

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

THIRD SPECIAL SESSION

October 1, 1992 to October 6, 1992

FOURTH SPECIAL SESSION

October 16, 1992

ONE HUNDRED AND SIXTEENTH LEGISLATURE

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J.S. McCarthy Company
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PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

of the
ONE HUNDRED AND SIXTEENTH LEGISLATURE

1993

include provisions for designating how much of each type of solid waste is generated and how that solid waste is managed. The agency shall assist municipal reporting by developing a municipal waste stream assessment model. The model must rely on actual waste data whenever possible, but incorporate default generation estimates when needed. Default generation estimates must incorporate factors such as commercial activity, geographical differences and municipal population.

2. Progress report. The agency shall use the municipal annual reports and other appropriate information to prepare an annual report to the Governor and the Legislature on the progress made by municipalities toward implementing the solid waste management hierarchy.

Sec. 2. 38 MRSA §2133, sub-§4, ¶A, as enacted by PL 1989, c. 585, Pt. A, §7, is repealed.

See title page for effective date.

CHAPTER 299

H.P. 309 - L.D. 397

An Act to Ensure Equitable Treatment of Manufactured Home Owners

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two thirds of all of the members elected to each House have determined it necessary to enact this measure.

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

Sec. 1. 30-A MRSA §4358, sub-§2, ¶E is enacted to read:

E. Notwithstanding any other provision of law, any modular home that meets the provisions of the municipality's building code or, in the absence of a municipal building code, the Building Officials and Code Administrators National Code (1990), 11th edition, as published by the Building Officials and Code Administrators International, Incorporated and as subsequently revised and amended, must be allowed in all zones where other single-family homes are allowed.

See title page for effective date.

CHAPTER 300

H.P. 553 - L.D. 749

An Act to Provide for Affordable Cooperative Housing in the State

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

Sec. 1. 13 MRSA c. 85, sub-c. I-A is enacted to read:

SUBCHAPTER I-A

COOPERATIVE AFFORDABLE HOUSING OWNERSHIP

§1741. Short title

This subchapter may be known and cited as the "Maine Cooperative Affordable Housing Ownership Act."

§1742. Definitions

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

1. Conversion. "Conversion" means a change in character of residential real property from a rental to an ownership basis. Creation of a cooperative affordable housing corporation to own property formerly rented for dwelling purposes is considered such a change in character.

2. Cooperative affordable housing corporation. "Cooperative affordable housing corporation" means a domestic corporation that is organized under or elects to be governed by the provisions of this subchapter.

3. Cooperative interest. "Cooperative interest" means the ownership interest in a cooperative affordable housing corporation that is evidenced by a membership share.

4. Cooperative property. "Cooperative property" means the real and personal property, including mobile and manufactured homes, in this State owned or leased by a cooperative affordable housing corporation for the primary purpose of residential use.

5. Lender. "Lender" includes, but is not limited to, the following institutional lenders whose policies and procedures are subject to governmental supervision:

A. A federal, state or local housing finance agency;

B. A bank, including savings and loan associations or insured credit unions;

C. Insurance companies;

D. Pension and profit-sharing funds or trusts; or

E. Any combination of the lenders listed in paragraphs A to D.

“Lender” also includes a community loan fund or similar nonprofit lender to housing projects.

6. Limited equity cooperative. “Limited equity cooperative” means a cooperative affordable housing corporation organized in accordance with section 1754.

7. Limited equity formula. “Limited equity formula” means a rule or method for determining the transfer value of a share in a limited equity cooperative.

8. Low income. “Low income” means income that is less than or equal to 80% of median income for the area, adjusted for family size, in accordance with federal standards generally accepted at the time of incorporation under this subchapter and comparable to standards of the federal Department of Housing and Urban Development in existence on the effective date of this section.

9. Member. “Member” means a person who owns a cooperative interest.

10. Moderate income. “Moderate income” means income that is less than or equal to 100% of median income for the area, adjusted for family size, in accordance with federal standards generally accepted at the time of incorporation under this subchapter and comparable to standards of the federal Department of Housing and Urban Development in existence on the effective date of this section.

11. Proprietary lease. “Proprietary lease” means an agreement with a cooperative affordable housing corporation governing a member’s right to occupancy under which a member has an exclusive possessory interest in a unit.

12. Resident. “Resident” means any occupant of space owned by the cooperative affordable housing corporation.

13. Share loan. “Share loan” means an agreement entered into by a member and a lender to finance the member’s acquisition of the member’s cooperative interest.

14. Subscription agreement. “Subscription agreement” means a written agreement between a prospective member and a cooperative affordable housing corporation for the purchase and sale of a cooperative interest.

15. Unit. “Unit” means a portion of the cooperative property leased for exclusive occupancy by a mem-

ber under a proprietary lease or leased to a tenant by lease agreement.

§1743. Application

1. Nonprofit. Cooperative affordable housing corporations are considered nonprofit inasmuch as they are not organized to make a profit for themselves or for their members.

2. Applicability. Except as otherwise provided in this subchapter, cooperative affordable housing corporations in the State are governed by and have all the rights, privileges and powers established in Title 13-A. Without limiting the applicability of federal law to any other corporation or unincorporated association that provides housing on a cooperative basis, it is the intent that cooperative affordable housing corporations governed by this subchapter qualify as cooperative housing corporations under federal law.

3. Election. Any corporation governed by Title 13-A may elect by a vote of 2/3 of the members voting to secure the benefits of and be bound by this subchapter and must then amend its articles of incorporation to conform with this subchapter.

4. Exemption. Any corporation or unincorporated association that does not elect to be governed under this subchapter may not be restricted from providing housing on a cooperative basis whether as a consumer cooperative under subchapter I or otherwise.

§1744. Name; use of “cooperative”

A person, firm, corporation or association, domestic or foreign, commencing business in this State after the effective date of this section may not use the word “cooperative” or “co-op” as a part of its corporate name unless it has complied with this subchapter or any other law of this State relating to cooperative associations. A foreign association organized under and complying with the cooperative laws of the state in which it was created is entitled to use the term “cooperative” or “co-op” in this State if it has obtained the privilege of doing business or carrying on activities in this State.

§1745. Property classification of cooperative interest

1. Personal property. A cooperative interest is personal property.

2. Nonseverable interest. The possessory interest evidenced by a proprietary lease is a part of and may not be severed from a cooperative interest.

§1746. Perfection of security interests in cooperative interests

1. Creation of security interest. Security interests in shares of cooperative affordable housing corporations

may be created, perfected and enforced in the same manner as security interests in certificated securities under Title 11, articles 8 and 9. A lender may perfect such a security interest by possession of shares or by any other method under which security interests in certificated securities may be perfected pursuant to Title 11, article 8.

2. Notation of secured party. Upon the request of a secured party, a cooperative affordable housing corporation shall note on its books and records the interest of the secured party in a cooperative interest. Such a request or notation is not required to perfect a security interest in a cooperative interest.

§1747. Articles of incorporation; minimum requirements

Articles of incorporation of a cooperative affordable housing corporation must contain the following provisions in addition to those required by Title 13-A:

1. One class of stock. A statement that the cooperative affordable housing corporation has only one class of stock;

2. Restrictions on transfers. A statement of restrictions, if any, upon transfers of shares;

3. Rate of dividend. The rate of dividend, if any, allocable to membership shares, which may not exceed 6% per annum on invested capital;

4. Acquire membership. The conditions, if any, under which the cooperative affordable housing corporation reserves the right to acquire membership shares;

5. Distribution upon dissolution. The basis for distribution of assets in the event of dissolution;

6. Allocation of ownership and voting interests. The method of allocation of ownership and voting interests in the cooperative affordable housing corporation; and

7. Right of first refusal. The conditions, if any, under which the cooperative affordable housing corporation has a right of first refusal upon proposed transfers of cooperative interest.

§1748. Organizational meeting

Within 6 months after the first conveyance of a share to a member, an organizational meeting of the cooperative affordable housing corporation must be held for the purpose of adopting bylaws, electing officers and transacting such other business as may come before the meeting.

§1749. Membership

1. Capital stock. A cooperative affordable housing corporation must be organized on a membership basis with capital stock.

2. Requirements. A cooperative affordable housing corporation must have one class of stock and one class of members. The designation, qualifications, requirements, method of acceptance and incidents of membership must be set forth in the articles of incorporation or the bylaws.

3. Transfers. A member may not transfer membership except as permitted in the articles of incorporation or the bylaws.

4. Termination. The articles of incorporation or the bylaws may provide for termination of membership and the conditions and terms of termination.

§1750. Bylaws; minimum requirements

The bylaws of a cooperative affordable housing corporation must contain procedures under which the cooperative affordable housing corporation's possessory remedy will be pursued in the event of a member's default and the rights of a defaulting member, in accordance with section 1755, subsection 2.

§1751. Membership shares; requirements

A cooperative affordable housing corporation shall issue shares to its members as evidence of their ownership of a cooperative interest. The shares must be in a form prescribed in the articles of incorporation or bylaws of the cooperative affordable housing corporation. Restrictions upon transfers of shares must be noted on the face of the certificates representing shares. Membership shares may not be issued under this section and proprietary leases may not be issued under section 1755 before filing of the articles of incorporation as a cooperative affordable housing corporation.

§1752. Voting

1. One vote per member. Except as provided in subsection 5, the votes in a cooperative affordable housing corporation must be assigned so that each member has one vote.

2. Nonmembers on board. Nonmembers may be elected by the membership of the cooperative affordable housing corporation to serve on the board of directors of the cooperative affordable housing corporation, except that no more than 1/3 of the directors may be nonmembers.

3. Proxy voting. Voting by proxy may be permitted in cooperative affordable housing corporations, subject to the following limitations:

A. Proxies must be assigned to members; and

B. No more than one proxy may be voted by any member on any question.

4. Absentee ballots. Voting by absentee ballots may be permitted in cooperative affordable housing corporations.

5. Alternative voting scheme. Notwithstanding subsection 1, a cooperative affordable housing corporation not organized as a limited equity cooperative pursuant to section 1754 may adopt in its articles of incorporation or bylaws a voting scheme other than one vote per member, except that decisions to merge a cooperative affordable housing corporation with another entity, to dissolve it or to amend its articles of incorporation or bylaws must be made on the basis of one vote per member.

§1753. Merger; consolidation

A cooperative affordable housing corporation may not consolidate or merge with another corporation other than a cooperative affordable housing corporation. Two or more cooperative affordable housing corporations may consolidate or merge in accordance with Title 13-A, chapter 9. Cooperative affordable housing corporations may not engage in mergers or consolidation if such an action is undertaken for the purpose of circumventing section 1754, 1757, 1758 or 1761.

§1754. Limited equity cooperatives

A cooperative affordable housing corporation may organize as a limited equity cooperative in order to fulfill the public purpose of providing and preserving housing for persons and households of low income and moderate income at the time that they purchase their memberships. In addition to safeguarding the public purpose, a limited equity cooperative must meet the following requirements.

1. Sale of interest based on limited equity formula. The articles of incorporation must require that cooperative interests be sold at no more than a transfer value determined by a limited equity formula contained in the articles. That value must be consistent with the object of maintaining long-term affordability of cooperative interests for persons or households of low income and moderate income.

2. Maintenance of affordability. A limited equity formula, once established by a cooperative affordable housing corporation in its articles of incorporation, may be amended only if that amendment does not make the cooperative membership unaffordable for classes of low-income or moderate-income households for which the cooperative affordable housing corporation was originally incorporated. A cooperative affordable housing corpo-

ration once organized under this section may not reorganize as other than a limited equity cooperative without first dissolving.

3. Uphold public purpose. A limited equity cooperative may not sell all or substantially all of its assets if such sale is intended to circumvent the public purpose of this section.

4. Right to repurchase. The articles of incorporation must require that the cooperative affordable housing corporation has the first right to repurchase a member's cooperative interest.

5. Limit on capital distribution. The articles of incorporation must require that the total distribution of capital to a member not exceed the transfer value.

6. Distribution upon dissolution. The articles of incorporation must require that upon dissolution of the cooperative affordable housing corporation any assets remaining after retirement of corporate debts and distribution to members must be distributed to a charitable organization described in the Internal Revenue Code of 1986, Section 501(c)(3), as amended, a public agency or another limited equity cooperative whose formula for determining transfer value is no less restrictive than that of the cooperative affordable housing corporation being dissolved.

7. Sublease limitations. The articles of incorporation must require that a sublease of a unit may not require monthly payments by the sublessee in excess of 100% of the monthly payments for the unit required in the proprietary lease.

8. Minimum occupancy requirement. At least 80% of a limited equity cooperative's occupied units must be occupied by members.

9. Residents only. Voting authority may not be assigned to nonresidents, except for any assignment as security for a share loan or as security for a loan for construction, acquisition or permanent financing of cooperative property.

§1755. Proprietary lease

Every member of a cooperative affordable housing corporation is entitled to receive from the cooperative affordable housing corporation a written proprietary lease that must include the following:

1. Personal property security interest. A provision that the collateral for a loan against the member's cooperative interest is in the nature of a personal property security interest and any default of such a loan entitles the lender to treat the default in the same manner as a default of a loan secured by personal property;

2. Remedy for default. A description of the cooperative affordable housing corporation's possessory remedy in the event of default. Good cause is required for termination of the right of occupancy. "Good cause" includes nonpayment of loans, fees, costs or assessments pertaining to the cooperative interest or material violation of bylaws, rules or proprietary lease that continues following reasonable notice and reasonable opportunity to cure the alleged material violations; and

3. Maintenance and carrying charges. Provisions for determining maintenance and carrying charges for the unit.

§1756. Offering of cooperative interests; subscription agreement; disclosures required

1. Materials provided to prospective members. In conjunction with the offering of cooperative interests to prospective members, a person or entity offering to sell cooperative interests shall provide to a purchaser prior to the execution of a subscription agreement by the purchaser a copy of the proposed or adopted articles of incorporation and bylaws of the cooperative affordable housing corporation, a subscription agreement or sales agreement, a proposed proprietary lease and the most current corporate financial statements, if any exist.

2. Contents of agreements. The subscription agreement or sales agreement must contain:

A. Provisions detailing the cost of acquisition of a cooperative interest, the rights and privileges of membership in the cooperative affordable housing corporation and terms and conditions of occupancy of a unit in the cooperative affordable housing corporation;

B. Provisions, if any, under which the subscription agreement or sales agreement is subordinated to other agreements or otherwise encumbered;

C. Provisions for cancellation of the agreement by either party; and

D. A legally sufficient description of the property.

3. Cancellation. The subscriber or purchaser has the right to cancel the subscription agreement or sales agreement without penalty upon provision of written notice to the offeror within 10 days of the date of signing the agreement. In the event of a cancellation, all money paid by the subscriber or purchaser to the offeror must be returned to the subscriber or purchaser by the offeror within 14 days of receipt of the notice of cancellation. The offeror shall inform the subscriber or purchaser in writing of the right of cancellation.

Notwithstanding any other provision of law to the contrary, the offer of membership, shares or other own-

ership interests in a cooperative affordable housing corporation or any other corporation or unincorporated association organized for the primary purpose of providing housing on a cooperative basis as a consumer cooperative under subchapter I or otherwise is not the offer of a security pursuant to Title 32, chapter 105 or any other provision of law.

§1757. Consumer protection; enforcement

Failure or neglect to provide to purchasers the documents and disclosures required by section 1756 is considered a violation of Title 10, chapter 206.

§1758. Dissolution

By vote of at least 80% of its members or any larger percentage specified in the articles of incorporation or bylaws, a cooperative affordable housing corporation may vote to dissolve and terminate its proprietary leases.

§1759. Loans

Any lender is authorized to make loans secured by shares in a cooperative affordable housing corporation, including limited equity cooperatives. For purposes of Title 9-A, section 1-202, subsection (8), a loan secured by shares of a cooperative affordable housing corporation must be considered a loan secured by a mortgage on real estate.

§1760. Net income; apportionment

1. Apportionment. Subject to subsection 2, the board of directors of a cooperative affordable housing corporation may apportion annually the remainder of its net income in one or more of the following ways:

A. As a reserve fund for the general operation of the cooperative affordable housing corporation; or

B. As a dividend not to exceed 6% per annum on invested capital.

2. Cost reduction. This section does not prevent a cooperative affordable housing corporation from disposing of its net income by reducing the cost of facilities or services or by applying the net income otherwise for the common benefit of its members.

§1761. Nondiscrimination

Title 5, chapter 337, subchapter IV applies to all cooperative affordable housing corporations in the State.

§1762. Property tax provisions

1. Property not tax-exempt. Notwithstanding any provision of law to the contrary, cooperative property

does not qualify for property tax exemption under Title 36, section 652, subsection 1, paragraph A.

2. Eligibility for property tax relief. Without limiting the eligibility of members of any other corporation or unincorporated association that provides housing on a cooperative basis for tax relief, a member of a cooperative affordable housing corporation is eligible for any relief afforded to property taxpayers under law.

3. Homestead exemption from attachment and execution. Title 14, section 4422 applies to cooperative interests in cooperative affordable housing corporations.

See title page for effective date.

CHAPTER 301

H.P. 454 - L.D. 580

An Act to Further Discourage the Smoking of Cigarettes by Minors

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

Sec. 1. 22 MRSA §1579, as repealed and replaced by PL 1989, c. 445, §8, is amended to read:

§1579. Prohibition

1. Sale and distribution; penalty. No person may knowingly sell, furnish, give away or offer to sell, furnish or give away cigarettes, cigarette paper or any other tobacco product to any person under the age of 18 years. No person in the business of selling or otherwise distributing cigarettes, cigarette paper or other tobacco products for profit nor an employee or agent of such that a person may, in the course of that person's business, distribute free any cigarette, cigarette paper or other tobacco product to any person under the age of 18 years in any place, including, but not limited to, a public way or sidewalk, public park or playground, public school or other public building, or an entranceway, lobby, hall or other common area of a private building, shopping center or mall.

Any person who violates this subsection commits a civil violation for which a forfeiture of not less than ~~\$10 nor more than \$100~~ \$25 nor more than \$200 may be adjudged for any one offense. Any person who employs a person who violates this subsection commits a civil violation for which a forfeiture of not less than \$100 nor more than \$1,000 ~~shall~~ may be adjudged. In all cases of violations, the court shall impose a forfeiture ~~which shall that may~~ not be suspended, except pursuant to Title 15, section 3314.

~~It is an affirmative defense to prosecution under this subsection that the defendant was the parent, foster par-~~

~~ent, guardian or other similar person responsible for the long-term general care and welfare of the person under the age of 18 years who furnished that person with cigarettes or any other tobacco product in the defendant's home for use in the defendant's home. It is an affirmative defense to prosecution under this subsection that the defendant sold cigarettes, cigarette paper or any other tobacco product to a person under the age of 18 years who furnished fraudulent proof of age.~~

2. Prohibition; purchase by minors; penalty. It ~~shall be~~ is unlawful for any person under the age of 18 years to purchase cigarettes, cigarette paper or any other tobacco product.

Any person who violates this subsection commits a civil violation for which a forfeiture of not less than ~~\$10 nor more than \$50~~ \$25 nor more than \$200 may be adjudged for each violation. The judge, as an alternative to or in addition to the civil forfeitures permitted by this subsection, may assign the violator to perform specified work for the benefit of the State, the municipality or other public entity or a charitable institution.

3. Display of prohibition against sales to minors. All dealers and distributors of tobacco products shall post notice of this section prohibiting tobacco and cigarette paper sales to persons under the age of 18 years. Notices ~~shall~~ must be publicly and conspicuously displayed in the dealers' or distributors' places of business in letters at least 3/8 inches high. Signs required by this section may be provided at cost by the Bureau of Liquor Enforcement. Any person who violates this subsection commits a civil violation for which a forfeiture of not less than \$50 nor more than \$200 may be adjudged for any one offense.

4. Cigarette paper defined. As used in this section, the term "cigarette paper" means those paper or paper-like products used to roll cigarettes, which by advertising, design or use facilitate the use of tobacco or other products for inhalation.

See title page for effective date.

CHAPTER 302

S.P. 381 - L.D. 1137

An Act to Amend the Maine Business Corporation Act

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

Sec. 1. 13-A MRSA §910, sub-§2, ¶C, as enacted by PL 1985, c. 394, §3, is amended to read:

C. For the purposes of this section: