

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1995

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Legislative Document

No. 901

S.P. 320

In Senate, March 21, 1995

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**An Act to Clarify the Use of the Power of Sale Foreclosures Regarding  
Limited Liability Corporations.**

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS  
Secretary of the Senate

Presented by Senator FAIRCLOTH of Penobscot.

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

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3           **Sec. 1. 14 MRSA §6203-A, first ¶**, as amended by PL 1993, c.  
4 277, §1 and affected by §5, is further amended to read:

6           Any holder of a mortgage on real estate that is granted by a  
7 corporation, partnership, including a limited partnership,  
8 limited liability company or trustee of a trust and that contains  
9 a power of sale, or a person authorized by the power of sale, or  
10 an attorney duly authorized by a writing under seal, or a person  
11 acting in the name of the holder of such mortgage or any such  
12 authorized person, may, upon breach of condition and without  
13 action, do all the acts authorized or required by the power;  
14 except that a sale under the power is not effectual to foreclose  
15 a mortgage unless, previous to the sale, notice has been  
16 published once in each of 3 successive weeks, the first  
17 publication to be not less than 21 days before the day of the  
18 sale in a newspaper of general circulation in the town where the  
19 land lies. This provision is implied in every power of sale  
20 mortgage in which it is not expressly set forth. For mortgage  
21 deeds executed on or after October 1, 1993, the power of sale may  
22 be used only if the mortgage deed states that it is given  
23 primarily for a business, commercial or agricultural purpose. A  
24 copy of the notice must be served on the mortgagor or its  
25 representative in interest, or may be sent by registered mail  
26 addressed to it or the representative at its last known address,  
27 or to the person and to the address as may be agreed upon in the  
28 mortgage, at least 21 days before the date of the sale under the  
29 power in the mortgage. Any power of sale incorporated into a  
30 mortgage is not affected by the subsequent transfer of the  
31 mortgaged premises from the corporation, partnership, including a  
32 limited partnership, limited liability company or trustee of the  
33 trust to any other type of organization or to an individual or  
34 individuals. The power of sale may not be used to foreclose a  
35 mortgage deed granted by a trustee of a trust if at the time the  
36 mortgage deed is given the real estate is used exclusively for  
37 residential purposes, the real estate has 4 or fewer residential  
38 units and one of the units is the principal residence of the  
39 owner of at least 1/2 of the beneficial interest in the trust.  
40 If the mortgage deed contains a statement that at the time the  
41 mortgage deed is given the real estate encumbered by the mortgage  
42 deed is not used exclusively for residential purposes, that the  
43 real estate has more than 4 residential units or that none of the  
44 residential units is the principal residence of the owner of at  
45 least 1/2 of the beneficial interest in the trust, the statement  
46 conclusively establishes these facts and the mortgage deed may be  
47 foreclosed by the power of sale. The method of foreclosure of  
48 real estate mortgages provided by this section is specifically  
49 subject to the order of priorities set out in section 6205.

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2           **Sec. 2. 33 MRSA §501-A, first ¶**, as amended by PL 1993, c. 277,  
§3 and affected by §5, is further amended to read:

4           The following "power" is known as "The Statutory Power of  
5           Sale" and may be included in any mortgage or incorporated by  
6           reference in any mortgage granted by a corporation, partnership,  
7           including a limited partnership, limited liability company or  
8           trustee of a trust. The power of sale may not be used to  
9           foreclose a mortgage deed granted by a trustee of a trust if at  
10          the time the mortgage deed is given the real estate is used  
11          exclusively for residential purposes, the real estate has 4 or  
12          fewer residential units and one of the units is the principal  
13          residence of the owner of at least 1/2 of the beneficial interest  
14          in the trust. If the mortgage deed contains a statement that at  
15          the time the mortgage deed is given the real estate encumbered by  
16          the mortgage deed is not used exclusively for residential  
17          purposes, that the real estate has more than 4 residential units  
18          or that none of the residential units is the principal residence  
19          of the owner of at least 1/2 of the beneficial interest in the  
20          trust, the statement conclusively establishes these facts and the  
21          mortgage deed may be foreclosed by the power of sale.

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#### STATEMENT OF FACT

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27           This bill adds limited liability companies to the list of  
28           entities against which a real estate mortgage lender may use the  
29           power of sale foreclosure method in foreclosing real estate  
30           mortgages and clarifies that the power of sale foreclosure method  
31           may be used against limited partnerships as well as general  
32           partnerships. The bill would have the effect of treating limited  
33           liability companies the same as all corporations, partnerships,  
34           limited partnerships and trusts for purposes of the power of sale  
foreclosure laws.