

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

SECOND REGULAR SESSION-1992

Legislative Document

No. 2194

H.P. 1556

House of Representatives, January 23, 1992

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.
Reference to the Committee on Judiciary suggested and ordered printed.

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

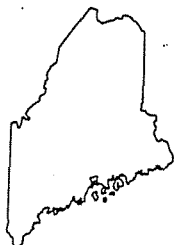
EDWIN H. PERT, Clerk

Presented by Representative PARADIS of Augusta.

STATE OF MAINE

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

**An Act to Clarify the Law Regarding the Power of Sale Foreclosure
Laws.**



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

2
4 **Sec. 1. 14 MRSA §6203-A, first ¶**, as amended by PL 1991, c. 134, §1, is further amended to read:

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

34 **Sec. 2. 33 MRSA §501-A, first ¶**, as amended by PL 1991, c. 134,
35 §3, is further amended to read:

36 The following "power" is known as "The Statutory Power of
37 Sale" and may be included in any mortgage or incorporated by
38 reference in any mortgage that ~~secures a loan primarily for~~
39 ~~business, commercial or agricultural purposes extended to~~ of a
40 corporation, partnership or trust, ~~provided that the power of~~
41 ~~sale is not used to foreclose on the primary residence of any~~
42 ~~mortgagor who is a natural person~~ when the corporation,
43 partnership or trust is the mortgagor.
44

STATEMENT OF FACT

2

4

In the First Regular Session of the 115th Legislature, the Legislature made certain changes to the law in an attempt to expand the right to foreclose by power of sale from corporations to other entities such as partnerships or trusts.

6

8

10

The change in the law has raised problems with title examinations by requiring persons to look behind the purpose of the loan at a later date to determine if the original mortgage was primarily for a business, commercial or agricultural purpose.

12

14

In addition, the new law raises a question about prior law regarding a transfer of mortgaged premises from a corporation to an individual.

16

18

The bill clarifies when a power of sale is effective and avoids affecting transactions entered into prior to the effective date of the law. It also discourages a person from moving into commercial building simply to avoid the foreclosure.

20