

**HOUSE . . . . . No. 1287**

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The Commonwealth of Massachusetts

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**In the Year Two Thousand Nine**  
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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  
2 Official Edition, is hereby amended by inserting after the definition of “Exchange program”, in  
3 lines 41-43, the following definitions:-

4 “Forfeiture”, full termination of any and all rights at law or in equity of a time-share  
5 owner, and of the heirs, executors, administrators, successors or assigns of the time-share owner  
6 in or arising out of the ownership of a time-share estate or a time-share license, including all  
7 rights of redemption or any other rights to cure.

8 “Forfeiture proceedings”, shall include the process of terminating or foreclosing the  
9 rights of a time-share owner, or exercising rights of a secured party, under a mortgage, trust deed  
10 or other security instrument which encumbers a time-share pursuant to section 29A, or the  
11 process of foreclosing a lien for assessments pursuant to section 29 on a time-share pursuant to  
12 section 29B, or both.

13 SECTION 2. Said section 2 of said chapter 183B, as so appearing, is hereby further  
14 amended by striking out the definition of “Time-share license” and replacing it with the  
15 following definition:-

16 “Time-share license”, a right to occupancy of a unit or any of several units during 5 or  
17 more separated time periods not coupled with a freehold estate or an estate for years and shall  
18 include an interest in time-share property created through the conveyance of all or a portion of  
19 time-share property to an association or a third party, in trust, for the benefit of time-share  
20 owners.

21 SECTION 3. Said chapter 183B is hereby amended by striking out clause (8) of  
22 subsection (a) of 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  
24 to be heard, levy reasonable fines for violations of the time-share instrument, by-laws, and rules  
25 and 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 SECTION 4. Said chapter 183B is hereby amended by striking out section 29, as so  
29 appearing, and inserting in place thereof the following section:-

30 Section 29. (a) A person who has a duty to make assessments for time-share expenses  
31 shall have a lien on a time-share for any assessment levied against that time-share or fines  
32 imposed against its owner from the time the assessment or fine becomes due. In the case of  
33 either a time-share estate or a time-share license, the lien shall be forfeited pursuant to section  
34 29A. Unless the time-share instrument otherwise provides, fees, charges, late charges, fines,

35 interest, collection agency fees, and reasonable attorney's fees, charged pursuant to clauses (8)  
36 and (9) of subsection (a) of section 20 shall be enforceable as assessments under this section. If  
37 an assessment is payable in installments, the full amount of the assessment shall be a lien from  
38 the time the first installment thereof becomes due.

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

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

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

54 (e) The lien created under this section shall include costs, including collection agency  
55 fees, reasonable attorneys' fees and all forfeiture costs incurred by the association. A person who  
56 has a 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 time-share. 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 of the  
64 statement.

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

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

72 Section 29A. The rights of a time-share owner shall be subject to forfeiture in the  
73 following manner for breach of condition of any mortgage, which for the purpose of this section  
74 shall include any security instrument such as a mortgage, trust deed or other similar instrument  
75 encumbering a time-share:

76 (1) Upon default, and after all applicable cure periods have expired, the holder of a  
77 mortgage shall provide written notice of default to the time-share owner at his or her last known

78 address by certified and first class mail and provide a reasonable opportunity to cure of not less  
79 than 30 days from the date of the mailing of the notice letter.

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

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

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

96 (5) If after expiration of the 30 day period the time-share owner has not cured said  
97 default in the manner prescribed and the holder of the mortgage has determined in good faith and  
98 with reasonable precaution that the time-share owner is not entitled to protection under SCRA,  
99 the holder of the mortgage shall conduct a public auction sale under the following conditions:

100 (i) Notice:

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

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

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

116 SALE OF TIME-SHARE ESTATE UNDER M.G.L. C. 183B, SECTION 29A.

117 By virtue of M.G.L. c. 183B, Section 29 and in execution of the Power of Sale contained  
118 in a certain Mortgage (or Mortgages, if more than one) on the time-share estate (or estates, if  
119 more than one) given by the time-share owner (or owners, if more than one) set forth below for  
120 breach of the conditions of said Mortgage and for the purpose of forfeiting, the same will be sold

121 at Public Auction commencing at \_\_\_\_\_ on \_\_\_\_\_, 20\_\_ at  
122 \_\_\_\_\_, Massachusetts, being all and singular the premises described  
123 in said Mortgage. (For each Mortgage, list name and address of the time-share owner, a general  
124 description of the time-share 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  
126 place of the sale, and the times(s) for payment of the balance or the whole as the case may be.  
127 The time share estates, if more than one, may be sold in individual lots or as a group.)

128 Other terms to be announced at the sale.

129 Signed \_\_\_\_\_

130 Holder of security instrument, or counsel therefor.

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

143 (ii.) Conduct of Sale:

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

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

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

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

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

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

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



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

165 (f) The buyer shall record the deed or other instrument and the affidavit of sale with  
166 the appropriate Registry of Deeds no more than 90 days after the sale date, holder of the  
167 mortgage. Upon such recording, the buyer shall be deemed to be a bona fide purchaser of such  
168 time-share and shall not be subject to claims by the prior owner thereof that the forfeiture  
169 proceedings under this section are invalid under SCRA.

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

174 (6) In the event of a breach of the conditions of a mortgage granted prior to the  
175 effective date of this section on a time-share which does not contain a power of sale, the holder  
176 of the mortgage may conduct forfeiture proceedings of the interest of the time-share owner in the  
177 time-share as provided in this section, if at the same time the holder gives written notice of  
178 default to the time-share owner as provided in subsection (a)(1), the holder also gives written  
179 notice to the time-share owner stating that unless the time-share owner objects in writing to the  
180 nonjudicial forfeiture within the 30-day period required by subsection (a)(1), it will proceed to  
181 conduct the forfeiture pursuant to this section. The holder must explain in the notice that the  
182 time-share owner has the right to a judicial foreclosure conducted pursuant to chapter 244 if the  
183 owner asserts the objection within the specified time period and must include with the notice an  
184 objection form together with an envelope addressed to the holder. Failure of a time-share owner  
185 to object as required by this section in a timely manner is deemed a waiver of the owner's right

186 to a foreclosure pursuant to chapter 244, which may include judicial foreclosure by way of court  
187 action.

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

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

194 (1) Upon default in payment of assessments, and after all applicable cure periods  
195 have expired, the association shall provide written notice of default in payment of assessments to  
196 the time-share owner at his or her last known address by certified and first class mail and shall  
197 provide a reasonable opportunity to cure of not less than 30 days from the date of the mailing of  
198 the notice letter.

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

204 (3) With respect to forfeiture proceedings based upon nonpayment of assessments by  
205 the owner of a time-share license, the holder of same shall have the option of (i) forfeiting the  
206 time-share license in the manner prescribed in the time-share instrument or, if not prescribed, in

207 accordance with this section, or (ii) by public or private sale conducted in accordance with the  
208 provisions of part 5 of chapter 106 of the Massachusetts Uniform Commercial Code.

209 (4) If after expiration of the 30 day period the time-share owner has not cured said  
210 default in the manner prescribed and the association has determined in good faith and with  
211 reasonable precaution that the time-share owner is not entitled to protection under SCRA, the  
212 association shall conduct a public auction sale under the following conditions:

213 (i) Notice:

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

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

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

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

229 NOTICE OF SALE OF TIME-SHARE ESTATE OR ESTATES UNDER M.G.L. C.  
230 183B, SECTION 29B.

231 By virtue of M.G.L. c. 183B, Section 29B and the constituent instruments of the  
232 \_\_\_\_\_ (name and address of time-share property), establishing a lien  
233 pursuant to M.G.L. c. 183B:29 (a) on the time-share (or time-shares, if more than one) held by  
234 the time-share owner (or owners, if more than one) listed below, the time-share (or time-shares,  
235 if more than one) will be sold at Public Auction commencing at \_\_\_\_\_ on \_\_\_\_\_,  
236 20\_\_ at \_\_\_\_\_, Massachusetts. (For each time-share, list name and  
237 address of the time-share owner(s), a general description of the time-share and the Book and  
238 Page number of the deed).

239 TERMS OF SALE: (State the deposit amount to be paid by the purchaser at the time and  
240 place of the sale, and the times(s) for payment of the balance or the whole as the case may be.  
241 The time share estates, if more than one, may be sold in individual lots or as a group.)

242 Other terms to be announced at the sale.

243 Signed \_\_\_\_\_

244 Lienholder, or counsel therefor.

245 (e) Such notice of sale in the above form, published in accordance with the provisions  
246 of this section, together with such other or further notice, if any, shall be deemed a sufficient  
247 notice of the sale and the time-share shall be deemed to have been sold, and the instrument

248 conveying the time-share from the entity conducting the forfeiture shall transfer the time-share  
249 subject to, and with the benefit of, all restrictions, easements, improvements, outstanding tax  
250 titles, municipal or other public taxes, assessments, and security instruments recorded prior to the  
251 recording of the notice of lien, whether or not reference to such restrictions, easements,  
252 improvements, outstanding tax titles, municipal or other public taxes, assessments, or security  
253 instruments is made in the said instrument of conveyance; but no purchaser at such sale shall be  
254 bound to complete the purchase if there are encumbrances, other than those included in the  
255 notice of sale, which are not stated at the sale and included in the entity's contract with the  
256 purchaser.

257 (ii.) Conduct of Sale:

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

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

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

266 (d) The association, its manager, and any time-share owner may bid at the sale. The  
267 successful buyer at such sale shall take title to the time-share free and clear of any and all  
268 outstanding obligations of the prior time-share owner to the association, except that if the buyer

269 intends to use the time-share during the same fiscal year of the association in which the time-  
270 share was purchased, the buyer shall be obligated to pay the assessment for that year.

271 (e) Upon closing, the association shall provide the buyer with:

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

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

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

278 (f) The buyer shall record the deed or other instrument and the affidavit of sale with  
279 the appropriate Registry of Deeds no more than 90 days after the sale date, or 90 days after the  
280 receipt of the deed from the association. Upon such recording, the buyer shall be deemed to be a  
281 bona fide purchaser of such time – share and shall not be subject to claims by the prior owner  
282 thereof that the forfeiture proceedings under this section are invalid under SCRA.

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

287 SECTION 6. Section 5 of chapter 254 of the General Laws, as appearing in the 2006  
288 Official Edition, is hereby amended by striking out, in line 4, the following words:- “section six  
289 of chapter one hundred and eighty-three A, or subsection (a) of section twenty-nine of chapter

290 one hundred and eighty-three B”, and inserting in place thereof the following words:- or section  
291 6 of chapter 183A.