

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 745

H.P. 548

House of Representatives, March 9, 1989

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative CONLEY of Portland.

STATE OF MAINE

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

An Act to Clarify the Provisions of the Act to Protect Elderly, Infirm
Persons from Improvident Transfers of Title to Property.



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

3 Sec. 1. 33 MRSA §1021, sub-§6 is enacted to read:

5 6. Transfer. "Transfer" does not include testamentary
7 transfers, which are outside the scope of this chapter.

9 Sec. 2. 33 MRSA §1023, sub-§§1 and 2, as enacted by PL 1987, c.
699, §1, are amended to read:

11 1. Civil action. A civil action may be brought to obtain
13 relief under this chapter by an elderly dependent person or that
person's legal representative.

15 2. Relief available; protected transfers. When a court
17 finds that a transfer of property was the result of undue
19 influence, it shall grant appropriate relief enabling the elderly
21 dependent person to avoid the transfer, including the rescission
23 or reformation of a deed or other instrument, the imposition of a
constructive trust on property or an order enjoining use of or
entry on property or commanding the return of property. When the
court finds that undue influence is a good and valid defense to a
transferee's suit on a contract to transfer the property, the
court shall refuse to enforce the transfer.

25 No relief obtained or granted under this section may in any way
27 affect or limit the rights right, title and interest of good
29 faith purchasers, mortgagees, holders of security interests or
other 3rd parties who obtain an interest in the transferred
property for value after its transfer from the elderly dependent
31 person. No relief obtained or granted under this section may
33 affect any mortgage deed to the extent of value given by the
mortgagee.

35 Sec. 3. 33 MRSA §1025 is enacted to read:

37 §1025. Title practices

39 This chapter does not require that language showing
41 compliance with this chapter be included in a deed and does not
43 require that evidence of compliance with this chapter be recorded
in the registry of deeds. Any attempt to record such evidence is
void and has no effect on title.

45 Sec. 4. Application. This Act applies only to transfers of
47 property that occur on or after the effective date of this Act.

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STATEMENT OF FACT

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5 This bill amends the laws to protect elderly, infirm persons
7 from improvident transfers of title to property. The purpose of
9 this bill is to clarify the application of the law with respect
to certain transfers, to identify which individuals have standing
to bring suit and to define what impact the law has on standards
for certifying title.

11 First, the Maine Revised Statutes, Title 33, section 1021,
13 subsection 6, is added to the law to exclude from the law all
15 testamentary transfers, since such transfers are already covered
by the Probate Code and case law.

17 Second, Title 33, section 1023, subsection 1, clarifies that
19 only an elderly dependent person may bring suit under this law.
21 This change makes it clear that the 3rd parties, such as
23 relatives who stand to inherit from an elderly dependent person,
have no standing to sue. It also allows legal representatives of
an elderly dependent person, such as a guardian, conservator,
guardian ad litem or agent under a power of attorney, to bring
suit on behalf of the elderly dependent person.

25 Third, Title 33, section 1023, subsection 2, clarifies the
27 protection afforded good faith purchasers, mortgagees, holders of
29 security interests and other 3rd parties who obtain an interest
31 in the transferred property for value after its transfer from an
elderly dependent person. As the law currently reads, the rights
of such 3rd parties are not affected or limited by relief
33 obtained or granted under the law. It replaces the word rights
35 with the words title and interest. It enables title examiners to
certify title without having to determine whether previous
transfers of the same property took place under the circumstances
defined in the law.

37 Finally, the proposed addition of Title 33, section 1025,
39 makes it clear that the law does not require title examiners to
follow new title practices.