

HOUSE No. 4496

The Commonwealth of Massachusetts

In the Year Two Thousand 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
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 timeshare 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 either
33 a time-share estate or a time-share license, the lien shall be forfeited pursuant to section 29A.
34 Unless the time-share instrument otherwise provides, fees, charges, late charges, fines, interest,

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

38 a lien from 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) creates
52 a lien or precludes an association to resort to any contractual or other remedy permitted by law.

53 (e) The lien created under this section shall include costs, including collection agency
54 fees, reasonable attorneys' fees and all forfeiture costs incurred by the association. A person who
55 has a duty to make assessments for time-share expenses shall furnish to a time-share owner upon
56 written request a statement recordable in form setting forth the amount of unpaid assessments

57 currently levied against his or her timeshare. Said person may charge a reasonable fee for the
58 preparation of the statement. The statement shall be furnished within 10 business days after the
59 receipt of the request. The recipient of the statement shall be entitled to rely on its contents, and
60 the person who has delivered the statement may collect only the sums of money set forth therein
61 from the recipient, provided the recipient pays any amounts stated as due and owing and any
62 amounts which subsequently may become due and owing within 60 days of the date
63 of the statement.

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

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

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

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

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

85 (3) Nothing herein contained shall prevent a holder of a mortgage from seeking a
86 determination

87 under section 57 of the Acts of 1943 that a time-share owner is not entitled to benefits
88 under SCRA or, if a time-share owner is entitled to the benefits under SCRA, a determination of
89 said time-share owner’s rights under SCRA.

90 (4) With respect to forfeiture proceedings based upon breach of condition of a security
91 instrument encumbering a time-share license, the holder of same shall have the option of (i)
92 forfeiting the time-share license in the manner prescribed in the time-share instrument or, if not
93 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 90 day period the time-share owner has not cured said default
97 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
103 circulation in the town or county in which the time-share property is situated. The publication
104 shall be not less than 30 days before the date of the sale, calculated by excluding the date of
105 publication of 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
107 known

108 address of the time-share owner of record, by certified and first class mail at least 30 days
109 prior to the date of sale. Such notice of sale shall also be sent by certified and first class mail to
110 all parties having a lien in the time-share estate at least 30 days prior to the date of the sale.

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

115 (d) The notice of sale pursuant to this section shall be printed in substantially the
116 following form:

117 SALE OF TIME-SHARE ESTATE UNDER M.G.L. C. 183B, SECTION 29A. By virtue
118 of M.G.L. c. 183B, Section 29 and in execution of the Power of Sale contained in a certain
119 Mortgage (or Mortgages, if more than one) on the time-share estate (or estates, if more than one)
120 given by

121 the time-share owner (or owners, if more than one) set forth below for breach of the
122 conditions of said Mortgage and for the purpose of forfeiting, the same will be sold at Public
123 Auction commencing at _____ on _____, 20__ at _____,
124 Massachusetts, being all and singular the premises described in said Mortgage. (For each
125 Mortgage, list name and address of the timeshare owner, a general description of the time-share
126 estate and the book and page number of the Mortgage).

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

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

142 in the notice of sale, which are not stated at the sale and included in the entity's contract
143 with the purchaser.

144 (ii.) Conduct of Sale:

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

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

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

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

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

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

161 (II) an affidavit of sale attesting that all requirements of the forfeiture proceedings
162 pursuant to this section have been complied with and further attesting that the holder has

163 attempted in good faith and with reasonable precaution, to determine whether any person subject
164 to forfeiture proceedings under this section is entitled to protection under the SCRA; and

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

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

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

175 (6) In the event of a breach of the conditions of a mortgage granted prior to the effective
176 date of this section on a time-share which does not contain a power of sale, the holder of the
177 mortgage may conduct forfeiture proceedings of the interest of the time-share owner in the time-
178 share as provided in this section, if at the same time the holder gives written notice of default to
179 the time-share owner as provided in subsection (a)(1), the holder also gives written notice to the
180 time-share owner stating that unless the timeshare owner objects in writing to the non-judicial
181 forfeiture within the 90-day period required by subsection (a)(1), it will proceed to conduct the
182 forfeiture pursuant to this section. The holder must explain in the notice that the time-share
183 owner has the right to a judicial foreclosure conducted pursuant to chapter 244 if the owner

184 asserts the objection within the specified time period and must include with the notice an
185 objection form together with an envelope addressed to the holder. Failure of a time-share
186 owner to object as required by this section in a timely manner is deemed a waiver of the
187 owner's right to a foreclosure pursuant to chapter 244, which may include judicial foreclosure by
188 way of court action.

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

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

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

200 (2) Prior to offering a time-share for sale for nonpayment of assessments, the association
201 shall

202 attempt in good faith and with reasonable precaution to determine whether any person
203 subject to forfeiture proceedings under this section is entitled to protection under the

204 Servicemembers Civil Relief Act of 2003, 50 U.S.C. App. Sec. 517 (“SCRA”) in the same
205 manner as is set forth in subsections (2) and (3) of section 29A.

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

211 (4) If after expiration of the 90 day period the time-share owner has not cured said default
212 in the

213 manner prescribed and the association has determined in good faith and with reasonable
214 precaution that the time-share owner is not entitled to protection under SCRA, the association
215 shall conduct a public auction sale under the following conditions:

216 (i) Notice:

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

221 (b) A written notice of the time, date, and place of the auction shall be mailed, to the last
222 known

223 address of the time-share owner of record, by certified and first class mail at least 30 days
224 prior to the date of sale. Such notice of sale shall also be sent by certified and first class mail to
225 all parties having a lien in the time-share estate at least 30 days prior to the date of the sale.

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

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

232 NOTICE OF SALE OF TIME-SHARE ESTATE OR ESTATES UNDER M.G.L. C.
233 183B, SECTION 29B. By virtue of M.G.L. c. 183B, Section 29B and the constituent instruments
234 of the

235 _____ (name and address of time-share property), establishing a
236 lien pursuant to M.G.L. c. 183B:29 (a) on the time-share (or time-shares, if more than one) held
237 by the time-share owner (or owners, if more than one) listed below, the time-share (or time-
238 shares, if more than one) will be sold at Public Auction commencing at _____ on
239 _____, 20__ at _____, Massachusetts. (For each time-share,
240 list name and address of the time-share owner(s), a general description of the time-share and the
241 Book and Page number of the deed).

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

245 terms to be announced at the sale. Signed _____ Lienholder, or counsel
246 therefor.

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

259 (ii.) Conduct of Sale:

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

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

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

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

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

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

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

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

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

285 (g) Within 30 days after the closing and delivery of the deed or other instrument and
286 affidavit of

287 sale, the association shall mail a notice detailing the results of the sale to the last known
288 address of the former time-share owner and all parties which held a junior interest to that of said
289 holder.

290 SECTION 6. Section 5 of chapter 254 of the General Laws, as appearing in the 2006
291 Official Edition, is hereby amended by striking out, in line 4, the following words:- “section six
292 of chapter one hundred and eighty-three A, or subsection (a) of section twenty-nine of chapter
293 one hundred and eighty-three B”, and inserting in place thereof the following words:- or section
294 6 of chapter 183A

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