

# MAINE STATE LEGISLATURE

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## PART 3

## PURCHASE

Sec.

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**§ 8-301. Rights acquired by purchaser; title acquired by bona fide purchaser**

(1) Upon delivery of a security, the purchaser acquires the rights in the security which his transferor had or had actual authority to convey, except that a purchaser who has himself been a party to any fraud or illegality affecting the security or who as a prior holder had notice of an adverse claim cannot improve his position by taking from a later bona fide purchaser.

(2) A bona fide purchaser in addition to acquiring the rights of a purchaser also acquires the security free of any adverse claim. "Adverse claim" includes a claim that a transfer was or would be unauthorized or wrongful or that a particular adverse person is the owner or has an interest in the security.

(3) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

1963, c. 362, § 1.

**§ 8-302. “Bona fide purchaser”**

A “bona fide purchaser” is a purchaser for value in good faith and without notice of any adverse claim who takes delivery of a security in bearer form or of one in registered form issued to him or indorsed to him or in blank.

1963, c. 362, § 1.

**§ 8-303. “Broker”**

“Broker” means a person engaged for all or part of his time in the business of buying and selling securities, who in the transaction concerned acts for or buys a security from or sells a security to a customer. Nothing in this Article determines the capacity in which a person acts for purposes of any other statute or rule to which such person is subject.

1963, c. 362, § 1.

**§ 8-304. Notice to purchaser of adverse claims**

(1) A purchaser (including a broker for the seller or buyer but excluding an intermediary bank) of a security is charged with notice of adverse claims if

(a) The security whether in bearer or registered form has been indorsed “for collection” or “for surrender” or for some other purpose not involving transfer; or

(b) The security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor. The mere writing of a name on a security is not such a statement.

(2) The fact that the purchaser (including a broker for the seller or buyer) has notice that the security is held for a third person or is registered in the name of or indorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute notice of adverse claims. If, however, the purchaser (excluding an intermediary bank) has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims.

1963, c. 362, § 1.

**§ 8-305. Staleness as notice of adverse claims**

An act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange does not of itself constitute any notice of adverse claims, except in the case of a purchase

(1) After one year from any date set for such presentment or surrender for redemption or exchange; or

(2) After 6 months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date.

1963, c. 362, § 1.

**§ 8-306. Warranties on presentment and transfer**

(1) A person who presents a security for registration of transfer or for payment or exchange warrants to the issuer that he is entitled to the registration, payment or exchange. But a purchaser for value without notice of adverse claims who receives a new, reissued or reregistered security on registration of transfer warrants only that he has no knowledge of any unauthorized signature (section 8-311) in a necessary indorsement.

(2) A person by transferring a security to a purchaser for value warrants only that

(a) His transfer is effective and rightful; and

(b) The security is genuine and has not been materially altered; and

(c) He knows no fact which might impair the validity of the security.

(3) Where a security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against such delivery, the intermediary by such delivery warrants only his own good faith and authority even though he has purchased or made advances against the claim to be collected against the delivery.

(4) A pledgee or other holder for security who redelivers the security received, or after payment and on order of the debtor delivers that security to a third person makes only the warranties of an intermediary under subsection (3).

(5) A broker gives to his customer and to the issuer and a purchaser the warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of his customer.

1963, c. 362, § 1.

**§ 8-307. Effect of delivery without indorsement; right to compel indorsement**

Where a security in registered form has been delivered to a purchaser without a necessary indorsement he may become a bona fide purchaser only as of the time the indorsement is supplied, but against the transferor the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

1963, c. 362, § 1.

**§ 8-308. Indorsement, how made; special indorsement; indorser not a guarantor; partial assignment**

(1) An indorsement of a security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or when the signature of such person is written without more upon the back of the security.

(2) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies the person to whom the security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement into a special indorsement.

(3) "An appropriate person" in subsection (1) means

(a) The person specified by the security or by special indorsement to be entitled to the security; or

(b) Where the person so specified is described as a fiduciary but is no longer serving in the described capacity, either that person or his successor; or

(c) Where the security or indorsement so specifies more than one person as fiduciaries and one or more are no longer serving in the described capacity, the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified; or



(d) Where the person so specified is an individual and is without capacity to act by virtue of death, incompetence, infancy or otherwise, his executor, administrator, guardian or like fiduciary; or

(e) Where the security or indorsement so specifies more than one person as tenants by the entirety or with right of survivorship and by reason of death all cannot sign, the survivor or survivors; or

(f) A person having power to sign under applicable law or controlling instrument; or

(g) To the extent that any of the foregoing persons may act through an agent, his authorized agent.

(4) Unless otherwise agreed, the indorser by his indorsement assumes no obligation that the security will be honored by the issuer.

(5) An indorsement purporting to be only of part of a security representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(6) Whether the person signing is appropriate, is determined as of the date of signing and an indorsement by such a person does not become unauthorized for the purposes of this Article by virtue of any subsequent change of circumstances.

(7) Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, does not render his indorsement unauthorized for the purposes of this Article.

1963, c. 362, § 1.

### § 8-309. Effect of indorsement without delivery

An indorsement of a security whether special or in blank does not constitute a transfer until delivery of the security on which it appears or if the indorsement is on a separate document until delivery of both the document and the security.

1963, c. 362, § 1.

### § 8-310. Indorsement of security in bearer form

An indorsement of a security in bearer form may give notice of adverse claims (section 8-304), but does not otherwise affect any right to registration the holder may possess.

1963, c. 362, § 1.

**§ 8-311. Effect of unauthorized indorsement**

Unless the owner has ratified an unauthorized indorsement or is otherwise precluded from asserting its ineffectiveness,

(1) He may assert its ineffectiveness against the issuer or any purchaser other than a purchaser for value and without notice of adverse claims who has in good faith received a new, re-issued or re-registered security on registration of transfer; and

(2) An issuer who registers the transfer of a security upon the unauthorized indorsement is subject to liability for improper registration (section 8-404).

1963, c. 362, § 1.

**§ 8-312. Effect of guaranteeing signature or indorsement**

(1) Any person guaranteeing a signature of an indorser of a security warrants that at the time of signing

(a) The signature was genuine; and

(b) The signer was an appropriate person to indorse (section 8-308); and

(c) The signer had legal capacity to sign.

But the guarantor does not otherwise warrant the rightfulness of the particular transfer.

(2) Any person may guarantee an indorsement of a security and by so doing warrants not only the signature (subsection (1)) but also the rightfulness of the particular transfer in all respects. But no issuer may require a guarantee of indorsement as a condition to registration of transfer.

(3) The foregoing warranties are made to any person taking or dealing with the security in reliance on the guarantee and the guarantor is liable to such person for any loss resulting from breach of the warranties.

1963, c. 362, § 1.

**§ 8-313. When delivery to the purchaser occurs; purchaser's broker as holder**

(1) Delivery to a purchaser occurs when

(a) He or a person designated by him acquires possession of a security; or

(b) His broker acquires possession of a security specially indorsed to or issued in the name of the purchaser; or

(c) His broker sends him confirmation of the purchase and also by book entry or otherwise identifies a specific security in the broker's possession as belonging to the purchaser; or

(d) With respect to an identified security to be delivered while still in the possession of a third person when that person acknowledges that he holds for the purchaser.

(e) Appropriate entries on the books of a clearing corporation are made under section 8-320.

(2) The purchaser is the owner of a security held for him by his broker, but is not the holder except as specified in paragraphs (b), (c) and (e) of subsection (1). Where a security is part of a fungible bulk the purchaser is the owner of a proportionate property interest in the fungible bulk.

(3) Notice of an adverse claim received by the broker or by the purchaser after the broker takes delivery as a holder for value is not effective either as to the broker or as to the purchaser. However, as between the broker and the purchaser the purchaser may demand delivery of an equivalent security as to which no notice of an adverse claim has been received.

1963, c. 362, § 1.

### § 8-314. Duty to deliver, when completed

(1) Unless otherwise agreed where a sale of a security is made on an exchange or otherwise through brokers,

(a) The selling customer fulfills his duty to deliver when he places such a security in the possession of the selling broker or of a person designated by the broker or if requested, causes an acknowledgment to be made to the selling broker that it is held for him; and

(b) The selling broker including a correspondent broker acting for a selling customer fulfills his duty to deliver by placing the security or a like security in the possession of the buying broker or a person designated by him or by effecting clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

(2) Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to deliver a security under a contract of purchase is not fulfilled until he places the security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by him or at the purchaser's

request causes an acknowledgment to be made to the purchaser that it is held for him. Unless made on an exchange, a sale to a broker purchasing for his own account is within this subsection and not within subsection (1).

1963, c. 362, § 1.

**§ 8-315. Action against purchaser based upon wrongful transfer**

(1) Any person against whom the transfer of a security is wrongful for any reason, including his incapacity, may against anyone except a bona fide purchaser reclaim possession of the security or obtain possession of any new security evidencing all or part of the same rights or have damages.

(2) If the transfer is wrongful because of an unauthorized indorsement, the owner may also reclaim or obtain possession of the security or new security even from a bona fide purchaser, if the ineffectiveness of the purported indorsement can be asserted against him under the provisions of this Article on unauthorized indorsements (section 8-311).

(3) The right to obtain or reclaim possession of a security may be specifically enforced and its transfer enjoined and the security impounded pending the litigation.

1963, c. 362, § 1.

**§ 8-316. Purchaser's right to requisites for registration of transfer on books**

Unless otherwise agreed, the transferor must on due demand supply his purchaser with any proof of his authority to transfer or with any other requisite which may be necessary to obtain registration of the transfer of the security, but if the transfer is not for value a transferor need not do so unless the purchaser furnishes the necessary expenses. Failure to comply with a demand made within a reasonable time gives the purchaser the right to reject or rescind the transfer.

1963, c. 362, § 1.

**§ 8-317. Attachment or levy upon security**

(1) No attachment or levy upon a security or any share or other interest evidenced thereby which is outstanding shall be valid until the security is actually seized by the officer making

the attachment or levy but a security which has been surrendered to the issuer may be attached or levied upon at the source.

(2) A creditor whose debtor is the owner of a security shall be entitled to such aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching such security or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process.

1963, c. 362, § 1.

### § 8-318. No conversion by good faith delivery

An agent or bailee who in good faith (including observance of reasonable commercial standards if he is in the business of buying, selling or otherwise dealing with securities) has received securities and sold, pledged or delivered them according to the instructions of his principal is not liable for conversion or for participation in breach of fiduciary duty although the principal had no right to dispose of them.

1963, c. 362, § 1.

### § 8-319. Statute of frauds

A contract for the sale of securities is not enforceable by way of action or defense, unless

(1) There is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price; or

(2) Delivery of the security has been accepted or payment has been made but the contract is enforceable under this provision only to the extent of such delivery or payment; or

(3) Within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under subsection (1) has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within 10 days after its receipt; or

(4) The party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract was made for sale of a stated quantity of described securities at a defined or stated price.

1963, c. 362, § 1.

**§ 8-320. Transfer or pledge within a central depository system**

(1) If a security

(a) Is in the custody of a clearing corporation or of a custodian bank or a nominee of either subject to the instructions of the clearing corporation; and

(b) Is in bearer form or indorsed in blank by an appropriate person or registered in the name of the clearing corporation or custodian bank or a nominee of either; and

(c) Is shown on the account of a transferor or pledgor on the books of the clearing corporation;

then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of appropriate entries on the books of the clearing corporation reducing the account of the transferor or pledgor and increasing the account of the transferee or pledgee by the amount of the obligation or the number of shares or rights transferred or pledged.

(2) Under this section entries may be with respect to like securities or interests therein as a part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers or pledges of the same security.

(3) A transfer or pledge under this section has the effect of a delivery of a security in bearer form or duly indorsed in blank (section 8-301) representing the amount of the obligation or the number of shares or rights transferred or pledged. If a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party (sections 9-304 and 9-305). A transferee or pledgee under this section is a holder.

(4) A transfer or pledge under this section does not constitute a registration of transfer under part 4 of this Article.

(5) That entries made on the books of the clearing corporation as provided in subsection (1) are not appropriate does not affect the validity or effect of the entries nor the liabilities or obligations of the clearing corporation to any person adversely affected thereby.

1963, c. 362, § 1.