



129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1426

H.P. 1039

House of Representatives, March 28, 2019

An Act To Increase Protections for Land Installment Contracts

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative HARNETT of Gardiner.
Cosponsored by Senator BELLOWS of Kennebec and
Representatives: COLLINGS of Portland, DOUDERA of Camden, EVANGELOS of
Friendship, KESSLER of South Portland, MORALES of South Portland, PEBWORTH of Blue
Hill, TALBOT ROSS of Portland, WHITE of Waterville.

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

2 **Sec. 1. 14 MRSA §6203-F**, as repealed and replaced by PL 1991, c. 707, §2, is
3 repealed and the following enacted in its place:

4 **§6203-F. Foreclosure of residential land installment contracts**

5 **1. Foreclosure procedure.** Notwithstanding any other provision of this chapter, if
6 the purchaser of real estate under a residential land installment contract who is in
7 possession or intends to take possession of the real estate is in default of any of the terms
8 of that contract, the seller or the seller's heirs or assigns may foreclose the rights of the
9 purchaser in the contract. For purposes of this section, "land installment contract" has the
10 same meaning as in Title 33, section 481, subsection 2.

11 **2. Redemption period.** A judgment for foreclosure under this section must contain
12 a 90-day redemption period. Within the redemption period, the purchaser or a person
13 claiming under the purchaser may apply to any Justice of the Supreme Judicial Court or
14 Superior Court for an extension of time to redeem, and after such notice as the court may
15 order, for good cause shown, the court may extend the redemption period to a maximum
16 of one year. An extension order is not binding against any person without actual notice of
17 the order unless, within the 90-day period, a written notice describing the land,
18 identifying the instrument under which foreclosure proceedings have been brought and
19 setting forth the fact that application for extension of the redemption period has been
20 made is recorded in the registry of deeds in the county in which the land is located. This
21 section may not be construed to extend the life of options with an ascertainable time of
22 termination.

23 **3. Foreclosing party as mortgagee.** A seller or other foreclosing party under this
24 section is subject to the requirements imposed upon a mortgagee under sections 6101,
25 6111, 6321, 6321-A, 6321-B, 6322 and 6322-A.

26 **Sec. 2. 33 MRSA §481, sub-§2**, as enacted by PL 1983, c. 368, is amended to
27 read:

28 **2. Land installment contract.** "Land installment contract" means an agreement
29 under which the vendor agrees to sell an interest in property to the purchaser and the
30 purchaser agrees to pay the purchase price in 5 or more subsequent payments exclusive of
31 the down payment, if any, and the vendor retains title to the property as security for the
32 purchaser's obligation under the agreement. Land installment contracts include a bond
33 for deed, a contract for the sale of real estate, option contracts for the purchase of real
34 property, an agreement for the occupancy of residential real estate in which the occupant
35 is required to make an initial payment in excess of 4 times the periodic monthly payments
36 required to occupy the premises and an agreement in which a person is induced to occupy
37 a property as a primary residence by a promise or offer to grant ownership of the property
38 to the person at a future date. Land installment contracts do not include ~~option contracts~~
39 for the purchase of real property or purchase and sale agreements entered into with the
40 good faith expectation of a separate transaction in which a 3rd party or the seller agrees to
41 finance the purchase price in a single installment.

1 **Sec. 3. 33 MRSA §482, sub-§1, ¶¶P and Q**, as enacted by PL 1983, c. 368, are
2 amended to read:

3 P. A provision that the purchaser has the right to accelerate or prepay any installment
4 payments without penalty, unless agreed to the contrary; ~~and~~

5 Q. A clear and conspicuous provision above the place for the signature of the
6 purchaser ~~which~~ that acknowledges receipt by the purchaser of a copy of the land
7 installment contract signed by the vendor; and

8 **Sec. 4. 33 MRSA §482, sub-§1, ¶R** is enacted to read:

9 R. A statement that the vendor has inspected the property to be conveyed and
10 certifies that the property is in compliance with Title 14, sections 6021 and 6021-A.

11 **Sec. 5. 33 MRSA §482, sub-§2**, as enacted by PL 1983, c. 368, is amended to
12 read:

13 **2. Recordation.** Within 20 days after the contract has been signed by both the
14 vendor and the purchaser, the vendor shall cause a copy of the contract or a memorandum
15 of the contract to be recorded at the purchaser's expense in the registry of deeds in the
16 county where the property sold under the contract is located. If a memorandum of the
17 contract is recorded, it ~~shall~~ must be entitled "Memorandum of a Land Installment
18 Contract" and ~~shall~~ must contain, as at a minimum, the names of the parties, the
19 signatures of the parties, a description of the property and applicable time periods. A
20 person other than a vendor and purchaser may rely on the recorded materials in
21 determining whether the requirements of this subsection have been met. If a contract is
22 not recorded pursuant to this subsection, the vendor may not enforce the contract.

23 **Sec. 6. 33 MRSA §482, sub-§§4 and 5** are enacted to read:

24 **4. Vendor is creditor.** A vendor in a land installment contract is a creditor under
25 Title 9-A, section 1-301, subsection 17.

26 **5. Violations.** A violation of this chapter is a violation of the Maine Unfair Trade
27 Practices Act. In addition to any other rights and remedies a purchaser may have in the
28 law, upon a finding that a violation of this chapter by a vendor has occurred, a court shall
29 find one or both of the following:

30 A. The purchaser is entitled to recover all actual damages or \$1,000, whichever is
31 greater; and

32 B. The purchaser is entitled to recover the aggregate amount of costs, expenses and
33 attorney's fees determined by the court to have reasonably been incurred on the
34 purchaser's behalf in connection with the prosecution or defense of the matter.

35 **Sec. 7. 33 MRSA §483** is enacted to read:

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§483. Prohibited acts

1. Bad faith avoidance. A person may not in bad faith attempt to avoid the application of this chapter including engaging in subterfuge or designing or structuring a transaction with the purpose of evading the provisions of this chapter.

2. Survival of foreclosure. A land installment contract may not require a purchaser to enter into a promissory note or any other financial instrument or obligation that survives the foreclosure of the purchaser's interest in the real estate.

SUMMARY

This bill expands the definition of "land installment contracts," creates foreclosure procedures for residential land installment contracts that include a 90-day redemption period and removes the right to cure of the purchaser and imposes mortgagee requirements on the foreclosing party. This bill also requires the vendor of a land installment contract to certify that the property meets the warranty of habitability under state law, makes the vendor of a land installment contract a creditor under the Maine Consumer Credit Code and, along with other remedies, makes a violation of the provisions regarding land installment contracts a violation under the Maine Unfair Trade Practices Act.