

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 1103

6
7 H.P. 853

House of Representatives, March 8, 1983

8 Submitted by the Department of Business Regulation pursuant to Joint
9 Rule 24.

10 Referred to the Committee on Business Legislation. Sent up for concur-
11 rence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Thompson of So. Portland.

12 Cosponsors: Representative Telow of Lewiston, Senator Bustin of Ken-
13 nebec and Representative MacBride of Presque Isle.

14 STATE OF MAINE
15

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

18 AN ACT to Prevent Abuses in Certain
19 Land Installment Contracts.

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

22 Sec. 1. 14 MRSA §6203-F, as enacted by PL 1967,
23 c. 544, §38, is amended to read:

24 §6203-F. Foreclosure of bond for deed and contracts
25 for sale of real estate

26 If the purchaser of real estate under a contract
27 for the sale of real estate, including a bond for a
28 deed, and a land installment contract created under
29 Title 33, chapter 8, shall be in default of any of
30 the terms of such that contract, the seller, his
31 heirs or assigns may foreclose the rights of the pur-
32 chaser in said the contract by any of the means pro-
33 vided by law for the foreclosure of mortgages, except

1 that the redemption period shall be ~~60~~ 90 days.
2 Within the redemption period, the purchaser, or a
3 person claiming under him, may apply to any Justice
4 of the Supreme Judicial Court or Superior Court for
5 an extension of time to redeem, and after such notice
6 as the court may order, for good cause shown, the
7 court may extend the redemption period to a maximum
8 of one year. An extension order shall not be binding
9 against any person without actual notice thereof
10 unless, within ~~said 60-day~~ the 90-day period, a writ-
11 ten notice describing the land, identifying the
12 instrument under which foreclosure proceedings have
13 been brought, and setting forth the fact that appli-
14 cation for extension of the redemption period has
15 been made, is recorded in the registry of deeds in
16 the county in which the land is located. This section
17 shall not be construed to extend the life of options
18 with an ascertainable time of termination. The remedy
19 afforded by this section supplements other legal
20 remedies which may be available to the seller, except
21 that the redemption period provided by this section
22 shall apply whenever the seller seeks possession of
23 the property subject to an installment land contract
24 created under Title 33, chapter 8.

25 Sec. 2. 33 MRSA c. 8 is enacted to read:

26 CHAPTER 8

27 LAND INSTALLMENT CONTRACTS

28 §481. Definitions

29 As used in this chapter, unless the context indi-
30 cates otherwise, the following terms have the follow-
31 ing meanings.

32 1. Down payment. "Down payment" means the pay-
33 ment made by the purchaser to the vendor on account
34 of the purchase price at or before the time of the
35 execution of a land installment contract.

36 2. Land installment contract. "Land installment
37 contract" means an agreement under which the vendor
38 agrees to sell an interest in property to the pur-
39 chaser and the purchaser agrees to pay the purchase
40 price in 5 or more subsequent payments exclusive of

1 the down payment, if any, and the vendor retains
2 title to the property as security for the purchaser's
3 obligation under the agreement. Land installment
4 contracts do not include option contracts for the
5 purchase of real property or purchase and sale agree-
6 ments entered into with the good faith expectation of
7 a separate transaction in which a 3rd party or the
8 seller agrees to finance the purchase price in a sin-
9 gle installment.

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

13 4. Purchaser. "Purchaser" means an individual
14 who purchases property subject to a land installment
15 contract, or any legal successor in interest to him,
16 regardless of whether the individual has entered into
17 an agreement as to extension, default or refund.

18 5. Vendor. "Vendor" means a person who makes a
19 sale of property by means of a land installment con-
20 tract or his successor in interest.

21 §482. Minimum contents of land installment contract;
22 right to cancel; duty of vendor to record;
23 formalities

24 1. Contents. A land installment contract shall be
25 executed in duplicate and a copy of the contract
26 shall be provided to the vendor and the purchaser.
27 The contract shall contain at least the following
28 provisions:

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

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

32 C. A legal description of the property conveyed;

33 D. The sales price of the property conveyed;

34 E. Any charges or fees for services included in
35 the contract separate from the sales price;

36 F. The amount of the purchaser's down payment;

- 1 G. The principal balance owed by the purchaser
2 which is the sum of the amounts described in
3 paragraphs D and E, less the amount described in
4 paragraph F;
- 5 H. The amount and due date of each installment
6 payment and the total number of installment pay-
7 ments;
- 8 I. The interest rate on the unpaid balance and
9 the method of determining the interest rate;
- 10 J. A conspicuous statement of any encumbrances
11 against the property, including a statement of
12 any pending order of any public agency or other
13 matters of public record affecting the property;
- 14 K. A statement which explains that the contract
15 is not a mortgage and that the purchaser does not
16 obtain title to the property until the purchase
17 price is paid in full;
- 18 L. A statement by the vendor which warrants that
19 at the time of the execution of the contract any
20 dwelling subject to the installment land contract
21 is fit for human habitation as that term is used
22 in Title 14, section 6021, and that the vendor
23 and purchaser have the rights and duties of a
24 landlord and tenant, respectively, as provided in
25 Title 14, section 6021, to enforce the warranty
26 of habitability, except that this paragraph shall
27 apply only when the purchaser intends to use the
28 property as his primary residence;
- 29 M. A provision that the vendor provide evidence
30 of title by copy of deed, or otherwise, at the
31 time of the execution of the agreement and, if
32 the vendor is not prepared to deliver a full war-
33 ranty deed on completion of the contract, a de-
34 scription of the deed the vendor will deliver on
35 completion;
- 36 N. A provision that, if the vendor defaults on
37 any mortgage on the property, the purchaser may
38 pay on the mortgage and receive credit on the
39 land installment contract;

1 O. A requirement that the purchaser shall be
2 responsible for the payment of taxes, assessments
3 and other charges against the property from the
4 date of the contract unless agreed to the con-
5 trary;

6 P. A provision that the purchaser has the right
7 to accelerate or prepay any installment payments
8 without penalty, unless agreed to the contrary;
9 and

10 Q. A clear and conspicuous provision above the
11 place for the signature of the purchaser which
12 acknowledges receipt by the purchaser of a copy
13 of the land installment contract signed by the
14 vendor.

15 2. Mortgages on land installment contract prop-
16 erty. No vendor may, at the time of execution of the
17 contract, hold a mortgage on property sold by a land
18 installment contract in an amount greater than the
19 balance due under the contract, except a mortgage
20 which covers real property in addition to the prop-
21 erty which is the subject of the contract where the
22 vendor has made written disclosure to the purchaser
23 of the amount of the mortgage and the release price,
24 if any, attributable to the property which is the
25 subject of the contract.

26 No vendor may, subsequent to the execution of the
27 contract, place a mortgage on the property in an
28 amount greater than the balance due on the contract
29 without the consent of the purchaser.

30 3. Recordation. Within 20 days after the con-
31 tract has been signed by both the vendor and the pur-
32 chaser, the vendor shall cause a copy of the contract
33 or a memorandum of the contract to be recorded at the
34 purchaser's expense in the registry of deeds in the
35 county where the property sold under the contract is
36 located. If a memorandum of the contract is
37 recorded, it shall be entitled "Memorandum of a Land
38 Installment Contract" and shall contain, as a mini-
39 imum, the names of the parties, the signatures of the
40 parties, a description of the property and applicable
41 time periods. A person other than a vendor and pur-
42 chaser may rely on the recorded materials in deter-

1 mining whether the requirements of this section have
2 been met.

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

6 5. Other disclosures. Disclosures made by the
7 vendor pursuant to Title 9-A, Article VIII, Truth in
8 Lending, shall be deemed to comply with subsection 1,
9 paragraphs D to I.

10 §483. Default; notice of right to cure

11 1. When notice required. In any action by the
12 vendor which seeks to regain possession of the prop-
13 erty subject to a land installment contract, whether
14 by means of contractual remedies or foreclosure
15 methods allowed by Title 14, section 6203-F, the
16 vendor shall give a written notice to the purchaser
17 which describes the default, the action necessary by
18 the purchaser to cure the default and a period of not
19 less than 30 days in which the purchaser can cure the
20 default and resume paying under the contract as
21 though no default has occurred. A notice which sub-
22 stantially conforms to Title 9-A, section 5-110 con-
23 forms with this section.

24 2. Receipt of notice. The notice shall be served
25 by the vendor or his successor in interest by handing
26 a written copy of the notice to the purchaser in
27 person, by leaving it at his usual place of abode or
28 at the property which is the subject of the contract
29 or by registered or certified mail by mailing to the
30 last known address of the purchaser.

31 §484. When foreclosure required; other remedies by
32 vendor not prohibited

33 1. When foreclosure required. If the purchaser
34 of a land installment contract has paid in accordance
35 with the terms of the contract for a period of 5
36 years or more from the date of the first payment or
37 has paid toward the purchase price a total sum equal
38 to or in excess of 20%, the vendor may recover pos-
39 session of his property only by use of a proceeding
40 for foreclosure as provided in Title 14, chapter 713,

1 and subject to the right of redemption of Title 14,
2 section 6203-F. This action may be commenced only
3 after expiration of the time periods described in
4 section 483. In such an action the proceeds of sale,
5 if any, shall be distributed as provided in Title 14,
6 section 6204-A or 6324, as applicable.

7 2. Other remedies. A proceeding under Title 14,
8 chapter 713, does not prevent the vendor or purchaser
9 from commencing a quiet title action to establish the
10 validity of a claim, nor does it prevent the vendor
11 from bringing any other action based on the contract
12 which does not seek possession of the property sub-
13 ject to the land installment contract.

14 §485. Purchase money mortgage

15 1. Right to demand grant upon execution of mort-
16 gage; expenses. If the contract fixes no earlier
17 period, when 20% or more of the original sales price
18 of the property is paid, the purchaser may demand a
19 grant of the premises described in the contract, on
20 the condition that he execute a purchase money mort-
21 gage to the vendor, or to a mortgagee procured by the
22 purchaser. If any mortgage is executed pursuant to
23 the purchaser's demand for grant under this section,
24 the purchaser is liable for the usual expenses asso-
25 ciated with the preparation and recordation of the
26 mortgage.

27 2. Payments. The periodic principal and interest
28 payments required by the mortgage may not exceed the
29 periodic principal and interest payments otherwise
30 required by the land installment contract, except
31 with the consent of the mortgagor. This consent may
32 be evidenced by the execution of a mortgage.

33 3. Covenants. The mortgagee may require the usual
34 covenants by the mortgagor for the payment of the
35 mortgage debt, taxes and insurance premiums.

36 4. Deed and mortgage supersedes land installment
37 contract. The deed and mortgage executed under this
38 section shall supersede entirely any land installment
39 contract.

1 5. Applicability. This section shall not be
2 applicable to a vendor who has sold property pursuant
3 to a land installment and in which the property is
4 subject to a mortgage as allowed in section 482, sub-
5 section 2.

6 §486. Right of purchaser to enforce this chapter

7 If a vendor fails to comply with this chapter,
8 the purchaser has the right to seek enforcement in
9 court. If the court finds that the vendor has failed
10 to comply with this chapter, the court shall grant
11 appropriate legal and equitable relief, including,
12 but not limited to, reformation, rescission, injunc-
13 tion and damages, as appropriate, and shall require
14 the vendor to assume all court costs as well as a
15 reasonable attorney's fee for the purchaser's attor-
16 ney.

17 §487. Waiver

18 1. Void. Except as otherwise provided in this
19 chapter, the buyer under a land installment contract
20 may not waive or agree to forego rights or benefits
21 under this chapter, and any such waiver or agreement
22 is void and unenforceable.

23 2. By agreement. Nothing in this chapter may
24 preclude the buyer and the seller from agreeing to
25 terms and conditions more protective of the buyer's
26 rights than the provisions of this chapter.

27 §488. Cumulative rights

28 The rights and benefits conferred on the buyer
29 under this chapter are cumulative and in addition to
30 all other rights and privileges which the buyer may
31 have under any other law or agreement.

32 §489. Application

33 This chapter shall apply to all land installment
34 contracts entered into after the effective date of
35 this chapter, except that sections 483 and 484 shall
36 apply to all contracts, whenever executed, if the de-
37 fault occurs after the effective date of this chap-
38 ter.

1

STATEMENT OF FACT

2 The purpose of this bill is to provide protection
3 for those who purchase residential property under a
4 land installment contract. A land installment con-
5 tract is not a mortgage. The purchaser does not own
6 the property until all the payments required in the
7 contract are paid in full. A land installment con-
8 tract has certain attributes of both a sales contract
9 and a lease, but most purchasers view it as another
10 form of mortgage and do not understand the legal
11 risks and benefits involved in this alternative
12 method of conveying real estate. Land installment
13 contracts have increased in popularity due to the use
14 of "creative financing." It is one form of owner
15 financing which, because it is technically not a
16 mortgage, avoids the due on sale clause in some bank
17 mortgages held by prospective sellers.

18 No statutory law now exists regarding land
19 installment contracts in this State although at least
20 the States of Maryland, Pennsylvania and Ohio have
21 these laws.

22 At present the contract is now written heavily in
23 favor of the vendor. The purchaser has full respon-
24 sibility for principal, interest, taxes, insurance,
25 plus full responsibility for maintenance, including
26 building code violations, without having title to the
27 property and without the right of offering the prop-
28 erty as collateral for a loan from a bank until the
29 final installment payment.

30 The bill adopts both a disclosure and regulation
31 approach.

32 Section 1 amends current mortgage foreclosure
33 laws to make it clear that those mortgage provisions
34 apply to land installment contracts as well. Any
35 surplus remaining after a foreclosure sale of prop-
36 erty covered by a land installment contract must be
37 treated the same as a mortgage foreclosure, returned
38 to the buyer. Most contracts require the buyer to
39 forfeit any equity in the property if default occurs.

40 Section 2 proposes a new Title 33, chapter 8,
41 which requires that:

1 Minimum information and disclosures to be con-
2 tained in the land installment contract;

3 Restrictions on the vendor's (seller's) ability
4 to mortgage the property to others during the
5 period when the consumer is making payments under
6 the contract;

7 Recording of the land installment contract in the
8 registry of deeds to protect the buyer's posi-
9 tion;

10 The vendor to give a warranty of habitability to
11 the buyer similar to the landlord-tenant law to
12 reflect the lease-like nature of the contract;

13 The vendor to give a 30-day notice to cure de-
14 fault before seeking possession of the property;
15 and

16 After the buyer has paid 20% of the contract
17 price, which is equal to the standard down pay-
18 ment, the vendor must offer a traditional mort-
19 gage to the buyer.

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