

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

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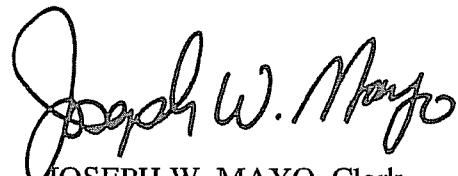
No. 749

H.P. 553

House of Representatives, March 2, 1993

An Act to Provide for Affordable Cooperative Housing in the State.

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


JOSEPH W. MAYO, Clerk

Presented by Representative MITCHELL of Vassalboro.
Cosponsored by Representatives: BRENNAN of Portland, PFEIFFER of Brunswick, ROWE of Portland, Senators: CONLEY of Cumberland, HARRIMAN of Cumberland, PINGREE of Knox.

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

Sec. 1. 30-A MRSA c. 215 is enacted to read:

CHAPTER 215

COOPERATIVE HOUSING OWNERSHIP

§5431. Short title

This chapter may be known and cited as the "Maine Cooperative Housing Ownership Act."

§5432. Definitions

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

1. Conversion. "Conversion" means a change in character of residential real property from a rental to an ownership basis. Creation of a cooperative housing corporation to own property formerly rented for dwelling purposes is deemed to be such a change in character.

2. Cooperative housing corporation. "Cooperative housing corporation" means a domestic corporation that elects to be governed by the provisions of this chapter.

3. Cooperative interest. "Cooperative interest" means the ownership interest in a cooperative housing corporation that is evidenced by a membership share.

4. Cooperative property. "Cooperative property" means the real and personal property, including mobile and manufactured homes, in this State owned or leased by a cooperative housing corporation for the primary purpose of residential use.

5. Lender. "Lender" includes banks, the Maine State Housing Authority and other financial institutions.

6. Limited equity cooperative. "Limited equity cooperative" means a cooperative housing corporation organized in accordance with section 5445.

7. Limited equity formula. "Limited equity formula" means a rule or method for determining the transfer value of a share in a limited equity cooperative.

8. Low income. "Low income" means income that is less than or equal to 80% of median income for the area, adjusted for

2 family size, in accordance with federal standards generally
4 accepted at the time of incorporation under this Act and
6 comparable to standards of the federal Department of Housing and
8 Urban Development in existence on the effective date of this
10 section.

12 9. Member. "Member" means a person who owns a cooperative
14 interest who is entitled to voting rights as prescribed in
16 section 5443.

18 10. Moderate income. "Moderate income" means income that
20 is less than or equal to 100% of median income for the area,
22 adjusted for family size, in accordance with standards generally
24 accepted at the time of incorporation under this Act and
26 comparable to standards of the federal Department of Housing and
28 Urban Development in existence on the effective date of this
30 section.

32 11. Proprietary lease. "Proprietary lease" means an
34 agreement with a cooperative housing corporation governing a
36 member's right to occupancy under which a member has an exclusive
38 possessory interest in a unit.

40 12. Resident. "Resident" means any occupant of space owned
42 by the cooperative housing corporation.

44 13. Share loan. "Share loan" means an agreement entered
46 into by a member and a lender to finance the member's acquisition
48 of the member's cooperative interest.

50 14. Subscription agreement. "Subscription agreement" means
52 a written agreement between a prospective member and a
54 cooperative housing corporation for the purchase and sale of a
56 cooperative interest.

58 15. Unit. "Unit" means a portion of the cooperative
60 property leased for exclusive occupancy by a member under a
62 proprietary lease or leased to a tenant by lease agreement.

64 §5433. Application

66 Any corporation organized under the Maine Nonprofit
68 Corporation Act may elect to be governed as a cooperative housing
70 corporation under the provisions of this chapter and, except as
72 otherwise provided in this chapter, cooperative housing
74 corporations in the State have all the rights, privileges and
76 powers established in Title 13-B. It is the intent that such
78 corporations qualify as cooperative housing corporations under
80 federal law.

2 §5434. Name; use of "cooperative"

4 The use of the terms "cooperative housing," "housing
6 cooperative," "cooperative apartments" or any variants of those
8 terms in identification of dwelling units is reserved to
10 cooperative housing corporations organized under this chapter. A
12 person, firm, corporation or association, domestic or foreign,
14 commencing business in this State after the effective date of
16 this section may not use the word "cooperative" or "co-op" as a
18 part of its corporate name unless it has complied with this
20 chapter or any other law of this State relating to cooperative
22 associations. A foreign association organized under and
24 complying with the cooperative laws of the state in which it was
26 created is entitled to use the term "cooperative" or "co-op" in
28 this State if it has obtained the privilege of doing business in
30 this State pursuant to this chapter.

32 §5435. Property classification of cooperative interest

34 1. Personal property. A cooperative interest is personal
36 property.

38 2. Nonseverable interest. The possessory interest
40 evidenced by a proprietary lease is a part of and may not be
42 severed from a cooperative interest.

44 §5436. Perfection of security interests in cooperative interests

46 1. Uniform Commercial Code applies. The attachment,
48 perfection and enforceability of a security interest in a
50 cooperative interest are governed by Title 11, article 9.

2. Notation of secured party. Upon the request of a
secured party, a cooperative housing corporation shall note on
its books and records the interest of the secured party in a
cooperative interest. Such a request or notation is not required
in order to perfect a security interest in a cooperative interest.

§5437. Articles of incorporation; minimum requirements

Articles of incorporation of a cooperative housing
corporation must contain the following provisions in addition to
those required by Title 13-B:

1. One class of stock. A statement that the cooperative
housing corporation has only one class of stock;

2. Restrictions on transfers. A statement of restrictions,
if any, upon transfers of shares;

2 3. Rate of dividend. The rate of dividend, if any,
allocable to membership shares, which may not exceed 6% per annum
on invested capital;

4
6 4. Acquire membership. Reservation of the right of the
cooperative housing corporation to acquire membership shares;

8 5. Distribution upon dissolution. The basis for
distribution of assets in the event of dissolution;

10 6. Allocation of ownership and voting interests. The
method of allocation of ownership and voting interests in the
cooperative housing corporation; and

12 7. Right of first refusal. The conditions, if any, under
which the cooperative housing corporation has a right of first
refusal upon proposed transfers of cooperative interest.

14
16
18 **§5438. Organization meeting**

20 Within 6 months after the first conveyance of a share to a
22 member, an organization meeting of the cooperative housing
24 corporation must be held for the purpose of adopting bylaws,
electing officers and transacting such other business as may come
before the meeting.

26 **§5439. Minimum occupancy requirement**

28 At least 80% of a cooperative housing corporation's occupied
30 units must be occupied by members.

32 **§5440. Membership**

34 1. Capital stock. A cooperative housing corporation must
be organized on a membership basis with capital stock.

36 2. Requirements. A cooperative housing corporation must
38 have one class of stock and one class of members, all of whom
must be residents except as provided in this chapter. The
40 designation, qualifications, requirements, method of acceptance
and incidents of membership must be set forth in the articles of
42 incorporation or the bylaws.

44 3. Transfers. A member may not transfer membership except
as permitted in the articles of incorporation or the bylaws.

46 4. Termination. The bylaws may provide for termination of
48 membership and the conditions and terms of termination.

2 §5441. Bylaws; minimum requirements

4 The bylaws of a cooperative housing corporation must contain
6 procedures under which the cooperative housing corporation's
8 possessory remedy must be pursued in the event of a member's
10 default and the rights of a defaulting member, in accordance with
12 section 5546, subsection 2.

14 §5442. Membership shares; requirements

16 A cooperative housing corporation shall issue shares to its
18 members as evidence of their ownership of a cooperative
20 interest. The shares must be in a form prescribed in the
22 articles of incorporation or bylaws of the cooperative housing
24 corporation. Restrictions upon transfers of shares must be noted
26 on the face of the certificates representing shares. Membership
28 shares may not be issued under this section and proprietary
30 leases may not be issued under section 5446 prior to issuance of
32 a certificate of incorporation as a cooperative housing
34 corporation.

36 §5443. Voting

38 1. One vote per member. Except as provided in subsection
40 6, the votes in a cooperative housing corporation must be
42 assigned so that each member has one vote.

44 2. Residents only. Voting authority may not be assigned to
46 nonresidents.

48 3. Nonmembers on board. Nonmembers may be elected by the
50 membership of the cooperative housing corporation to serve on the
board of directors of the cooperative housing corporation, except
that no more than 1/3 of the directors may be nonmembers.

4. Proxy voting. Voting by proxy may be permitted in
cooperative housing corporations, subject to the following
limitations: Proxies must be assigned to members and no more
than one proxy may be voted by any member on any question.

5. Absentee ballots. Voting by absentee ballots may be
permitted in cooperative housing corporations.

6. Alternative voting scheme. Notwithstanding subsection
1, a cooperative housing corporation not organized as a limited
equity cooperative pursuant to section 5445 may adopt in its
articles of incorporation or bylaws a voting scheme other than
one vote per member, except that decisions to merge a cooperative
housing corporation with another entity, to dissolve it or to
amend its articles of incorporation or bylaws must be made on the
basis of one vote per member.

2 **§5444. Merger; consolidation**

4 Cooperative housing corporations may not engage in mergers
6 or consolidation if such an action is undertaken for the purpose
 of circumventing section 5445, 5448, 5449 or 5452.

8 **§5445. Limited equity cooperatives**

10 A cooperative housing corporation may organize as a limited
12 equity cooperative in order to fulfill the public purpose of
14 providing and preserving housing for persons and households of
 low income and moderate income at the time that they purchase
16 their memberships. In addition to safeguarding the public
 purpose, a limited equity cooperative must meet the following
 requirements.

18 **1. Sale of interest based on limited equity formula.** The
20 articles of incorporation must require that cooperative interests
22 be sold at no more than a transfer value determined by a limited
24 equity formula contained in the articles. That value must be
 consistent with the object of maintaining long-term affordability
 of cooperative interests for persons or households of low income
 and moderate income.

26 **2. Maintenance of affordability.** A limited equity formula,
28 once established by a cooperative housing corporation in its
30 articles of incorporation, may be amended only if that amendment
32 does not make the cooperative membership unaffordable for the
34 class of low-income or moderate-income households for which the
 cooperative housing corporation was originally incorporated, as
 determined and certified by the Executive Director of the Maine
 State Housing Authority. A cooperative housing corporation once
 organized under this section may not reorganize as other than a
 limited equity cooperative without first dissolving.

36 **3. Uphold public purpose.** A limited equity cooperative may
38 not sell all or substantially all of its assets if such sale is
40 intended to circumvent the public purpose of this section.

42 **4. Right to repurchase.** The articles of incorporation must
44 require that the cooperative housing corporation has the first
 right to repurchase a member's cooperative interest.

46 **5. Limit on capital distribution.** The articles of
48 incorporation must require that the total distribution of capital
 to a member not exceed the transfer value.

50 **6. Distribution upon dissolution.** The articles of
 incorporation must require that upon dissolution of the

2 cooperative housing corporation, any assets remaining after
3 requirement of corporate debts and distribution to members must
4 be distributed to a charitable organization described in the
5 Internal Revenue Code of 1986, Section 501(c)(3), as amended, a
6 public agency or another limited equity cooperative whose formula
7 for determining transfer value is no less restrictive than that
8 of the cooperative housing corporation being dissolved.

9 7. Sublease limitations. The articles of incorporation
10 must require that a sublease of a unit may not require monthly
11 payments by the sublessee in excess of 100% of the monthly
12 payments for the unit required in the proprietary lease.

13 §5446. Proprietary lease

14 Every member of a cooperative housing corporation is
15 entitled to receive from the cooperative housing corporation a
16 written proprietary lease that must include the following:

17 1. Personal property security interest. A provision that
18 the security for a loan against the member's cooperative interest
19 is in the nature of a personal property security interest and any
20 default of such a loan entitles the lender to treat the default
21 in the same manner as a default of a loan secured by personal
22 property;

23 2. Remedy for default. A provision that the cooperative
24 housing corporation's possessory remedy in the event of the
25 default of a member affecting that person's right to occupancy is
26 in an action under Title 14, chapter 709. Good cause is required
27 for termination of the right of occupancy. "Good cause" includes
28 nonpayment of loans, fees, costs or assessments pertaining to the
29 cooperative interest or material violation of bylaws, rules or
30 proprietary lease that continues following reasonable notice and
31 reasonable opportunity to cure the alleged material violations;
32 and

33 3. Maintenance and carrying charges. Provisions for
34 determining maintenance and carrying charges for the unit.

35 §5447. Offering of cooperative interests; subscription
36 agreement; disclosures required

37 1. Materials provided to prospective members. In
38 conjunction with the offering of cooperative interests to
39 prospective members, a cooperative housing corporation or other
40 persons or entities seeking to establish a cooperative housing
41 corporation, or the owner of a cooperative interest seeking to
42 sell that interest, shall provide to all prospective purchasers a
43 copy of the proposed or adopted articles of incorporation and
44 50

2 bylaws of the cooperative housing corporation, a subscription
4 agreement or sales agreement, a proposed proprietary lease and
6 the most current corporate financial statements, if any exist.

8 2. Contents of agreements. The subscription agreement or
10 sales agreement must contain:

12 A. Provisions detailing the cost of acquisition of a
14 cooperative interest, the rights and privileges of
16 membership in the cooperative housing corporation and terms
18 and conditions of occupancy of a unit in the cooperating
20 housing corporation;

22 B. Provisions, if any, under which the subscription
24 agreement or sales agreement is subordinated to other
26 agreements or otherwise encumbered;

28 C. Provisions for cancellation of the agreement by either
30 party; and

32 D. A legally sufficient description of the property.

34 3. Risk disclosure. The subscription agreement or sales
36 agreement must contain provisions detailing the risks of
38 acquisition of a cooperative interest, including risks resulting
40 from failure of all units to be occupied.

42 4. Cancellation. The subscriber or purchaser has the right
44 to cancel the subscription agreement or sales agreement without
46 penalty upon provision of written notice to the offeror within 10
48 days of the date of signing the agreement. In the event of a
50 cancellation, all money paid by the subscriber or purchaser to
the offeror must be returned to the subscriber or purchaser by
the offeror within 14 days of receipt of the notice of
cancellation. The offeror shall inform the subscriber or
purchaser in writing of the right of cancellation.

Notwithstanding any other provision of law to the contrary,
the offering of an interest in a limited equity cooperative may
not be deemed to be the offering of a security interest pursuant
to Title 32, chapter 105, subchapter IV or any other provision of
law, and cooperatives created pursuant to this chapter are exempt
from the filing requirements under that subchapter.

§5448. Consumer protection; enforcement

1. Definition. For purposes of this section, "consumer"
means an actual or prospective subscriber, purchaser, member,
assignee or transferee of a cooperative interest with respect to
a residential unit. "Consumer" includes a co-obligor surety for
a consumer.

2 2. Deceptive trade practice; enforcement. To the extent
4 that a violation of this chapter affects a consumer, that
6 violation is deemed a violation of Title 10, section 1212 and the
 violator is subject to all rights, obligations and penalties
 provided under Title 10, chapter 206.

8 3. Violation. Failure or neglect to provide to subscribers
10 or purchasers the documents and disclosures required by section
 5447 is deemed a violation of this chapter.

12 §5449. Dissolution

14 By vote of at least 80% of its members or any larger
16 percentage specified in the articles of incorporation or bylaws,
 a cooperative housing corporation may vote to dissolve and
18 terminate its proprietary leases.

20 §5450. Loans

22 Any lender is authorized to make loans secured by
 cooperative interests of a cooperative housing corporation,
24 including limited equity cooperatives, on the same terms and with
 the same limitations as other consumer and residential loans.

26 §5451. Net income; apportionment

28 1. Apportionment. Subject to subsection 2, the board of
30 directors of a cooperative housing corporation may apportion
 annually the remainder of the net income in one or more of the
32 following ways:

34 A. As a reserve fund for the general operation of the
 cooperative housing corporation; or

36 B. As a dividend not to exceed 6% per annum on invested
38 capital.

40 2. Cost reduction. This section does not prevent a
 cooperative housing corporation from disposing of the net income
42 by reducing the cost of facilities or services or by applying the
 net income otherwise for the common benefit of its members.

44 §5452. Nondiscrimination

46 Title 5, chapter 337, subchapter IV applies to all
48 cooperative housing corporations in the State.

