

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

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Legislative Document

No. 1764

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H.P. 1208

House of Representatives, May 1, 1991

Reference to the Committee on Housing and Economic Development suggested and ordered printed.

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

EDWIN H. PERT, Clerk

Presented by Representative LARRIVEE of Gorham.

Cosponsored by Representative HOGLUND of Portland, Representative MITCHELL of Vassalboro and Representative HEESCHEN of Wilton.

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STATE OF MAINE

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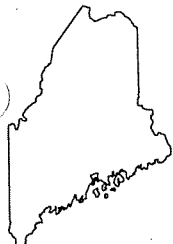
IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-ONE

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**An Act to Promote Affordable Housing for Persons of Low to Moderate  
Income.**

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(EMERGENCY)



2           **Emergency preamble.** Whereas, Acts of the Legislature do not  
become effective until 90 days after adjournment unless enacted  
as emergencies; and

4           Whereas, opportunities now exist to provide affordable  
6 housing to the citizens of the State who will benefit from this  
Act; and

8           Whereas, in the judgment of the Legislature, these facts  
10 create an emergency within the meaning of the Constitution of  
Maine and require the following legislation as immediately  
12 necessary for the preservation of the public peace, health and  
safety; now, therefore,

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

16                   33 MRSA c. 6 is enacted to read:

18                                   CHAPTER 6

20   AFFORDABLE HOUSING COVENANTS

22                   §121. Definitions

24                   As used in this chapter, unless the context otherwise  
26 indicates, the following terms have the following meanings.

28                   1. Affordable housing covenant. "Affordable housing  
30 covenant" means any agreement among one or more owners and  
32 tenants of residential real estate and one or more qualified  
holders that permits a qualified holder to control, either  
34 directly or indirectly, the purchase price of residential housing  
for the primary purpose of providing that the housing remains  
affordable to lower income and moderate-income households.

36                   2. Lower income and moderate-income households. "Lower  
38 income and moderate-income households" means very low-income,  
low-income and moderate-income households as defined in the  
40 Affordable Housing Partnership Act of 1989.

42                   3. Qualified holder. "Qualified holder" means a  
44 governmental entity empowered to hold an interest in real  
46 property under the laws of this State or the United States or a  
48 nonprofit organization whose purposes include the provision of  
50 affordable housing or the increasing of affordable housing  
opportunities for lower income or moderate-income households and  
52 also includes governmental or quasi-governmental entities such as  
public housing authorities, community action agencies or other  
similar nonprofit or governmental entities committed to providing  
opportunities for lower income or moderate-income households to  
obtain affordable housing.

2                   **§122. Creation; conveyance; acceptance; duration**

4                   **1. Affordable housing covenant.** Except as otherwise  
6                   provided in this chapter, an affordable housing covenant may be  
8                   created, conveyed, recorded, assigned, released, modified,  
10                   terminated or otherwise altered or affected in the same manner as  
12                   other covenants created by written instrument.

14                   **2. Right or duty.** A right or duty in favor of or against a  
16                   qualified holder may not arise under an affordable housing  
18                   covenant unless it is accepted by the qualified holder.

20                   **3. Limitation.** Except as provided in this chapter, an  
22                   affordable housing covenant is unlimited in duration unless:

24                   **A. The instrument creating it provides otherwise; or**

26                   **B. A change of circumstances renders the affordable housing**  
28                   **covenant no longer in the public interest as determined in**  
30                   **an action under section 123, subsection 3.**

32                   **4. Interest.** An interest in real property in existence at  
34                   the time that an affordable housing covenant is created is not  
36                   impaired by the affordable housing covenant unless the owner of  
38                   the interest is a party to the affordable housing covenant.

40                   **5. Right to enter land.** The instrument creating an  
42                   affordable housing covenant must designate the manner in which  
44                   and the times when representatives of the holder of an affordable  
46                   housing covenant are entitled to enter the real property to  
48                   assure compliance.

50                   **§123. Judicial actions**

52                   **1. Owners; qualified holders.** An action affecting an  
54                   affordable housing covenant may be brought or intervened in by:

56                   **A. An owner of an interest in the real property burdened by**  
58                   **the covenant; or**

60                   **B. A qualified holder of the benefit of the affordable**  
62                   **housing covenant.**

64                   **2. State; political subdivision.** An action affecting an  
66                   affordable housing covenant may be intervened in by the State or  
68                   a political subdivision of the State in which the real property  
70                   burdened by the covenant is located.

72                   **3. Power of court.** This chapter does not affect the power  
74                   of a court to enforce an affordable housing covenant by  
76                   injunction or proceeding in equity or to modify or terminate an  
78                   affordable housing covenant in accordance with principles of law

2 and equity. A court may deny equitable enforcement of an  
4 affordable housing covenant when it finds that a change of  
6 circumstances has rendered that covenant no longer in the public  
8 interest. If the court so finds, the court may allow damages as  
10 the only remedy in an action to enforce the affordable housing  
12 covenant.

14 A comparative economic test may not be used to determine under  
16 this subsection if an affordable housing covenant is in the  
18 public interest.

20 **§124. Scope of affordable housing covenant**

22 An affordable housing covenant may include any of the  
24 following agreements affecting residential real estate:

26 1. Resale price of residential real estate. To limit the  
28 resale price of residential real estate;

30 2. Amount of equity appreciation. To limit the amount of  
32 equity appreciation that a landowner may derive from ownership of  
34 residential real estate;

36 3. Improvements to residential real estate. To limit the  
38 extent or dollar value of improvements that may be made to  
40 residential real estate;

42 4. Class of persons to whom residential real estate may be  
44 sold. To restrict the class of persons to whom residential real  
46 estate may be sold or leased, as long as that restriction does  
48 not discriminate based upon race, color, sex, physical or mental  
50 handicap, religion, ancestry or national origin and does not  
otherwise contravene the Constitution of Maine or the United  
States Constitution;

5. Options to purchase. To grant rights of first refusal  
or options to purchase to qualified holders;

6. Maintenance and insurance of residential real estate.  
To maintain and insure residential real estate;

7. Right of qualified holders to enter and inspect. To  
provide to qualified holders the right to periodic entry and  
inspection of residential real estate at reasonable times and  
after reasonable notice;

8. Construction and materials. To restrict, limit or  
specify types of construction and materials that may be used in  
the construction of or improvements to residential real estate;  
and

2        9. Acts that may enhance affordability of residential real  
3        estate. To prohibit, limit or require other acts that may  
4        enhance the affordability of residential real estate over time to  
5        lower income or moderate-income households.

6        §125. Validity

8        An affordable housing covenant is valid and enforceable even  
9        when any of the following apply.

10       1. Not appurtenant to interest in real property. The  
11       affordable housing covenant is not appurtenant and does not run  
12       with an interest in real property.

13       2. Assignable to another holder. The affordable housing  
14       covenant can be or has been assigned to another qualified holder.

15       3. Not recognized at common law. The affordable housing  
16       covenant is not of a character traditionally recognized at common  
17       law.

18       4. Imposes a negative burden. The affordable housing  
19       covenant imposes a negative burden.

20       5. Imposes affirmative obligations. The affordable housing  
21       covenant imposes affirmative obligations upon the owner of an  
22       interest in the burdened property or upon the qualified holder.

23       6. Benefit does not touch or concern real property. The  
24       benefit of the affordable housing covenant is held by a qualified  
25       holder who has not retained property that would benefit from  
26       enforcement of the affordable housing covenant against the  
27       burdened property, or the benefit does not touch or concern real  
28       property in any other way.

29       7. No privity of estate or contract. There is no privity  
30       of estate or privity of contract.

31       8. Does not run to successors or assigns. The affordable  
32       housing covenant does not run to the successors or assigns of the  
33       qualified holder.

34       9. Unreasonable restraint on alienability. The affordable  
35       housing covenant may be construed by a court to be an  
36       unreasonable restraint on alienability.

37       10. In violation of rule against perpetuities. The  
38       affordable housing covenant may be construed by a court to  
39       violate the rule against perpetuities.

40

2 §126. Application

4 1. Interest created after effective date. This chapter  
6 applies to any interest that complies with this chapter created  
8 after the effective date of this chapter, whether designated as  
10 an affordable housing covenant or an equitable servitude,  
12 restriction easement or other interest.

14 2. Affordable housing covenant created before effective  
16 date. This chapter applies to any affordable housing covenant  
18 created before the effective date of this chapter if the  
20 affordable housing covenant would have been enforceable had it  
22 been created after the effective date of this chapter, unless  
24 retroactive application contravenes the Constitution of Maine or  
26 the United States Constitution.

28 3. Chapter does not invalidate interest. This chapter does  
30 not invalidate any interest, whether designated as an affordable  
32 housing covenant or an equitable servitude, restriction, easement  
34 or other interest, that is enforceable under other laws of this  
State.

**Emergency clause.** In view of the emergency cited in the  
preamble, this Act takes effect when approved.

**STATEMENT OF FACT**

The purpose of this bill is to facilitate the creation of  
agreements that promote affordable housing in the State. Among  
other things, the bill removes common law defenses that could  
impede the use of covenants that are intended to enhance the  
affordability of housing.