## MAINE STATE LEGISLATURE

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(Filing No. H-1114)

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## STATE OF MAINE HOUSE OF REPRESENTATIVES 115TH LEGISLATURE SECOND REGULAR SESSION

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COMMITTEE AMENDMENT "A" to H.P. 1556, L.D. 2194, Bill, "An Act to Clarify the Law Regarding the Power of Sale Foreclosure Laws"

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Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

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'Sec. 1. 14 MRSA  $\S6203$ -A, first  $\P$ , as amended by PL 1991, c. 134,  $\S1$ , is further amended to read:

Any holder of a mortgage on real estate that seeures-a-lean primarily--for--business,---commercial--or--agricultural--purposes extended-to is granted by a corporation, partnership or trustee of a trust and that contains a power of sale, er-the-assignee-ef the-helder, or a person authorized by the power of sale, or the an attorney duly authorized by a writing under seal, or the a person acting in the name of the mertgagee holder of such mortgage or any such authorized person, may, upon breach of condition and without action, do all the acts authorized or required by the power; but a sale under the power is not effectual to foreclose a mortgage unless, previous to the sale, notice has been published once in each of 3 successive weeks, the first publication to be not less than 21 days before the day of the sale in a newspaper of general circulation in the town where the land lies. This provision is implied in every power of sale mortgage in which it is not expressly set forth. A copy of the notice must be served on the mortgagor or its representative in interest, or may be sent by registered mail addressed to it or the representative at its last known address, or to the person and to the address as may be agreed upon in the mortgage, at least 21 days before the date of the sale under the power in the mortgage. The power of sale may not be used to foreclose on the primary-residence-of-any-mortgagor-who-is-a-natural-person- Any

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power of sale incorporated into a mortgage executed-after-October

1,--1991 is not affected by the subsequent transfer of the
mortgaged premises from a- such corporation, partnership or

trustee of a trust to any other type of organization or to an
individual or individuals. This paragraph is repealed October 1,

1993.

Sec. 2. 14 MRSA §6203-A, as amended by PL 1991, c. 134, §1, is further amended by adding after the first paragraph a new paragraph to read:

Any holder of a mortgage on real estate that secures a loan primarily for business, commercial or agricultural purposes extended to a corporation, partnership or trust and contains a power of sale, or the assignee of the holder, or a person authorized by the power of sale, or the attorney duly authorized by a writing under seal, or the person acting in the name of the mortgagee or person, may, upon breach of condition and without action, do all the acts authorized or required by the power; but a sale under the power is not effectual to foreclose a mortgage unless, previous to the sale, notice has been published once in each of 3 successive weeks, the first publication to be not less than 21 days before the day of the sale, in a newspaper of general circulation in the town where the land lies. This provision is implied in every power of sale mortgage in which it is not expressly set forth. A copy of the notice must be served on the mortgagor or its representative in interest, or may be sent by registered mail addressed to it or the representative at its last known address, or to the person and to the address as may be agreed upon in the mortgage, at least 21 days before the date of the sale under the power in the mortgage. The power of sale may not be used to foreclose on the primary residence of any mortgagor who is a natural person. Any power of sale incorporated into a mortgage executed after October 1, 1991 is not affected by the subsequent transfer of the mortgaged premises from a corporation, partnership or trust to any other type of organization or to an individual or individuals. This paragraph takes effect October 1, 1993.

Sec. 3. 33 MRSA  $\S 501$ -A, first  $\P$ , as amended by PL 1991, c. 134,  $\S 3$ , is further amended to read:

The following "power" is known as "The Statutory Power of Sale" and may be included in any mortgage or incorporated by reference in any mortgage that—secures—a loan—primarily—for business,—commercial—or—agricultural—purposes—extended—to granted by a corporation, partnership or trustee of a trust, provided that—the—power—of—cale—is—net—used—to—foreclose—of—the primary residence—of—any—mortgager—who—is—a—natural—person. This paragraph is repealed October 1, 1993.

2	Sec. 4. 33 MRSA §501-A, as amended by PL 1991, c. 134, §3, i.
	further amended by adding after the first paragraph a ne
4	paragraph to read:
6	The following "power" is known as "The Statutory Power of the Statut
8	Sale" and may be included in any mortgage or incorporated by reference in any mortgage that secures a loan primarily for
	business, commercial or agricultural purposes extended to
10	corporation, partnership or trust, provided that the power or sale is not used to foreclose on the primary residence of any
12	mortgagor who is a natural person. This paragraph takes effect
	October 1, 1993.'
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<b>1</b> 6	STATEMENT OF FACT
18	This amendment makes technical changes to the bill. The bill as amended removes the restrictions on the use of a power of
20	sale in mortgages added in 1991. Prior to last year, a power of
22	sale could be incorporated into a mortgage only if the mortgagor was a corporation. Public Law 1991, chapter 134 amended the law to allow a power of sale in mortgages granted by partnerships and
24	trusts as well as corporations, but 2 restrictions were added. First, the mortgage had to be primarily for business, commercial
26	or agricultural purposes. Second, a power of sale could not be used to foreclose on the primary residence of a mortgagor who is
28	a natural person. This latter restriction is of little value because the mortgagor who grants a mortgage containing a power of
30	sale must be a corporation, business or trust and not a natural person.
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34	This amendment removes both those restrictions because of the title problems apparently caused by retaining the language.
7 <del>4</del>	This amendment repeals the changes made by this amendment in 1993
36	to give lawyers who practice in this area of the law the
38	incentive to redraft this provision in the law and to provide adequate protection from use of the power of sale to foreclose a mortgage on a natural person's primary residence.

This amendment is not intended to affect any power of sale incorporated into a mortgage granted prior to October 1, 1991.

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Reported by the Committee on Judiciary.
Reproduced and distributed under the direction of the Clerk of the House.
(3/13/92) (Filing No. H-1114)

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## COMMITTEE AMENDMENT