

**HOUSE . . . . . No. 4803**

---

**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 2008  
2 Official Edition, is hereby amended by inserting after the definition of “Exchange program” the  
3 following 4 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 on a time-share pursuant to section 29 or section  
12 29B, or both.

13           “Recorded”, recorded or filed in the registry of deeds or land registration office for the  
14 county or registry district where the property is located.

15           “Registry of deeds”, the registry of deeds or land registration office for the county or  
16 registry district where the property is located.

17           SECTION 2. Said section 2 of said chapter 183B, as so appearing, is hereby further  
18 amended by striking out the definition of “Time-share instrument” and inserting in place thereof  
19 the following definition:-

20           “Time-share instrument”, one or more documents, by whatever name denominated,  
21 creating or governing time-shares, including without limitation, a declaration or plan establishing  
22 a time-share regime, articles of organization and by-laws of a time-share association, rules and  
23 regulations, offering materials, sales documents, and instruments of conveyance or transfer.

24           SECTION 3. Subsection (a) of section 20 of said chapter 183B, as so appearing, is  
25 hereby amended by striking out clause (8) and inserting in place thereof the following clause:-

26           (8) impose charges for late payment of assessments; and after notice and an opportunity  
27 to be heard, levy reasonable fines for violations of the time-share instrument, by-laws, and rules  
28 and regulations of the association; and assess the reasonable legal fees and collection agency fees  
29 incurred by the association in collection of such assessments and fines and the institution of  
30 forfeiture proceedings.

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

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

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

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

54 (d) This section shall not prohibit actions to recover sums for which subsection (a) creates  
55 a lien or precludes an association from recourse by any contractual or other remedy permitted by  
56 law.

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

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

75 SECTION 5. Said chapter 183B is hereby further amended by inserting after section 29  
76 the following 2 sections:-

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

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

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

91 (c) Nothing herein contained shall prevent a holder of a mortgage from seeking a  
92 determination under section 57 of the acts of 1943 that a time-share owner is not entitled to  
93 benefits under SCRA or, if a time-share owner is entitled to the benefits under SCRA, a  
94 determination of said time-share owner's rights under SCRA.

95 (d) With respect to forfeiture proceedings based upon breach of condition of a security  
96 instrument encumbering a time-share license, the holder of same shall have the option of; (i)

97 foreclosing in the manner prescribed in the time-share instrument or, if not prescribed, in  
98 accordance with this section; or (ii) by public or private sale conducted in accordance with the  
99 provisions of part 6 of article 9 of chapter 106 of the General Laws, the Massachusetts Uniform  
100 Commercial Code.

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

105 (1) Notice:

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

110 (ii) At least 30 days prior to the date of sale, a written notice of the time, date, and  
111 place of the auction shall be mailed, by certified mail and by first class mail to the last known  
112 address of the time-share owner of record, and to the last known address of all parties having a  
113 lien or other interest of record in the time-share estate junior to the mortgage that is the subject of  
114 forfeiture proceedings.

115 (iii) Such notice shall contain: the name of the time-share owner and the original  
116 mortgagee; the date and book and page or document number of the mortgage; the date, time and  
117 place of the sale; a general description of the time-share; and the terms of the sale. If more than

118 one time-share is to be included in the sale, all such time-shares may be combined into 1 notice  
119 of sale, with 1 property description being given as set forth herein below.

120 (iv) The notice of sale pursuant to this section shall be printed in substantially the  
121 following form:

122 SALE OF TIME-SHARE ESTATE UNDER M.G.L. C. 183B, SECTION 29A. By virtue  
123 of M.G.L. c. 183B, Section 29A and in execution of the Power of Sale contained in a certain  
124 Mortgage (or Mortgages, if more than one) on the time-share estate (or estates, if more than one)  
125 given by the time-share owner (or owners, if more than one) set forth below for breach of the  
126 conditions of said Mortgage and for the purpose of foreclosing, the same will be sold at Public  
127 Auction commencing at \_\_\_\_\_ on \_\_\_\_\_, 20\_\_ at \_\_\_\_\_,  
128 Massachusetts, being all and singular the premises described in said Mortgage. (For each  
129 Mortgage, list name and address of the timeshare owner and the original Mortgagee, a general  
130 description of the time-share estate and the date and book and page number or document number  
131 of the Mortgage).

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

136 Signed \_\_\_\_\_

137 Holder of security instrument, or counsel.

138           (v) Such notice of sale substantially in the above form, published in accordance with  
139 the provisions of this section, together with such other or further notice, if any, shall be deemed a  
140 sufficient notice of the sale and the time-share shall be deemed to have been sold, and the  
141 instrument conveying the time-share from the foreclosing entity shall transfer the time-share  
142 subject to, and with the benefit of, all restrictions, easements, improvements, outstanding tax  
143 titles, municipal or other public taxes, assessments and security instruments recorded prior to the  
144 mortgage that is the subject of forfeiture proceedings, whether or not reference to such  
145 restrictions, easements, improvements, outstanding tax titles, municipal or other public taxes,  
146 assessments, or security instruments is made in the said instrument of conveyance; but no  
147 purchaser at such sale shall be bound to complete the purchase if there are encumbrances, other  
148 than those included in the notice of sale, which are not stated at the sale and included in the  
149 foreclosing entity's contract with the purchaser. No such notice of sale shall be held to be invalid  
150 by reason of any error or irregularity which is neither substantial nor misleading.

151           (2) Conduct of Sale:

152           (i) Unless the notice of sale otherwise provides, the sale shall take place on the time-  
153 share property.

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

158           (iii) All rights of redemption of the time-share owner shall be extinguished upon the  
159 sale of a time-share pursuant to this section.



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

166 (v) Upon closing, the holder of the mortgage shall provide the buyer with:

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

168 (B) an affidavit of sale attesting to compliance with all requirements of the forfeiture  
169 proceedings pursuant to this section and further attesting that the holder has attempted in good  
170 faith and with reasonable precaution, to determine whether any person subject to forfeiture  
171 proceedings under this section is entitled to protection under the SCRA; and

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

173 (vi) The buyer shall record the deed or other instrument and the affidavit of sale with  
174 the appropriate registry of deeds no more than the later of 90 days after the sale date, or 90 days  
175 after receipt of the deed from the holder of the mortgage. Upon such recording, the buyer shall  
176 be deemed to be a bona fide purchaser of such time-share and shall not be subject to claims by  
177 the prior owner thereof that the forfeiture proceedings under this section are invalid under  
178 SCRA.

179 (vii) Within 30 days after the closing and delivery of the deed or other instrument  
180 and affidavit of sale, the holder of the mortgage shall mail a notice detailing the results of the

181 sale to the last known address of the former time-share owner and all parties which held a junior  
182 interest to that of said holder.

183 (f) In the event of a breach of the conditions of a mortgage on a time-share granted prior  
184 to the effective date of this section, the holder of the mortgage may conduct forfeiture  
185 proceedings of the interest of the time-share owner in the time-share under this section; provided,  
186 however, that if at the same time the holder gives written notice of default to the time-share  
187 owner as provided in subsection (a), the holder also gives written notice to the time-share owner  
188 stating that unless the timeshare owner objects in writing to the non-judicial forfeiture within the  
189 90-day period required by subsection (a), it will proceed to conduct the forfeiture pursuant to this  
190 section. The holder must explain in the notice that the time-share owner has the right to a judicial  
191 foreclosure conducted pursuant to chapter 244 if the owner asserts the objection within the  
192 specified time period and must include with the notice an objection form together with an  
193 envelope addressed to the holder. Failure of a time-share owner to object in a timely manner as  
194 required by this section is deemed a waiver of the owner's right to a foreclosure pursuant to  
195 chapter 244, which may include judicial foreclosure in a court action.

196 (g) In the case of a mortgage in which the term or maturity date of the mortgage is stated,  
197 section 33 of chapter 260 prohibiting the exercise of a power of sale, entry, possession or  
198 commencement of foreclosure proceedings after 5 years from the expiration of the term or  
199 maturity date shall not apply to forfeiture proceedings completed within 36 months of the  
200 effective date of this section or forfeiture proceedings on mortgages for which an extension of  
201 the mortgage or acknowledgement or affidavit that the mortgage is not satisfied pursuant to  
202 sections 33 and 34 of chapter 260 has been recorded. For the purposes of this subsection,

203 completion of forfeiture proceedings shall be deemed to have occurred upon the recording of the  
204 deed and affidavit referenced in clause (vi) of paragraph (2) of subsection (e).

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

207 (a) Upon default in payment of assessments, and after all applicable cure periods have  
208 expired, the association shall provide written notice of default in payment of assessments to the  
209 time-share owner at the last known address by certified and first class mail and shall provide a  
210 reasonable opportunity to cure of not less than 90 days from the date of the mailing of the notice  
211 letter.

212 (b) Prior to offering a time-share for sale for nonpayment of assessments, the association  
213 shall attempt in good faith and with reasonable precaution to determine whether any person  
214 subject to forfeiture proceedings under this section is entitled to protection under the Service  
215 members Civil Relief Act of 2003, 50 U.S.C. App. Sec. 517 (“SCRA”) in the same manner as set  
216 forth in subsections (b) and (c) of section 29A.

217 (c) With respect to forfeiture proceedings based upon nonpayment of assessments by the  
218 owner of a time-share license, the person or entity entitled to receive such payments shall have  
219 the option of: (i) foreclosing in the manner prescribed in the time-share instrument or, if not  
220 prescribed, in accordance with this section; or (ii) by public or private sale conducted in  
221 accordance with the provisions of part 6 of article 9 of chapter 106 of the General Laws, the  
222 Massachusetts Uniform Commercial Code.

223 (d) If after the expiration of the 90- day period, the time-share owner has not cured said  
224 default in the manner prescribed and the association has determined in good faith and with

225 reasonable precaution that the time-share owner is not entitled to protection under SCRA, the  
226 association shall conduct a public auction sale under the following conditions:

227 (1) Notice:

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

232 (ii) At least 30 days prior to the date of sale, a written notice of the time, date, and  
233 place of the auction shall be mailed, by certified mail and first class mail, to the last known  
234 address of the time-share owner of record, and to the last known address of all parties having a  
235 lien or other interest of record in the time-share estate or time-share license that is junior to the  
236 assessment lien, and to any party holding a first mortgage or first security interest of record on  
237 said time-share estate or time-share license.

238 (iii) Such notice shall contain the name of the time-share owner, the book and page  
239 or document number of the deed or other instrument evidencing said time-share owner's fee  
240 interest, lease or license, as applicable, the date, time and place of the sale, a general description  
241 of the time-share, and the terms of the sale. If more than one time-share is to be included in the  
242 sale, all such time-shares may be combined into 1 notice of sale, with 1 property description  
243 being given as set forth herein below.

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

246 NOTICE OF SALE OF TIME-SHARE ESTATE OR ESTATES UNDER M.G.L.  
247 CHAPTER 183B, SECTION 29B. By virtue of M.G.L. c. 183B, Section 29B and the constituent  
248 instruments of the \_\_\_\_\_ (name and address of time-share property),  
249 establishing a lien pursuant to M.G.L. c. 183B, Section 29 (a) on the time-share (or time-shares,  
250 if more than one) held by the time-share owner (or owners, if more than one) listed below, the  
251 time-share (or time-shares, if more than one) will be sold at Public Auction commencing at  
252 \_\_\_\_\_ on \_\_\_\_\_, 20\_\_ at \_\_\_\_\_, Massachusetts. (For each time-  
253 share, list name and address of the time-share owner(s), a general description of the time-share  
254 and the book and page or document number of the deed or other instrument evidencing said  
255 time-share owner's fee interest, lease, or license, as applicable).

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

260 Signed \_\_\_\_\_

261 Lienholder, or counsel.

262 (v) Such notice of sale substantially in the above form, published in accordance  
263 with the provisions of this section, together with such other or further notice, if any, shall be  
264 deemed a sufficient notice of the sale and the time-share shall be deemed to have been sold, and  
265 the instrument conveying the time-share from the foreclosing entity shall transfer the time-share  
266 subject to, and with the benefit of, all restrictions, easements, improvements, outstanding tax  
267 titles, municipal or other public taxes, assessments and security instruments recorded prior to the

268 recording of the notice of lien, whether or not reference to such restrictions, easements,  
269 improvements, outstanding tax titles, municipal or other public taxes, assessments or security  
270 instruments is made in the said instrument of conveyance; but no purchaser at such sale shall be  
271 bound to complete the purchase if there are encumbrances, other than those included in the  
272 notice of sale, which are not stated at the sale and included in the foreclosing entity's contract  
273 with the purchaser. No such notice of sale shall be held to be invalid by reason of any error or  
274 irregularity which is neither substantial nor misleading.

275 (2) Conduct of Sale:

276 (i) Unless the notice of sale otherwise provides, the sale shall take place on the time-  
277 share property.

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

282 (iii) All rights of redemption of the time-share owner shall be extinguished upon the  
283 sale of a time-share pursuant to this section.

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

289 (v) Upon closing, the association shall provide the buyer with:

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

291 (B) an affidavit of sale attesting to compliance with all requirements of the forfeiture  
292 proceedings pursuant to this section and further attesting that the holder has attempted in good  
293 faith and with reasonable precaution, to determine whether any person subject to forfeiture  
294 proceedings under this section is entitled to protection under the SCRA; and

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

296 (vi) The buyer shall record the deed or other instrument and the affidavit of sale with  
297 the appropriate registry of deeds no more than the later of 90 days after the sale date, or 90 days  
298 after the receipt of the deed from the association. Upon such recording, the buyer shall be  
299 deemed to be a bona fide purchaser of such time-share and shall not be subject to claims by the  
300 prior owner thereof that the forfeiture proceedings under this section are invalid under SCRA.

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

305 SECTION 6. Section 5 of chapter 254 of the General Laws, as appearing in the 2008  
306 Official Edition, is hereby amended by striking out, in line 4, the words “section six of chapter  
307 one hundred and eighty-three A, or subsection (a) of section twenty-nine of chapter one hundred  
308 and eighty-three B” and inserting in place thereof the following words:- or section 6 of chapter  
309 183A .

310           SECTION 7. Upon the effective date of this act, the association shall provide notice  
311 within 60 days of the contents and intent of said legislation to the time-share owner. The entire  
312 contents of this legislation shall be summarized in said letter. The notice shall be provided by  
313 any of the following methods: (i) first class mail sent to each unit owner's address; or (ii) in the  
314 notice of an annual or special meeting of the owners; or (iii) by posting said notice on the  
315 website of the applicable time-share plan; or (iv) by any owner communication used by the  
316 managing entity.