

# MAINE STATE LEGISLATURE

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# 121st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2003

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Legislative Document

No. 1311

H.P. 965

House of Representatives, March 11, 2003

### **An Act To Clarify the Filing of Municipal Personal Property Tax Liens**

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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 PENDLETON of Cumberland and  
Representatives: BLANCHETTE of Bangor, LERMAN of Augusta, MAKAS of Lewiston,  
SAMPSON of Auburn.

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

2           **Sec. 1. 36 MRSA §612, sub-§1**, as amended by PL 1999, c. 699,  
4 Pt. D, §28 and affected by §30, is further amended to read:

6           **1. Lien.** ~~There must be a lien to secure the payment of all~~  
7 ~~taxes--legally-assessed--on~~ The legal assessment of taxes upon  
8 personal property as defined in section 601 and against a  
9 particular taxpayer creates and constitutes a lien upon all of  
10 the property assessed to secure payment of the resulting taxes,  
11 provided in that the inventory and valuation upon which the  
12 assessment is made,--there must be contains a description of the  
13 personal property taxed which that meets the requirements of  
14 Title 11, section 9-1504. Except as otherwise provided in this  
15 section, the lien,--when-perfected, takes precedence over all  
16 other claims on the personal property and continues in force  
17 until the taxes are paid or until the lien is otherwise  
18 terminated by law.

20           **Sec. 2. 36 MRSA §612, sub-§§3 and 4**, as amended by PL 1999, c.  
21 699, Pt. D, §28 and affected by §30, are repealed and the  
22 following enacted in their place:

24           **3. Perfection of lien.** The lien established by subsection 1  
25 attaches on the date of assessment and must be perfected as  
26 against all lien creditors, as defined in Title 11, section  
27 9-1102, subsection (52), without the necessity of further action  
28 by the municipality or any other party. The lien becomes  
29 perfected as against parties other than lien creditors at the  
30 time when a notice of the lien is communicated, pursuant to the  
31 provisions of Title 11, section 9-1516, to the office identified  
32 in Title 11, section 9-1501, subsection (1), paragraph (b). Any  
33 filing is ineffective to perfect a lien as against parties that  
34 are not lien creditors to the extent that the filing covers taxes  
35 upon property whose status for those taxes was fixed pursuant to  
36 section 502 or 611 more than 2 years prior to the filing date.  
37 The lien does not have priority against any interest as to which  
38 it is unperfected during the period in which it is not so  
39 perfected. If the lien is perfected as to some interests in the  
40 property subject to the tax, but not as to other interests, and  
41 the interests as to which it is perfected are superior in  
42 priority to the interests against which the lien is unperfected,  
43 then the lien has priority over the interests against which it  
44 has not been perfected to the extent of the superior interests  
45 against which it has been perfected.

46           **4. Notice of lien.** Each notice of lien, which may be in the  
47 form of a financing statement or other authenticated record, must:  
48

2 A. Name the owner of the property upon which the lien is  
claimed, if the owner is not the taxpayer and is known to  
4 the municipality;

6 B. Provide the residence or business address of the owner,  
if known to the municipality;

8 C. Provide the taxpayer's name and the taxpayer's residence  
10 or business address, if known to the municipality, and if  
12 not otherwise known, the address where the property that is  
being taxed was located on the date the status of such  
taxable property was fixed pursuant to section 502 or 611;

14 D. Describe the property claimed to be subject to the lien  
16 in a manner that meets the requirements of Title 11, section  
9-1504;

18 E. State the amount of tax, accrued interest and costs, as  
20 of the date on which the municipality sends the notice for  
filing, claimed due the municipality and secured by the lien;

22 F. State the tax year or years for which the lien is  
24 claimed; and

26 G. Name the municipality claiming the lien.

28 The notice of lien need not contain the information required by  
30 Title 11, section 9-1516, subsection (2), paragraph (e),  
32 subparagraph (iii) and must be accepted for filing without that  
34 information notwithstanding the provisions of Title 11, section  
36 9-1520, subsection (1). A copy of the notice of lien must be  
38 given by certified mail, return receipt requested, at the last  
40 known address, to the taxpayer, to the owner, if the owner is not  
42 the taxpayer, and to any party who has asserted that it holds an  
44 interest in any of the property that is subject to the lien in an  
46 authenticated notification received by the municipality within 5  
years prior to the date on which the municipality sends the  
notice of lien for filing, or who has filed a financing statement  
with the office identified in Title 11, section 9-1501,  
subsection (1), paragraph (b) that remains effective as of the  
date on which the municipality sends the notice of lien for  
filing. Failure to give notice to any secured party who has a  
perfected security interest prevents the lien from taking  
priority over that security interest, but does not otherwise  
affect the validity of the lien.

48 **Sec. 3. 36 MRSA §612, sub-§5, as amended by PL 1999, c. 699,**  
**Pt. D, §28 and affected by §30, is further amended to read:**

50 **5. Effective period of lien; limitation period. The**  
**Perfection of any lien by the filing of a notice of lien is**

2 effective for a period of 5 years from the date of filing, unless  
3 discharged as provided in this section or unless a continuation  
4 statement is filed prior to the lapse. A continuation statement  
5 signed by the tax collector may be filed on behalf of the  
6 municipality within 6 months prior to the expiration of the  
7 5-year period provided in this section in the same manner and to  
8 the same effect as provided in Title 11, section 9-1515.

9  
10 **Sec. 4. 36 MRSA §612, sub-§6**, as amended by PL 1999, c. 699,  
11 Pt. D, §28 and affected by §30, is repealed and the following  
12 enacted in its place:

13 **6. Rights and remedies of municipality and taxpayer.** A  
14 municipality that has filed a notice of tax lien has the rights  
15 and remedies of a secured party, the taxpayer and the owner of  
16 the property against whom the lien has been filed have the rights  
17 and remedies of a debtor, all parties to whom the municipality is  
18 required to provide a copy of the lien notice pursuant to  
19 subsection 4 have the rights and remedies of a junior secured  
20 party and all lien creditors have the rights of lien creditors,  
21 as provided for in Title 11, Article 9-A, Part 6, except that:

22 A. The municipality does not have the rights provided to a  
23 secured party in Title 11, sections 9-1620, 9-1621 and  
24 9-1622;

25 B. The municipality has no obligations to lien creditors or  
26 to secured parties referenced in Title 11, sections 9-1605,  
27 9-1615 and 9-1628 except to the extent that it has received  
28 notice from such secured parties as set forth in subsection  
29 4 or they have effective financing statements on file as  
30 provided in subsection 4;

31 C. The municipality has no obligations under Title 11,  
32 section 9-1616; and

33 D. The municipality is not subject to Title 11, section  
34 9-1625, subsection (3), paragraph (b) and section 9-1625,  
35 subsections (5) to (7).

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41 **Sec. 5. 36 MRSA §612, sub-§7, ¶C**, as amended by PL 1999, c.  
42 699, Pt. D, §28 and affected by §30, is further amended to read:

43 C. A final judgment is rendered in favor of the taxpayer or  
44 others claiming an interest in the lien property which  
45 determines either that the tax is not owed or that the  
46 lien is not valid. If the judgment determines that the tax  
47 is partially owed, then the officer who filed the notice of  
48 lien or that officer's successor shall, within 10 days of  
49 the rendition of the final judgment, file an amended tax

2 amendment to the notice of lien for reducing the amount  
3 claimed to the actual amount of tax found to be due, which  
4 amended lien is effective as to the revised amount of the  
5 lien as of the date of the filing of the original notice of  
6 tax lien,--and--the--officer--or--that--officer's--successor--at  
7 the--time--of--the--filing--of--the--amended--tax--lien--shall--also  
8 file--a--discharge--of--the--original--tax--lien.

9  
10 **Sec. 6. 36 MRSA §612, sub-§9**, as amended by PL 1999, c. 699,  
11 Pt. D, §28 and affected by §30, is repealed and the following  
12 enacted in its place:

13 **9. Liens subordinate to security interests.** The lien  
14 authorized by subsection 1 is subordinated to security interests  
15 that were perfected before September 23, 1983 and that have  
16 remained perfected thereafter, except to the extent that such  
17 perfected security interests would be subordinate to the rights  
18 of the municipality if the municipality were considered, whether  
19 or not such is actually the case, to be a lien creditor under  
20 Title 11, section 9-1323 by virtue of its rights pursuant to the  
21 lien authorized by subsection 1.

22  
23 **Sec. 7. Retroactivity.** This Act applies retroactively to liens  
24 authorized in the Maine Revised Statutes, Title 36, section 612  
25 that are perfected by a filing made on or after July 1, 2001, or  
26 for which a continuation statement is filed on or after July 1,  
27 2001. All tax lien notices filed on or after July 1, 2001 with  
28 the office identified in Title 11, section 9-1501, subsection  
29 (1), paragraph (b) may not, by reason of filing in that office,  
30 be deemed invalid or otherwise ineffectual.

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33 **SUMMARY**

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35 This bill amends the provisions of law that govern the  
36 creation, perfection and effect of tax liens on personal property.