

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

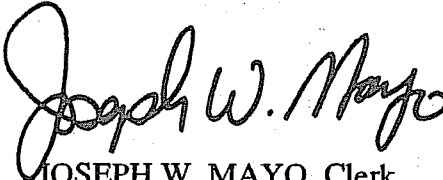
No. 1148

H.P. 843

House of Representatives, April 1, 1993

An Act to Amend the Power of Sale Foreclosure Laws.

Reference to the Committee on Judiciary suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative FARNSWORTH of Hallowell.

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 1991, c.
4 768, §1, is further amended to read:

6 Any holder of a mortgage on real estate that is granted by a
7 corporation, partnership or trustee of a trust and that contains
8 a power of sale, or a person authorized by the power of sale, or
9 an attorney duly authorized by a writing under seal, or a person
10 acting in the name of the holder of such mortgage or any such
11 authorized person, may, upon breach of condition and without
12 action, do all the acts authorized or required by the power; but
13 except that a sale under the power is not effectual to foreclose
14 a mortgage unless, previous to the sale, notice has been
15 published once in each of 3 successive weeks, the first
16 publication to be not less than 21 days before the day of the
17 sale in a newspaper of general circulation in the town where the
18 land lies. This provision is implied in every power of sale
19 mortgage in which it is not expressly set forth. For mortgage
20 deeds executed after October 1, 1993, the power of sale may only
21 be used if the mortgage deed states that it is given primarily
22 for a business, commercial or agricultural purpose. A copy of
23 the notice must be served on the mortgagor or its representative
24 in interest, or may be sent by registered mail addressed to it or
25 the representative at its last known address, or to the person
26 and to the address as may be agreed upon in the mortgage, at
27 least 21 days before the date of the sale under the power in the
28 mortgage. Any power of sale incorporated into a mortgage is not
29 affected by the subsequent transfer of the mortgaged premises
30 from such the corporation, partnership or trustee of a the trust
31 to any other type of organization or to an individual or
32 individuals. ~~This paragraph is repealed October 1, 1993.~~ The
33 power of sale may not be used to foreclose against real estate
34 owned by a corporation, partnership or trustee of a trust if the
35 real estate is both residential property with no more than 4
36 residential units and was the principal residence of the owner of
37 at least 1/2 of the stock in the corporation, at least 1/2 of
38 the partnership interest in the partnership or at least 1/2 of
39 the beneficial interest in the trust at the time the mortgage
40 deed is given.

42 **Sec. 2. 14 MRSA §6203-A, 2nd ¶**, as enacted by PL 1991, c. 768,
43 §2, is repealed.

44 **Sec. 3. 33 MRSA §501-A, first ¶**, as amended by PL 1991, c. 768,
45 §3, is further amended to read:

46 The following "power" is known as "The Statutory Power of
47 Sale" and may be included in any mortgage or incorporated by
48 reference in any mortgage granted by a corporation, partnership
49

or trustee of a trust. ~~This paragraph is repealed October 1, 1993.~~ The power of sale may not be used to foreclose against real estate owned by a corporation, partnership or a trustee of the trust if the real estate is both residential property with no more than 4 residential units and was the principal residence of the owner of at least 1/2 of the stock of the corporation, at least 1/2 of the partnership interest in the partnership or at least 1/2 of the beneficial interest in the trust at the time the mortgage deed was given.

Sec. 4. 33 MRSA §501-A, 2nd ¶, as enacted by PL 1991, c. 768, §4, is repealed.

STATEMENT OF FACT

Effective June 30, 1992, Public Law 1991, chapter 768 was enacted by the Second Regular Session of the 115th Legislature, to clarify certain 1991 amendments adopted by the First Regular Session in Public Law 1991, chapter 134. This bill confirms that the power of sale may not be used in cases when an individual's primary residence is owned by a corporation, partnership or trust, provided that the individual owns at least 1/2 of that business organization.

This bill also provides that after October 1, 1993, a power of sale may be used only if the mortgage deed contains a statement that the mortgage deed is given "primarily for business, commercial or agricultural purposes."

Current law contains a "sunset" clause that needs to be addressed by October 1, 1993. This bill eliminates that "sunset" provision.