

MAINE STATE LEGISLATURE

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PART 5

**PRESENTMENT, NOTICE OF DISHONOR
AND PROTEST**

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§ 3-501. When presentment, notice of dishonor and protest necessary or permissible

(1) Unless excused (section 3-511), presentment is necessary to charge secondary parties as follows:

(a) Presentment for acceptance is necessary to charge the drawer and indorsers of a draft where the draft so provides, or is payable elsewhere than at the residence or place of business of the drawee, or its date of payment depends upon such presentment. The holder may at his option present for acceptance any other draft payable at a stated date.

(b) Presentment for payment is necessary to charge any indorser

(c) In the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, presentment for payment is necessary, but failure to make presentment discharges such drawer, acceptor or maker only as stated in section 3-502, subsection (1), paragraph (b).

(2) Unless excused (section 3-511),

(a) Notice of any dishonor is necessary to charge any indorser.

(b) In the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank,

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notice of any dishonor is necessary, but failure to give such notice discharges such drawer, acceptor or maker only as stated in section 3-502, subsection (1), paragraph (b).

(3) Unless excused, (section 3-511) protest of any dishonor is necessary to charge the drawer and indorsers of any draft which on its face appears to be drawn or payable outside the states and territories of the United States and the District of Columbia. The holder may at his option make protest of any dishonor of any other instrument and in the case of a foreign draft may on insolvency of the acceptor before maturity make protest for better security.

(4) Notwithstanding any provision of this section, neither presentment nor notice of dishonor nor protest is necessary to charge an indorser who has indorsed an instrument after maturity.

1963, c. 362, § 1.

§ 3-502. Unexcused delay; discharge

(1) Where without excuse any necessary presentment or notice of dishonor is delayed beyond the time when it is due,

(a) Any indorser is discharged; and

(b) Any drawer or the acceptor of a draft payable at a bank or the maker of a note payable at a bank who, because the drawee or payor bank becomes insolvent during the delay, is deprived of funds maintained with the drawee or payor bank to cover the instrument may discharge his liability by written assignment to the holder of his rights against the drawee or payor bank in respect of such funds, but such drawer, acceptor or maker is not otherwise discharged.

(2) Where without excuse a necessary protest is delayed beyond the time when it is due, any drawer or indorser is discharged.

1963, c. 362, § 1.

§ 3-503. Time of presentment

(1) Unless a different time is expressed in the instrument, the time for any presentment is determined as follows:

(a) Where an instrument is payable at or a fixed period after a stated date, any presentment for acceptance must be made on or before the date it is payable.

(b) Where an instrument is payable after sight, it must either be presented for acceptance or negotiated within a reasonable time after date or issue whichever is later.

(c) Where an instrument shows the date on which it is payable, presentment for payment is due on that date.

(d) Where an instrument is accelerated, presentment for payment is due within a reasonable time after the acceleration.

(e) With respect to the liability of any secondary party, presentment for acceptance or payment of any other instrument is due within a reasonable time after such party becomes liable thereon.

(2) A reasonable time for presentment is determined by the nature of the instrument, any usage of banking or trade and the facts of the particular case. In the case of an uncertified check which is drawn and payable within the United States and which is not a draft drawn by a bank, the following are presumed to be reasonable periods within which to present for payment or to initiate bank collection.

(a) With respect to the liability of the drawer, 30 days after date or issue whichever is later; and

(b) With respect to the liability of an indorser, 7 days after his indorsement.

(3) Where any presentment is due on a day which is not a full business day for either the person making presentment or the party to pay or accept, presentment is due on the next following day which is a full business day for both parties.

(4) Presentment to be sufficient must be made at a reasonable hour and if at a bank during its banking day.

1963, c. 362, § 1.

§ 3-504. How presentment made

(1) Presentment is a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder.

(2) Presentment may be made

(a) By mail, in which event the time of presentment is determined by the time of receipt of the mail; or

(b) Through a clearing house; or

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(c) At the place of acceptance or payment specified in the instrument or if there be none, at the place of business or residence of the party to accept or pay. If neither the party to accept or pay nor anyone authorized to act for him is present or accessible at such place, presentment is excused.

(3) It may be made

(a) To any one of 2 or more makers, acceptors, drawees or other payors; or

(b) To any person who has authority to make or refuse the acceptance or payment.

(4) A draft accepted or a note made payable at a bank in the United States must be presented at such bank.

(5) In the case described in section 4-210 presentment may be made in the manner and with the result stated in that section.

1963, c. 362, § 1.

§ 3-505. Rights of party to whom presentment is made

(1) The party to whom presentment is made may without dishonor require

(a) Exhibition of the instrument; and

(b) Reasonable identification of the person making presentment and evidence of his authority to make it if made for another; and

(c) That the instrument be produced for acceptance or payment at a place specified in it, or if there be none at any place reasonable in the circumstances; and

(d) A signed receipt on the instrument for any partial or full payment and its surrender upon full payment.

(2) Failure to comply with any such requirement invalidates the presentment but the person presenting has a reasonable time in which to comply and the time for acceptance or payment runs from the time of compliance.

1963, c. 362, § 1.

§ 3-506. Time allowed for acceptance or payment

(1) Acceptance may be deferred without dishonor until the close of the next business day following presentment. The holder may also, in a good faith effort to obtain acceptance and without either dishonor of the instrument or discharge of secondary par-

ties, allow postponement of acceptance for an additional business day.

(2) Except as a longer time is allowed in the case of documentary drafts drawn under a letter of credit, and unless an earlier time is agreed to by the party to pay, payment of an instrument may be deferred without dishonor pending reasonable examination to determine whether it is properly payable, but payment must be made in any event before the close of business on the day of presentment.

1963, c. 362, § 1.

§ 3-507. Dishonor; holder's right of recourse; term allowing representment

(1) An instrument is dishonored when

(a) A necessary or optional presentment is duly made and due acceptance or payment is refused or cannot be obtained within the prescribed time or in case of bank collections the instrument is seasonably returned by midnight deadline (section 4-301); or

(b) Presentment is excused and the instrument is not duly accepted or paid.

(2) Subject to any necessary notice of dishonor and protest, the holder has upon dishonor an immediate right of recourse against the drawers and indorsers.

(3) Return of an instrument for lack of proper indorsement is not dishonor.

(4) A term in a draft or an indorsement thereof, allowing a stated time for representment in the event of any dishonor of the draft by nonacceptance if a time draft or by nonpayment if a sight draft, gives the holder as against any secondary party bound by the term an option to waive the dishonor without affecting the liability of the secondary party and he may present again up to the end of the stated time.

1963, c. 362, § 1.

§ 3-508. Notice of dishonor

(1) Notice of dishonor may be given to any person who may be liable on the instrument by or on behalf of the holder or any party who has himself received notice or any other party who can be compelled to pay the instrument. In addition an agent or

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bank in whose hands the instrument is dishonored may give notice to his principal or customer or to another agent or bank from which the instrument was received.

(2) Any necessary notice must be given by a bank before its midnight deadline and by any other person before midnight of the third business day after dishonor or receipt of notice of dishonor.

(3) Notice may be given in any reasonable manner. It may be oral or written and in any terms which identify the instrument and state that it has been dishonored. A misdescription which does not mislead the party notified does not vitiate the notice. Sending the instrument bearing a stamp, ticket or writing stating that acceptance or payment has been refused or sending a notice of debit with respect to the instrument is sufficient.

(4) Written notice is given when sent although it is not received.

(5) Notice to one partner is notice to each although the firm has been dissolved.

(6) When any party is in insolvency proceedings instituted after the issue of the instrument, notice may be given either to the party or to the representative of his estate.

(7) When any party is dead or incompetent, notice may be sent to his last known address or given to his personal representative.

(8) Notice operates for the benefit of all parties who have rights on the instrument against the party notified.

1963, c. 362, § 1.

§ 3-509. Protest; noting for protest

(1) A protest is a certificate of dishonor made under the hand and seal of a United States consul or vice consul or a notary public or other person authorized to certify dishonor by the law of the place where dishonor occurs. It may be made upon information satisfactory to such person.

(2) The protest must identify the instrument and certify either that due presentment has been made or the reason why it is excused and that the instrument has been dishonored by non-acceptance or nonpayment.

(3) The protest may also certify that notice of dishonor has been given to all parties or to specified parties.

(4) Subject to subsection (5), any necessary protest is due by the time that notice of dishonor is due.

(5) If, before protest is due, an instrument has been noted for protest by the officer to make protest, the protest may be made at any time thereafter as of the date of the noting.

1963, c. 362, § 1.

§ 3-510. Evidence of dishonor and notice of dishonor

The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor therein shown:

(1) A document regular in form as provided in the section which purports to be a protest;

(2) The purported stamp or writing of the drawee, payor bank or presenting bank on the instrument or accompanying it stating that acceptance or payment has been refused for reasons consistent with dishonor;

(3) Any book or record of the drawee, payor bank or any collecting bank kept in the usual course of business which shows dishonor, even though there is no evidence of who made the entry.

1963, c. 362, § 1.

§ 3-511. Waived or excused presentment, protest or notice of dishonor or delay therein

(1) Delay in presentment, protest or notice of dishonor is excused when the party is without notice that it is due or when the delay is caused by circumstances beyond his control and he exercises reasonable diligence after the cause of the delay ceases to operate.

(2) Presentment or notice or protest as the case may be is entirely excused when

(a) The party to be charged has waived it expressly or by implication either before or after it is due; or

(b) Such party has himself dishonored the instrument or has countermanded payment or otherwise has no reason to expect or right to require that the instrument be accepted or paid; or

(c) By reasonable diligence the presentment or protest cannot be made or the notice given.

(3) Presentment is also entirely excused when

(a) The maker, acceptor or drawee of any instrument except a documentary draft is dead or in insolvency proceedings instituted after the issue of the instrument; or

(b) Acceptance or payment is refused but not for want of proper presentment.

(4) Where a draft has been dishonored by nonacceptance, a later presentment for payment and any notice of dishonor and protest for nonpayment are excused unless in the meantime the instrument has been accepted.

(5) A waiver of protest is also a waiver of presentment and of notice of dishonor even though protest is not required.

(6) Where a waiver of presentment or notice or protest is embodied in the instrument itself it is binding upon all parties; but where it is written above the signature of an indorser it binds him only.

1963, c. 362, § 1.