

# 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)



# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

---

Legislative Document

No. 798

H.P. 555

House of Representatives, February 25, 1991

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 MARSANO of Belfast.

Cosponsored by Senator HOLLOWAY of Lincoln, Representative OTT of York and Representative HASTINGS of Fryeburg.

---

STATE OF MAINE

---

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-ONE

---

**An Act to Amend the Power of Sale Foreclosure Laws.**

---



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

2  
3 Sec. 1. 14 MRSA §6203-A, first ¶, as amended by PL 1987, c.  
4 667, §14, is further amended to read:

6 Any mortgagee holder of a mortgage on real estate of that  
7 secures a loan extended to a corporation having--a--mortgage  
8 containing, partnership, trust, cooperative or association or  
9 secures a loan primarily for business, commercial or agricultural  
10 purposes and contains a power of sale, or his the assignee of the  
11 holder, or a person authorized by the power of sale, or the  
12 attorney duly authorized by a writing under seal, or the person  
13 acting in the name of such the mortgagee or person, may, upon  
14 breach of condition and without action, do all the acts  
15 authorized or required by the power; but no a sale under such the  
16 power shall-be is not effectual to foreclose a mortgage unless,  
17 previous to such the sale, notice thereof has been published once  
18 in each of 3 successive weeks, the first publication to be not  
19 less than 21 days before the day of the sale in a newspaper of  
20 general circulation in the town where the land lies. This  
21 provision shall-be is implied in every power of sale mortgage in  
22 which it is not expressly set forth. A copy of said the notice  
23 shall must be served on the mortgagor or its representative in  
24 interest, or may be sent by registered mail addressed to it or  
25 such the representative at its last known address, or to such the  
26 person and to such the address as may be agreed upon in said the  
27 mortgage, at least 21 days before the date of the sale under the  
28 power in the mortgage. The power of sale may not be used to  
29 foreclose on the principal dwelling of any mortgagor who is a  
30 natural person.

32 Sec. 2. 14 MRSA §6204, 3rd ¶, as amended by PL 1967, c. 424,  
33 §3, is further amended to read:

34  
35 The mortgagor or those claiming under him--shall the  
36 mortgagor have the right to redeem the mortgaged premises from  
37 any or all sales thereof of the mortgaged premises under and by  
38 virtue of authority and power contained in such the mortgage or  
39 from any sale of the mortgaged premises under or by virtue of a  
40 separate instrument executed at or about the same time with the  
41 mortgage, and being a part of the same transaction, by paying or  
42 tendering to the mortgagee or to those claiming under him the  
43 mortgage as appears by record at the registry of deeds where the  
44 mortgage is properly recorded, the debt, interest, costs of  
45 foreclosure and other obligations provided in the mortgage, at  
46 any time within one year from the date of such the sale. Nothing  
47 herein shall apply in this section applies to a sale under the  
48 statutory power of sale in a separate mortgage as provided for  
49 in sections 6203-A to 6203-E, to railroad mortgages, so called,  
50 or to bond issues of corporations, or to bonds forming a part of  
a mortgage indebtedness of any corporation or corporations

2 wherein the method of sale is provided in the deed of trust or  
any similar instrument.

4 Sec. 3. 33 MRSA §501-A, first ¶, as enacted by PL 1967, c. 424,  
§4, is amended to read:

6 The following "power" shall be is known as "The Statutory  
8 Power of Sale" and may be included in any mortgage or  
incorporated by reference in any mortgage wherein that secures a  
10 loan extended to a corporation is--the-mortgagor, partnership,  
12 trust, cooperative or association or a loan that is primarily for  
14 business, commercial or agricultural purposes, provided that the  
power of sale is not used to foreclose on the principal dwelling  
of any mortgagor who is a natural person.

16  
18 **STATEMENT OF FACT**

20 Under current law, foreclosure by power of sale is possible  
22 only when the mortgagor is a corporation. However, a great many  
commercial real estate deals in the 1980's were structured as  
24 partnerships or trusts and there is no reason why these entities  
should be treated differently than corporations under the  
26 foreclosure laws. This bill extends the scope of the power of  
sale law to encompass all mortgages securing commercial loans,  
28 except that the power of sale may not be used to foreclose on the  
principal dwelling of a mortgagor who is a natural person.