least forty years and purports to create the claimed interest in land. It would be the transaction upon which a person relies as the basis for the marketability of their title. Additionally, the root of title must be the most recent recorded transaction as of a date at least forty years before the time when marketability is being determined. The effective date of the root of title would be the date on which it is recorded.

Section 2 of HB 256/HCS-1 would create a new section of KRS Chapter 381 that would mandate that a person with the legal capacity to own land who has maintained an unbroken chain of title for at least 40 years has marketable record title to that interest, subject to Section 3 of the Act. The chain of title is considered unbroken if public records

show a conveyance or title transaction that took place at least 40 years before marketability is determined. This transaction must either create an interest in the claimant or in a predecessor from whom the interest has been transferred through one or more recorded transactions. Additionally, there must be no recorded documents indicating that the claimant's interest has been divested.

Section 3 of HB 256/HCS-1 would specify that marketable record title is subject to certain exceptions and limitations. These include: (1) all interests and defects inherent in the chain of record title, unless they are specifically identified in a recorded title transaction; (2) possibilities of reverter, rights of entry, and powers of termination for breach of condition subsequent, which remain valid only if preserved in accordance with Section 5 of the Act; (3) all interests preserved by proper notice filing or continuous possession by the same owner for at least forty years, as outlined in Section 5; (4) rights arising from adverse possession or adverse use if any portion of the possession or use occurred after the effective date of the root of title; (5) any interest created by a title transaction recorded after the effective date of the root of title, though such a recording would not revive or validate an interest previously extinguished by Section 4; and (6) any exceptions stated in Section 7 of the Act.

Section 4 of HB 256/HCS-1 would establish that, subject to the exceptions outlined in Section 3, marketable record title is held by its owner free and clear of all interests, claims, or charges that depend on any act, transaction, event, or omission occurring before the effective date of the root of title. These extinguished interests, claims, or charges—whether legal or equitable, present or future—would be considered void, regardless of the capacity, location, or nature of the party asserting them, including individuals, corporations, private entities, or governmental bodies.

Section 5 of HB 256/HCS-1 would establish a process for preserving an interest in land and preventing its extinguishment under the marketable record title framework. A person claiming an interest in land may preserve it by filing a written, verified notice within forty years of the effective date of the root of title of the person whose record title would otherwise be marketable. The forty-year period would not be suspended due to disability or lack of knowledge. The notice may be filed by the claimant or by someone acting on behalf of a claimant who is disabled, unable to assert the claim, or part of an uncertain or unidentifiable class. Additionally, if a record owner has possessed the land continuously for at least forty years without any recorded title transactions or filed notices affecting the interest, and possession continues up to the time marketability is determined, that continuous possession would be deemed equivalent to filing a notice just before the end of the forty-year period.

Section 6 of HB 256/HCS-1 would outline the requirements for filing a notice under Section 5 to preserve an interest in land. To be effective, the notice must be in the form of an affidavit, state the nature of the claim, include an accurate land description, list the names and addresses of those benefiting from the notice, and name each record owner along with their title transaction details. The notice must be filed with the county clerk in the county where the land is located. The county clerk would be required to record the

notice as they would a deed and charge the same recording fees. A properly recorded notice or a certified copy would serve as evidence in legal proceedings. Any person who knowingly makes a false statement in a notice would be guilty of perjury under KRS Chapter 523.

Section 7 of HB 256/HCS-1 would establish exceptions to the marketable record title provisions. The bill would not apply to: (1) a lessor's right to regain possession upon lease expiration or a lessee's rights under a lease, except as provided in Section 9; (2) easements or similar interests for railroads or public utilities; (3) easements evidenced by observable physical use; (4) easements or rights of use recorded in an instrument and evidenced by physical facilities such as pipes, wires, or roads; (5) rights, titles, estates, or interests in a mineral interest, mineral estate, or mineral, and any mining or other rights pertinent to or exercisable in connection with any right, title, estate, or interest in a mineral interest, mineral estate, or mineral; (6) mortgages properly recorded under KRS 382.110; and (7) rights, titles, or interests held by the federal government, the state, or any political subdivision.

Section 8 of HB 256/HCS-1 would clarify that the bill does not extend statutes of limitations or alter existing laws governing the effect of recording or failing to record land instruments, except as specified in the bill.

Section 9 of HB 256/HCS-1 would state that the bill should be liberally construed to simplify and facilitate land title transactions by allowing reliance on a record chain of title, subject to the exceptions in Section 3.

The fiscal impact of HB 256/HCS-1 is indeterminable, but is likely to be minimally positive.

The impact of HB 256/HCS-1 would vary from county to county, depending on the extent to which counties experience title-related filings and legal disputes. The bill may reduce administrative expenses for county clerks associated with extensive title searches and involvement in potential litigation.

If HB 256/HCS-1 is enacted, there would likely be a number of individuals who would seek to preserve land interests under Sections 5 and 6. Section 6 states that the county clerks would charge the same fee for these filings as they would for recording a deed. Under KRS 64.012, the filing of a deed is \$33.00 if under 5 pages with \$3.00 for each additional page beyond 5 pages and an additional \$4.00 for each additional reference relating to same instrument. Of the \$33.00, county clerks are entitled to retain \$27.00, with the remainder going to the affordable housing trust fund.

While this will likely generate additional revenue, the exact amount would vary from county to county, depending on the number of people who seek to preserve their land interests. The amount of revenue generated would also depend on the administrative expenses associated with filing.

Data Source(s): LRC Staff

Preparer: AS **Reviewer:** JB (MDA) **Date:** 2/18/25