

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document No. 1991

S. P. 854 In Senate, February 17, 1982
Approved for introduction by the Legislative Council pursuant to
Joint Rule 26.
On Motion of Senator Devoe of Penobscot, referred to the Commit-
tee on Judiciary and ordered printed. Sent down for concurrence.
MAY M. ROSS, Secretary of the Senate
Presented by Senator Trafton of Androscoggin.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-TWO

**AN ACT to Facilitate the Removal of
Clouds on Titles to Proposed Unaccepted
Streets in Subdivisions.**

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

Sec. 1. 23 MRSA §3026, as amended by PL 1977, c. 301,
§1, is repealed and the following enacted in its place:

§3026. Discontinuance of town ways

1. General procedures. A municipality may terminate in whole or in part any interests held by it for highway purposes. A municipality may discontinue a town way or public easement after the municipal officers have given best practicable notice to all abutting property owners and the municipal planning board or office and have filed an order of discontinuance with the municipal clerk that specifies the location of the way, the names of abutting property owners and the amount of damages, if any, determined by the municipal officers to be paid to each abutter.

1 Upon approval of the discontinuance order by the legislative
2 body, and unless otherwise stated in the order, a public
3 easement shall, in the case of town ways, be retained and
4 all remaining interests of the municipality shall pass to
5 the abutting property owners to the center of the way. For
6 purposes of this section, the words "public easement" shall
7 include, without limitation, an easement for public utility
8 facilities necessary to provide service.

9 2. Definition of best practicable notice. "Best
10 practicable notice" means, at minimum, the mailing by the
11 United States Postal Service, postage prepaid, first class,
12 of notice to abutting property owners whose addresses appear
13 in the assessment records of the municipality.

14 Sec. 2. 23 MRSA §3027, as enacted by PL 1975, c. 711,
15 §8, is repealed and the following enacted in its place:

16 §3027. Vacation of proposed town ways in land subdivision;
17 revocation of dedication

18 1. Vacation of ways. Where proposed town ways have
19 been described in a recorded subdivision plan and lots have
20 been sold with reference to the plan, the municipal offi-
21 cers, with the approval of the municipal planning board or
22 office, may, on their own initiative, on petition of the
23 abutting property owners or on petition of any person claim-
24 ing a property interest in the proposed way, vacate in whole
25 or in part proposed ways that have not been accepted. The
26 municipal officers shall give best practicable notice, as
27 defined in section 3206, subsection 2, of the proposed vaca-
28 tion to owners of lots on the recorded subdivision plan and
29 their mortgagees of record. The notice shall conform in
30 substance to the following form:

31 NOTICE

32 (The municipal officers of) (A petition has been
33 filed with the municipal officers of)

34

35 _____ (Name of Town
36 or City)

37 (propose to) (to vacate) the following (ways) (way)
38 shown upon a subdivision plan (named) (dated) (and)
39 recorded in the _____ County Registry of
40 Deeds, Book of Plans, Volume _____, Page
41 _____

42 (Herein list or describe ways to be vacated)

1 If the municipal officers enter an order vacating
2 (these ways) (this way) any person claiming an interest
3 in (these ways) (this way) (adverse to the claims of
4 the petitioners) must, within one (1) year of the
5 recording of the order, file a written claim thereof
6 under oath in the _____ County Registry of
7 Deeds and must, within one hundred eighty (180) days of
8 the filing of the claim, commence an action in the
9 Superior Court in _____ County in accordance
10 with the Revised Statutes Title 23, section 3027-A.

11 The municipal officers shall file an order of vacation with
12 the municipal clerk that specifies the location of the way,
13 the names of owners of lots on the recorded subdivision plan
14 and the amount of damages, if any, determined by the municipi-
15 pal officers to be paid to each lot owner or other person
16 having an interest in the way. Damages and reasonable costs
17 as determined by the municipal officers shall be paid by the
18 petitioners, if any.

19 2. Revocation of dedication. A dedication of property
20 or interest therein to the municipality described in a
21 recorded subdivision plot plan may not be revoked or vacated
22 by the dedicator unless no lot has been sold with reference
23 to the plan, and unless an amended subdivision plan has been
24 approved by the municipal subdivision review authority and
25 filed with the appropriate registry of deeds.

26 Sec. 3. 23 MRSA §3027-A is enacted to read:

27 §3027-A. Recording of vacation orders; rights of action;
28 prior orders

29 1. Recording of vacation order. A copy of the order
30 of vacation by the municipal officers entered under section
31 3027 shall be recorded in the registry of deeds where the
32 plan of subdivision is recorded and shall contain an alpha-
33 betical listing of the names of the subdivision lot owners
34 and their mortgagees of record whose interests may be
35 affected by the order. The register of deeds shall make a
36 cross-reference to the order of vacation upon or attached to
37 the face of the subdivision plan. The register of deeds
38 shall also index the order under the names of the lot owners
39 whose names appear in the body of the order. Any order of
40 vacation entered prior to the effective date of this section
41 may be recorded by the municipal officers in the same man-
42 ner and with the same effect set forth in this section.

43 2. Rights of action. All persons are forever barred
44 from maintaining any action at law or in equity to estab-

1 lish, recover, confirm or otherwise enforce any right
2 claimed to or in a proposed or described vacated way by
3 reason of the ownership by the claimant or by any predeces-
4 sor in title of a lot or parcel of land shown on a subdivi-
5 sion plan, unless within one year of the date of recordation
6 of the order of vacation the claimant files in the registry
7 of deeds where the subdivision plan is recorded a statement
8 under oath specifying the nature, basis and extent of the
9 claimed interest in the way. The claim is forever barred
10 unless, within 180 days after the recording of the state-
11 ment, the claimant commences an action in equity under Title
12 14, chapter 723, to establish the rights asserted to or in
13 the way. These limitation periods are not tolled or inter-
14 rupted by any disability, minority or absence from this
15 State of any claimant. Upon the trial of an action, the
16 court shall grant judgment for the claimant only if it finds
17 that the claimant has acquired an interest in the proposed
18 way and that the deprivation of rights in the proposed way
19 unreasonably limits access from a public way, a public body
20 of water or common land or facility to the land of the
21 claimant shown on the subdivision plan. Any judgment
22 rendered by the court in the action may, in the discretion
23 of the court, grant the claimant reasonable damages instead
24 of establishment of the claimant's rights.

25 3. Prior orders. A person claiming an interest in a
26 proposed unaccepted way vacated under section 3027 prior to
27 the effective date of this section may cause an attested
28 copy of that order to be recorded in the registry of deeds
29 where the subdivision plan describing or showing the way is
30 recorded. That person shall append to the order to be
31 recorded an alphabetical listing of the names of the current
32 subdivision lot owners and their mortgagees of record whose
33 interest in the way may be affected by the order. The
34 register of deeds shall also index the order under the names
35 of the lot owners appearing in the appendix.

36 Within 20 days of the recording of a prior order, the person
37 causing the order to be recorded shall give notice of his
38 claim to all current owners of lots on the subdivision plan
39 and their mortgagees of record by mailing by the United
40 States Postal Service, postage prepaid, a notice informing
41 them of his claim and advising them that, to preserve any
42 claim adverse to his, they must file a claim and commence an
43 action as required by subsection 2. The notice shall con-
44 form in substance to the following form:

45 NOTICE

46 On _____, 19____, the municipal officers of

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(Name of Town or City)
entered an order vacating the following (ways) (way)
shown upon a subdivision plan (named) (dated) (and)
recorded in the _____ Registry of Deeds
Book of Plans, Volume _____, Page _____.

(Herein list vacated ways)

The undersigned claims to own the (ways) (way) described above. A copy of the order of the municipal officers was recorded in the _____ Registry of Deeds on _____, 19____, and any person claiming an interest in (these ways) (this way) adverse to the claims of the undersigned must, within one (1) year of the date of the recording of the above order, file a written claim under oath in the Registry of Deeds and must, within one hundred eighty (180) days thereafter, commence an action in the Superior Court in _____ County in accordance with the Revised Statutes, Title 23, section 3027-A.

4. Applicability. This section applies to ways described or shown in recorded subdivision plans proposed before and after the effective date of this section.

STATEMENT OF FACT

The purpose of this bill is to provide a mechanism for removing clouds on titles caused by streets shown on recorded subdivision plans that are never used as streets.

The bill makes no substantive changes in section 3026, except to add a definition of "best practicable notice."

Subsection 1 of section 3027 changes current law only by replacing a reference to "approved subdivision plan" with the term "recorded subdivision plan," by setting forth in more detail the procedures required by current law for vacation by municipal officers of unused ways in subdivisions and by specifying the type of notice of proposed vacation to be sent to affected lot owners. Subsection 2 contains the same provisions as current law, except for the changed reference to "recorded subdivision plan."

Section 3027-A is a new section which requires the recording in registries of deeds of orders vacating unused ways in subdivisions. The section also sets forth the rights, and bars on these rights, retained by persons who

1 might wish to claim an interest in a subdivision way subse-
2 quent to a vacation order. The section also permits a vaca-
3 tion order entered prior to the passage of this bill to be
4 recorded in a registry by a person wishing to claim an
5 interest in the subdivision way. This recording of a prior
6 order triggers the section's procedures for claiming an
7 interest in the vacated way. The initial claimant must also
8 notify other potential claimants of his claim and of the
9 procedures they must follow to retain any claim they might
10 have in or to the way vacated before the passage of this
11 bill.