

MAINE STATE LEGISLATURE

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(New Draft of H.P. 239, L.D. 307)
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1776

H.P. 1298 House of Representatives, June 9, 1987
Reported by Representative COTE from the Committee on
Judiciary and printed under Joint Rule 2.

EDWIN H. PERT, Clerk
Original bill sponsored by Representative DORE of
Auburn. Cosponsored by Senator GAUVREAU of Androscoggin.

STATE OF MAINE

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

AN ACT to Enhance the Marketability of
Titles.

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

Sec. 1. 23 MRSA §3027, sub-§1, as enacted by PL
1981, c. 683, §2, is amended to read:

1. Vacation of ways. Where proposed town ways
have been described in a recorded subdivision plan
and lots have been sold with reference to the plan,
the municipal officers, ~~with the approval of~~ after
notice to the municipal planning board or office,
may, on their own initiative, on petition of the
abutting property owners or on petition of any person
claiming a property interest in the proposed way, va-

1 cate in whole or in part proposed ways that have not
2 been accepted. The municipal officers shall give
3 best practicable notice, as defined in section 3026,
4 subsection 2, of the proposed vacation to owners of
5 lots on the recorded subdivision plan and their mort-
6 gagees of record. The notice shall conform in sub-
7 stance to the following form:

8 NOTICE

9 (The municipal officers of) (A petition has been
10 filed with the municipal officers of) _____

11 _____ (Name of Town
12 or City)

13 (propose to) (to vacate) the following (ways)
14 (way) shown upon a subdivision plan (named)
15 (dated) (and) recorded in the
16 County Registry of Deeds,
17 Book of Plans, Volume _____, Page
18 _____.

19
20 (Herein list or describe ways to be vacated)

21 If the municipal officers enter an order va-
22 cating (these ways) (this way) any person claim-
23 ing an interest in (these ways) (this way) (ad-
24 verse to the claims of the petitioners) must,
25 within one (1) year of the recording of the or-
26 der, file a written claim thereof under oath in
27 the _____ County Registry of Deeds
28 and must, within one hundred eighty (180) days of
29 the filing of the claim, commence an action in
30 the Superior Court in _____ County in
31 accordance with the Revised Statutes Title 23,
32 section 3027-A.

33 The municipal officers shall file an order of vaca-
34 tion with the municipal clerk that specifies the lo-
35 cation of the way, the names of owners of lots on the
36 recorded subdivision plan and the amount of damages,
37 if any, determined by the municipal officers to be
38 paid to each lot owner or other person having an in-
39 terest in the way. Damages and reasonable costs as
40 determined by the municipal officers shall be paid by
41 the petitioners, if any.

1 Sec. 2. 23 MRSA §§3031 to 3035 are enacted to
2 read:

3 §3031. Public and private rights in proposed, unac-
4 cepted ways in subdivisions

5 1. Public rights. From the date of recording of
6 a subdivision plan in the registry of deeds, the pub-
7 lic acquires rights of incipient dedication to public
8 use of the ways laid out on the plan. If a proposed
9 way laid out in the plan is not accepted by the mu-
10 nicipality within 20 years from the date of recording
11 of the plan, the public rights in that way terminate.

12 2. Private rights. A person acquiring title to
13 land shown on a subdivision plan recorded in the reg-
14 istry of deeds acquires a private right-of-way over
15 the ways laid out in the plan. If a proposed, unac-
16 cepted way is not constructed within 20 years from
17 the date of recording of the plan, and if the private
18 rights created by the recording of the plan are not
19 constructed and utilized as private rights within
20 that 20-year period, the private rights-of-way in
21 that way terminate.

22 Unless title has been reserved pursuant to Title 33,
23 section 469-A, when the private rights established by
24 this subsection are terminated as provided in this
25 subsection or by order of vacation by the municipali-
26 ty, the title of the fee interest in the proposed,
27 unaccepted way for which the private rights-of-way
28 have terminated passes to the abutting property own-
29 ers to the centerline of the way.

30 3. Shorter duration of public and private
31 rights; rights of lesser extent. Notwithstanding sub-
32 sections 1 and 2, the developer or other person re-
33 cording a subdivision plan in the registry of deeds
34 may set a shorter duration for the public and private
35 rights established in subsections 1 and 2 than the
36 period provided in those subsections. The developer
37 or other person recording the subdivision plan shall
38 cause the shorter duration to be noted on the face of
39 the subdivision plan.

40 Pursuant to a subdivision review under Title 30, sec-
41 tion 4956, the municipal reviewing authority may set

1 a shorter duration for the public and private rights
2 established in subsections 1 and 2 than the period
3 provided in those subsections. The municipal review-
4 ing authority shall cause the shorter duration to be
5 noted on the face of the subdivision plan.

6 Nothing in this section may be construed to prohibit
7 the developer or other person recording a subdivision
8 plan in the registry of deeds from granting rights of
9 lesser extent than those established in subsections 1
10 and 2. If rights of lesser extent are granted, the
11 person recording the subdivision plan shall cause the
12 extent of those rights to be described on the face of
13 the subdivision plan and in any conveyance of land
14 shown on the plan.

15 4. Fee interest reserved by owner of subdivi-
16 sion. If the owner of land for which a subdivision is
17 proposed reserves the fee interest in any ways pro-
18 posed on the subdivision plan, the owner shall place
19 a statement of this reservation in all conveyances by
20 him of land in the subdivision.

21 §3032. Proposed, unaccepted ways deemed vacated

22 1. Deemed vacation. A proposed, unaccepted way
23 or portion of a proposed, unaccepted way laid out on
24 a subdivision plan recorded in the registry of deeds
25 prior to the effective date of this section shall be
26 deemed to have been subject to an order of vacation
27 under section 3027 if the way or portion of the way
28 has not been constructed or used as a way and has not
29 been accepted as a town, county or state way or high-
30 way by the later of:

31 A. Fifteen years after the date of the recording
32 of the subdivision plan laying out the way or
33 portion of the way; or

34 B. Ten years after the effective date of this
35 section.

36 A way or portion of a way considered vacated under
37 this subsection is subject to section 3033.

38 2. Extensions. The municipal officers of the af-
39 fected municipality may except a proposed, unaccepted

1 way or portion of a proposed, unaccepted way de-
2 scribed in subsection 1 from the operation of the
3 time limitations of that subsection by filing, in the
4 registry of deeds where the subdivision plan is re-
5 corded, a notice stating that the way or portion of
6 the way is excepted from the operation of subsection
7 1 for a period of 20 years from the filing of the no-
8 tice. To be effective, this exception must be filed
9 prior to the expiration of the time limitations of
10 subsection 1. An extension accomplished under this
11 subsection may be extended by the municipal officers
12 for a subsequent 20-year period by the filing of a
13 new notice within the preceding 20-year extension pe-
14 riod.

15 §3033. Rights of action concerning ways deemed va-
16 cated

17 1. Notice by person claiming ownership. Any per-
18 son claiming to own a proposed, unaccepted way or
19 portion of a proposed, unaccepted way deemed vacated
20 under section 3032 may record, in the registry of
21 deeds where the subdivision plan, to which the notice
22 set forth in this subsection pertains, is recorded, a
23 conformed copy of the notice set forth in this sub-
24 section, with an alphabetical listing of the names of
25 the current record owners of lots on the subdivision
26 plan to which the notice pertains and their mortga-
27 gees of record. The person shall give notice of his
28 claim to these current record owners and their mort-
29 gagees of record. Within 20 days of recording of the
30 notice, the person shall give this notice by mailing,
31 by the United States postal service, postage prepaid,
32 to the current record owners and mortgagees, a copy
33 of the notice set forth below:

34

NOTICE

35 By virtue of the Maine Revised Statutes, Title
36 23, section 3032, the following proposed, unac-
37 cepted ways or portions of proposed, unaccepted
38 ways were deemed by law to have been vacated by
39 the municipal officers of (name of town or
40 city). The ways or portions of ways so
41 vacated are shown on a plan (named) (dated) (and)
42 recorded in the County Registry of
43 Deeds, Book of Plans, Volume , Page

1 _____, (Folio #) and are described as fol-
2 lows:

3 (Herein list vacated ways or portions of ways)

4 The undersigned claims to own the (way or ways)
5 (portion of way or ways) described above. Any
6 person claiming an interest in (this way or these
7 ways) (a portion of this way or these ways) ad-
8 verse to the claim of the undersigned, within one
9 year from the date of recording of a copy of this
10 notice in the registry of deeds, must file a
11 written claim, under oath, in the same registry
12 and, within 180 days thereafter, must commence an
13 action in Superior Court in _____ County in
14 accordance with the Maine Revised Statutes, Title
15 23, section 3033. A copy of this notice was re-
16 corded in the registry of deeds on _____,
17 19 _____.

18 2. Rights of action by persons receiving notice.

19 All persons receiving a notice under subsection 1,
20 who claim any private right of any kind in the way or
21 portion of a way to which the notice pertains, are
22 forever barred from maintaining any action at law or
23 in equity to establish, recover, confirm or otherwise
24 enforce any right claimed to or in the way or portion
25 of a way by reason of the ownership by the person, or
26 by a predecessor in title, of a lot or parcel of land
27 shown on the recorded subdivision plan to which the
28 notice pertains, unless, within one year from the
29 date of recording of the notice, the person files in
30 the registry of deed where the pertinent subdivision
31 plan is recorded a statement, under oath, specifying
32 the nature, basis and extent of the claimed interest
33 in the way or portion of a way. The claim is forever
34 barred unless, within 180 days of the recording of
35 the statement, the claimant, or a person acting on
36 his behalf, commences an action in equity under Title
37 14, chapter 723, to establish the rights asserted to
38 or in the way or portion of a way.

39 The limitation periods in this section are not tolled
40 or interrupted by any disability, minority, lack of
41 knowledge or absence from this State by the claimant.

1 3. Trial of an action. Upon trial of an action
2 initiated under subsection 2, the court shall grant
3 judgment for the claimant only if it finds that:

4 A. The claimant has acquired an interest in the
5 way or portion of a way; and

6 B. The deprivation of the claimant's rights in
7 the way or portion of the way unreasonably limits
8 the claimant's access from his land shown on the
9 recorded subdivision plan to:

10 (1) A public way;

11 (2) A public body of water; or

12 (3) Common land or a common facility within
13 the subdivision.

14 Any judgment rendered by the court in an action under
15 subsection 2, in the discretion of the court, may
16 grant the claimant reasonable damages instead of es-
17 tablishment of the claimant's rights, except that un-
18 der no circumstances shall a municipality be liable
19 for any damages granted by any judgment rendered by
20 the court under subsection 2.

21 §3034. Structures located in proposed ways

22 1. Action to compel removal. When any structure,
23 for 20 years, has been continuously located, in whole
24 or in part, within a proposed, unaccepted way laid
25 out in a subdivision plan recorded in the registry of
26 deeds, and lots have been sold with reference to this
27 plan, no action may be maintained by any person to
28 compel removal of the structure based upon the fact
29 of its location within the proposed, unaccepted way.
30 For the purposes of this section, person includes a
31 corporation, partnership, governmental entity or oth-
32 er entity.

33 Nothing in this section may be construed to restrict
34 or affect private rights in a proposed, unaccepted
35 way which come into existence under common law, in
36 equity or under existing statutes. This section shall
37 not be construed for any reason to extend the 20-year
38 period set forth in this subsection.

1 2. Applicability. This section applies to struc-
2 tures existing and proposed, unaccepted ways laid out
3 on subdivision plans recorded in registries of deeds
4 before, on or after the effective date of this sec-
5 tion, except that:

6 A. When a structure is located within a pro-
7 posed, unaccepted way laid out on a subdivision
8 plan recorded in the registry of deeds 20 years
9 or more before the effective date of this sec-
10 tion, any person, other than the owner of the
11 structure, who claims a right or interest of any
12 kind in the land within the proposed, unaccepted
13 way, or any person claiming by, through or under
14 such a person, may preserve his right or interest
15 by recording the notice set forth in subsection
16 3, within 2 years after the effective date of
17 this section, in the registry of deeds where the
18 pertinent subdivision plan is recorded; and

19 B. When a structure is located within a pro-
20 posed, unaccepted way laid out on a subdivision
21 plan recorded in the registry of deeds less than
22 20 years before the effective date of this sec-
23 tion, any person, other than the owner of the
24 structure, who claims a right or interest of any
25 kind in the land within the proposed, unaccepted
26 way, or any person claiming by, through or under
27 such a person, may preserve his right or interest
28 by recording the notice set forth in subsection
29 3, in the registry of deeds where the pertinent
30 subdivision plan is recorded, within the later
31 of:

32 (1) Twenty years from the date of the re-
33 coding of the subdivision plan, on which
34 the way is laid out, in the registry of
35 deeds; or

36 (2) Two years after the effective date of
37 this section.

38 A person seeking to preserve a right or interest un-
39 der paragraph A or B, within one year after the re-
40 coding of the notice, shall bring an action to quiet
41 title to establish the existence and extent of his
42 claimed right or interest.

1 3. Notice. The notice required under subsection
2 2, paragraphs A and B, shall contain:

3 A. An intelligible description of the land in
4 which the right or interest is claimed;

5 B. The name and address of the person on whose
6 behalf the right or interest is claimed;

7 C. A description of the structure claimed to be
8 within the proposed, unaccepted way in which the
9 person claims a right or interest;

10 D. The name and address of the owner of the
11 structure;

12 E. A description, including specific reference,
13 by date of recording and the volume and page num-
14 bers, of the recorded instrument upon which the
15 person claims the right to or interest in the re-
16 corded source of title; and

17 F. A duly verified oath taken by the person
18 claiming the right or interest before a person
19 authorized to administer oaths.

20 4. Register's duties. In indexing a notice pre-
21 sented for recording under subsection 2, the register
22 of deeds shall make an entry:

23 A. In the grantee index of deeds under the name
24 of the person making the claim in the notice; and

25 B. In the grantor index of deeds under the name
26 of the owner of the structure described in the
27 notice.

28 The register of deeds may charge the same fee for re-
29 recording the notice that is charged for recording
30 deeds.

31 5. Who may present notice for recording. The no-
32 tice required under subsection 2 may be presented for
33 recording by the person claiming the right or inter-
34 est or a person acting on his behalf. Disability or
35 lack of knowledge by the person claiming the right or
36 interest shall not extend the time limitations relat-
37 ed to the recording of the notice.

1 6. Mailing the notice. Within 20 days of the re-
2 ording of the notice required under subsection 2,
3 the person who presented the notice for recording
4 shall deliver or mail, to the owner's last-known ad-
5 dress, a copy of the notice to the owner of the
6 structure described in the notice.

7 §3035. Construction of laws

8 Nothing in sections 3031 to 3034 may be construed
9 to extend the period for the bringing of an action or
10 for the doing of any other required act under any
11 statute of limitations. Nothing in those sections may
12 be construed to affect the nature of any right or in-
13 terest which may be claimed in property to which
14 those sections apply, or to affect the law regarding
15 the sale, release or other disposition of such a
16 right or interest.

17 Sections 3031 to 3034 shall be liberally con-
18 strued to affect the legislative purpose of enhancing
19 the merits of title to land by eliminating the possi-
20 bility of ancient claims to proposed, unaccepted,
21 unconstructed ways that are outstanding on the record
22 but unclaimed.

23 Sec. 3. 33 MRSA §460, as amended by PL 1975, c.
24 416, is repealed and the following enacted in its
25 place:

26 §460. Conveyance of land abutting a road or way

27 A conveyance of land which abuts a town or pri-
28 vate way, county road, highway or proposed, unac-
29 cepted way laid out on a subdivision plan recorded in
30 the registry of deeds shall be deemed to convey all
31 of the grantor's interest in the portion of the road
32 or way which abuts the land, except:

33 1. Proposed, unaccepted ways. With respect to a
34 proposed, unaccepted way laid out on a subdivision
35 plan recorded in the registry of deeds, those rights
36 provided to owners of other lots in the subdivision
37 by Title 23, section 3031; and

38 2. All roads and ways. With respect to a town or
39 private way, county road or highway, an easement of

1 access necessary to provide ingress and egress to
2 property adjoining the town or private way, county
3 road or highway which shall be preserved, unless the
4 grantor expressly reserves his title to the road or
5 way by a specific reference to the road or way con-
6 tained in the conveyance.

7 Sec. 4. 33 MRSa §469-A is enacted to read:

8 §469-A. Title to proposed, unaccepted ways

9 1. Reservation of title. Any conveyance made be-
10 fore the effective date of this section which con-
11 veyed land abutting upon a proposed, unaccepted way
12 laid out on a subdivision plan recorded in the regis-
13 try of deeds shall be deemed to have conveyed all of
14 the grantor's interest in the portion of the way
15 which abuts the land conveyed, unless the grantor ex-
16 pressly reserved his title to the way by a specific
17 reference to this reservation in the conveyance of
18 the land.

19 2. Intent to reserve. Any grantor who, before
20 the effective date of this section, conveyed land
21 abutting a proposed, unaccepted way laid out on a
22 subdivision plan recorded in the registry of deeds
23 with the intent to reserve title to the way, but who
24 did not expressly reserve title to the way as re-
25 quired in subsection 1, or any person who claims ti-
26 tle to the way by, through or under the grantor, may
27 preserve the grantor's claim by recording the notice
28 set forth in subsection 3, in the registry of deeds
29 where the pertinent subdivision plan is recorded,
30 within 2 years after the effective date of this sec-
31 tion.

32 3. Notice. The notice required under subsection
33 2 shall contain:

34 A. An intelligible description of the way or
35 portion of a way in which title is being claimed;

36 B. The name and address of the person on whose
37 behalf the title is being claimed;

38 C. A description, including specific reference,
39 by date of recording and the volume and page num-

1 bers, to that conveyance, of the recorded instru-
2 ment in which the person claims title to the way
3 or portion of the way which was intended to be
4 reserved; and

5 D. A duly verified oath taken by the person
6 claiming title before a person authorized to ad-
7 minister oaths.

8 4. Register's duties. The register of deeds
9 shall enter upon the margin of the recorded convey-
10 ance, described in the notice under subsection 3,
11 paragraph C, the volume and page numbers where the
12 notice is recorded.

13 The register of deeds may charge the same fee for re-
14 recording the notice that is charged for recording
15 deeds.

16 5. Who may present notice for recording. The no-
17 tice required under subsection 2 may be presented for
18 recording by the person claiming title or a person
19 acting on his behalf. Disability or lack of knowledge
20 by the person claiming title shall not extend the
21 time limitations related to the recording of the no-
22 tice.

23 6. Lack of reservation. Any person owning land
24 in this State abutting a proposed, unaccepted way or
25 portion of a proposed, unaccepted way, whose prede-
26 cessors in title had not reserved title in the way
27 under subsection 1 or 2, is deemed to own to the cen-
28 ter line of the way or portion of the way.

29 7. Action to establish title. In any action con-
30 cerning title to a proposed, unaccepted way, the bur-
31 den of proof concerning the grantor's intent to re-
32 serve title shall be on the grantor or those claiming
33 title by, through or under the grantor.

34 8. Construction of laws. Nothing contained in
35 this section may be construed to extend the period
36 for the bringing of an action or for the doing of any
37 other required act under any statute of limitations.

38 This section shall be liberally construed to affect
39 the legislative purpose of clarifying the title to

1 land underlying proposed, unaccepted ways by elimi-
2 nating the possibility of ancient claims.

3 STATEMENT OF FACT

4 This new draft is a comprehensive attempt to deal
5 with a variety of title and title marketability prob-
6 lems presented by old, proposed, unaccepted streets
7 shown on subdivision plans.

8 Section 1 of the new draft deals with proposed
9 ways that are in fact vacated by municipal officers.
10 Current law requires the municipal officers to re-
11 ceive the approval of the planning board before va-
12 cating a proposed way. The new draft amends this pro-
13 vision to require the municipal officers to notify
14 the planning board of such a vacation, rather than
15 requiring the officers to receive the board's approv-
16 al.

17 Section 2 of the new draft enacts the Maine Re-
18 vised Statutes, Title 23, sections 3031 to 3035. Sec-
19 tion 3031 describes the private and public rights
20 created in proposed, unaccepted ways by the recording
21 in the registry of deeds of a subdivision plan on
22 which these ways are laid out. The new draft also de-
23 scribes the conditions under which these rights ter-
24minate.

25 Title 23, section 3032 permits the clearing of
26 title to a proposed, unaccepted way laid out on a re-
27 corded subdivision plan when the municipality has not
28 vacated the way. The new draft states that a pro-
29 posed, unaccepted way laid out on a recorded subdivi-
30 sion plan shall be considered vacated if the way has
31 not been accepted by the later of 15 years from the
32 date of recording of the subdivision plan, or 10
33 years after the effective date of this new draft. The
34 municipality may extend the life of the proposed, un-
35 accepted way for 20 years by filing a notice in the
36 registry of deeds.

37 Title 23, section 3033 permits persons claiming
38 to own a proposed, unaccepted way considered vacated
39 to initiate a procedure that will confirm their own-

1 ership. This procedure involves recording, within a
2 set time period, a notice of their claim in the reg-
3 istry of deeds and sending this notice to all current
4 owners of lots shown on the pertinent subdivision
5 plan. Persons who receive the notice then have a set
6 time within which to institute a court action to as-
7 sert rights they claim in the way to which the notice
8 pertains. Failure to bring this action within the es-
9 tablished time period causes these claims of rights
10 to be barred. In determining whether or not to grant
11 the claimed rights, the court must determine that the
12 claimant has an interest in the way and must protect
13 the claimant's access to public ways, public bodies
14 of water and common land or facilities within the
15 subdivision.

16 Title 23, section 3034 protects the owners of
17 structures built within a proposed, unaccepted way.
18 If the structure has been within the way for at least
19 20 years, no action to compel removal may be brought.
20 This new draft creates a mechanism that permits a
21 person to protect his claim to a way when the struc-
22 ture has existed in the proposed, unaccepted way for
23 20 years or more prior to the effective date of the
24 new draft. The new draft creates a 2nd mechanism that
25 permits a person to protect his claim to a way when
26 the structure has existed in the proposed, unaccepted
27 way for less than 20 years prior to the effective
28 date of the new draft.

29 Title 23, section 3036 concerns how the Maine Re-
30 vised Statutes, Title 23, sections 3031 to 3035 are
31 to be construed.

32 Section 3 of this new draft specifies what rights
33 in proposed, unaccepted ways are preserved upon the
34 conveyance of land abutting these ways.

1 Section 4 makes it clear that a grantor must ex-
2 pressly reserve title to a way laid out on a subdivi-
3 sion plan if that is his intent. For a grantor who
4 intended to make this reservation, but failed to do
5 so expressly in a conveyance of abutting land, this
6 section provides a mechanism for asserting that in-
7 tent and establishing a reservation.

8

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