

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

SECOND REGULAR SESSION-2006

Legislative Document

No. 1932

S.P. 732

In Senate, January 4, 2006

An Act To Implement Model Time-share Foreclosure Procedures

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator HOBBS of York.

Cosponsored by Representative KOFFMAN of Bar Harbor and

Senators: BRYANT of Oxford, DAMON of Hancock, DAVIS of Piscataquis, President EDMONDS of Cumberland, HASTINGS of Oxford, SAVAGE of Knox, Representatives: BRYANT of Windham, DUPLESSIE of Westbrook, PELLETIER-SIMPSON of Auburn, TARDY of Newport.

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

Sec. 1. 33 MRSA §594, sub-§1, as enacted by PL 1983, c. 407, §1, is repealed and the following enacted in its place:

1. Lien created. A managing entity has a lien on a time share for any assessment for expenses of the time-share property or fines levied against that time share in accordance with the project instrument from the time the assessment or fine becomes due. A lien against a time-share estate may be foreclosed as provided in section 595, subsection 1, and a lien against a time-share license may be foreclosed as provided in section 595, subsection 2. Unless the project instrument otherwise provides, fees, charges, late charges, fines and interest charged in accordance with the project instrument are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due. The managing entity shall record notice of a lien on a time-share estate in the registry of deeds in the county in which the time-share estate is located. A notice of a lien on a time-share license must be recorded in the public records for the filing of security interests governed by the Uniform Commercial Code. If there is more than one lien, they may be listed in one filing.

Sec. 2. 33 MRSA §595 is enacted to read:

§595. Foreclosure or commercial sale of timeshare

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1. Nonjudicial foreclosure of time-share estate. A time-share owner may grant to a financial institution or other person a mortgage with a power of sale on that owner's time-share estate that is governed by the terms of this section. The foreclosure of a mortgage with a power of sale or a lien from an assessment created pursuant to section 594 must be conducted pursuant to this section. The provisions of Title 14, sections 6201 to 6209 do not apply to any such foreclosure.

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In the event of a breach of the conditions of the power of sale mortgage or the failure of the time-share owner to pay the assessments as and when due and owing the following procedure must be followed.

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A. Upon default, and after all applicable cure periods have expired, the party seeking to foreclose shall provide written notice of the default to the time-share owner at the owner's last known address by certified mail, return receipt requested and provide a reasonable opportunity to cure of not less than 30 days from the date of the mailing of the notice letter.

2 B. If, after expiration of the 30-day period under
4 paragraph A, the time-share owner has not cured the default
6 in the manner prescribed, the party seeking to foreclose
shall conduct a public auction under the conditions
described in this paragraph.

8 (1) Notice under this paragraph must be given as
10 follows.

12 (a) Notice of the sale must be published once in
14 a public newspaper with a general circulation in
16 the town or county in which the time-share
18 property is situated. The publication must be not
later than 30 days before the date of the sale,
calculated by excluding the date of publication of
the first notice and the date of sale.

20 (b) A written notice of the time, date and place
22 of the auction must be mailed to the last known
24 address of the time-share owner of record by
26 certified mail, return receipt requested at least
28 30 days prior to the date of sale. The notice of
sale also must be sent by certified mail, return
receipt requested to all persons having a lien on
the time-share estate at least 30 days prior to
the date of the foreclosure sale.

30 (c) The notice must contain:

32 (i) The name of the time-share owner;

34 (ii) The date, time and place of the
foreclosure sale;

36 (iii) A general description of the
38 time-share estate; and

40 (iv) The terms of the sale.

42 If more than one time-share estate is to be
44 included in the foreclosure sale, all such
46 time-share estates may be combined into one notice
of sale, with one property description, as
described in division (d) or (e).

48 (d) The notice of foreclosure for foreclosing on
50 the lien of a time-share estate must be printed in
substantially the following form:

2 NOTICE OF SALE OF TIME-SHARE ESTATE OR ESTATES
3 UNDER TITLE 33, SECTION 595 OF THE MAINE REVISED
4 STATUTES ANNOTATED

6 By virtue of the project instrument of the
7 (name and address of
8 time-share property) and Title 33, section 594
9 establishing a lien for failure to pay assessments
10 on the time-share estate (or estates, if more than
11 one) held by the time-share owner (or owners, if
12 more than one) listed below, the time-share estate
13 (or estates, if more than one) will be sold at
14 Public Auction commencing at on
15 , 20.. at
16 Maine. (For each time-share estate, list the name
17 and address of the time-share owner, a general
18 description of the time-share estate and the book
19 and page number of the deed.)

20 TERMS OF SALE: (State the deposit amount to be
21 paid by the purchaser at the time and place of the
22 sale and the times for payment of the balance or
23 the whole, as the case may be. The time-share
24 estates, if more than one, may be sold in
25 individual lots or as a group.)

26 Other terms to be announced at the sale.

28 Signed.....
29 Lienholder or authorized agent.

31 (e) For foreclosure of a mortgage lien containing
32 a power of sale on a time-share estate, a notice
33 of sale must be printed in substantially the
34 following form:

35 NOTICE OF SALE OF TIME-SHARE ESTATE OR ESTATES
36 UNDER TITLE 33, SECTION 595 OF THE MAINE REVISED
37 STATUTES ANNOTATED

38 By virtue of Title 33, section 595 and in
39 execution of the power of sale contained in a
40 certain mortgage (or mortgages, if more than one)
41 on the time-share estate (or estates, if more than
42 one) given by the time-share owner (or owners, if
43 more than one) set forth below for breach of the
44 conditions of said mortgage (or mortgages, if more
45 than one) and for the purpose of foreclosing, the
46 same will be sold at Public Auction commencing at
47 on, 20.. at

2 Maine, being all and singular the premises
3 described in said mortgage (or mortgages, if more
4 than one). (For each mortgage, list the name and
5 address of the time-share owner, a general
6 description of the time-share estate and the book
7 and page number of the mortgage.)

8 TERMS OF SALE: (State the deposit amount to be
9 paid by the purchaser at the time and place of the
10 sale and the times for payment of the balance or
11 the whole, as the case may be. The time-share
12 estates, if more than one, may be sold in
13 individual lots or as a group.)

14 Other terms to be announced at the sale.

15 Signed
16 Holder of Mortgage or authorized agent.

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19 (f) The notice of sale in the forms described in
20 divisions (d) and (e), published in accordance
21 with the provisions of this section, together with
22 such other or further notice, if any, constitutes
23 sufficient notice of the sale.

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25 (2) The foreclosure sale must be conducted pursuant to
26 this subparagraph.

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29 (a) Unless the notice of sale otherwise provides,
30 the foreclosure sale must take place on the
31 time-share property.

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33 (b) The foreclosure sale must be by public
34 auction, conducted by an auctioneer or attorney
35 licensed to practice in the State. At the
36 discretion of the auctioneer or attorney, the
37 reading of the names of the time-share owners, if
38 more than one, the description of time-share
39 estates, if more than one, and the recording
40 information, if more than one instrument, may be
41 dispensed with.

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43 (c) All rights of redemption of the time-share
44 owner are extinguished upon sale of a time-share
45 estate.

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47 (d) The managing entity, the foreclosing person
48 or any time-share owner may bid at the foreclosure
49 sale. The successful buyer at the foreclosure
50 sale takes title to the time-share estate free and

2 clear of any outstanding assessments owed by the
3 prior time-share owner to the managing entity,
4 except that if the buyer intends to use the
5 time-share estate during the same calendar year in
6 which the estate is purchased, the buyer shall pay
7 the assessment for that year. A purchaser at a
8 sale is not required to complete the purchase if
9 there are liens and encumbrances, other than those
10 included in the notice of sale, that are not
11 stated at the sale and included in the foreclosing
12 person's contract with the purchaser.

13 (e) Upon closing, the foreclosing person shall
14 provide the buyer with a foreclosure deed or other
15 appropriate instrument transferring the rights to
16 the time-share estate and an affidavit attesting
17 that all requirements of the foreclosure pursuant
18 to this section have been met. The time-share
19 estate is deemed to have been sold, and the
20 instrument conveying the time-share estate must
21 transfer the time-share estate, subject to
22 municipal or other public taxes and to any liens
23 and encumbrances recorded prior to the recording
24 of the mortgage or the lien for assessments.

25 (f) The buyer shall record the foreclosure deed
26 or other instrument with the appropriate registry
27 of deeds no more than 30 days after the
28 foreclosure sale date.

29 (g) Within 30 days after the closing and transfer
30 of the foreclosure deed or other instrument and
31 affidavit, the foreclosing person shall mail a
32 notice detailing the results of the foreclosure
33 sale to the last known address of the former
34 time-share owner and all parties that held a
35 junior interest to that of the foreclosing person.

36 **2. Foreclosure of lien or security interest on time-share**
37 **license. In the case of a time-share license, the following must**
38 **be conducted by public or private sale in accordance with the**
39 **provisions of Title 11, section 9-1610:**

40 **A. The foreclosure of a lien on a time-share estate**
41 **pursuant to section 594 for failure to pay assessments when**
42 **due; or**

43 **B. The exercise of the rights of a holder of a security**
44 **interest in a time-share license for breach of the terms of**
45 **the instrument granting the security interest.**

2 All rights of redemption of a time-share owner are extinguished
4 upon the consummation of the sale proceedings. The managing
6 entity, the foreclosing person or any time-share owner may bid at
8 the sale or may enter into agreements for the purchase of one or
10 more time-share licenses following the completion of sale
12 proceedings. The successful buyer takes title to the time-share
14 license free and clear of any outstanding assessments owed by the
16 prior time-share owner to the managing entity.

18 **3. Foreclosure of mortgage not containing power of sale.**

20 In the event of a breach of the conditions of a mortgage on a
22 time-share estate that does not contain a power of sale, the
24 holder of the mortgage may conduct a nonjudicial foreclosure of
26 the interest of the time-share owner in the time-share estate
28 pursuant to subsection 1 if, at the same time the holder gives
30 written notice of default to the time-share owner as provided in
32 subsection 1, paragraph A, the holder also gives written notice
34 to the time-share owner stating that unless the time-share owner
36 objects in writing to the nonjudicial foreclosure within the
38 30-day period required by subsection 1, paragraph A, the holder
40 will proceed to conduct the foreclosure pursuant to subsection
42 1. The holder must explain in the notice that the time-share
44 owner has the right to a judicial foreclosure if the owner
46 asserts the objection within the specified time period and must
48 include with the notice an objection form together with an
50 envelope addressed to the holder. Failure of a time-share owner
to object as required by this subsection in a timely manner is
deemed a waiver of the owner's right to a judicial foreclosure.

SUMMARY

Under current law, time-share estates are considered to be real property. The judicial foreclosure of a mortgage or the execution of a lien for assessments is expensive. The cost is disproportionately high relative to the value of time-share estates. This bill provides for a nonjudicial process for the foreclosure of time-share estates pursuant to a power of sale granted in a mortgage instrument and for the foreclosure of a lien for assessments. This bill requires that notice of the foreclosure of a time-share estate be given by certified mail to the time-share estate owner and by means of newspaper publication to the public. The sale of the time-share estate must be conducted at an auction. The foreclosure of the rights of time-share owners in time-share licenses may only be conducted as a sale under the commercial reasonableness standard of the Uniform Commercial Code. Mortgages on time-share estates that do not contain a power of sale also may be foreclosed by a nonjudicial process if notice is given to the time-share owner

2 and that owner fails to object to the process in a timely
manner. This will enable older mortgages to be foreclosed by the
nonjudicial process if the owner does not object and eliminate
4 the high costs of judicial foreclosure.