

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

SMG
R O F S
1
2

Date: 3-12-18

(Filing No. H-646)

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

STATE AND LOCAL GOVERNMENT

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
128TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1092, L.D. 1588, Bill, "An Act To Maintain Mail Routes and Access to Residential Structures"

Amend the bill by striking out the title and substituting the following:

'An Act To Maintain Access to Property on Discontinued Roads'

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 23 MRSA §3026-A, sub-§1, as enacted by PL 2015, c. 464, §5, is amended to read:

1. Notification of discontinuance to abutting property owners. The municipal officers shall give best practicable notice to all abutting property owners of a proposed discontinuance of a town way or public easement. ~~As used in this subsection, "best practicable notice" means, at minimum, the mailing by the United States Postal Service, postage prepaid, first class, of notice to abutting property owners whose addresses appear in the assessment records of the municipality.~~

A. For a proposed discontinuance of a town way, the notice must include information regarding the potential discontinuance or retention of a public easement, including maintenance obligations for and the right of access to the way under the discontinuance or retention of a public easement, and information regarding the rights of abutting property owners to enter into agreements regarding maintenance of and access to the discontinued way.

B. For a proposed discontinuance of a town way that is abutted by property not otherwise accessible by a public way, the notice must include information, in addition to the information required in paragraph A, regarding the right of abutting property owners to create private easements and the municipal requirements under subsection 1-A.

Paragraphs A and B apply to town ways that are not discontinued as of October 1, 2018.

COMMITTEE AMENDMENT

R.O.F.S

1 As used in this subsection, "best practicable notice" means, at minimum, the mailing by
2 the United States Postal Service, postage prepaid, first class, of notice to abutting
3 property owners whose addresses appear in the assessment records of the municipality.

4 **Sec. 2. 23 MRSA §3026-A, sub-§1-A** is enacted to read:

5 **1-A. Discontinuance after October 1, 2018 of a town way with abutting property**
6 **not otherwise accessible. A municipality may not discontinue a town way that is not**
7 **discontinued as of October 1, 2018 pursuant to this section if that town way is abutted by**
8 **property not otherwise accessible by a public way, unless the municipal officers have**
9 **complied with this subsection.**

10 A. The municipal officers shall wait one year from the date of notice provided
11 pursuant to subsection 1, paragraph B before proceeding with the discontinuance
12 process, to allow abutting property owners the opportunity to grant private easements
13 that run with the title of the property owners' land for the purpose of allowing travel
14 along the way for all abutting property owners and their lessees and guests.

15 B. After the one-year waiting period required in paragraph A, the municipal officers
16 may:

17 (1) Proceed with the discontinuance process pursuant to this section, as long as a
18 public easement is retained; or

19 (2) If the municipal officers verify that private easements that run with the title
20 of the property owners' land for the purpose of allowing travel along the way for
21 all abutting property owners and their lessees and guests have been filed with the
22 registry of deeds, proceed with the discontinuance process without retaining a
23 public easement.

24 **Sec. 3. 23 MRSA §3026-A, sub-§4**, as enacted by PL 2015, c. 464, §5, is
25 amended to read:

26 **4. Approval of order of discontinuance and damage awards. Ten or more**
27 **business days after the public hearing pursuant to subsection 3, the The municipal**
28 **legislative body must vote upon the order of discontinuance submitted to it:**

29 A. To approve the order of discontinuance and the damage awards and to appropriate
30 the money to pay the damages; or

31 B. To disapprove the order of discontinuance.

32 The vote required by this subsection must be conducted 10 or more business days after
33 the public hearing pursuant to subsection 3, except that, for a town way that is not
34 discontinued as of October 1, 2018, in a municipality in which the municipal legislative
35 body is the town meeting, the vote must be conducted at the next regularly scheduled
36 annual town meeting.

37 **Sec. 4. 33 MRSA c. 7, sub-c. 1-B** is enacted to read:

38 **SUBCHAPTER 1-B**

R.O.F.S

NONRESIDENTIAL PROPERTY DISCLOSURES

§191. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Nonresidential real property. "Nonresidential real property" means real estate that is not residential real property as defined in section 171, subsection 6.

2. Public easement. "Public easement" has the same meaning as in Title 23, section 3021, subsection 2.

3. Town way. "Town way" has the same meaning as in Title 23, section 3021, subsection 3.

§192. Applicability; exemptions

This subchapter applies to the transfer of any interest in nonresidential real property, whether by sale, installment land contract, lease with an option to purchase or any other option to purchase. If a person licensed to practice real estate brokerage is involved in the transaction, the licensee is subject to the requirements of licensure in Title 32, chapter 114. The following transfers are exempt from this subchapter:

1. Court order. Transfers pursuant to court order, including, but not limited to, transfers ordered by a court in the administration of an estate, transfers pursuant to a writ of execution, transfers by any foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain and transfers resulting from a decree for specific performance;

2. Default. Transfers to a mortgagee by a mortgagor or successor in interest who is in default or transfers to a beneficiary of a deed of trust by a trustor or successor in interest who is in default;

3. Co-owner. Transfers from one or more co-owners solely to one or more other co-owners;

4. Testate; intestate succession. Transfers pursuant to testate or intestate succession;

5. Divorce. Transfers between spouses resulting from a judgment of divorce or a judgment of separate maintenance or from a property settlement agreement incidental to such a judgment;

6. Living trust. Transfers to a living trust; and

7. Corrective deed. Transfers that, without additional consideration and without changing ownership or ownership interest, confirm, correct, modify or supplement a deed previously recorded.

§193. Disclosures

Unless the transaction is exempt under section 192, the seller of nonresidential real property shall provide to the purchaser a property disclosure statement containing the following:

R.O.F.S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41

1. Roads on or abutting property. Information identifying any abandoned or discontinued town ways, any public easements and any private roads located on or abutting the property, if known by the seller; and

2. Road maintenance. Information identifying the party or parties responsible for maintenance of any abandoned or discontinued town way, public easement or private road on or abutting the property identified pursuant to subsection 1, including any responsible road association, if known by the seller.'

SUMMARY

This amendment replaces the bill and changes the title. The amendment makes the following changes to the law governing discontinuance of town ways.

1. It requires that notice of a proposed discontinuance of a town way include information regarding the potential discontinuance or retention of a public easement, including maintenance obligations for and the right of access to the way under the discontinuance or retention of a public easement, and information regarding the rights of abutting property owners to enter into agreements regarding maintenance of and access to the discontinued way.

2. It requires that for a proposed discontinuance of a town way abutted by property not otherwise accessible by a public way the municipal officers provide additional notice to abutting property owners regarding their right to create private easements.

3. It prohibits the municipality from proceeding with discontinuance of a town way abutted by property not otherwise accessible by a public way unless the municipal officers have first given the additional notice to abutting property owners and allowed one year for the abutting property owners to grant easements that run with the title of the property owners' land for the purpose of allowing travel along that way for all abutting property owners and their lessees and guests. If after one year the abutting property owners have not created such private easements, the town may discontinue the way, but only if a public easement is retained. If after one year the abutting property owners have created such private easements, the town officers may proceed with discontinuance without retaining a public easement.

4. It specifies that for a municipality in which the municipal legislative body is the town meeting, a vote on the order of discontinuance must be conducted at the next regularly scheduled annual town meeting.

5. It provides that the above changes apply only to town ways not discontinued as of October 1, 2018.

The amendment also requires a seller of nonresidential real estate to provide the purchaser a property disclosure statement that includes information about any abandoned or discontinued roads, public easements or private roads on or abutting the property, if known by the seller. The disclosure must also include information about who is responsible for maintenance of such roads or easements, including any responsible road association, if known by the seller. It exempts certain property transfers that do not involve a traditional seller and purchaser from these requirements.

COMMITTEE AMENDMENT