

MAINE STATE LEGISLATURE

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L.D. 1665

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DATE: 4/7/94

(Filing No. H- 1075)

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
116TH LEGISLATURE
SECOND REGULAR SESSION

HOUSE AMENDMENT "A" to H.P. 1238, L.D. 1665, Bill, "An Act Regarding Access to Property via Discontinued Roads"

Amend the bill by striking out the title and substituting the following:

'An Act Regarding Access to Property via Abandoned Roads'

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

'Sec. 1. 14 MRSA §6663 is enacted to read:

§6663. Claim of prescriptive easement over abandoned way

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Abandoned way" means a public way abandoned before September 3, 1965.

B. "Landlocked property" means real property that abuts an abandoned way and over which there is no established title to a way of access by land.

C. "Owner of landlocked property" means a person who holds title to the property as the result of a conveyance of the property to that person by gift, devise or the operation of the intestacy laws.

HOUSE AMENDMENT

2 2. Expedited procedure. An owner of landlocked property
4 claiming a prescriptive easement over an abandoned way under this
6 chapter may initiate a proceeding under this section. Except as
8 otherwise provided in this subsection, if the owner of landlocked
10 property claiming a prescriptive easement initiates a proceeding
12 under this section, the expedited procedures of this section must
14 be completed before a party to the action may bring further
16 action under other applicable provisions of this chapter. The
18 parties to the proceeding initiated under this section may agree
20 to forego completion of the action under this section. Any other
22 claims by the parties regarding access to the landlocked property
24 are not diminished by the operation of this section but actions
26 to enforce those claims are stayed until a proceeding under this
28 section is complete.

30 3. Notice of claim. Notice of a claim under this section
32 must be provided as follows.

34 A. An owner of landlocked property initiating a proceeding
36 under this section must commence the action by filing a
38 notice claiming a prescriptive easement at the office of the
40 clerk of the District Court or the Superior Court in the
42 district or county, respectively, in which the property
44 against which the claim is asserted is located. The clerk
46 shall provide the claimant with a form on which to place the
48 notice. The claimant shall pay the clerk a filing fee
50 established by the court to cover the court's costs of the
 action.

B. The claimant shall serve a copy of the notice on the
 owner of the property against which the claimant asserts a
 prescriptive easement. The claimant shall serve this notice
 by certified mail, return receipt requested, within 10 days
 of the filing of the notice with the court clerk. Within 20
 days of receipt of the notice the recipient shall file an
 appearance with the court clerk.

4. Referee and hearing. The court shall appoint a referee
 to hear the claim. The claimant or a representative of the
 claimant shall present the case before the referee. The
 respondent or a representative of the respondent shall make a
 responding presentation. The referee shall make all procedural
 rulings and the referee's rulings are final. The Maine Rules of
 Evidence do not apply to the proceeding. The referee shall admit
 evidence if it is the kind of evidence upon which reasonable
 persons are accustomed to rely in the conduct of serious
 affairs. To prevail, the claimant must prove the existence of a
 prescriptive easement by a preponderance of the evidence.

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2 5. Settlement. The referee shall attempt to mediate the
differences between the parties before making findings.

4 6. Failure to appear. If the referee finds that a party
failed to appear without good cause at a hearing, the referee
6 shall report that finding to the court. The court may impose an
appropriate sanction, including dismissing the action, rendering
8 a decree or judgment by default or assessing fees and costs.

10 7. Finding. Findings under this subsection must be
provided as follows.

12 A. Within 30 days of the conclusion of the hearing, the
14 referee shall make a finding as to the existence of a
prescriptive easement and a description of a prescriptive
16 easement found to exist. The referee shall notify the
parties in writing by certified mail, return receipt
18 requested, of the finding within 7 days of the date of the
finding.

20 B. If an action is not initiated under subsection 8, the
22 referee shall cause the referee's finding to be filed in the
registry of deeds in the county in which is located the
24 property against which the prescriptive easement was
claimed. The referee shall make this filing within 7 days
26 of the expiration of the time period for instituting an
action under subsection 8.

28 8. Subsequent proceeding. A subsequent proceeding under
30 this subsection must be in accordance with the following.

32 A. Within 30 days of a party's receipt of a finding under
34 subsection 7, paragraph A, the party may institute a court
proceeding on the matter to which the finding pertains under
36 other applicable provisions of this chapter. The finding of
the referee must be admitted into that proceeding.

38 B. If the party that initiated the proceeding under this
40 subsection does not prevail, and the court's finding is in
agreement with the referee's finding under subsection 7, the
42 court shall order the party that does not prevail to pay all
fees and costs of the prevailing party incurred under
44 subsections 2 to 7 and this subsection.'

46 Further amend the bill by inserting at the end before the
statement of fact the following:

48 **FISCAL NOTE**

50 The additional workload and administrative costs associated
with the minimal number of new cases filed in the court system

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can be absorbed within the budgeted resources of the Judicial Department. The collection of additional filing fees may increase General Fund revenue by a minor amount.'

STATEMENT OF FACT

This amendment replaces the bill. The amendment narrows the issue dealt with to that of landlocked property created by public ways abandoned prior to September 3, 1965. The amendment does not create any new property right in landlocked property owners. It creates an expedited court procedure for owners of landlocked property who acquired the property by gift, devise or the operation of the intestacy laws. The amendment permits these owners to use the expedited procedure to claim the existence of a prescriptive easement over the abandoned way permitting them access to their otherwise landlocked property.

The expedited procedure involves the filing of a notice of claim in court and the serving of the notice on the owner of the property over which the abandoned way passes, the use of a court-appointed referee to hear the claim with relaxed rules of evidence and procedure, a requirement that the referee attempt to mediate the dispute, sanctions for a party's failure to appear and the issuance of a written finding by the referee to be served on the parties and filed in the registry of deeds. The amendment permits any party to institute a quiet title action in court at the conclusion of the refereed procedure, or before if all parties agree, to preserve the possibility of a jury trial. The referee's finding will be admissible in the further court proceeding, and, if the court's decree or judgment conforms with the referee's finding and is against the party who initiated the additional court proceeding, the party who does not prevail will be ordered to pay the fees and costs of the prevailing party.

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