

HOUSE No. 1287

The Commonwealth of Massachusetts

PRESENTED BY:

Daniel E. Bosley

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.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Daniel E. Bosley	1st Berkshire
Benjamin B. Downing	
William Smitty Pignatelli	4th Berkshire

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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 Edition, is
2 hereby amended by inserting after the definition of “Exchange program”, in lines 41-43, the following
3 definitions:-

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

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

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

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

18 SECTION 3. Said chapter 183B is hereby amended by striking out clause (8) of subsection (a) of section
19 20, as so appearing, and inserting in place thereof the following clause:-

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

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

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

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

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

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

48 (e) The lien created under this section shall include costs, including collection agency fees, reasonable
49 attorneys' fees and all forfeiture costs incurred by the association. A person who has a duty to make
50 assessments for time-share expenses shall furnish to a time-share owner upon written request a statement
51 recordable in form setting forth the amount of unpaid assessments currently levied against his or her time-
52 share. Said person may charge a reasonable fee for the preparation of the statement. The statement shall

53 be furnished within 10 business days after the receipt of the request. The recipient of the statement shall
54 be entitled to rely on its contents, and the person who has delivered the statement may collect only the
55 sums of money set forth therein from the recipient, provided the recipient pays any amounts stated as due
56 and owing and any amounts which subsequently may become due and owing within 60 days of the date
57 of the statement.

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

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

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

68 (1) Upon default, and after all applicable cure periods have expired, the holder of a mortgage shall
69 provide written notice of default to the time-share owner at his or her last known address by certified and
70 first class mail and provide a reasonable opportunity to cure of not less than 30 days from the date of the
71 mailing of the notice letter.

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

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

81 (4) With respect to forfeiture proceedings based upon breach of condition of a security instrument
82 encumbering a time-share license, the holder of same shall have the option of (i) forfeiting the time-share
83 license in the manner prescribed in the time-share instrument or, if not prescribed, in accordance with this

84 section, or (ii) by public or private sale conducted in accordance with the provisions of part 5 of chapter
85 106 of the Massachusetts Uniform Commercial Code.

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

90 (i) Notice:

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

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

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

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

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

105 By virtue of M.G.L. c. 183B, Section 29 and in execution of the Power of Sale contained in a certain
106 Mortgage (or Mortgages, if more than one) on the time-share estate (or estates, if more than one) given by
107 the time-share owner (or owners, if more than one) set forth below for breach of the conditions of said
108 Mortgage and for the purpose of forfeiting, the same will be sold at Public Auction commencing at
109 _____ on _____, 20__ at _____, Massachusetts, being all and
110 singular the premises described in said Mortgage. (For each Mortgage, list name and address of the time-
111 share owner, a general description of the time-share estate and the book and page number of the
112 Mortgage).

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

116 Other terms to be announced at the sale.

117 Signed _____

118 Holder of security instrument, or counsel therefor.

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

130 (ii.) Conduct of Sale:

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

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

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

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

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

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

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

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

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

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

158 (6) In the event of a breach of the conditions of a mortgage granted prior to the effective date of this
159 section on a time-share which does not contain a power of sale, the holder of the mortgage may conduct
160 forfeiture proceedings of the interest of the time-share owner in the time-share as provided in this section,
161 if at the same time the holder gives written notice of default to the time-share owner as provided in
162 subsection (a)(1), the holder also gives written notice to the time-share owner stating that unless the time-
163 share owner objects in writing to the nonjudicial forfeiture within the 30-day period required by
164 subsection (a)(1), it will proceed to conduct the forfeiture pursuant to this section. The holder must
165 explain in the notice that the time-share owner has the right to a judicial foreclosure conducted pursuant
166 to chapter 244 if the owner asserts the objection within the specified time period and must include with
167 the notice an objection form together with an envelope addressed to the holder. Failure of a time-share
168 owner to object as required by this section in a timely manner is deemed a waiver of the owner's right to a
169 foreclosure pursuant to chapter 244, which may include judicial foreclosure by way of court action.

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

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

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

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

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

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

194 (i) Notice:

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

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

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

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

209 NOTICE OF SALE OF TIME-SHARE ESTATE OR ESTATES UNDER M.G.L. C. 183B, SECTION
210 29B.

211 By virtue of M.G.L. c. 183B, Section 29B and the constituent instruments of the
212 _____ (name and address of time-share property), establishing a lien pursuant to
213 M.G.L. c. 183B:29 (a) on the time-share (or time-shares, if more than one) held by the time-share owner
214 (or owners, if more than one) listed below, the time-share (or time-shares, if more than one) will be sold
215 at Public Auction commencing at _____ on _____, 20__ at
216 _____, Massachusetts. (For each time-share, list name and address of the
217 time-share owner(s), a general description of the time-share and the Book and Page number of the deed).

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

221 Other terms to be announced at the sale.

222 Signed _____

223 Lienholder, or counsel therefor.

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

235 (ii.) Conduct of Sale:

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

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

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

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

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

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

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

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

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

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

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