

HOUSE No. 4496

The Commonwealth of Massachusetts

By Mr. Speliotis of Danvers, for the committee on Consumer Protection and Professional Licensure, on House No. 1287, a Bill relative to time-share ownership (House, No. 4496). February 16, 2010.

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act Relative to time-share ownership.

FOR THE COMMITTEE

NAME:	DISTRICT/ADDRESS:
Theodore C. Speliotis	13th Essex

The Commonwealth of Massachusetts

In the Year Two Thousand and Ten

An Act Relative to time-share ownership.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 SECTION 1. Section 2 of chapter 183B of the General Laws, as appearing in the 2006 Official
2 Edition, is hereby amended by inserting after the definition of “Exchange program”, in lines 41-
3 43, the following definitions:-
4 “Forfeiture”, full termination of any and all rights at law or in equity of a time-share owner, and
5 of the heirs, executors, administrators, successors or assigns of the time-share owner in or arising
6 out of the ownership of a time-share estate or a time-share license, including all rights of
7 redemption or any other rights to cure.
8 “Forfeiture proceedings”, shall include the process of terminating or foreclosing the rights of a
9 time-share owner, or exercising rights of a secured party, under a mortgage, trust deed or other
10 security instrument which encumbers a time-share pursuant to section 29A, or the process of
11 foreclosing a lien for assessments pursuant to section 29 on a time-share pursuant to section 29B,
12 or both.
13
- 14 SECTION 2. Said section 2 of said chapter 183B, as so appearing, is hereby further amended by
15 striking out the definition of “Time-share license” and replacing it with the following definition:-
16 “Time-share license”, a right to occupancy of a unit or any of several units during 5 or more
17 separated time periods not coupled with a freehold estate or an estate for years and shall include
18 an interest in timeshare property created through the conveyance of all or a portion of time-share
19 property to an association or a third party, in trust, for the benefit of time-share owners.
20
- 21 SECTION 3. Said chapter 183B is hereby amended by striking out clause (8) of subsection (a) of
22 section 20, as so appearing, and inserting in place thereof the following clause:-
23 (8) impose charges for late payment of assessments; and after notice and an opportunity to be
24 heard, levy reasonable fines for violations of the time-share instrument, by-laws, and rules and
25 regulations of the association; and assess the reasonable legal fees and collection agency fees
26 incurred by the association in collection of such assessments and fines and the institution of
27 forfeiture proceedings.
28

29 SECTION 4. Said chapter 183B is hereby amended by striking out section 29, as so appearing,
30 and inserting in place thereof the following section:-

31 Section 29. (a) A person who has a duty to make assessments for time-share expenses shall have
32 a lien on a time-share for any assessment levied against that time-share or fines imposed against
33 its owner from the time the assessment or fine becomes due. In the case of either a time-share
34 estate or a time-share license, the lien shall be forfeited pursuant to section 29A. Unless the time-
35 share instrument otherwise provides, fees, charges, late charges, fines, interest, collection agency
36 fees, and reasonable attorney's fees charged pursuant to clauses (8) and (9) of subsection (a) of
37 section 20 shall be enforceable as assessments under this section. If an assessment is payable in
38 installments, the full amount of the assessment shall be
39 a lien from the time the first installment thereof becomes due.

40 (b) A lien created under this section shall be prior to all other liens and encumbrances on a time-
41 share except (i) liens and encumbrances recorded before the recording of the time-share
42 instrument, (ii) mortgages or security interests on the time-share recorded before the due date of
43 the assessment or the due date of the first installment payable on the assessment and (iii) liens for
44 real estate taxes and other governmental assessments or charges against the time-share. This
45 subsection shall not affect the priority of mechanics' or materialmen's liens. The lien under this
46 section shall not be subject to the provisions of chapter 188.

47 (c) The lien created under this section shall be automatic as a matter of law, but a claim or notice
48 of lien may be filed in the applicable registry of deeds for a time-share estate or as required in the
49 controlling time-share instruments for a time-share. A notice of lien shall be dissolved upon the
50 issuance and recording of a statement by the association pursuant to subsection (e) showing no
51 assessment to be due and owing.

52 (d) This section shall not prohibit actions to recover sums for which subsection (a) creates a lien
53 or precludes an association to resort to any contractual or other remedy permitted by law.

54 (e) The lien created under this section shall include costs, including collection agency fees,
55 reasonable attorneys' fees and all forfeiture costs incurred by the association. A person who has a
56 duty to make assessments for time-share expenses shall furnish to a time-share owner upon
57 written request a statement recordable in form setting forth the amount of unpaid assessments
58 currently levied against his or her timeshare. Said person may charge a reasonable fee for the
59 preparation of the statement. The statement shall be furnished within 10 business days after the
60 receipt of the request. The recipient of the statement shall be entitled to rely on its contents, and
61 the person who has delivered the statement may collect only the sums of money set forth therein
62 from the recipient, provided the recipient pays any amounts stated as due and owing and any
63 amounts which subsequently may become due and owing within 60 days of the date
64 of the statement.

65 (f) No time-share owner may exempt himself or herself from liability for his or her contribution
66 toward the time-share liability expenses by waiver of the use or enjoyment of any of the common
67 areas and facilities or by abandonment of the time-share or otherwise; and no time-share owner
68 shall be entitled to an offset, deduction, or waiver of time-share liability expenses or other
69 charges levied or lawfully assessed by the association.

70
71 SECTION 5. Said chapter 183B, as so appearing, is hereby amended inserting after section 29
72 the following two sections:-

73 Section 29A. The rights of a time-share owner shall be subject to forfeiture in the following
74 manner for breach of condition of any mortgage, which for the purpose of this section shall

75 include any security instrument such as a mortgage, trust deed or other similar instrument
76 encumbering a time-share:

77 (1) Upon default, and after all applicable cure periods have expired, the holder of a mortgage
78 shall provide written notice of default to the time-share owner at his or her last known address by
79 certified and first class mail and provide a reasonable opportunity to cure of not less than 90 days
80 from the date of the mailing of the notice letter.

81 (2) Prior to offering a time-share for sale for breach of condition of a mortgage, the holder
82 thereof shall attempt in good faith and with reasonable precaution, which for the purpose of this
83 section shall not require separate proceedings under section 57 of the Acts of 1943, to determine
84 whether any person subject to forfeiture proceedings under this section is entitled to protection
85 under the Servicemembers Civil Relief Act of 2003, 50 U.S.C. App. Sec. 517, hereinafter
86 referred to as "SCRA".

87 (3) Nothing herein contained shall prevent a holder of a mortgage from seeking a determination
88 under section 57 of the Acts of 1943 that a time-share owner is not entitled to benefits under
89 SCRA or, if a time-share owner is entitled to the benefits under SCRA, a determination of said
90 time-share owner's rights under SCRA.

91 (4) With respect to forfeiture proceedings based upon breach of condition of a security
92 instrument encumbering a time-share license, the holder of same shall have the option of (i)
93 forfeiting the time-share license in the manner prescribed in the time-share instrument or, if not
94 prescribed, in accordance with this section, or (ii) by public or private sale conducted in
95 accordance with the provisions of part 5 of chapter 106 of the Massachusetts Uniform
96 Commercial Code.

97 (5) If after expiration of the 90 day period the time-share owner has not cured said default in the
98 manner prescribed and the holder of the mortgage has determined in good faith and with
99 reasonable precaution that the time-share owner is not entitled to protection under SCRA, the
100 holder of the mortgage shall conduct a public auction sale under the following conditions:

101 (i) Notice:

102 (a) Notice of such sale shall be published once in a public newspaper with a general circulation
103 in the town or county in which the time-share property is situated. The publication shall be not
104 less than 30 days before the date of the sale, calculated by excluding the date of publication of
105 the first notice and the date of sale.

106 (b) A written notice of the time, date, and place of the auction shall be mailed, to the last known
107 address of the time-share owner of record, by certified and first class mail at least 30 days prior
108 to the date of sale. Such notice of sale shall also be sent by certified and first class mail to all
109 parties having a lien in the time-share estate at least 30 days prior to the date of the sale.

110 (c) Such notice shall contain the name of the time-share owner, and set forth the date, time and
111 place of the sale; a general description of the time-share, and the terms of the sale. If more than
112 one time-share is to be included in the sale, all such time-shares may be combined into one
113 notice of sale, with one property description being given as set forth herein below.

114 (d) The notice of sale pursuant to this section shall be printed in substantially the following form:
115 **SALE OF TIME-SHARE ESTATE UNDER M.G.L. C. 183B, SECTION 29A.** By virtue of
116 M.G.L. c. 183B, Section 29 and in execution of the Power of Sale contained in a certain
117 Mortgage (or Mortgages, if more than one) on the time-share estate (or estates, if more than one)
118 given by
119 the time-share owner (or owners, if more than one) set forth below for breach of the conditions
120 of said Mortgage and for the purpose of forfeiting, the same will be sold at Public Auction

121 commencing at _____ on _____, 20__ at _____,
122 Massachusetts, being all and singular the premises described in said Mortgage. (For each
123 Mortgage, list name and address of the timeshare owner, a general description of the time-share
124 estate and the book and page number of the Mortgage).

125 TERMS OF SALE: (State the deposit amount to be paid by the purchaser at the time and place of
126 the sale, and the times(s) for payment of the balance or the whole as the case may be. The time
127 share estates, if more than one, may be sold in individual lots or as a group.) Other terms to be
128 announced at the sale. Signed _____ Holder of security instrument, or
129 counsel therefor.

130 (e) Such notice of sale in the above form, published in accordance with the provisions of this
131 section, together with such other or further notice, if any, shall be deemed a sufficient notice of
132 the sale and the time-share shall be deemed to have been sold, and the instrument conveying the
133 time-share from the entity conducting the forfeiture proceedings shall transfer the time-share
134 subject to, and with the benefit of, all restrictions, easements, improvements, outstanding tax
135 titles, municipal or other public taxes, assessments, and security instruments recorded prior to the
136 recording of the notice of lien, whether or not reference to such restrictions, easements,
137 improvements, outstanding tax titles, municipal or other public taxes, assessments, or security
138 instruments is made in the said instrument of conveyance; but no purchaser at such sale shall be
139 bound to complete the purchase if there are encumbrances, other than those included
140 in the notice of sale, which are not stated at the sale and included in the entity's contract with the
141 purchaser.

142 (ii.) Conduct of Sale:

143 (a) Unless the notice of sale otherwise provides, the sale shall take place on the time-share
144 property.

145 (b) The sale shall be by public auction, conducted by a Massachusetts licensed auctioneer. At the
146 discretion of the auctioneer, he may dispense with the reading of the names of the time-share
147 owners (if there is more than one), the description of time-share (if there is more than one) and
148 the recording information (if there is more than one instrument).

149 (c) All rights of redemption of the time-share owner shall be extinguished upon sale of a time-
150 share pursuant to this section.

151 (d) The association, its manager, the holder of the mortgage, and any time-share owner may bid
152 at the sale. The successful buyer at such sale shall take title to the time-share free and clear of
153 any and all outstanding obligations of the prior time-share owner to the association, except that if
154 the buyer intends to use the time-share during the same fiscal year of the association in which the
155 time-share was purchased, the buyer shall be obligated to pay the assessment for that year.

156 (e) Upon closing, the holder of the mortgage shall provide the buyer with:

157 (I) a deed or other appropriate instrument transferring the rights to the time-share;

158 (II) an affidavit of sale attesting that all requirements of the forfeiture proceedings pursuant to
159 this section have been complied with and further attesting that the holder has attempted in good
160 faith and with reasonable precaution, to determine whether any person subject to forfeiture
161 proceedings under this section is entitled to protection under the SCRA; and

162 (III) a resale certificate as required by section 42, if requested by the buyer.

163 (f) The buyer shall record the deed or other instrument and the affidavit of sale with the

164 appropriate Registry of Deeds no more than 90 days after the sale date, holder of the mortgage.

165 Upon such recording, the buyer shall be deemed to be a bona fide purchaser of such time-share

166 and shall not be subject to claims by the prior owner thereof that the forfeiture proceedings under
167 this section are invalid under SCRA.

168 (g) Within 30 days after the closing and delivery of the deed or other instrument and affidavit of
169 sale, the holder of the mortgage shall mail a notice detailing the results of the sale to the last
170 known address of the former time-share owner and all parties which held a junior interest to that
171 of said holder.

172 (6) In the event of a breach of the conditions of a mortgage granted prior to the effective date of
173 this section on a time-share which does not contain a power of sale, the holder of the mortgage
174 may conduct forfeiture proceedings of the interest of the time-share owner in the time-share as
175 provided in this section, if at the same time the holder gives written notice of default to the time-
176 share owner as provided in subsection (a)(1), the holder also gives written notice to the time-
177 share owner stating that unless the timeshare owner objects in writing to the non-judicial
178 forfeiture within the 90-day period required by subsection (a)(1), it will proceed to conduct the
179 forfeiture pursuant to this section. The holder must explain in the notice that the time-share
180 owner has the right to a judicial foreclosure conducted pursuant to chapter 244 if the owner
181 asserts the objection within the specified time period and must include with the notice an
182 objection form together with an envelope addressed to the holder. Failure of a time-share
183 owner to object as required by this section in a timely manner is deemed a waiver of the owner's
184 right to a foreclosure pursuant to chapter 244, which may include judicial foreclosure by way of
185 court action.

186 (7) The provisions of section 33 of chapter 260 prohibiting, in the case of a mortgage in which
187 the term or maturity date of the mortgage is stated, the exercise of a power sale, entry or
188 commencement of foreclosure proceedings within 5 years from the expiration of the term or
189 maturity date, shall not apply to mortgages encumbering time-shares.

190 Section 29B. The rights of a time-share owner shall be subject to forfeiture in the following
191 manner for non-payment of assessments:

192 (1) Upon default in payment of assessments, and after all applicable cure periods have expired,
193 the association shall provide written notice of default in payment of assessments to the time-
194 share owner at his or her last known address by certified and first class mail and shall provide a
195 reasonable opportunity to cure of not less than 90 days from the date of the mailing of the notice
196 letter.

197 (2) Prior to offering a time-share for sale for nonpayment of assessments, the association shall
198 attempt in good faith and with reasonable precaution to determine whether any person subject to
199 forfeiture proceedings under this section is entitled to protection under the Servicemembers Civil
200 Relief Act of 2003, 50 U.S.C. App. Sec. 517 ("SCRA") in the same manner as is set forth in
201 subsections (2) and (3) of section 29A.

202 (3) With respect to forfeiture proceedings based upon nonpayment of assessments by the owner
203 of a time-share license, the holder of same shall have the option of (i) forfeiting the time-share
204 license in the manner prescribed in the time-share instrument or, if not prescribed, in accordance
205 with this section, or (ii) by public or private sale conducted in accordance with the provisions of
206 part 5 of chapter 106 of the Massachusetts Uniform Commercial Code.

207 (4) If after expiration of the 90 day period the time-share owner has not cured said default in the
208 manner prescribed and the association has determined in good faith and with reasonable
209 precaution that the time-share owner is not entitled to protection under SCRA, the association
210 shall conduct a public auction sale under the following conditions:

211 (i) Notice:

212 (a) Notice of such sale shall be published once in a public newspaper with a general circulation
213 in the town or county in which the time-share property is situated. The publication shall be not
214 less than 30 days before the date of the sale, calculated by excluding the date of publication of
215 the first notice and the date of sale.

216 (b) A written notice of the time, date, and place of the auction shall be mailed, to the last known
217 address of the time-share owner of record, by certified and first class mail at least 30 days prior
218 to the date of sale. Such notice of sale shall also be sent by certified and first class mail to all
219 parties having a lien in the time-share estate at least 30 days prior to the date of the sale.

220 (c) Such notice shall contain the name of the time-share owner, and set forth the date, time and
221 place of the sale; a general description of the time-share, and the terms of the sale. If more than
222 one time-share is to be included in the sale, all such time-shares may be combined into one
223 notice of sale, with one property description being given as set forth herein below.

224 (d) The notice of forfeiture proceedings with respect to a lien for nonpayment of assessments on
225 a time-share estate shall be printed in substantially the following form:

226 NOTICE OF SALE OF TIME-SHARE ESTATE OR ESTATES UNDER M.G.L. C. 183B,
227 SECTION 29B. By virtue of M.G.L. c. 183B, Section 29B and the constituent instruments of the
228 _____ (name and address of time-share property), establishing a lien
229 pursuant to M.G.L. c. 183B:29 (a) on the time-share (or time-shares, if more than one) held by
230 the time-share owner (or owners, if more than one) listed below, the time-share (or time-shares,
231 if more than one) will be sold at Public Auction commencing at _____ on _____,
232 20__ at _____, Massachusetts. (For each time-share, list name and
233 address of the time-share owner(s), a general description of the time-share and the Book and
234 Page number of the deed).

235 TERMS OF SALE: (State the deposit amount to be paid by the purchaser at the time and place of
236 the sale, and the times(s) for payment of the balance or the whole as the case may be. The time
237 share estates, if more than one, may be sold in individual lots or as a group.) Other terms to be
238 announced at the sale. Signed _____ Lienholder, or counsel therefor.

239 (e) Such notice of sale in the above form, published in accordance with the provisions of this
240 section, together with such other or further notice, if any, shall be deemed a sufficient notice of
241 the sale and the time-share shall be deemed to have been sold, and the instrument conveying the
242 time-share from the entity conducting the forfeiture shall transfer the time-share subject to, and
243 with the benefit of, all restrictions, easements, improvements, outstanding tax titles, municipal or
244 other public taxes, assessments, and security instruments recorded prior to the recording of the
245 notice of lien, whether or not reference to such restrictions, easements, improvements,
246 outstanding tax titles, municipal or other public taxes, assessments, or security instruments is
247 made in the said instrument of conveyance; but no purchaser at such sale shall be bound to
248 complete the purchase if there are encumbrances, other than those included in the notice of sale,
249 which are not stated at the sale and included in the entity's contract with the purchaser.

250 (ii.) Conduct of Sale:

251 (a) Unless the notice of sale otherwise provides, the sale shall take place on the time-share
252 property.

253 (b) The sale shall be by public auction, conducted by a Massachusetts licensed auctioneer. At the
254 discretion of the auctioneer, he may dispense with the reading of the names of the time-share
255 owners (if there is more than one), the description of time-share (if there is more than one) and
256 the recording information (if there is more than one instrument).

257 (c) All rights of redemption of the time-share owner shall be extinguished upon sale of a time-
258 share pursuant to this section.
259 (d) The association, its manager, and any time-share owner may bid at the sale. The successful
260 buyer at such sale shall take title to the time-share free and clear of any and all outstanding
261 obligations of the prior time-share owner to the association, except that if the buyer intends to
262 use the time-share during the same fiscal year of the association in which the time-share was
263 purchased, the buyer shall be obligated to pay the assessment for that year.
264 (e) Upon closing, the association shall provide the buyer with:
265 (I) a deed or other appropriate instrument transferring the rights to the time-share;
266 (II) an affidavit of sale attesting that all requirements of the forfeiture proceedings pursuant to
267 this section have been complied with and further attesting that the holder has attempted in good
268 faith and with reasonable precaution, to determine whether any person subject to forfeiture
269 proceedings under this section is entitled to protection under the SCRA; and
270 (III) a resale certificate as required by section 42, if requested by the buyer.
271 (f) The buyer shall record the deed or other instrument and the affidavit of sale with the
272 appropriate Registry of Deeds no more than 90 days after the sale date, or 90 days after the
273 receipt of the deed from the association. Upon such recording, the buyer shall be deemed to be a
274 bona fide purchaser of such time – share and shall not be subject to claims by the prior owner
275 thereof that the forfeiture proceedings under this section are invalid under SCRA.
276 (g) Within 30 days after the closing and delivery of the deed or other instrument and affidavit of
277 sale, the association shall mail a notice detailing the results of the sale to the last known address
278 of the former time-share owner and all parties which held a junior interest to that of said holder.

279
280 SECTION 6. Section 5 of chapter 254 of the General Laws, as appearing in the 2006 Official
281 Edition, is hereby amended by striking out, in line 4, the following words:- “section six of
282 chapter one hundred and eighty-three A, or subsection (a) of section twenty-nine of chapter one
283 hundred and eighty-three B”, and inserting in place thereof the following words:- or section 6 of
284 chapter 183A
285

286 SECTION 7 Upon passage of this legislation, the association shall notify within 60 days by
287 certified and first-class mail the contents and intent of said legislation to the time-share owner.
288 The entire contents of this legislation shall be summarized in said letter.