

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

1

L.D. 2019
(Filing No. S-447)

2
3
4
5

STATE OF MAINE
SENATE
110TH LEGISLATURE
SECOND REGULAR SESSION

6 COMMITTEE AMENDMENT " A" to S.P. 870, L.D. 2019, Bill,
7 "AN ACT to Create the Maine Condominium Act."

8 Amend the bill by striking out all of the first line
9 after the enacting clause and inserting in its place the
10 following:

11 '33 MRSA c. 31 is enacted to read:'

12 Further amend the bill in that part designated
13 "§1601-102." in subsection (a) in the 8th line (page 2, line
14 8 in L.D.) by striking out the underlined word "these" and
15 inserting in its place the underlined word 'those'

16 Further amend the bill in that part designated
17 "§1601-102." in subsection (a) in the 20th line (page 2,
18 line 20 in L.D.) by striking out the underlined words and
19 punctuation "; attorney's fees."

20 Further amend the bill in that part designated
21 "§1601-103." in subsection (21) in the 7th line (page 5,
22 line 30 in L.D.) by striking out the underlined word "filed"
23 and inserting in its place the underlined word 'filled'

24 Further amend the bill in that part designated
25 "§1601-106." in the 6th line (page 7, line 20 in L.D.) by
26 inserting after the underlined word "ownership" the under-
27 lined punctuation and words ', except as permitted under
28 section 1604-111, subsection (f)'

29 Further amend the bill in that part designated
30 "§1601-107." by inserting at the end the following:

31 '(e) Notwithstanding anything to the contrary in this
32 section, lien holders on any unit, common element or limited
33 common element, shall have a lien on any such awards in
34 order of priority of their respective liens.'

35 Further amend the bill by striking out all of that part

D. OF R.

1 COMMITTEE AMENDMENT "A " to S.P. 870, L.D. 2019

2 designated "§1601-115." and inserting in its place the fol-
3 lowing:

4 '§1601-115. Legal investments

5 Financial institutions may make loans to any person or
6 persons to be secured by a mortgage of a unit or units
7 together with their allocated interests, created pursuant to
8 this chapter, to the extent that each of them may make loans
9 secured by real estate mortgages, and subject to the appli-
10 cable conditions and limitations imposed by law.'

11 Further amend the bill in that part designated
12 "§1601-116." in the 2nd line (page 10, line 27 in L.D.) by
13 striking out the underlined figure "1982" and inserting in
14 its place the underlined figure '1983'

15 Further amend the bill in that part designated
16 "§1601-116." in the 4th line (page 10, line 29 in L.D.) by
17 striking out the underlined word "CREATIONS" and inserting
18 in its place the underlined word 'CREATION'

19 Further amend the bill in that part designated
20 "§1602-101." in subsection (a) in the 2nd line (page 10,
21 line 34 in L.D.) by striking out the underlined words and
22 punctuation "executed, in" and inserting in their place the
23 underlined words 'executed in'

24 Further amend the bill in that part designated
25 "§1602-101." by striking out all of subsection (b) and
26 inserting in its place the following:

27 '(b) No interest in any unit may be conveyed to a pur-
28 chaser until the unit is substantially completed as evi-
29 denced by a certificate or statement of substantial comple-
30 tion executed by an engineer or architect, or until a cer-
31 tificate of occupancy is issued by the municipal inspector
32 of buildings; provided that this limitation shall not apply
33 to contracts, options or reservations for sale of units
34 later to be so completed nor to mortgages or transfers of
35 units as security for an obligation, deeds in lieu of fore-
36 closure, foreclosures and foreclosure sales, conveyances to
37 successor declarants or to any person in the business of
38 selling real estate for his own account, or to financial
39 institutions.'

1 COMMITTEE AMENDMENT "A" to S.P. 870, L.D. 2019

2 Further amend the bill in that part designated
3 "§1602-109." by striking out all of paragraph (3) and
4 inserting in its place the following:

5 '(3) The location and dimensions of any real estate
6 subject to development rights, labeled to identify the
7 rights applicable to each parcel;'

8 Further amend the bill in that part designated
9 "§1602-109." by striking out all of paragraph (5) and
10 inserting in its place the following:

11 '(5) The location and dimensions of all easements
12 servicing or burdening any portion of the condominium;'

13 Further amend the bill in that part designated
14 "§1602-109." by striking out all of paragraph (7) and
15 inserting in its place the following:

16 '(7) The location with reference to any established
17 datum of any horizontal unit boundaries not shown or pro-
18 jected on plans recorded pursuant to subsection (d) and
19 that unit's identifying number;'

20 Further amend the bill in that part designated
21 "§1602-109." by striking out all of paragraph (8) and
22 inserting in its place the following:

23 '(8) The location and dimensions of any real estate in
24 which the unit owners will own only an estate for years,
25 labeled as "leasehold real estate;''

26 Further amend the bill in that part designated
27 "§1602-109." by striking out all of paragraph (9) and
28 inserting in its place the following:

29 '(9) The distances and courses between noncontiguous
30 parcels of real estate comprising the condominium;'

31 Further amend the bill in that part designated
32 "§1602-110." in subsection (a) in the 9th line (page 18,
33 line 30 in L.D.) by striking out the underlined word
34 "reallocated" and inserting in its place the underlined word
35 'reallocate'

1 COMMITTEE AMENDMENT "A" to S.P. 870, L.D. 2019

2 Further amend the bill in that part designated
3 "§1602-110." in subsection (a) in the 10th line (page 18,
4 line 31 in L.D.) by striking out the underlined words
5 "amendment describes" and inserting in their place the
6 underlined words 'amendment must describe'

7 Further amend the bill in that part designated
8 "§1602-110." in subsection (a) in the 11th line (page 18,
9 line 32 in L.D.) by striking out the underlined words and
10 punctuation "elements, thereby" and inserting in their place
11 the underlined words 'elements thereby'

12 Further amend the bill in that part designated
13 "1602-117." in subsection (d) in the 5th line (page 22, line
14 8 in L.D.) by inserting after the underlined words "or the"
15 the underlined words and punctuation 'uses to which any unit
16 is restricted, in the absence of unanimous'

17 Further amend the bill in that part designated
18 "1602-118." in subsection (j) in the 5th line (page 24, line
19 38 in L.D.) by striking out the underlined words "may upon"
20 and inserting in their place the underlined words and
21 punctuation 'may, upon'

22 Further amend the bill in that part designated
23 "1602-119." in the 2nd line (page 24, line 42 in L.D.) by
24 striking out the underlined word "The" and inserting the
25 following: '(a) The'

26 Further amend the bill in that part designated
27 "§1602-119." by inserting at the end the following:

28 '(b) The association shall send reasonable prior writ-
29 ten notice by prepaid United States mail to eligible mort-
30 gage holders as hereinafter defined of the consideration by
31 the association of following proposed actions:

32 (1) The termination of the condominium pursuant to
33 section 1602-118;

34 (2) A change in the allocated interest of a unit, a
35 change in the boundaries of a unit or a subdivision of a
36 unit;

1 COMMITTEE AMENDMENT "A" to S.P. 870, L.D. 2019

2 (3) The merger or consolidation of the condominium
3 with another condominium;

4 (4) The conveyance or subjection to a security inter-
5 est of any portion of the common elements;

6 (5) The proposed use of any proceeds of hazard insur-
7 ance required to be maintained by the association under
8 section 1603-113, subsection (a), for purposes other than
9 the repair or restoration of the damaged property;

10 (6) The adoption of any proposed budget by the execu-
11 tive board under section 1603-103, subsection (c), and of
12 the date of the scheduled unit owners meeting to consider
13 ratification thereof; a summary of the proposed budget shall
14 accompany this notice; and

15 (7) Any default in the performance or payment by a
16 unit owner of any obligations under the condominium declara-
17 tion, including, without limitation, default in the payment
18 of common expense liabilities.

19 An "eligible mortgage holder" means the holder of a recorded
20 first mortgage on a unit which has delivered written notice
21 to the association by prepaid United States mail, return
22 receipt requested, or by delivery in hand securing a receipt
23 therefor, which notice shall state the mortgagee's name and
24 address, the unit owner's name and address, and the iden-
25 tifying number of the unit, and shall state that the mort-
26 gage is a recorded first mortgage. Such notice shall be
27 deemed to have been given reasonably prior to the proposed
28 action if sent at the time notice thereof is given to the
29 unit owners. In addition, the declaration may require that
30 similar notice be given to other persons or of other pro-
31 posed actions.

32 (c) In the event of any proposed actions described in
33 subsection (b), paragraphs (1), (2), (3), (4) or (5), an
34 eligible mortgage holder shall have the right but not the
35 obligation in place of the unit owner to cast the votes
36 allocated to that unit or give or withhold any consent re-
37 quired of the unit owner for such action by delivering writ-
38 ten notice to the association with a copy to the unit owner
39 prior to or at the time of the taking of the proposed ac-
40 tion, which notice shall be sent by prepaid United States

1 COMMITTEE AMENDMENT "A" to S.P. 870, L.D. 2019

2 mail, return receipt requested, or by delivery in hand.
3 Failure of the eligible mortgage holder to so exercise such
4 rights shall constitute a waiver thereof and shall not pre-
5 clude the unit owner from exercising such right. In the
6 event of any default described in subsection (b), paragraph
7 (7), the eligible mortgage holder shall have the right but
8 not the obligation to cure such default.

9 (d) In addition, an eligible mortgage holder, or its
10 representative, shall have the right to attend association
11 and executive board meetings for the purposes of discussing
12 the matters described in subsection (b), paragraphs (1) to
13 (6).

14 Further amend the bill in that part designated
15 "§1603-104." in subsection (e), paragraph (4) last line
16 (page 33, line 20 in L.D.) by striking out the following
17 "subsection (e)" and inserting in their place the following
18 "subsection (d)"

19 Further amend the bill in that part designated
20 "§1603-113." in subsection (g), 5th line (page 39, line 38
21 in L.D.) by striking out the underlined figure "30" and
22 inserting in its place the underlined figure "20"

23 Further amend the bill in that part designated
24 "§1603-113." in subsection (h), 18th line (page 40, line 18
25 in L.D.) by inserting after the underlined word "allocated"
26 the underlined words and punctuation "or to their respective
27 lien holders as their interests may appear"

28 Further amend the bill in that part designated
29 "§1604-101." in subsection (a), 2nd line (page 44, line 17
30 in L.D.) by striking out the underlined word "Act" and
31 inserting in its place the underlined word "Act"

32 Further amend the bill in that part designated
33 "§1604-103." in subsection (a), paragraph (4), 3rd line
34 (page 46, line 9 in L.D.) by striking out the underlined
35 word "convenants" and inserting in its place the underlined
36 word "covenants"

37 Further amend the bill in that part designated
38 "§1604-103." in subsection (a), paragraph (11), by striking
39 out all of subparagraphs (i), (ii) and (iii) and inserting

1 COMMITTEE AMENDMENT "A" to S.P. 870, L.D. 2019

2 in their place the following:

3 '(i) Unless a purchaser has received and reviewed a
4 copy of the public offering statement 3 days prior to
5 the execution of a contract for sale, a purchaser,
6 before conveyance, may cancel any contract for purchase
7 of a unit from a declarant; and

8 (ii) If a purchaser accepts the conveyance of a unit,
9 he may not cancel the contract.'

10 Further amend the bill in that part designated
11 "§1604-103." in subsection (a), paragraph (18), 3rd line
12 (page 48, line 7 in L.D.) by inserting after the underlined
13 word and punctuation "alienate;" the underlined word 'and'

14 Further amend the bill in that part designated
15 "§1604-103." in subsection (a), paragraph (19), 2nd line
16 (page 48, line 9 in L.D.) by striking out the underlined
17 word "and"

18 Further amend the bill in that part designated
19 "§1604-103." in subsection (a), by striking out all of para-
20 graph (20)

21 Further amend the bill in that part designated
22 "§1604-103." in subsection (b), 7th line (page 48, line 18
23 in L.D.) by striking out the following "(18), (19) and (20)"
24 and inserting in their place the following '(18) and (19)'

25 Further amend the bill in that part designated
26 "§1604-104." in the first paragraph, first line (page 48,
27 line 26 in L.D.) by striking out the underlined word
28 "declarant" and inserting in its place the underlined word
29 'declaration'

30 Further amend the bill in that part designated
31 "§1604-107." by striking out all of subsection (a) and
32 inserting in its place the following:

33 '(a) A person required to deliver a public offering
34 statement pursuant to section 1604-102, subsection (c),
35 shall provide a purchaser of a unit with a copy of the
36 public offering statement and all amendments thereto 3 days
37 before the execution of a contract for sale. Unless prior

D. OF R.

1 COMMITTEE AMENDMENT "A" to S.P. 870, L.D. 2019

2 to the execution of a contract for sale, a purchaser ac-
3 knowledges in writing receipt and review of such offering
4 statement, the purchaser, upon written notice to the declar-
5 ant, may cancel the contract at any time prior to conveyance
6 of the unit, unless the purchaser shall, subsequently,
7 expressly and in writing waive such right to cancel after
8 having received and reviewed such offering statement.'

9 Further amend the bill in that part designated
10 "§1604-107." by striking out all of subsection (c) and
11 inserting in its place the following:

12 '(c) A purchaser who accepts a conveyance of a unit
13 may not later exercise the right to cancel or rescind the
14 contract for sale under this section, and all persons may
15 rely on the conveyance.'

16 Further amend the bill in that part designated
17 "§1604-108." in subsection (a), by striking out all of para-
18 graph (4) and inserting in its place the following:

19 '(4) A statement of any capital expenditures antici-
20 pated by the association;'

21 Further amend the bill in that part designated
22 "§1604-111." in subsection (f), first line (page 55, line 3
23 in L.D.) by inserting after the underlined word "Act" the
24 underlined words and punctuation ', including section
25 1601-106.'

26 Further amend the bill in that part designated
27 "§1604-111." in subsection (f), 4th line (page 55, line 6 in
28 L.D.) by striking out the underlined word "provided" and
29 inserting in its place the underlined word 'providing'

30 Further amend the bill in that part designated
31 "§1604-112." in subsection (a), by striking out all of para-
32 graph (2) and inserting in its place the following:

33 '(2) Any model or description of the physical charac-
34 teristics of the condominium, including plans and specifica-
35 tions of or for improvements, creates an express warranty
36 that the condominium will substantially conform to the model
37 or description;'

1 COMMITTEE AMENDMENT " A" to S.P. 870, L.D. 2019

2 Further amend the bill in that part designated
3 "§1604-113." in subsection (b), paragraph (2) by inserting
4 at the end a new sentence to read:

5 'Construction complying with the National Building Code and
6 Code Administrators (BOCA), Basic Building Code or equiva-
7 lent applicable local building code, if any, shall be deemed
8 to satisfy such sound engineering or construction stan-
9 dards.'

10 Further amend the bill in that part designated
11 "§1604-114." by striking out all of the first 2 lines and
12 inserting in their place the following:

13 '§1604-114. Exclusion or modification of implied warranties
14 of quality'

15 Further amend the bill in that part designated
16 "§1604-116." by striking out all of the first 2 lines and
17 inserting in their place the following:

18 '§1604-116. Effect of violations on rights of action'

19 Further amend the bill in that part designated
20 "§1604-116." by striking out all of the last 2 underlined
21 sentences.

22 STATEMENT OF FACT

23 This amendment makes several technical changes in the
24 bill, including corrections of typographical errors and
25 insertions of clearer wording. The amendment also makes
26 some substantive changes, summarized as follows.

27 The amendment adds provisions clarifying the rights of
28 those holding liens on condominium property to insurance
29 proceeds when the property is damaged or destroyed and not
30 rebuilt and to proceeds when the property is taken by emi-
31 nent domain.

32 The amendment makes it clear that financial insti-
33 tutions may make loans secured by any type of mortgage on a
34 condominium unit, not just a first mortgage. It also makes
35 it clear that these loans may be made to any entity, includ-

1 COMMITTEE AMENDMENT "A" to S.P. 870, L.D. 2019

2 ing, for example, a limited partnership, and not merely to
3 individuals and corporations as the original bill read.

4 This amendment also amends the subsection which states
5 that no interest in any condominium unit may be conveyed
6 until the unit is substantially completed. The amendment
7 makes it clear that this limitation does not apply to con-
8 tracts for sale, options to buy and other obligations
9 entered into that are not completed conveyances. The
10 limitation also does not apply to conveyances between a
11 developer and a financial institution or a successor devel-
12 oper.

13 The amendment makes several changes in provisions call-
14 ing for descriptions of condominiums to be supplied to match
15 the language of the law with land surveying language and
16 practices.

17 The amendment adds a subsection requiring a unit
18 owners' association to notify first mortgagee when the asso-
19 ciation is considering certain enumerated actions which
20 could affect a mortgagee's security interest in the prop-
21 erty. The provision gives the mortgage holder the right to
22 cast a vote, in place of the unit owner, in an association
23 meeting on the following possible actions: Termination of
24 the condominium; changing allocated interests, boundaries or
25 subdivision of units; merger of the condominium with another
26 condominium; conveyance or subjection to a security interest
27 of any of the common elements; and use of proceeds from
28 insurance maintained by the association for purposes other
29 than repair or restoration. If the mortgage holder fails to
30 vote in any of these situations the unit owner may cast the
31 vote. The mortgage holder may attend meetings of the unit
32 owners' association to discuss any of the items set forth
33 above or to discuss the proposed budget for the condominium
34 or the default by a unit owner on any obligations imposed
35 under the condominium's declaration.

36 The amendment changes the time period applied to the
37 effectiveness of a notice of cancellation of or refusal to
38 renew a unit owners' association insurance policy. The bill
39 made the cancellation or refusal to renew effective 30 days
40 after notice. The amendment changes this to 20 days to
41 coincide with the related time period provided in the Maine
42 Property Insurance Cancellation Control Act.

1 COMMITTEE AMENDMENT "A" to S.P. 870, L.D. 2019

2 This amendment also deletes a provision of the bill
3 which gave the purchaser the right to cancel a signed con-
4 tract for sale of a condominium unit within 15 days of
5 receiving the required public offering statement if that
6 statement was not received 15 days prior to the signing.
7 The amendment replaces this provision with a requirement
8 that the public offering statement be supplied 3 days prior
9 to the signing of the contract for sale. The purchaser may
10 cancel the contract for sale any time prior to conveyance of
11 the unit unless receipt and review of the public offering
12 statement is acknowledged, and the right to cancel waived,
13 in writing.

14 The amendment changes a provision pertaining to resale
15 statements. The bill required a resale statement to include
16 capital expenditures anticipated by the unit owners' associ-
17 ation for the current and next 2 succeeding years. The
18 amendment simply requires a statement of any anticipated
19 capital expenditures.

20 The amendment makes it clear that the provision permit-
21 ting conversion ordinances to be stricter in certain
22 respects than the requirements of the Act is not in conflict
23 with an initial general provision in the Act which states
24 that municipal regulations may not impose certain require-
25 ments exclusively on condominiums.

26 This amendment also makes it clear that the implied
27 warranty concerning the construction of the condominium is
28 met if certain nationally recognized building codes are com-
29 plied with.

30 This amendment also amends the section dealing with
31 rights of action for violations of the Act to eliminate the
32 ability to seek attorney's fees and punitive damages.

Reported by the Majority of the Committee on Judiciary.

Reproduced and distributed pursuant to Senate Rule 11-A.

March 31, 1982

(Filing No. S-447)