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FIRST REGULAR SESSION-2011

Legislative Document

No. 1448

H.P. 1062

House of Representatives, April 11, 2011

An Act To Protect Time-share Condominium Associations

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative CROCKETT of Bethel.
Cosponsored by Senator PATRICK of Oxford and
Representatives: CRAY of Palmyra, HAYES of Buckfield, PRIEST of Brunswick,
RICHARDSON of Warren, WATERHOUSE of Bridgton, Senator: BLISS of Cumberland.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 33 MRSA §594, sub-§1**, as repealed and replaced by PL 2005, c. 572, §1,
3 is amended to read:

4 **1. Lien created.** A managing entity has a lien on a time share for any assessment for
5 expenses of the time share or taxes or fines levied against that time share in accordance
6 with the project instrument or municipal or state law from the time the assessment, tax or
7 fine becomes due. ~~A lien against a time share estate may be foreclosed as provided in~~
8 ~~section 595, subsection 1, and a lien against a time share license may be foreclosed as~~
9 ~~provided in section 595, subsection 2.~~ Unless the project instrument otherwise provides,
10 fees, charges, late charges, fines and interest charged in accordance with the project
11 instrument are enforceable as assessments under this section. If an assessment is payable
12 in installments, the full amount of the assessment is a lien from the time the first
13 installment thereof becomes due. The managing entity shall record notice of a lien on a
14 time-share estate in the registry of deeds in the county in which the time-share estate is
15 located. A notice of a lien on a time-share license must be recorded in the public records
16 for the filing of security interests governed by the Uniform Commercial Code. If there is
17 more than one lien, they may be listed in one filing. A copy of the notice of a lien on a
18 time-share estate or time-share license must be sent by first class mail to the last known
19 address of the time-share owner. A notice of a lien on a time-share estate or time-share
20 license must include a statement that the federal Servicemembers' Civil Relief Act of
21 2003 applies to enforcement of liens when the owner of the time-share estate or
22 time-share license is or was recently in military service.

23 **Sec. 2. 33 MRSA §595, sub-§1**, as amended by PL 2007, c. 466, Pt. A, §55, is
24 further amended to read:

25 **1. Nonjudicial foreclosure of time-share estate.** A time-share owner may grant to
26 a financial institution or other person a mortgage with a power of sale on that owner's
27 time-share estate that is governed by the terms of this section. The foreclosure of a
28 mortgage with a power of sale or a lien from an assessment created pursuant to section
29 594 ~~must~~ may be conducted pursuant to this section. The provisions of Title 14, chapter
30 713 do not apply to any such foreclosure.

31 In the event of a breach of the conditions of the power of sale mortgage or the failure of
32 the time-share owner to pay the assessments as and when due and owing the following
33 procedure ~~must~~ may be followed.

34 A. Upon default, and after all applicable cure periods have expired, the person
35 seeking to foreclose shall provide written notice of the default to the time-share
36 owner at the owner's last known address by certified mail, return receipt requested,
37 and by first class mail and provide a reasonable opportunity to cure of not less than
38 30 days from the date of the mailing of the notice letter.

39 B. If, after expiration of the 30-day period under paragraph A, the time-share owner
40 has not cured the default in the manner prescribed, the person seeking to foreclose
41 shall conduct a public auction under the conditions described in this paragraph.

42 (1) Notice under this paragraph must be given as follows.

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(a) Notice of the sale must be published once in each of 3 successive weeks in a newspaper with a general circulation in the town in which the time-share property is situated. The first publication must be not later than 30 days before the date of the sale, calculated by excluding the date of publication of the first notice and the date of sale.

(b) A written notice of the time, date and place of the auction must be mailed to the last known address of the time-share owner of record by certified mail, return receipt requested, and by first class mail at least 30 days prior to the date of sale. The notice to the time-share owner must include the following language: "You are hereby notified that you have a right to petition the Superior Court or District Court for the county or district in which the time-share estate is located, with service on the foreclosing person, and upon such bond as the court may require, to enjoin the scheduled foreclosure sale." The notice of sale also must be sent by certified mail, return receipt requested, to all persons having a lien on the time-share estate at least 30 days prior to the date of the foreclosure sale.

- (c) The notice must contain:
- (i) The name of the time-share owner;
 - (ii) The date, time and place of the foreclosure sale;
 - (iii) A general description of the time-share estate; and
 - (iv) The terms of the sale.

If more than one time-share estate is to be included in the foreclosure sale, all such time-share estates may be combined into one notice of sale, with one property description, as described in division (d) or (e).

(d) The notice of foreclosure for foreclosing on the lien of a time-share estate must be printed in substantially the following form:

**NOTICE OF SALE OF TIME-SHARE ESTATE OR ESTATES UNDER
TITLE 33, SECTION 595 OF THE MAINE REVISED STATUTES
ANNOTATED**

By virtue of the project instrument of the(name and address of time-share property) and Title 33, section 594 establishing a lien for failure to pay assessments on the time-share estate (or estates, if more than one) held by the time-share owner (or owners, if more than one) listed below, the time-share estate (or estates, if more than one) will be sold at Public Auction commencing at on , 20.. at, Maine. (For each time-share estate, list the name and address of the time-share owner, a general description of the time-share estate and the book and page number of the deed.)

TERMS OF SALE: (State the deposit amount to be paid by the purchaser at the time and place of the sale and the times for payment of the balance or the whole, as the case may be. The time-share estates, if more than one, must be

1 sold in individual lots unless there are no individual bidders, in which case
2 they may be sold as a group.)
3 Other terms to be announced at the sale.
4 Signed.....
5 Lienholder or authorized agent.
6 (e) For foreclosure of a mortgage lien containing a power of sale on a time-
7 share estate, a notice of sale must be printed in substantially the following
8 form:
9 NOTICE OF SALE OF TIME-SHARE ESTATE OR ESTATES UNDER
10 TITLE 33, SECTION 595 OF THE MAINE REVISED STATUTES
11 ANNOTATED
12 By virtue of Title 33, section 595 and in execution of the power of sale
13 contained in a certain mortgage (or mortgages, if more than one) on the time-
14 share estate (or estates, if more than one) given by the time-share owner (or
15 owners, if more than one) set forth below for breach of the conditions of said
16 mortgage (or mortgages, if more than one) and for the purpose of foreclosing,
17 the same will be sold at Public Auction commencing at on, 20.. at
18, Maine, being all and singular the premises described in said
19 mortgage (or mortgages, if more than one). (For each mortgage, list the name
20 and address of the time-share owner, a general description of the time-share
21 estate and the book and page number of the mortgage.)
22 TERMS OF SALE: (State the deposit amount to be paid by the purchaser at
23 the time and place of the sale and the times for payment of the balance or the
24 whole, as the case may be. The time-share estates, if more than one, must be
25 sold in individual lots unless there are no individual bidders, in which case
26 they may be sold as a group.)
27 Other terms to be announced at the sale.
28 Signed,
29 Holder of Mortgage or authorized agent.
30 (f) The notice of sale in the forms described in divisions (d) and (e),
31 published in accordance with the provisions of this section, together with
32 such other or further notice, if any, constitutes sufficient notice of the sale.
33 (2) The foreclosure sale must be conducted pursuant to this subparagraph.
34 (a) The foreclosure sale must take place on the time-share property or some
35 other location within the same town as the time-share property.
36 (b) The foreclosure sale must be by public auction, conducted by an
37 auctioneer or attorney licensed to practice in the State. At the discretion of
38 the auctioneer or attorney, the reading of the names of the time-share owners,
39 if more than one, the description of time-share estates, if more than one, and
40 the recording information, if more than one instrument, may be dispensed
41 with.

1 (c) All rights of redemption of the time-share owner are extinguished upon
2 sale of a time-share estate.

3 (d) The managing entity, the foreclosing person or any time-share owner
4 may bid at the foreclosure sale. The successful buyer at the foreclosure sale
5 takes title to the time-share estate free and clear of any outstanding
6 assessments owed by the prior time-share owner to the managing entity. A
7 purchaser at a sale is not required to complete the purchase if there are liens
8 and encumbrances, other than those included in the notice of sale, that are not
9 stated at the sale and included in the foreclosing person's contract with the
10 purchaser.

11 (e) Upon closing, the foreclosing person shall provide the buyer with a
12 foreclosure deed or other appropriate instrument transferring the rights to the
13 time-share estate and an affidavit attesting that all requirements of the
14 foreclosure pursuant to this section have been met. The time-share estate is
15 deemed to have been sold, and the instrument conveying the time-share
16 estate must transfer the time-share estate, subject to municipal or other public
17 taxes and to any liens and encumbrances recorded prior to the recording of
18 the mortgage or the lien for assessments.

19 (f) The buyer shall record the foreclosure deed or other instrument with the
20 appropriate registry of deeds no more than 30 days after the foreclosure sale
21 date.

22 (g) Within 30 days after the closing and transfer of the foreclosure deed or
23 other instrument and affidavit, the foreclosing person shall mail a notice
24 detailing the results of the foreclosure sale to the last known address of the
25 former time-share owner and all parties that held a junior interest to that of
26 the foreclosing person.

27 **Sec. 3. 33 MRSA §596** is enacted to read:

28 **§596. Foreclosure of time share**

29 **1. Foreclosure of lien for assessment or mortgage on time-share estates. A lien**
30 **against a time-share estate or a mortgage on a time-share estate held by or on behalf of a**
31 **managing entity may be foreclosed either:**

32 **A. As provided in section 595, subsection 1 or 3; or**

33 **B. By obtaining possession of the time-share estate for the purpose of foreclosure by**
34 **entry, if not opposed. The mortgagee or lienholder may enter peaceably and openly,**
35 **if not opposed, in the presence of 2 witnesses and take possession of the premises**
36 **composing the time-share estate. A certificate of the fact and time of the entry must**
37 **be made, signed and sworn to by the witnesses before a notary public or an attorney.**
38 **The certificate must be recorded in each registry of deeds in which the mortgage is or**
39 **by law ought to be recorded, within 30 days after the entry is made. Possession**
40 **obtained in this manner and continued for one year forever extinguishes the right of**
41 **redemption.**

1 **2. Foreclosure of lien for assessment or mortgage lien on time-share license. A**
2 **lien against a time-share license or a mortgage on a time-share license held by or on**
3 **behalf of a managing entity may be foreclosed:**

4 A. As provided in section 595, subsection 2:

5 B. Under the Uniform Commercial Code; or

6 C. By obtaining possession of the time-share license for the purpose of foreclosure
7 by entry, if not opposed. The mortgagee or lienholder may enter peaceably and
8 openly if not opposed in the presence of 2 witnesses and take possession of the
9 premises composing the time-share license. A certificate of the fact and time of the
10 entry must be made, signed and sworn to by the witnesses before a notary public or
11 an attorney. The certificate must be recorded in each registry of deeds in which the
12 mortgage is or by law ought to be recorded, within 30 days after the entry is made.
13 Possession obtained in this manner and continued for one year forever extinguishes
14 the right of redemption.

15 **SUMMARY**

16 This bill provides an alternative to existing law for foreclosing time-share liens and
17 mortgages. The bill allows the mortgagee or lienholder to foreclose the mortgage or lien
18 by entry, if not opposed. The entry must be peaceable and must be in the presence of 2
19 witnesses. The notarized certificate of fact of the entry, signed by the witnesses, must be
20 recorded in the registry of deeds. Possession obtained in this manner and continued for
21 one year extinguishes the right of redemption.