

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 880

7 S.P. 292

In Senate, February 24, 1983

8 Referred to the Committee on Taxation. Sent down for concurrence and
9 ordered printed.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Twitchell of Oxford.

Cosponsor: Senator Perkins of Hancock.

11
12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT to Clarify the Tax Status of
18 Time-sharing Condominiums.
19

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

22 Sec. 1. 33 MRSA c. 10, first 2 lines, as enacted
23 by PL 1965, c. 357, are repealed and the following
24 enacted in their place:

25 CHAPTER 10

26 UNIT OWNERSHIP

27 SUBCHAPTER I

28 UNIT OWNERSHIP

29 Sec. 2. 33 MRSA §588, as enacted by PL 1979, c.
30 484, is repealed.

1 which the exclusive right of use, possession or occu-
2 pancy of the unit circulates among the various time-
3 share owners in the unit in accordance with a fixed
4 time schedule on a periodically recurring basis for
5 periods of time established by the schedule coupled
6 with a freehold estate or an estate for years in a
7 time-share property or a specified portion thereof.

8 8. Time-share instrument. "Time-share instru-
9 ment" means one or more documents, by whatever name
10 denominated, creating or regulating time shares.

11 9. Time-share license. "Time-share license"
12 means a right to occupy a unit or any of several
13 units during 3 or more separate time periods over a
14 period of at least 3 years, including renewal
15 options, not coupled with a freehold estate or an
16 estate for years.

17 10. Time-share property. "Time-share property"
18 means one or more time-share units subject to the
19 same time-share instrument, together with any other
20 real estate or rights therein appurtenant to those
21 units.

22 11. Time-share unit. "Time-share unit" means a
23 unit in which time shares exist.

24 12. Unit. "Unit" means a real property, or a
25 portion thereof, designated for separate use.

26 §592. Requirements of time shares

27 1. Declaration. If time shares will or may be
28 created with respect to any unit in the project, the
29 declaration or project instrument shall contain a
30 statement in conspicuous type declaring that time
31 shares will or may be created with respect to the
32 units in the project. In addition, the degree, quan-
33 tity, nature and extent of the time shares that will
34 or may be created shall be defined and described in
35 detail in the declaration or project instrument, with
36 specific statement as to the minimum duration of the
37 recurring periods of rights of use, possession or
38 occupancy that may be created with respect to any
39 unit.

1 2. Specific disclosures. No time share may be
2 conveyed by a developer or conveyed for the first
3 time unless, prior to that conveyance or the execu-
4 tion of an agreement for the purchase, whichever is
5 earlier, the purchaser is provided, at no cost to the
6 purchaser, with a written statement containing the
7 following information, all of which shall be current
8 to a point not more than 60 days prior to the date of
9 delivery to the purchaser.

10 A. The front cover or first page shall contain
11 only:

12 (1) The name and principal address of the
13 developer and of the project; and

14 (2) The following statements in conspicuous
15 type.

16 (a) THIS CONTAINS IMPORTANT MATTERS TO
17 BE CONSIDERED IN ACQUIRING A TIME-SHARE
18 ESTATE. STATE OF MAINE LAW REQUIRES
19 THAT THESE DISCLOSURES BE MADE, BUT NO
20 STATE AGENCY OR OFFICIAL HAS REVIEWED
21 THE INFORMATION CONTAINED IN THIS BOOK-
22 LET.

23 (b) YOU MAY CANCEL THE PURCHASE TRANS-
24 ACTION WITHIN FIFTEEN DAYS FOLLOWING
25 THE DATE OF EXECUTION OF THE CONTRACT
26 OR THE RECEIPT OF A CURRENT WRITTEN
27 STATEMENT, WHICHEVER IS LATER.

28 (c) THE STATEMENTS CONTAINED INSIDE
29 ARE ONLY SUMMARY IN NATURE. IF YOU ARE
30 THINKING OF BUYING A UNIT, YOU SHOULD
31 TALK TO YOUR ATTORNEY AND LOOK AT ALL
32 EXHIBITS, INCLUDING THE DECLARATION,
33 PROJECT INSTRUMENT FLOOR PLAN, PLOT
34 PLAN, BYLAWS AND CONTRACTS.

35 (d) YOU SHOULD ASK YOUR ATTORNEY AND
36 THE DEVELOPER TO TELL YOU WHAT WILL
37 HAPPEN TO YOUR DEPOSIT, INTEREST IN THE
38 UNIT OR COSTS AND EXPENSES IF THE
39 DEVELOPER OR OWNER IS DECLARED BANK-
40 RUPT. OBTAIN THE ANSWER FROM THE
41 DEVELOPER IN WRITING.

1 B. The following pages shall contain in the fol-
2 lowing order:

3 (1) A general description of the time share
4 and the time-share units including, without
5 limitation, the types, number and develop-
6 er's schedule of commencement and completion
7 of construction of all buildings, units and
8 amenities;

9 (2) The total number of additional time-
10 share units that may be included in the
11 project and the proportion of units the
12 developer intends to rent or market in
13 blocks of units to investors;

14 (3) Copies and a brief narrative descrip-
15 tion of the significant features of the
16 project instrument and time-share instrument
17 other than the survey and floor plans, the
18 bylaws and rules, copies of any contracts
19 and leases to be signed by purchasers at
20 closing and a brief narrative description of
21 any material contracts or leases the term of
22 which will or may extend beyond the period
23 of developer control of the association;

24 (4) Any current balance sheet and a pro-
25 jected budget for the association for one
26 year after the date of the first conveyance
27 to a purchaser, and thereafter the current
28 budget of the association, a statement of
29 who prepared the budget and a statement of
30 the budget's assumptions concerning occu-
31 pancy and inflation factors. The budget
32 shall include, without limitation:

33 (a) A statement of the amount or a
34 statement that there is no amount,
35 included in the budget as a reserve for
36 repairs and replacement;

37 (b) A statement of any other reserves;

38 (c) The projected common expenses
39 assessment by category of expenditures
40 for the association; and

1 (d) The projected monthly common
2 expense assessment for each type of
3 unit;

4 (5) Any services not reflected in the bud-
5 get that the developer provides, or expenses
6 that he pays, and that he expects may become
7 at any subsequent time a common expense of
8 the association and the projected common
9 expense assessment attributable to each of
10 those services or expenses for the associa-
11 tion and for each type of unit and each
12 time-share estate;

13 (6) Any initial or special fee due from the
14 purchaser at or before closing, together
15 with a description of the purpose and method
16 of calculating the fee;

17 (7) A description of any liens, defects or
18 encumbrances on or affecting the title to
19 the project and each time-share unit;

20 (8) A description of any financing offered
21 by the developer;

22 (9) The terms and significant limitations
23 of any warranties provided by the developer,
24 including statutory warranties and limita-
25 tions on the enforcement thereof or on dam-
26 ages;

27 (10) A statement that:

28 (a) Within 15 days after receipt of
29 the current written statement or execu-
30 tion of a contract, whichever is later,
31 a purchaser may cancel any conveyance
32 or contract for purchase of a unit from
33 the developer; and

34 (b) If the purchaser elects to cancel,
35 he may do so by hand delivering a
36 notice thereof or by mailing the notice
37 by prepaid United States mail to the
38 developer. The cancellation shall be
39 without penalty and any deposit made by

- 1 the purchaser shall be promptly
2 refunded in its entirety;
- 3 (11) A statement of any judgments against
4 the association, the status of any pending
5 suits to which the association is a party
6 and the status of any pending suits material
7 to the property of which the developer has
8 actual knowledge;
- 9 (12) A statement that any deposit made in
10 connection with the purchase of a unit will
11 be returned to the purchaser if the pur-
12 chaser cancels the contract within 15 days
13 after receipt of the written statement;
- 14 (13) Any restraints on transfer of time
15 shares or any portion thereof;
- 16 (14) A description of the insurance cover-
17 age provided for the benefit of time-share
18 owners;
- 19 (15) Any current or expected fees or
20 charges to be paid by time-share owners for
21 the use of the common elements and other
22 facilities related to the project;
- 23 (16) All unusual and material circum-
24 stances, features and characteristics of the
25 project and the units;
- 26 (17) The total number of units in which
27 time shares may be created;
- 28 (18) The total number of time shares that
29 may be created in the project;
- 30 (19) The projected common expense assess-
31 ment for each time share and whether those
32 assessments may vary seasonally;
- 33 (20) The extent to which the time-share
34 owners of a unit are jointly and severally
35 liable for the payment of real estate taxes
36 and all assessments and other charges levied
37 against that unit; and

1 (21) The extent to which a time-share unit
2 may become subject to a tax or other lien
3 arising out of claims against other time-
4 share owners of the same time-share unit.

5 3. Restraint upon partition of time-share units.
6 No action for partition of any unit in which time
7 shares are created may lie.

8 4. Cancellation of contract. Any purchaser or
9 prospective purchaser of a time share may cancel a
10 contract or conveyance of a time share by delivering
11 or mailing a postage prepaid written notice of the
12 purchaser's intention to cancel within 15 days after
13 the date of any contract or conveyance or within 15
14 days after delivery of the current written statement
15 required by subsection 2, whichever is later.

16 5. Time share located outside State. This
17 section shall apply to offers or sales within this
18 State of time shares in property even if the project
19 is located outside of this State.

20 6. Application with respect to foreclosures of
21 mortgages. This section shall not apply to offers or
22 sales by financial institutions, as defined in Title
23 9-B, of time shares in property with respect to fore-
24 closure of any mortgage or the delivery of any deed
25 in lieu of the foreclosure.

26 7. Violation. Any violation of this section
27 shall be a violation of Title 5, chapter 10.

28 §593. Taxation of time-share estates

29 Notwithstanding the provisions of sections 579
30 and 580, taxation of time-share estates shall be
31 determined according to this section.

32 1. Creation of estates. Notwithstanding any
33 contrary rule of common law, a grant of an estate in
34 a unit conferring the right of possession during a
35 potentially infinite number of separated time periods
36 creates an estate in fee simply having the character
37 and incidents of such an estate at common law, and a
38 grant of an estate in a unit conferring the right of
39 possession during 3 or more separated time periods

1 over a finite number of years equal to 3 or more,
2 including renewal options, creates an estate for
3 years having the character and incidents of such an
4 estate at common law.

5 2. Time-share estates as separate estates. Each
6 time-share estate constitutes for all purposes a sep-
7 arate estate in real property. Each time-share
8 estate shall be separately assessed and taxed.

9 3. Recordation. A document transferring or
10 encumbering a time-share estate may not be rejected
11 for recordation because of the nature or duration of
12 that estate.

13 4. Collection and receipt of money for
14 taxes. The managing entity may collect and receive
15 money from time-share estate owners for the purpose
16 of paying taxes assessed on time-share estates.

17 5. Escrow Account. The managing entity shall be
18 required to maintain an escrow account with a finan-
19 cial institution licensed by the State, and to
20 deposit any moneys collected or received for taxes in
21 the escrow account within 10 days after collection or
22 receipt thereof. The escrow account shall be estab-
23 lished in the names of both the managing entity and
24 the municipality in which the time-share estates are
25 located. No withdrawal may be made from the escrow
26 account without the written agreement of the munici-
27 pality.

28 Prior to the delinquency date established by the
29 municipality in which the time-share estates are
30 located, the managing entity shall pay to the municip-
31 al tax collector all money deposited in the escrow
32 account for the purpose of tax payment. If the
33 amount paid from the escrow account is not sufficient
34 to discharge all taxes and tax-related costs, due and
35 owing, the managing entity may either pay the differ-
36 ence and place a lien on those time-share estates
37 whose owners have not contributed to the escrow ac-
38 count as provided in section 594, or the managing
39 entity may provide a list identifying those owners
40 and their interests to the municipal tax collector
41 who may then proceed to collect the taxes on those
42 interests as allowed by law.

1 If the tax collector and treasurer use the lien
2 procedure, described in Title 36, sections 942 and
3 943, to collect delinquent taxes on time-share
4 estates, whenever a notice called for by Title 36,
5 section 942 or 943 is sent to a time-share estate
6 owner, the tax collector and treasurer shall give to
7 the managing entity or leave at the managing entity's
8 last and usual place of abode or send to the managing
9 entity by certified mail, return receipt requested,
10 either a copy of the notice sent to the time-share
11 estate owner or a notice which lists all time-share
12 estate owners to whom notices have been delivered.
13 For sending the notice or notices to the managing
14 entity, the tax collector or treasurer shall be enti-
15 tled to receive \$5 plus all certified mail, return
16 receipt requested fees, plus the cost of any
17 photocopying.

18 §594. Liens for assessment

19 1. Lien created. A person who has a duty to
20 make assessments for time-share expenses or taxes has
21 a lien on a time share for any assessment levied
22 against that time share or fines imposed against its
23 owner from the time the assessment or fine becomes
24 due. The lien may be foreclosed in like manner as a
25 mortgage on real estate, or, in the case of a time-
26 share license, under the Uniform Commercial Code.
27 Unless the time-share instrument otherwise provides,
28 fees, charges, late charges, fines and interest
29 charged in accordance with the project instrument are
30 enforceable as assessments under this section. If an
31 assessment is payable in installments, the full
32 amount of the assessment is a lien from the time the
33 first installment thereof becomes due.

34 2. Priority. A lien under this section is prior
35 to all other liens and encumbrances on a time share,
36 except:

37 A. Liens and encumbrances recorded before the
38 recordation of the time-share instrument;

39 B. Mortgages and deeds of trust on the time
40 share securing first mortgage holders and
41 recorded before the due date of the assessment or
42 the due date of the first installment payable on
43 the assessment;

1 C. Liens for real estate taxes and other govern-
2 mental assessments or charges against the time
3 share; and

4 D. Liens securing assessments or charges made by
5 a person managing a project of which the time-
6 share property is a part. This subsection does
7 not affect the priority or mechanics or material-
8 men's liens.

9 3. Perfection. The lien is perfected upon
10 recordation of a claim of lien in the county in which
11 the time-share unit is situated.

12 4. Extinguishing lien. A lien for unpaid
13 assessments is extinguished, unless proceedings to
14 enforce the lien are instituted within 3 years after
15 the assessments become payable.

16 5. Other remedies. This section does not pro-
17 hibit actions or suits to recover sums for which sub-
18 section 1 creates a lien or preclude resort to any
19 contractual or other remedy permitted by law.

20 6. Statement furnished. A person who has a duty
21 to make assessments for time-share expenses shall
22 furnish to a time-share owner upon written request a
23 recordable statement setting forth the amount of
24 unpaid assessments currently levied against his time
25 share. The statement shall be furnished within 10
26 business days after receipt of the request and is
27 binding in favor of persons reasonably relying
28 thereon.

29 Sec. 4. 36 MRSA §942, 2nd ¶, as amended by PL
30 1979, c. 613, §1, is further amended to read:

31 The tax collector may, after the expiration of 8
32 months and within one year after the date of original
33 commitment of a tax, give to the person against whom
34 the tax is assessed, or leave at his last and usual
35 place of abode, or send by certified mail, return
36 receipt requested, to his last known address, a
37 notice in writing signed by the tax collector or
38 bearing his facsimile signature, stating the amount
39 of the tax, describing the real estate on which the
40 tax is assessed, alleging that a lien is claimed on

1 the real estate to secure the payment of the tax, and
2 demanding the payment of the tax within 30 days after
3 service or mailing of the notice with ~~\$1~~ \$5 for the
4 tax collector for making the demand together with the
5 certified mail, return receipt requested, fee. In
6 the case of taxes supplementally assessed, ~~said~~ the
7 tax collector may give ~~such~~ that notice after the
8 expiration of 8 months and within one year after the
9 date of commitment of ~~such~~ the supplementally
10 assessed taxes. If an owner or occupant of real
11 estate to whom ~~said~~ the real estate is taxed ~~shall~~
12 ~~die~~ dies before ~~such~~ that demand is made on him, ~~such~~
13 the demand may be made upon the executor or adminis-
14 trator of his estate or upon any of his heirs or
15 devisees.

16 Sec. 5. 36 MRSA §942, 5th ¶, as amended by PL
17 1979, c. 114, is further amended to read:

18 The costs to be paid by the taxpayer shall be the
19 sum of the fees for recording and discharge of the
20 lien as established by Title 33, section 751, subsec-
21 tion 10, plus ~~\$10~~ \$15, plus the fee established by
22 section 943 for sending a notice 30 to 45 days prior
23 to the foreclosing date of the tax lien mortgage if
24 that notice is actually sent and all certified mail,
25 return receipt requested, fees. Upon redemption, the
26 municipality shall prepare and record a discharge of
27 the tax lien mortgage.

28 Sec. 6. 36 MRSA §943, 5th ¶, as repealed and
29 replaced by PL 1981, c. 29, is amended to read:

30 The municipal treasurer shall notify the party
31 named on the tax lien mortgage and each record holder
32 of a mortgage on the real estate not more than 45
33 days nor less than 30 days before the foreclosing
34 date of the tax lien mortgage, in a writing left at
35 his last and usual place of abode or sent by certi-
36 fied mail, return receipt requested, to his last
37 known address of the impending automatic foreclosure
38 and indicating the exact date of foreclosure. For
39 sending this notice, the municipality shall be enti-
40 tled to receive \$5 plus all certified mail, return
41 receipt requested, fees. These costs shall be added
42 to and become a part of the tax. If notice is not
43 given in the time period specified in this section to

1 the party named on the tax lien mortgage or to any
2 record holder of a mortgage, the person not receiving
3 timely notice shall have the right to redeem the tax
4 lien mortgage until 30 days after the treasurer does
5 provide notice in the manner specified in this
6 section.

7 STATEMENT OF FACT

8 Current property tax assessment law is very
9 unclear as to how it relates to time-share condomini-
10 ums. The purpose of this bill is to provide specific
11 and clear guidelines as to how and to whom property
12 taxes should be assessed on time-share units.

13

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