

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1275

H.P. 947

House of Representatives, March 11, 2003

An Act To Amend the Laws Governing Improvident Transfers of Title

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative NORBERT of Portland.
Cosponsored by Senator GILMAN of Cumberland and
Representatives: CLOUGH of Scarborough, SIMPSON of Auburn, Senator: PENDLETON of
Cumberland.

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

2 **Sec. 1. 33 MRSA §1022**, as enacted by PL 1987, c. 699, §1, is
4 amended to read:

6 **§1022. Undue influence**

8 **1. Presumption.** In any transfer of real estate or major
10 transfer of personal property or money for less than full
12 consideration or execution of a guaranty by an elderly person who
14 is dependent on others to a person with whom the elderly
16 dependent person has a confidential or fiduciary relationship, it
18 shall--be is presumed that the transfer or execution was the
20 result of undue influence, unless the elderly dependent person
22 was represented in the transfer or execution by independent
counsel. When the elderly dependent person successfully raises
the presumption of undue influence by a preponderance of the
evidence and when the transferee or person who benefits from the
execution of a guaranty fails to rebut the presumption, the
elderly dependent person shall--be is entitled to avoid the
transfer or execution and be entitled to the relief set forth in
section 1024.

24 **2. Confidential or fiduciary relationship.** For the purpose
26 of this section, the transfer of property or execution of a
28 guaranty is deemed to have been made in the context of a
30 confidential or fiduciary relationship if the transferee or
32 person who benefits from the execution of a guaranty had a close
relationship with the elderly dependent person prior to the
transfer or execution. Confidential or fiduciary relationships
include the following:

34 A. A family relationship between the elderly dependent
36 person and the transferee or person who benefits from the
execution of a guaranty, including relationships by marriage
and adoption;

38 B. A fiduciary relationship between the elderly dependent
40 person and the transferee or person who benefits from the
42 execution of a guaranty, such as with a guardian,
conservator, trustee, accountant, broker or financial
advisor;

44 C. A relationship between an elderly dependent person and a
46 physician, nurse or other medical or health care provider;

48 D. A relationship between the elderly dependent person and
a psychologist, social worker or counselor;

2 E. A relationship between the elderly dependent person and
an attorney;

4 F. A relationship between the elderly dependent person and
a priest, minister, rabbi or spiritual advisor;

6 G. A relationship between the elderly dependent person and
8 a person who provides care or services to that person
10 whether or not care or services are paid for by the elderly
person;

12 H. A relationship between an elderly dependent person and a
friend or neighbor; or

14 I. A relationship between an elderly dependent person and a
16 person sharing the same living quarters.

18 When any of these relationships exist and when a transfer or
20 execution is made to a corporation or organization primarily on
account of the membership, ownership or employment interest or
22 for the benefit of the fiduciary or confidante, a fiduciary or
confidential relationship with the corporation or organization is
deemed to exist.

24
26 **Sec. 2. 33 MRSA §1023**, as amended by PL 1989, c. 238, §§2 and
4, is further amended to read:

28 **§1023. Civil action; relief available**

30 1. **Civil action.** A civil action may be brought to obtain
relief under this chapter by an elderly dependent person ~~or~~, that
32 person's legal representative or the personal representative of
the estate of an elderly dependent person.

34 2. **Relief available; protected transfers and executions.**
36 When a court finds that a transfer of property or execution of a
guaranty was the result of undue influence, it shall grant
38 appropriate relief enabling the elderly dependent person to avoid
the transfer or execution, including the rescission or
40 reformation of a deed or other instrument, the imposition of a
constructive trust on property or an order enjoining use of or
42 entry on property or commanding the return of property. When the
court finds that undue influence is a good and valid defense to a
44 transferee's suit on a contract to transfer the property or a
suit of a person who benefits from the execution of a guaranty on
46 that guaranty, the court shall refuse to enforce the transfer or
guaranty.

48
50 No relief obtained or granted under this section may in any way
affect or limit the right, title and interest of good faith

2 purchasers, mortgagees, holders of security interests or other
3rd parties who obtain an interest in the transferred property
4 for value after its transfer from the elderly dependent person.
No relief obtained or granted under this section may affect any
mortgage deed to the extent of value given by the mortgagee.

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SUMMARY

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This bill extends the protections of the laws governing
improvident transfers of title to a guaranty made by an elderly
12 dependent person. It also extends the protections of the laws
governing improvident transfers of title to the personal
14 representative of the estate of an elderly dependent person.