

STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND AND EIGHTEEN

H.P. 1092 - L.D. 1588

**An Act To Maintain Access to Property on Discontinued Roads**

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

**Sec. 1. 23 MRSA §3026-A, sub-§1**, as enacted by PL 2015, c. 464, §5, is amended to read:

**1. Notification of discontinuance to abutting property owners.** The municipal officers shall give best practicable notice to all abutting property owners of a proposed discontinuance of a town way or public easement. ~~As used in this subsection, "best practicable notice" means, at minimum, the mailing by the United States Postal Service, postage prepaid, first class, of notice to abutting property owners whose addresses appear in the assessment records of the municipality.~~

A. For a proposed discontinuance of a town way, the notice must include information regarding the potential discontinuance or retention of a public easement, including maintenance obligations for and the right of access to the way under the discontinuance or retention of a public easement, and information regarding the rights of abutting property owners to enter into agreements regarding maintenance of and access to the discontinued way.

B. For a proposed discontinuance of a town way that is abutted by property not otherwise accessible by a public way, the notice must include information, in addition to the information required in paragraph A, regarding the right of abutting property owners to create private easements and the municipal requirements under subsection 1-A.

Paragraphs A and B apply to town ways that are not discontinued as of October 1, 2018.

As used in this subsection, "best practicable notice" means, at minimum, the mailing by the United States Postal Service, postage prepaid, first class, of notice to abutting property owners whose addresses appear in the assessment records of the municipality.

**Sec. 2. 23 MRSA §3026-A, sub-§1-A** is enacted to read:

**1-A. Discontinuance after October 1, 2018 of a town way with abutting property not otherwise accessible.** A municipality may not discontinue a town way that is not discontinued as of October 1, 2018 pursuant to this section if that town way is abutted by property not otherwise accessible by a public way, unless the municipal officers have complied with this subsection.

A. The municipal officers shall wait one year from the date of notice provided pursuant to subsection 1, paragraph B before proceeding with the discontinuance process, to allow abutting property owners the opportunity to grant private easements that run with the title of the property owners' land for the purpose of allowing travel along the way for all abutting property owners and their lessees and guests.

B. After the one-year waiting period required in paragraph A, the municipal officers may:

(1) Proceed with the discontinuance process pursuant to this section, as long as a public easement is retained; or

(2) If the municipal officers verify that private easements that run with the title of the property owners' land for the purpose of allowing travel along the way for all abutting property owners and their lessees and guests have been filed with the registry of deeds, proceed with the discontinuance process without retaining a public easement.

**Sec. 3. 23 MRSA §3026-A, sub-§4,** as enacted by PL 2015, c. 464, §5, is amended to read:

**4. Approval of order of discontinuance and damage awards.** ~~Ten or more business days after the public hearing pursuant to subsection 3, the~~ The municipal legislative body must vote upon the order of discontinuance submitted to it:

A. To approve the order of discontinuance and the damage awards and to appropriate the money to pay the damages; or

B. To disapprove the order of discontinuance.

The vote required by this subsection must be conducted 10 or more business days after the public hearing pursuant to subsection 3, except that, for a town way that is not discontinued as of October 1, 2018, in a municipality in which the municipal legislative body is the town meeting, the vote must be conducted at the next regularly scheduled annual town meeting.

**Sec. 4. 33 MRSA c. 7, sub-c. 1-B** is enacted to read:

## **SUBCHAPTER 1-B**

## NONRESIDENTIAL PROPERTY DISCLOSURES

### §191. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Nonresidential real property.** "Nonresidential real property" means real estate that is not residential real property as defined in section 171, subsection 6.

**2. Public easement.** "Public easement" has the same meaning as in Title 23, section 3021, subsection 2.

**3. Town way.** "Town way" has the same meaning as in Title 23, section 3021, subsection 3.

### §192. Applicability; exemptions

This subchapter applies to the transfer of any interest in nonresidential real property, whether by sale, installment land contract, lease with an option to purchase or any other option to purchase. If a person licensed to practice real estate brokerage is involved in the transaction, the licensee is subject to the requirements of licensure in Title 32, chapter 114. The following transfers are exempt from this subchapter:

**1. Court order.** Transfers pursuant to court order, including, but not limited to, transfers ordered by a court in the administration of an estate, transfers pursuant to a writ of execution, transfers by any foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain and transfers resulting from a decree for specific performance;

**2. Default.** Transfers to a mortgagee by a mortgagor or successor in interest who is in default or transfers to a beneficiary of a deed of trust by a trustor or successor in interest who is in default;

**3. Co-owner.** Transfers from one or more co-owners solely to one or more other co-owners;

**4. Testate; intestate succession.** Transfers pursuant to testate or intestate succession;

**5. Divorce.** Transfers between spouses resulting from a judgment of divorce or a judgment of separate maintenance or from a property settlement agreement incidental to such a judgment;

**6. Living trust.** Transfers to a living trust; and

**7. Corrective deed.** Transfers that, without additional consideration and without changing ownership or ownership interest, confirm, correct, modify or supplement a deed previously recorded.

**§193. Disclosures**

Unless the transaction is exempt under section 192, the seller of nonresidential real property shall provide to the purchaser a property disclosure statement containing the following:

**1. Roads on or abutting property.** Information identifying any abandoned or discontinued town ways, any public easements and any private roads located on or abutting the property, if known by the seller; and

**2. Road maintenance.** Information identifying the party or parties responsible for maintenance of any abandoned or discontinued town way, public easement or private road on or abutting the property identified pursuant to subsection 1, including any responsible road association, if known by the seller.