

MAINE STATE LEGISLATURE

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1 (Governor's Bill)
2 SECOND REGULAR SESSION
3

4 ONE HUNDRED AND TENTH LEGISLATURE
5

6 **Legislative Document**

No. 2016

8 H. P. 2073 House of Representatives, February 23, 1982
Referred to the Committee on Business Legislation. Sent up for
concurrence and ordered printed.

EDWIN H. PERT, Clerk

9 Presented by Representative Thompson of South Portland.
Cosponsors: Representative Masterton of Cape Elizabeth,
Representative Telow of Lewiston and Senator Bustin of Kennebec.

10
11 **STATE OF MAINE**
12

13 IN THE YEAR OF OUR LORD
14 NINETEEN HUNDRED AND EIGHTY-TWO
15

16 **AN ACT to Prevent Abuses in Certain**
17 **Land Installment Contracts.**
18

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

20 **Sec. 1. 14 MRSA §6203-F, first sentence, as enacted by**
21 **PL 1967, c. 544, §38, is amended to read:**

22 If the purchaser of real estate under a contract for
23 the sale of real estate, including a bond for a deed and a
24 land installment contract created under Title 33, chapter 8,
25 shall be in default of any of the terms of such contract,
26 the seller, his heirs or assigns may foreclose the rights of
27 the purchaser in said contract by any of the means provided
28 by law for the foreclosure of mortgages, except that the
29 redemption period shall be ~~60~~ 90 days.

30 **Sec. 2. 14 MRSA §6203-F, 3rd sentence, as enacted by**
31 **PL 1967, c. 544, §38, is amended to read:**

1 An extension order shall not be binding against any person
2 without actual notice thereof unless, within said ~~60-day~~ the
3 90-day period, a written notice describing the land, iden-
4 tifying the instrument under which foreclosure proceedings
5 have been brought, and setting forth the fact that applica-
6 tion for extension of the redemption period has been made,
7 is recorded in the registry of deeds in the county in which
8 the land is located.

9 Sec. 3. 14 MRSA §6204-A, as enacted by PL 1975, c.
10 552, §4, is amended by adding at the end a new paragraph to
11 read:

12 The seller, his heirs or assigns, under a bond for a
13 deed or land installment contract created under Title 33,
14 chapter 8, out of the money arising from a completed sale
15 after the period of redemption has expired under this sub-
16 chapter, shall be entitled to retain proceeds of the sale up
17 to and including the unpaid balance due under the bond for a
18 deed or land installment contract and all costs, charges or
19 expenses incurred or sustained by him or them by reason of
20 any default in the performance or observance of the condi-
21 tion of the bond for a deed or land installment contract.
22 The seller shall also be entitled to deduct from the pro-
23 ceeds of the sale all costs incurred and interest at the
24 rate provided in the contract from the expiration of the
25 redemption period to the date of sale. The surplus, if any,
26 from the sale shall be given to the purchaser, his heirs or
27 assigns, under the bond for a deed or land installment con-
28 tract. No person other than the seller may be bound to see
29 to the application of the money arising from the sale nor
30 submit to an account relating to the sale. In the absence
31 of fraud, the consideration received by the purchaser shall
32 be deemed to be adequate consideration and the purchaser
33 shall have no claim that the sale price was inadequate.

34 Sec. 4. 33 MRSA c. 8 is enacted to read:

35 CHAPTER 8

36 LAND INSTALLMENT CONTRACTS

37 §481. Applicability

38 This chapter does not apply to the sale of land without
39 buildings, the sale of a vendor's single-family residence,
40 the sale of a vendor's seasonal residence or the sale of a
41 multi-unit property containing no more than 5 dwelling
42 units, one of which is occupied by the vendor.

1 §482. Definitions

2 As used in this chapter, unless the context indicates
3 otherwise, the following terms have the following meanings.

4 1. Down payment. "Down payment" means the payment
5 made by the purchaser to the vendor on account of the pur-
6 chase price at or before the time of the execution of a land
7 installment contract.

8 2. Land installment contract. "Land installment con-
9 tract" means an executory agreement under which the vendor
10 agrees to sell an interest in property to the purchaser and
11 the purchaser agrees to pay the purchase price in 5 or more
12 subsequent payments exclusive of the down payment, if any;
13 and the vendor retains title as security for the purchaser's
14 obligation. Option contracts for the purchase of real prop-
15 erty are not land installment contracts.

16 3. Property. "Property" means improved real property
17 located in this State, sold to be occupied as a dwelling.

18 4. Purchaser. "Purchaser" means an individual who
19 purchases property subject to a land installment contract,
20 or any legal successor in interest to him, regardless of
21 whether the individual has entered into an agreement as to
22 extension, default or refund.

23 5. Sales price. "Sales price" means the total sum of
24 the principal and interest due under a land installment con-
25 tract.

26 6. Vendor. "Vendor" means a person who makes a sale
27 of property by means of a land installment contract.

28 §483. Minimum contents of land installment contract; right
29 to cancel; duty of vendor to record; formalities;
30 municipal code standards

31 1. Contents. A land installment contract shall be
32 executed in duplicate, and a copy of the contract shall be
33 provided to the vendor and the purchaser. The contract
34 shall contain at least the following provisions:

35 A. The full names and post office addresses of all the
36 parties to the contract;

37 B. The date the contract is signed by each party;

38 C. A legal description of the property conveyed;

- 1 D. The sales price of the property conveyed;
- 2 E. Any charges or fees for services included in the
3 contract separate from the sales price;
- 4 F. The amount of the purchaser's down payment;
- 5 G. The principal balance owed by the purchaser, which
6 is the sum of the amounts described in paragraphs D and
7 E, less the amount described in paragraph F;
- 8 H. The amount and due date of each installment payment
9 and the total number of periodic installments;
- 10 I. The interest rate on the unpaid balance and the
11 method of computing the rate;
- 12 J. A statement of any encumbrances against the prop-
13 erty;
- 14 K. A statement of the purchaser's rights under sec-
15 tions 486 and 487 in case of the purchaser's default on
16 the contract;
- 17 L. A statement that the vendor may be required by the
18 municipality to maintain the property so that it meets
19 municipal code standards;
- 20 M. A statement requiring the vendor to deliver a deed
21 of general warranty on completion of the contract, or
22 other deed available when the vendor is legally unable
23 to deliver a deed of general warranty;
- 24 N. A provision that the vendor provide evidence of
25 title;
- 26 O. A provision that, if the vendor defaults on any
27 mortgage on the property, the purchaser may pay on the
28 mortgage and receive credit on the land installment
29 contract;
- 30 P. A requirement that the purchaser shall be responsi-
31 ble for the payment of taxes, assessments and other
32 charges against the property from the date of the con-
33 tract unless agreed to the contrary;
- 34 Q. A statement of any pending order of any public
35 agency against the property; and
- 36 R. A provision that the purchaser has the right to ac-
37 celerate any installment payments.

1 2. Mortgage on land installment contract property. No
2 vendor may hold a mortgage on property sold by a land
3 installment contract in an amount greater than the balance
4 due under the contract, except a mortgage which covers real
5 property in addition to the property which is the subject of
6 the contract where the vendor has made written disclosure to
7 the purchaser of the amount of the mortgage and the release
8 price, if any, attributable to the property in question.

9 No vendor may place a mortgage on the property in an amount
10 greater than the balance due on the contract without the
11 consent of the purchaser.

12 3. Recordation. Within 20 days after the contract has
13 been signed by both the vendor and the purchaser, the vendor
14 shall cause a copy of the contract to be recorded in the
15 registry of deeds in the county where the property sold
16 under the contract is located.

17 4. Formalities. A land installment contract shall
18 conform to the formalities required by law for the execution
19 of deeds and mortgages.

20 5. Right of cancellation. Until the purchaser signs a
21 land installment contract and receives a copy signed by the
22 vendor, the purchaser has an unconditional right to cancel
23 the contract and to receive immediate refund of all payments
24 and deposits made on account of or in contemplation of the
25 contract. A request for a refund operates to cancel the
26 contract.

27 6. Municipal code standards. A certificate by the
28 municipal code officer of the municipality in which the
29 property is located, stating that the property meets municip-
30 al code standards, if any, shall be affixed to the land
31 installment contract. The vendor shall be held responsible
32 by the municipality for maintaining the property so that it
33 meets code standards as long as the vendor retains title.

34 §484. Statements required to be furnished to purchaser

35 1. Periodic statements. A vendor under a land
36 installment contract shall, at least once a year, or on
37 demand of the purchaser, but no more than twice a year, fur-
38 nish a statement to the purchaser showing the following:

39 A. The amount credited to principal and interest since
40 the inception of the contract; and

41 B. The balance due.

1 2. Purchase money mortgage right. When 20% of the
2 original sales price is paid, the vendor shall give a state-
3 ment to the purchaser describing the right given in section
4 485 to a purchase money mortgage.

5 §485. Purchase money mortgage

6 1. Right to demand grant upon execution of mortgage;
7 expenses. If the contract fixes no earlier period, when 20%
8 or more of the original sales price of the property is paid,
9 the purchaser may demand a grant of the premises described
10 in the contract, on the condition that he execute a purchase
11 money mortgage to the vendor, or to a mortgagee procured by
12 the purchaser. If any mortgage is executed pursuant to the
13 purchaser's demand for grant under this section, the pur-
14 chaser is liable for the usual expenses associated with the
15 preparation of the mortgage.

16 2. Payments. The periodic principal and interest pay-
17 ments required by the mortgage may not exceed the periodic
18 principal and interest payments otherwise required by the
19 land installment contract, except with the consent of the
20 mortgagor. This consent may be evidenced by the execution
21 of a mortgage.

22 3. Deed and mortgage supersedes land installment con-
23 tract. The deed and mortgage executed under this section
24 shall supersede entirely the land installment contract.

25 §486. Notice prior to foreclosure

26 Prior to the initiation of proceedings to foreclose the
27 interest of a purchaser in default on a land installment
28 contract, the following notice shall be served or caused to
29 be served by the vendor or his successor in interest on the
30 purchaser or his successor in interest if known. The writ-
31 ten notice shall:

32 1. Contract and property. Reasonably identify the
33 contract and describe the property covered by it;

34 2. Default. Specify the terms and conditions of the
35 contract which have not been complied with; and

36 3. Foreclosure. Notify the purchaser that foreclosure
37 proceedings may be initiated unless the purchaser performs
38 the terms and conditions of the contract within 10 days of
39 the completed service of notice.

1 The notice shall be served by the vendor or his successor in
2 interest by handing a written copy of the notice to the pur-
3 chaser or his successor in interest in person, or by leaving
4 it at his usual place of abode or at the property which is
5 the subject of the contract, or by registered or certified
6 mail by mailing it to the last known address of the pur-
7 chaser or his successor in interest.

8 §487. Foreclosure

9 The vendor may recover possession of his property when
10 the purchaser has defaulted on the land installment contract
11 only by use of a proceeding for foreclosure under Title 14,
12 section 6203-F. Proceeds from the sale of the property
13 shall be distributed as provided in Title 14, section
14 6204-A.

15 §488. Right of purchaser to enforce provisions of chapter

16 If a vendor fails to comply with the provisions of this
17 chapter, the purchaser has the right to enforce these sec-
18 tions in court. If the court finds that the vendor has
19 failed to comply with these provisions, the court shall
20 grant appropriate relief and shall require the vendor to
21 assume all court costs as well as a reasonable attorney's
22 fee for the purchaser's attorney.

23 STATEMENT OF FACT

24 The primary purpose of this bill is to provide protec-
25 tion for those who purchase residential property under a
26 land installment contract from vendors in the business of
27 extending credit for real estate purchases using this mecha-
28 nism. Under the usual land installment contract, the pur-
29 chaser receives no title to the property until all purchase
30 price installments are paid. To protect the purchaser under
31 the type of contract covered by this bill, usually someone
32 without as much bargaining power as the vendor, the bill
33 provides for:

34 1. Minimum information and disclosures to be supplied
35 in the land installment contract;

36 2. Restrictions on the vendor's ability to mortgage
37 the property;

38 3. Recording of the land installment contract in the
39 registry of deeds;

1 4. The purchaser's limited right to cancel the con-
2 tract;

3 5. The vendor's responsibility to a municipality for
4 meeting code standards; and

5 6. The purchaser's right to demand from the vendor a
6 purchase money mortgage upon payment of 20% of the purchase
7 price.

8 The bill also provides that the vendor must give a pur-
9 chaser in default on a land installment contract notice of
10 the default before foreclosure proceedings may be commenced.
11 Sections 1, 2 and 3 of the bill amend current foreclosure
12 law to make it clear that their provisions apply to foreclo-
13 sures on land installment contracts covered by this bill and
14 the similar mechanism of a bond for a deed. The period of
15 redemption provided in the foreclosure laws is extended from
16 60 to 90 days for purchasers under land installment con-
17 tracts and bonds for a deed. Also, the method of dealing
18 with any surplus remaining after a foreclosure sale of prop-
19 erty covered by a land installment contract or bond for a
20 deed is made explicit.

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