

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1916

H.P. 1333

House of Representatives, March 16, 1999

An Act Concerning the Regulation and Treatment of Time-shares.

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

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative CIANCHETTE of South Portland.
Cosponsored by Representatives: HONEY of Boothbay, McNEIL of Rockland, POWERS of Rockport, STANWOOD of Southwest Harbor, WHEELER of Bridgewater, Senators: BENOIT of Franklin, FERGUSON of Oxford.

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

2
4 Sec. 1. 33 MRSA §592, sub-§§7 and 8 are enacted to read:

6 7. Completion of construction; escrow requirement.
8 Notwithstanding chapter 31, a developer of a time-share project
10 may convey a time-share to a purchaser prior to the time-share
12 unit containing the time-share being substantially completed, as
14 long as the developer deposits all funds or other consideration
16 received from or on behalf of the purchaser into an escrow
18 account subject to an escrow agreement with an independent escrow
20 agent.

22 A. The escrow agreement must provide that the funds or
24 other consideration may be released only as provided in this
26 paragraph.

28 (1) If the purchaser gives a valid notice of
30 cancellation pursuant to this section or is otherwise
32 entitled to cancel the sale, the funds or other
34 consideration received from or on behalf of the
36 purchaser must be returned to the purchaser.

38 (2) If the purchaser defaults in the performance of
40 any obligation relating to the purchase or ownership of
42 the time-share following the expiration of the
44 cancellation period set out in subsection 1, the
46 developer shall provide an affidavit to the escrow
48 agent requesting release of the escrowed funds or other
50 consideration and shall provide a copy of the affidavit
52 to the purchaser who has defaulted. If, within 7
54 calendar days of mailing the affidavit, the developer
56 has not received from the purchaser a written notice of
58 a dispute between the purchaser and the developer or a
60 claim to the escrowed funds or other consideration, the
62 funds or other consideration received from or on behalf
64 of the purchaser must be immediately released to the
66 developer.

68 (3) If no cancellation or default has occurred, the
70 escrow agent may release the funds or other
72 consideration upon presentation of an affidavit by the
74 developer that:

76 (a) The cancellation period has expired; and

78 (b) A certificate or statement of substantial
80 completion has been executed by an engineer or
82 architect or a certificate of occupancy has been

2 issued by the municipal inspector of buildings for
3 the time-share unit containing the time share.

4 B. In lieu of any escrow required by this section, the
5 escrow agent may accept a surety bond issued by a company
6 authorized and licensed to do business in this State in an
7 amount equal to or in excess of the funds that would
8 otherwise be placed in the escrow account pursuant to this
9 section.

10 C. As used in this subsection, "independent escrow agent"
11 means a financial institution whose accounts are insured by
12 a governmental agency or instrumentality; an attorney; or a
13 licensed title insurance company, in which:

14 (1) The escrow agent is not a relative or an employee
15 of the developer or managing entity or of any officer,
16 director, affiliate or subsidiary of the developer or
17 managing entity;

18 (2) There is no financial relationship, other than the
19 payment of fiduciary fees or as otherwise provided in
20 this section, between the escrow agent and the
21 developer or managing entity or any officer, director,
22 affiliate or subsidiary of the developer or managing
23 entity; and

24 (3) Compensation paid by the developer to the escrow
25 agent for services rendered is not paid from funds in
26 the escrow account.

27 D. For purposes of paragraph C, an independent escrow agent
28 may not be disqualified to serve as escrow agent solely
29 because:

30 (1) The escrow agent provides the developer or
31 managing entity with routine banking services that do
32 not include construction or receivables financing or
33 any other lending activities;

34 (2) A nonemployee, attorney-client relationship exists
35 between the developer or managing entity and the escrow
36 agent; or

37 (3) The escrow agent performs closings for the
38 developer or issues owner's or lender's title insurance
39 commitments or policies in connection with such
40 closings.

2 8. Common expense assessment. Notwithstanding chapter 31,
3 a time-share owner may not be excused from the payment of the
4 time-share owner's share of any common expense assessment unless
5 all time-share owners are likewise excused from payment. The
6 developer may be excused from the payment of its share of the
7 common expenses that would have been assessed against its time
8 shares during a stated period of time during which it has
9 guaranteed to the purchasers in the time-share instrument that
10 the assessment for common expenses imposed upon the purchasers
11 would not increase over a stated dollar amount. In the event of
12 such a guarantee, the developer is obligated to pay common
13 expenses incurred by the time-share project during the guarantee
14 period that are in excess of the total revenue that may be
15 applied to the common expenses of the time-share project. The
16 guarantee by the developer may provide that the developer may
17 extend, increase or decrease the guarantee for one or more
18 additional stated periods of time.

19 **Sec. 2. 33 MRSA §593, sub-§2,** as amended by PL 1987, c. 358,
20 §1, is further amended to read:

21 **2. Time-share estates as separate estates.** Each time-share
22 estate constitutes for all purposes a separate estate in real
23 property. Each time-share estate shall ~~shall~~ **must** be separately
24 assessed and taxed. In ascertaining time-share estate valuation,
25 the municipal assessor shall determine real property values by
26 utilizing traditional valuation methods and techniques for
27 comparable sales of physically comparable property that is not
28 subject to time-share form of ownership. Neither the cumulative
29 total purchase price paid by the time-share purchasers for a
30 time-share unit nor the total purchase price paid by a purchaser
31 of a time-share estate may be utilized by the municipal assessor
32 as a factor in determining the assessed value of the time-share
33 estate. The filing and discharge of tax liens on more than one
34 time-share estate owned by the same person are governed by Title
35 36, section 942-A.

36 **Sec. 3. 33 MRSA §593, sub-§4,** as amended by PL 1991, c. 197,
37 §1, is further amended to read:

38 **4. Collection and receipt of money for taxes; tax bills.**
39 The managing entity may collect and receive money from time-share
40 estate owners for the purpose of paying taxes assessed on
41 time-share estates.

42 If ~~Unless~~ **Unless** otherwise required by an ordinance enacted by the
43 municipal officers, the managing entity shall collect and receive
44 money from time-share estate owners for the purpose of paying
45 taxes assessed on time-share estates. The ordinance must also
46 require that the municipality send the managing entity a tax bill

2 and information necessary to identify the assessed value of each
time-share unit estate, unless otherwise required by an ordinance
4 enacted by the municipal officers. Nothing in this subsection
prevents a municipality from sending separate tax bills to each
time-share owner.

6
8 Any managing entity that collects taxes shall maintain an escrow
account and pay the taxes as provided in subsection 5.

10
12 **SUMMARY**

14 This bill clarifies:

16 1. The developers' ability to sell time-shares prior to
completion of a time-share unit as long as all consideration from
the sale is held by a 3rd-party escrow agent;

18 2. That when the developer has guaranteed that common
20 expense assessments will not exceed a stated dollar amount, the
developer will be responsible for any excess common expenses due;
22 and

24 3. Methods of assessing time-share estates so that they
will be assessed by municipal assessors in the same manner as are
26 condominium units to achieve equitable valuation of comparable
real property.