

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

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Legislative Document

No. 1332

H.P. 978

House of Representatives, March 29, 2011

An Act To Amend the Maine Condominium Act

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative MOULTON of York.
Cosponsored by Senator COLLINS of York and
Representatives: CHASE of Wells, DILL of Cape Elizabeth.

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

2 **Sec. 1. 33 MRSA §1601-103, sub-§(19-A)** is enacted to read:

3 (19-A) "Priority amounts" means the amount of the association's regular assessments
4 established under a periodic budget that would have become due during the 6-month
5 period immediately prior to initiating a lawsuit to enforce a lien under section 1603-116
6 and the association's costs and reasonable attorney's fees incurred in enforcing the lien.
7 "Priority amounts" does not include amounts attributable to special assessments, late
8 charges, fines, penalties and interest assessed by the association.

9 **Sec. 2. 33 MRSA §1603-102, sub-§(a), ¶(14),** as enacted by PL 1981, c. 699, is
10 amended to read:

11 (14) Assign its right to future income, including the right to receive ~~common expense~~
12 assessments, but only ~~to the extent the declaration expressly so provides~~ if approval of a
13 majority of unit owners is obtained;

14 **Sec. 3. 33 MRSA §1603-102, sub-§(a), ¶(16),** as enacted by PL 1981, c. 699, is
15 amended to read:

16 (16) Exercise all other powers that may be exercised in this State by legal entities of
17 the same type as the association; ~~and~~

18 **Sec. 4. 33 MRSA §1603-102, sub-§(a), ¶(17),** as enacted by PL 1981, c. 699, is
19 amended to read:

20 (17) Exercise any other powers necessary and proper for the governance and
21 operation of the association-; and

22 **Sec. 5. 33 MRSA §1603-102, sub-§(a), ¶(18)** is enacted to read:

23 (18) Suspend any right or privilege of a unit owner that fails to pay an assessment,
24 but may not:

25 (A) Deny a unit owner or other occupant access to the unit owner's unit; or

26 (B) Withhold services provided to a unit or a unit owner by the association if the
27 effect of withholding the service would be to endanger the health, safety or property
28 of any person.

29 **Sec. 6. 33 MRSA §1603-108,** as enacted by PL 1981, c. 699, is amended to read:

30 **§1603-108. Meetings**

31 A meeting of the association ~~shall~~ must be held at least once each year. Special
32 meetings of the association may be called as provided in the Maine Nonprofit
33 Corporation Act. The bylaws must specify which of the association's officers, not less
34 than 10 nor more than 60 days in advance of any meeting, shall cause notice to be hand
35 delivered or sent prepaid by United States' mail to the mailing address of each unit or to

1 any other mailing address designated in writing by the unit owner. The notice of any
2 meeting must state the time and place of the meeting and the items on the agenda,
3 including the general nature of any proposed amendment to the declaration or bylaws,
4 any budget changes and any proposal to remove a director or officer.

5 The executive board shall give timely notice reasonably calculated to inform unit
6 owners of the date, time and place of and topics proposed to be discussed at meetings of
7 the executive board. The notice may be given by a posting in a prominent place in the
8 common elements or elsewhere, by e-mail or by other means, but actual notice need not
9 be delivered to each unit owner. Failure of a unit owner to receive notice does not
10 invalidate any action taken by the executive board at the meeting. Unit owners have the
11 right to attend meetings of the executive board, subject to reasonable rules established by
12 the executive board.

13 The executive board may restrict or prohibit attendance by unit owners and others
14 during executive sessions. An executive session may be held only to:

15 (a) Consult with the association's attorney concerning legal matters;

16 (b) Discuss existing or potential litigation or mediation, arbitration or administrative
17 proceedings;

18 (c) Discuss labor or personnel matters;

19 (d) Discuss contracts, leases and other commercial transactions to purchase or
20 provide goods or services currently being negotiated, including the review of bids or
21 proposals, if premature general knowledge of those matters would place the association at
22 a disadvantage; or

23 (e) Prevent public knowledge of the matter to be discussed if the executive board
24 determines that public knowledge would violate the privacy of any person.

25 A final vote or action may not be taken during an executive session.

26 **Sec. 7. 33 MRSA §1603-116, sub-§(e),** as enacted by PL 1981, c. 699, is
27 amended to read:

28 (e) A lien for unpaid assessments is extinguished unless proceedings to enforce the
29 lien are instituted within 3 5 years after the full amount of the assessments ~~become~~
30 becomes due.

31 **Sec. 8. 33 MRSA §1603-116, sub-§(i)** is enacted to read:

32 (i) Notwithstanding subsection (b), paragraph (2), a lien under this section securing
33 priority amounts is prior to a first mortgage. The association's failure to send notice to
34 the first mortgagee either that the unit owner is delinquent by 60 days in the payment of
35 common expenses or that the association intends to file an action to enforce the lien
36 within 30 days does not affect the priority of the lien securing the 6 months of regular
37 assessments, but failure to send at least one notice means that the association is not

1 entitled to receive any costs or attorney's fees incurred in an action to enforce the lien.
2 The full payment of the priority amounts discharges the lien under this section.

3 **Sec. 9. 33 MRSA §1603-116, sub-§(j)** is enacted to read:

4 (j) Assessments for common expenses accrue, free from the lien of a foreclosing first
5 mortgagee, from and after the initial date set for public sale of a condominium unit
6 pursuant to Title 14, section 6323.

7 **Sec. 10. 33 MRSA §1603-118**, as enacted by PL 1981, c. 699, is repealed and the
8 following enacted in its place:

9 **§1603-118. Association records**

10 (a) An association must retain the following:

11 (1) Records of receipts and expenditures affecting the operation and administration
12 of the association and other appropriate accounting records for the past 6 years;

13 (2) Minutes of all meetings of its unit owners and executive board other than
14 executive sessions, a record of all actions taken by the unit owners or executive board
15 without a meeting and a record of all actions taken by a committee in place of the
16 executive board on behalf of the association;

17 (3) The names of current unit owners in a form that permits preparation of a list of
18 the names of all unit owners and the addresses at which the association communicates
19 with them, in alphabetical order showing the number of votes each unit owner is entitled
20 to cast;

21 (4) Copies of its original or restated organizational documents and bylaws and all
22 amendments to them and all rules currently in effect;

23 (5) All financial statements and tax returns of the association for the past 3 years;

24 (6) A list of the names and addresses of its current executive board members and
25 officers;

26 (7) Its most recent annual report delivered to the Secretary of State;

27 (8) Financial and other records sufficiently detailed to enable the association to
28 comply with section 1604-108;

29 (9) Copies of current contracts to which it is a party;

30 (10) Records of executive board or committee actions to approve or deny any
31 requests for design or architectural approval from unit owners; and

32 (11) Ballots, proxies and other records related to voting by unit owners for one year
33 after the election, action or vote to which they relate.

1 (b) Subject to subsections (c) and (d), all records retained by an association must be
2 available for examination and copying by a unit owner or the unit owner's authorized
3 agent:

4 (1) During reasonable business hours or at a mutually convenient time and location;
5 and

6 (2) Upon 10 days' notice in writing reasonably identifying the specific records of the
7 association requested.

8 (c) Records retained by an association may be withheld from inspection and copying
9 to the extent that they concern:

10 (1) Personnel, salary and medical records relating to specific individuals;

11 (2) Contracts, leases and other commercial transactions to purchase or provide goods
12 or services currently being negotiated;

13 (3) Existing or potential litigation or mediation, arbitration or administrative
14 proceedings;

15 (4) Existing or potential matters involving federal, state or local administrative or
16 other formal proceedings before a governmental tribunal for enforcement of the
17 declaration, bylaws or rules;

18 (5) Communications with the association's attorney that are otherwise protected by
19 the attorney-client privilege or the attorney work-product doctrine;

20 (6) Information the disclosure of which would violate law other than this Act;

21 (7) Records of an executive session of the executive board; or

22 (8) Individual unit files other than those of the requesting unit owner.

23 (d) An association may charge a reasonable fee for providing copies of any records
24 under this section and for supervising the unit owner's inspection.

25 (e) A right to copy records under this section includes the right to receive copies by
26 photocopying or other means, including copies through an electronic transmission if
27 available upon request by the unit owner.

28 (f) An association is not obligated to compile or synthesize information.

29 (g) Information provided pursuant to this section may not be used for commercial
30 purposes or any other purpose not reasonably related to the management of the
31 association or the duties, rights or responsibilities of unit owners, officers or executive
32 board members under this Act or the association's governing documents.

SUMMARY

This bill amends the Maine Condominium Act.

The bill allows the condominium owners' association to assign its right to future income, including the right to receive assessments, but only if a majority of the unit owners have approved.

The bill revises the law governing the record requirements of condominium owners' associations to list specific records that must be retained. The records must be available for examination and copying by a unit owner or the owner's authorized agent, with certain exceptions.

The bill provides that assessments for common expenses accrue, free from a lien of a foreclosing first mortgagee, from and after the initial date set for public sale of a condominium unit.

The bill defines the term "priority amounts" to mean the amount of the association's regular assessments that would have become due during the 6-month period immediately prior to initiating a lawsuit to enforce a lien. It establishes that a lien securing priority amounts is prior to a first mortgage. The association's failure to notify a first mortgagee that the owner of the unit is delinquent by 60 days in the payment of common expenses or that the association intends to file an action to enforce the lien does not affect the priority of the lien, but failure to send at least one notice means that the association is not entitled to receive any costs or attorney's fees. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted with 5 years after the full amount of assessments becomes due. Current law extinguishes the lien after 3 years.

The bill gives an association the power to suspend any right or privilege of a unit owner that fails to pay an assessment, but the association may not deny access or withhold services if it would endanger the health, safety or property of any person.

The bill amends the law concerning the executive board to require the board to provide notice of meetings. Unit owners have the right to attend meetings, subject to reasonable rules. The board may prohibit attendance by unit owners and others during executive session, which may be held for only specific reasons.