

## CHAPTER 304

### ACQUISITION OF PROPERTY FOR HIGHWAY PURPOSES

#### §3021. Definitions

As used in this chapter, unless the context clearly indicates otherwise, the following words shall have the following meaning. [PL 1975, c. 711, §8 (NEW).]

**1. Highway purposes.** "Highway purposes" means use as a town way and those things incidental to the laying out, construction, improvement, maintenance, change of location, alignment and drainage of town ways, including the securing of materials therefor; provision for the health, welfare and safety of the public using town ways; provision for parking places, rest areas and preservation of scenic beauty along town ways.

[PL 1975, c. 711, §8 (NEW).]

**1-A. Municipal legislative body.** "Municipal legislative body" has the same meaning as in Title 30-A, section 2001, subsection 9.

[PL 2015, c. 464, §2 (NEW).]

**2. Public easement.** "Public easement" means an easement held by a municipality for purposes of public access to land or water not otherwise connected to a public way, and includes all rights enjoyed by the public with respect to private ways created by statute prior to July 29, 1976. Private ways created pursuant to former sections 3001 and 3004 prior to July 29, 1976 are public easements.

[PL 2015, c. 464, §3 (AMD).]

**3. Town way.** "Town way" means:

A. An area or strip of land designated and held by a municipality for the passage and use of the general public by motor vehicle; [PL 1981, c. 702, Pt. Z, §2 (NEW).]

B. All town or county ways not discontinued or abandoned before July 29, 1976; and [PL 1981, c. 702, Pt. Z, §2 (NEW).]

C. All state or state aid highways, or both, which shall be classified town ways as of July 1, 1982, or thereafter, pursuant to section 53. [PL 1981, c. 702, Pt. Z, §2 (NEW).]

[PL 1981, c. 702, Pt. Z, §2 (RPR).]

#### SECTION HISTORY

PL 1975, c. 711, §8 (NEW). PL 1981, c. 702, §22 (AMD). PL 2015, c. 464, §§2, 3 (AMD).

#### §3022. Laying out of town ways and public easements

The municipal officers may, personally or by agency, lay out, alter or widen town ways. They shall give written notice of their intentions posted at least 7 days in 2 public places in the municipality and in the vicinity of the way and shall in the notice describe the proposed way. [PL 1975, c. 711, §8 (NEW).]

The municipal officers may, upon the petition of any person, lay out, alter or widen a town way. [PL 1975, c. 711, §8 (NEW).]

The municipal officers may on petition therefor, personally or by agency, lay out a public easement for any occupant of land or for owners who have cultivated land in the municipality if the land will be connected to a town way or highway after the establishment of the public easement. [PL 1979, c. 127, §153 (RPR).]

After a public easement has been laid out, it may be taken pursuant to section 3023. Notwithstanding any other provision of this chapter, public easements laid out under this section are limited to rights of access by foot or motor vehicle as defined in Title 29-A, section 101, subsection 42. [PL 1995, c. 65, Pt. A, §65 (AMD); PL 1995, c. 65, Pt. A, §153 (AFF); PL 1995, c. 65, Pt. C, §15 (AFF).]

#### SECTION HISTORY

PL 1975, c. 711, §8 (NEW). PL 1979, c. 127, §153 (AMD). PL 1995, c. 65, §A65 (AMD). PL 1995, c. 65, §§A153,C15 (AFF).

#### **§3023. Eminent domain**

A municipality may take property or interests therein for highway purposes if the municipal officers determine that public exigency requires the immediate taking of such property interests, or if the municipality is unable to purchase it at what the municipal officers deem reasonable valuation, or if title is defective. [PL 1975, c. 711, §8 (NEW).]

In municipalities where the municipal officers have the legislative power of appropriation, the municipal officers shall file with the municipal clerk a condemnation order that includes a detailed description of the property interests to be taken, which shall specify its location by metes and bounds, the name or names of the owner or owners of record so far as they can be reasonably determined and the amount of damages determined by the municipal officers to be just compensation for the property or interest therein taken. The municipal officers shall then serve upon the owner or owners of record a copy of the condemnation order and a check in the amount of the damages awarded. In the event of multiple ownership, the check may be served on any one of the owners. Title shall pass to the municipality upon service of the order of condemnation and check or upon recordation in accordance with section 3024, whichever occurs first. [PL 1975, c. 711, §8 (NEW).]

In towns where the town meeting has the legislative power of appropriation, the municipal officers shall file the condemnation order described in the previous paragraph with the town clerk and send a copy to the owner or owners of record by registered mail. No interest shall pass to the town unless an article generally describing the property interest to be taken and stating the amount of damages to be paid has been approved by a duly called town meeting. The town meeting may not amend the article, except to increase the amount of damages to be paid. If the article is approved, a check in the amount of damages authorized shall be served immediately upon the owner or owners of record. In the event of multiple ownership, the check may be served on any one of the owners. Title shall pass to the town upon service of the check or upon recordation in accordance with section 3024, whichever occurs first. [PL 1975, c. 711, §8 (NEW).]

Unless specifically provided in the order of condemnation or unless the property or interests to be taken include land or right-of-way of a railroad corporation or a public utility, title to property taken for town ways after December 31, 1976, shall be in fee simple absolute. [PL 1975, c. 770, §98 (RPR).]

In all proceedings under this section, an award of damages by the municipal legislative body shall be considered an appropriation for that purpose. [PL 1975, c. 711, §8 (NEW).]

#### SECTION HISTORY

PL 1975, c. 711, §8 (NEW). PL 1975, c. 770, §§98,99 (AMD).

#### **§3024. Recording of proceedings**

No taking of property or interests therein by a municipality, or the discontinuance of a town way except by abandonment, after September 12, 1959, shall be valid against owners of record or abutting landowners who have not received actual notice, unless there is recorded in the registry of deeds for the county where the land lies either a deed, or a certificate attested by the municipal clerk, describing

the property and stating the final action of the municipality with respect to it. [PL 1975, c. 711, §8 (NEW).]

#### SECTION HISTORY

PL 1975, c. 711, §8 (NEW).

#### **§3025. Dedication and acceptance**

No property or interests therein may be dedicated for highway purposes unless the owner of such property or interest has filed with the municipal officers a petition, agreement, deed, affidavit or other writing specifically describing the property or interest and its location, and stating that the owner voluntarily offers to transfer such interests to the municipality without claim for damages, or has filed in the registry of deeds an approved subdivision plot plan which describes property to be appropriated for public use. [PL 1975, c. 711, §8 (NEW).]

A municipality may accept a dedication of property or interests therein by an affirmative vote of its legislative body. [PL 1975, c. 711, §8 (NEW).]

Unless specifically provided by the municipality, title to property accepted for highway purposes after December 31, 1976 shall be in fee simple. [PL 1975, c. 711, §8 (NEW).]

#### SECTION HISTORY

PL 1975, c. 711, §8 (NEW).

#### **§3026. Discontinuance of town ways**

#### **(REPEALED)**

#### SECTION HISTORY

PL 1975, c. 711, §8 (NEW). PL 1977, c. 301, §1 (AMD). PL 1981, c. 683, §1 (RPR). PL 2015, c. 464, §4 (RP).

#### **§3026-A. Discontinuance of town ways**

A municipality may terminate in whole or in part any interests held by it for highway purposes. A municipality discontinuing a town way or public easement in this State must meet the following requirements. [PL 2015, c. 464, §5 (NEW).]

**1. Notification of discontinuance to abutting property owners.** The municipal officers shall give best practicable notice to all abutting property owners of a proposed discontinuance of a town way or public easement.

A. For a proposed discontinuance of a town way, the notice must include information regarding the potential discontinuance or retention of a public easement, including maintenance obligations for and the right of access to the way under the discontinuance or retention of a public easement, and information regarding the rights of abutting property owners to enter into agreements regarding maintenance of and access to the discontinued way. [PL 2017, c. 345, §1 (NEW).]

B. For a proposed discontinuance of a town way that is abutted by property not otherwise accessible by a public way, the notice must include information, in addition to the information required in paragraph A, regarding the right of abutting property owners to create private easements and the municipal requirements under subsection 1-A. [PL 2017, c. 345, §1 (NEW).]

Paragraphs A and B apply to town ways that are not discontinued as of October 1, 2018.

As used in this subsection, "best practicable notice" means, at minimum, the mailing by the United States Postal Service, postage prepaid, first class, of notice to abutting property owners whose addresses appear in the assessment records of the municipality.

[PL 2017, c. 345, §1 (AMD).]

**1-A. Discontinuance after October 1, 2018 of a town way with abutting property not otherwise accessible.** A municipality may not discontinue a town way that is not discontinued as of October 1, 2018 pursuant to this section if that town way is abutted by property not otherwise accessible by a public way, unless the municipal officers have complied with this subsection.

A. The municipal officers shall wait one year from the date of notice provided pursuant to subsection 1, paragraph B before proceeding with the discontinuance process, to allow abutting property owners the opportunity to grant private easements that run with the title of the property owners' land for the purpose of allowing travel along the way for all abutting property owners and their lessees and guests. [PL 2017, c. 345, §2 (NEW).]

B. After the one-year waiting period required in paragraph A, the municipal officers may:

(1) Proceed with the discontinuance process pursuant to this section, as long as a public easement is retained; or

(2) If the municipal officers verify that private easements that run with the title of the property owners' land for the purpose of allowing travel along the way for all abutting property owners and their lessees and guests have been filed with the registry of deeds, proceed with the discontinuance process without retaining a public easement. [PL 2017, c. 345, §2 (NEW).]

[PL 2017, c. 345, §2 (NEW).]

**2. Municipal officers meet to discuss proposed discontinuance and file order of discontinuance.** The municipal officers shall discuss a proposed discontinuance of a town way or public easement at a public meeting and file an order of discontinuance with the municipal clerk that specifies:

A. The location of the town way or public easement; [PL 2015, c. 464, §5 (NEW).]

B. The names of abutting property owners; [PL 2015, c. 464, §5 (NEW).]

B-1. The location of any bridge, as defined in section 562, subsection 2, on the town way or public easement and the status of negotiations with the department with respect to the disposition of the bridge pursuant to section 566, subsection 3-A; [PL 2017, c. 154, §3 (NEW).]

C. The amount of damages, if any, determined by the municipal officers to be paid to each abutting property owner; and [PL 2015, c. 464, §5 (NEW).]

D. Whether or not a public easement is retained. [PL 2015, c. 464, §5 (NEW).]

If a proposal includes the discontinuance of a public easement, that must be stated explicitly in the order of discontinuance; otherwise, the public easement is retained. If a public easement is retained, all other interests of the municipality in the discontinued way, if any, pass to abutting property owners to the center of the way. If a public easement is not retained, all interests of the municipality in the discontinued way pass to abutting property owners to the center of the way.

[PL 2017, c. 154, §3 (AMD).]

**3. Public hearing.** The municipal officers shall hold a public hearing on the order of discontinuance of a town way or public easement filed pursuant to subsection 2.

[PL 2015, c. 464, §5 (NEW).]

**4. Approval of order of discontinuance and damage awards.** The municipal legislative body must vote upon the order of discontinuance submitted to it:

A. To approve the order of discontinuance and the damage awards and to appropriate the money to pay the damages; or [PL 2015, c. 464, §5 (NEW).]

B. To disapprove the order of discontinuance. [PL 2015, c. 464, §5 (NEW).]

The vote required by this subsection must be conducted 10 or more business days after the public hearing pursuant to subsection 3, except that, for a town way that is not discontinued as of October 1, 2018, in a municipality in which the municipal legislative body is the town meeting, the vote must be conducted at the next regularly scheduled annual town meeting.

[PL 2017, c. 345, §3 (AMD).]

**5. Certificate of discontinuance filed.** The municipal clerk shall record an attested certificate of discontinuance after a vote by the municipal legislative body under subsection 4 in the registry of deeds. The certificate must describe the town way or public easement and the final action by the municipal legislative body. The date the certificate is filed is the date the town way or public easement is discontinued. The registry of deeds shall record a certificate of discontinuance under the name of the town way or public easement, the name of the municipality and the names of the abutting property owners. The municipal clerk shall provide a photocopy of the certificate to the Department of Transportation, Bureau of Maintenance and Operations.

[PL 2015, c. 464, §5 (NEW).]

**6. Utility easement.** An easement for public utility facilities necessary to provide or maintain service remains in a discontinued town way regardless of whether a public easement is retained. Upon approval by a municipal legislative body of an order to discontinue a town way and retain a public easement, unless otherwise stated in the order, all remaining interests of the municipality, if any, pass to the abutting property owners in fee simple to the center of the way.

[PL 2015, c. 464, §5 (NEW).]

**SECTION HISTORY**

PL 2015, c. 464, §5 (NEW). PL 2017, c. 154, §3 (AMD). PL 2017, c. 345, §§1-3 (AMD).

**§3027. Vacation of proposed town ways in land subdivision; revocation of dedication**

**1. Vacation of ways.** When proposed town ways have been described in a recorded subdivision plan and lots have been sold with reference to the plan, the municipal officers, after notice to the municipal planning board or office, may, on their own initiative, on petition of the abutting property owners or on petition of any person claiming a property interest in the proposed way, vacate in whole or in part proposed ways that have not been accepted. The municipal officers shall give best practicable notice, as defined in section 3026-A, subsection 1, of the proposed vacation to owners of lots on the recorded subdivision plan and their mortgagees of record. The notice must conform in substance to the following form:

**NOTICE**

(The municipal officers of) (A petition has been filed with the municipal officers of) \_\_\_\_\_ (Name of Town or City) \_\_\_\_\_ (propose to) (to vacate) the following (ways) (way) shown upon a subdivision plan (named) (dated) (and) recorded in the \_\_\_\_\_ County Registry of Deeds, Book of Plans, Volume \_\_\_\_\_, Page \_\_\_\_\_.

(Herein list or describe ways to be vacated)

If the municipal officers enter an order vacating (these ways) (this way) any person claiming an interest in (these ways) (this way) (adverse to the claims of the petitioners) must, within one (1) year of the recording of the order, file a written claim thereof under oath in the \_\_\_\_\_ County Registry of Deeds and must, within one hundred eighty (180) days of the filing of the claim, commence an action in the Superior Court in \_\_\_\_\_ County in accordance with the Maine Revised Statutes, Title 23, section 3027-A.

The municipal officers shall file an order of vacation with the municipal clerk that specifies the location of the way, the names of owners of lots on the recorded subdivision plan and the amount of damages,

if any, determined by the municipal officers to be paid to each lot owner or other person having an interest in the way. Damages and reasonable costs as determined by the municipal officers must be paid by the petitioners, if any.

[PL 2015, c. 464, §6 (AMD).]

**2. Revocation of dedication.** A dedication of property or interest therein to the municipality described in a recorded subdivision plot plan may not be revoked or vacated by the dedicator unless no lot has been sold with reference to the plan, and unless an amended subdivision plan has been approved by the municipal subdivision review authority and recorded in the appropriate registry of deeds.

[PL 1981, c. 683, §2 (NEW).]

#### SECTION HISTORY

PL 1975, c. 711, §8 (NEW). PL 1981, c. 683, §2 (RPR). PL 1987, c. 385, §1 (AMD). PL 2015, c. 464, §6 (AMD).

#### §3027-A. Recording of vacation orders; rights of action; prior orders

**1. Recording of vacation order.** A copy of the order of vacation by the municipal officers entered under section 3027 shall be recorded in the registry of deeds where the plan of subdivision is recorded and shall contain an alphabetical listing of the names of the subdivision lot owners and their mortgagees of record whose interests may be affected by the order. The register of deeds shall make a cross-reference to the order of vacation upon or attached to the face of the subdivision plan. The register of deeds shall also index the order under the names of the lot owners whose names appear in the body of the order. Any order of vacation entered prior to the effective date of this section may be recorded by the municipal officers in the same manner and with the same effect set forth in this section.

[PL 1981, c. 683, §3 (NEW).]

**2. Rights of action.** All persons are forever barred from maintaining any action at law or in equity to establish, recover, confirm or otherwise enforce any right claimed to or in a proposed or described vacated way by reason of the ownership by the claimant or by a predecessor in title of a lot or parcel of land shown on a recorded subdivision plan, unless, within one year of the date of recordation of the order of vacation, the claimant files in the registry of deeds where the subdivision plan is recorded a statement under oath specifying the nature, basis and extent of the claimed interest in the way. The claim is forever barred unless, within 180 days after the recording of the statement, the claimant or any other person acting on behalf of the claimant commences an action in equity under Title 14, chapter 723, to establish the rights asserted to or in the way. These limitation periods are not tolled or interrupted by any disability, minority, lack of knowledge or absence from this State of any claimant. Upon the trial of an action, the court shall grant judgment for the claimant only if it finds that the claimant has acquired an interest in the proposed way and that the deprivation of rights in the proposed way unreasonably limits access from a public way, a public body of water or common land or facility to the land of the claimant shown on the recorded subdivision plan. Any judgment rendered by the court in the action may, in the discretion of the court, grant the claimant reasonable damages instead of establishment of the claimant's rights.

[RR 2013, c. 2, §34 (COR).]

**3. Prior orders.** A person claiming an interest in a proposed unaccepted way vacated under section 3027 prior to the effective date of this section may cause an attested copy of that order to be recorded in the registry of deeds where the subdivision plan describing or showing the way is recorded. That person shall append to the order to be recorded an alphabetical listing of the names of the current subdivision lot owners and their mortgagees of record whose interest in the way may be affected by the order. The register of deeds shall also index the order under the names of the lot owners appearing in the appendix.

Within 20 days of the recording of a prior order, the person causing the order to be recorded shall give notice of the person's claim to all current owners of lots on the subdivision plan and their mortgagees

of record by mailing by the United States Postal Service, postage prepaid, a notice informing them of the person's claim and advising them that, to preserve any claim adverse to the person's, they must file a claim and commence an action as required by subsection 2. The notice must conform in substance to the following form:

NOTICE

On \_\_\_\_\_, 19\_\_\_\_, the municipal officers of \_\_\_\_\_ (Name of Town or City) entered an order vacating the following (ways) (way) shown upon a subdivision plan (named) (dated) (and) recorded in the \_\_\_\_\_ Registry of Deeds Book of Plans, Volume \_\_\_\_\_, Page \_\_\_\_\_.

(Herein list vacated ways)

The undersigned claims to own the (ways) (way) described above. A copy of the order of the municipal officers was recorded in the Registry of Deeds on \_\_\_\_\_, 19\_\_\_\_, and any person claiming an interest in (these ways) (this way) adverse to the claims of the undersigned must, within one (1) year of the date of the recording of the above order, file a written claim under oath in the Registry of Deeds and must, within one hundred eighty (180) days thereafter, commence an action in the Superior Court in \_\_\_\_\_ County in accordance with the Revised Statutes, Title 23, section 3027-A.

[RR 2015, c. 1, §24 (COR).]

**4. Applicability.** This section applies to ways described or shown in recorded subdivision plans proposed before and after the effective date of this section.

[PL 1981, c. 683, §3 (NEW).]

SECTION HISTORY

PL 1981, c. 683, §3 (NEW). RR 2013, c. 2, §34 (COR). RR 2015, c. 1, §24 (COR).

**§3028. Abandonment of public ways; determination of status of any town way or public easement**

**1. Presumption of abandonment.** It is prima facie evidence that a town or county way not kept passable for the use of motor vehicles at the expense of the municipality or county for a period of 30 or more consecutive years has been discontinued by abandonment. A presumption of abandonment may be rebutted by evidence that manifests a clear intent by the municipality or county and the public to consider or use the way as if it were a public way. A proceeding to discontinue a town or county way may not prevent or estop a municipality from asserting a presumption of abandonment. A municipality or its officials are not liable for nonperformance of a legal duty with respect to such ways if there has been a good faith reliance on a presumption of abandonment. Any person affected by a presumption of abandonment, including the State or a municipality, may seek declaratory relief to finally resolve the status of such ways. A way that has been abandoned under this section is relegated to the same status as it would have had after a discontinuance pursuant to section 3026, except that this status is at all times subject to an affirmative vote of the legislative body of the municipality within which the way lies making that way an easement for recreational use. A presumption of abandonment is not rebutted by evidence that shows isolated acts of maintenance, unless other evidence exists that shows a clear intent by the municipality or county to consider or use the way as if it were a public way.

[PL 1991, c. 195 (NEW).]

**2. Status of town way or public easement.** The determination of the municipal officers regarding the status of a town way or public easement is binding on all persons until a final determination of that status has been made by a court, unless otherwise ordered by a court during the pendency of litigation to determine the status.

[PL 1991, c. 195 (NEW).]

**3. Removal of obstructions.** If the municipal officers have determined under subsection 2 that the way is a town way or public easement and a court has not ordered otherwise, the municipality or an abutter on the way, acting with the written permission of the municipal officers, may remove any gates, bars or other obstructions in the way.

[PL 1991, c. 195 (NEW).]

**4. Quasi-judicial act.** The determination of the municipal officers regarding the status of a town way or public easement pursuant to subsection 2 is a quasi-judicial act under Title 14, section 8104-B, subsection 2.

[PL 2009, c. 59, §1 (NEW).]

**5. Filing.** If after the effective date of this subsection the municipal officers, either on their own or after being presented with evidence of abandonment, determine that a town way has been discontinued by abandonment pursuant to subsection 1, the municipal clerk shall file a record of this determination with the registry of deeds. The absence of a filing of a determination of discontinuation by abandonment may not be construed as evidence against the status of abandonment. The registry of deeds shall record a document regarding an abandoned town way under the name of the town way, the name of the municipality and the names of the abutting property owners. The municipal clerk shall provide a copy of the document regarding an abandoned town way to the Department of Transportation, Bureau of Maintenance and Operations.

[PL 2015, c. 464, §7 (NEW).]

#### SECTION HISTORY

PL 1975, c. 711, §8 (NEW). PL 1977, c. 479, §4 (AMD). PL 1979, c. 127, §154 (AMD). PL 1979, c. 629 (AMD). PL 1989, c. 395 (AMD). PL 1991, c. 195 (RPR). PL 2009, c. 59, §1 (AMD). PL 2015, c. 464, §7 (AMD).

#### §3029. Damages; appeal

Damages shall be determined using the methods in sections 154 through 154E, as far as practicable, except that references to the "commission" or the "board" shall mean the "municipal officers" and references to the "state" shall mean the "municipality." [PL 1977, c. 479, §5 (AMD).]

Any person aggrieved by the determination of the damages awarded to owners of property or interests therein under this chapter may, within 60 days after the day of taking, appeal to the Superior Court in the county where the property lies. The court shall determine damages by a verdict of its jury or, if all parties agree, by the court without a jury or by a referee or referees and shall render judgment for just compensation, with interest where such is due, and for costs in favor of the party entitled thereto. [PL 1975, c. 711, §8 (NEW).]

Any person aggrieved by the action or nonaction of municipal officers or the municipal legislative body in proceedings under this chapter, other than a determination of damages, may appeal to the Superior Court in the county where the property lies, pursuant to Rule 80B of the Rules of Civil Procedure. [PL 1975, c. 711, §8 (NEW).]

#### SECTION HISTORY

PL 1975, c. 711, §8 (NEW). PL 1977, c. 479, §5 (AMD).

#### §3029-A. Damage to public easement; cause of action

**1. Cause of action.** An owner of property abutting a discontinued or abandoned road in which a public easement exists may bring a civil action in Superior Court for damages and injunctive relief against a person who causes damage to the road in a manner that impedes reasonable access by the property owner to the property owner's property by motor vehicle as defined in Title 29-A, section 101, subsection 42.

[PL 2015, c. 464, §8 (NEW).]



**2. Damages.** Damages may be sought pursuant to subsection 1 in an amount reasonably necessary to restore the road to its condition prior to the use by the person against whom the action is brought. [PL 2015, c. 464, §8 (NEW).]

**3. Attorney's fees and costs.** If the plaintiff under subsection 1 is the prevailing party, the plaintiff may be awarded reasonable attorney's fees and costs. [PL 2015, c. 464, §8 (NEW).]

**4. Application.** This section does not apply to:

A. A law enforcement officer who, in an emergency and within the scope of that law enforcement officer's employment, operates a motor vehicle on a public easement; or [PL 2015, c. 464, §8 (NEW).]

B. An emergency responder who, in an emergency and while performing the duties of an emergency responder, operates a motor vehicle on a public easement. [PL 2015, c. 464, §8 (NEW).]

[PL 2015, c. 464, §8 (NEW).]

#### SECTION HISTORY

PL 2015, c. 464, §8 (NEW).

#### §3030. Purchase; prescription

Nothing in this chapter shall be construed to abridge the authority of a municipality to acquire property or interests therein for highway purposes by purchase, or to modify the law relating to acquisition of property by a municipality through prescriptive use. [PL 1975, c. 711, §8 (NEW).]

#### SECTION HISTORY

PL 1975, c. 711, §8 (NEW).

#### §3031. Public and private rights in proposed, unaccepted ways in subdivisions

**1. Public rights.** From the date of recording of a subdivision plan in the registry of deeds, the public acquires rights of incipient dedication to public use of the ways laid out on the plan. If a proposed way laid out in the plan is not accepted by the municipality within 20 years from the date of recording of the plan, the public rights in that way terminate. [PL 1987, c. 385, §2 (NEW).]

**2. Private rights.** A person acquiring title to land shown on a subdivision plan recorded in the registry of deeds acquires a private right-of-way over the ways laid out in the plan. If a proposed, unaccepted way is not constructed within 20 years from the date of recording of the plan, and if the private rights created by the recording of the plan are not constructed and utilized as private rights within that 20-year period, the private rights-of-way in that way terminate.

Unless title has been reserved pursuant to Title 33, section 469-A, when the private rights established by this subsection are terminated as provided in this subsection or by order of vacation by the municipality, the title of the fee interest in the proposed, unaccepted way for which the private rights-of-way have terminated passes to the abutting property owners to the centerline of the way. [PL 1987, c. 385, §2 (NEW).]

**3. Shorter duration of public and private rights; rights of lesser extent.** Notwithstanding subsections 1 and 2, the developer or other person recording a subdivision plan in the registry of deeds may set a shorter duration for the public and private rights established in subsections 1 and 2 than the period provided in those subsections. The developer or other person recording the subdivision plan shall cause the shorter duration to be noted on the face of the subdivision plan.

Pursuant to a subdivision review under Title 30-A, chapter 187, subchapter IV, the municipal reviewing authority may set a shorter duration for the public and private rights established in subsections 1 and 2 than the period provided in those subsections. The municipal reviewing authority shall cause the shorter duration to be noted on the face of the subdivision plan.

Nothing in this section may be construed to prohibit the developer or other person recording a subdivision plan in the registry of deeds from granting rights of lesser extent than those established in subsections 1 and 2. If rights of lesser extent are granted, the person recording the subdivision plan shall cause the extent of those rights to be described on the face of the subdivision plan and in any conveyance of land shown on the plan.

[PL 1995, c. 462, Pt. B, §4 (AMD).]

**4. Fee interest reserved by owner of subdivision.** If the owner of land for which a subdivision is proposed reserves the fee interest in any ways proposed on the subdivision plan, the owner shall place a statement of this reservation in all conveyances by him of land in the subdivision.

[PL 1987, c. 385, §2 (NEW).]

#### SECTION HISTORY

PL 1987, c. 385, §2 (NEW). PL 1995, c. 462, §B4 (AMD).

#### §3032. Proposed, unaccepted ways deemed vacated

##### 1. Deemed vacation.

[PL 1997, c. 386, §1 (RP).]

**1-A. Deemed vacation.** A proposed, unaccepted way or portion of a proposed, unaccepted way laid out on a subdivision plan recorded in the registry of deeds prior to September 29, 1987 is deemed to have been subject to an order of vacation under section 3027 if, by the later of 15 years after the date of the recording of the subdivision plan laying out the way or portion of the way or September 29, 1997, both of the following conditions have been met:

A. The way or portion of the way has not been constructed or used as a way; and [PL 1997, c. 386, §2 (NEW).]

B. The way or portion of the way has not been accepted as a town, county or state way or highway or as a public, utility or recreational easement. [PL 1997, c. 386, §2 (NEW).]

A way or portion of a way considered vacated under this subsection is subject to section 3033.

[PL 1997, c. 386, §2 (NEW).]

**2. Extensions.** The municipal officers of the affected municipality may except a proposed, unaccepted way or portion of a proposed, unaccepted way described in subsection 1-A from the operation of the time limitations of that subsection by filing, in the registry of deeds where the subdivision plan is recorded, a notice stating that the way or portion of the way is excepted from the operation of subsection 1-A for a period of 20 years from the filing of the notice. To be effective, this exception must be filed prior to the expiration of the time limitations of subsection 1-A. An extension accomplished under this subsection may be extended by the municipal officers for a subsequent 20-year period by the filing of a new notice within the preceding 20-year extension period.

[PL 1997, c. 683, Pt. B, §10 (AMD); PL 1997, c. 683, Pt. B, §11 (AFF).]

#### SECTION HISTORY

PL 1987, c. 385, §2 (NEW). PL 1997, c. 386, §§1,2 (AMD). PL 1997, c. 683, §B10 (AMD). PL 1997, c. 683, §B11 (AFF).

#### §3033. Rights of action concerning ways deemed vacated

**1. Notice by person claiming ownership.** Any person claiming to own a proposed, unaccepted way or portion of a proposed, unaccepted way deemed vacated under section 3032 may record, in the

registry of deeds where the subdivision plan, to which the notice set forth in this subsection pertains, is recorded, a conformed copy of the notice set forth in this subsection, with an alphabetical listing of the names of the current record owners of lots on the subdivision plan to which the notice pertains and their mortgagees of record. The person shall give notice of his claim to these current record owners and their mortgagees of record. Within 20 days of recording of the notice, the person shall give this notice by mailing, by the United States postal service, postage prepaid, to the current record owners and mortgagees, a copy of the notice set forth below:

#### NOTICE

By virtue of the Maine Revised Statutes, Title 23, section 3032, the following proposed, unaccepted ways or portions of proposed, unaccepted ways were deemed by law to have been vacated by the municipal officers of (name of town or city) \_\_\_\_\_. The ways or portions of ways so vacated are shown on a plan (named) (dated) (and) recorded in the \_\_\_\_\_ County Registry of Deeds, Book of Plans, Volume \_\_\_\_\_, Page \_\_\_\_\_, (Folio #) and are described as follows:

(Herein list vacated ways or portions of ways)

The undersigned claims to own the (way or ways) (portion of way or ways) described above. Any person claiming an interest in (this way or these ways) (a portion of this way or these ways) adverse to the claim of the undersigned, within one year from the date of recording of a copy of this notice in the registry of deeds, must file a written claim, under oath, in the same registry and, within 180 days thereafter, must commence an action in Superior Court in \_\_\_\_\_ County in accordance with the Maine Revised Statutes, Title 23, section 3033. A copy of this notice was recorded in the registry of deeds on \_\_\_\_\_, 19\_\_\_\_.

[PL 1987, c. 385, §2 (NEW).]

**2. Rights of action by persons receiving notice.** All persons receiving a notice under subsection 1, who claim any private right of any kind in the way or portion of a way to which the notice pertains, are forever barred from maintaining any action at law or in equity to establish, recover, confirm or otherwise enforce any right claimed to or in the way or portion of a way by reason of the ownership by the person, or by a predecessor in title, of a lot or parcel of land shown on the recorded subdivision plan to which the notice pertains, unless, within one year from the date of recording of the notice, the person files in the registry of deed where the pertinent subdivision plan is recorded a statement, under oath, specifying the nature, basis and extent of the claimed interest in the way or portion of a way. The claim is forever barred unless, within 180 days of the recording of the statement, the claimant, or a person acting on his behalf, commences an action in equity under Title 14, chapter 723, to establish the rights asserted to or in the way or portion of a way.

The limitation periods in this section are not tolled or interrupted by any disability, minority, lack of knowledge or absence from this State by the claimant.

[PL 1987, c. 385, §2 (NEW).]

**3. Trial of an action.** Upon trial of an action initiated under subsection 2, the court shall grant judgment for the claimant only if it finds that:

- A. The claimant has acquired an interest in the way or portion of a way; and [PL 1987, c. 385, §2 (NEW).]
- B. The deprivation of the claimant's rights in the way or portion of the way unreasonably limits the claimant's access from his land shown on the recorded subdivision plan to:
  - (1) A public way;
  - (2) A public body of water; or
  - (3) Common land or a common facility within the subdivision. [PL 1987, c. 385, §2 (NEW).]

Any judgment rendered by the court in an action under subsection 2, in the discretion of the court, may grant the claimant reasonable damages instead of establishment of the claimant's rights, except that under no circumstances shall a municipality be liable for any damages granted by any judgment rendered by the court under subsection 2.

[PL 1987, c. 385, §2 (NEW).]

#### SECTION HISTORY

PL 1987, c. 385, §2 (NEW).

#### §3034. Structures located in proposed ways

**1. Action to compel removal.** When any structure, for 20 years, has been continuously located, in whole or in part, within a proposed, unaccepted way laid out in a subdivision plan recorded in the registry of deeds, and lots have been sold with reference to this plan, no action may be maintained by any person to compel removal of the structure based upon the fact of its location within the proposed, unaccepted way. For the purposes of this section, person includes a corporation, partnership, governmental entity or other entity.

Nothing in this section may be construed to restrict or affect private rights in a proposed, unaccepted way which come into existence under common law, in equity or under existing statutes. This section shall not be construed for any reason to extend the 20-year period set forth in this subsection.

[PL 1987, c. 385, §2 (NEW).]

**2. Applicability.** This section applies to structures existing and proposed, unaccepted ways laid out on subdivision plans recorded in registries of deeds before, on or after the effective date of this section, except that:

A. When a structure is located within a proposed, unaccepted way laid out on a subdivision plan recorded in the registry of deeds 20 years or more before the effective date of this section, any person, other than the owner of the structure, who claims a right or interest of any kind in the land within the proposed, unaccepted way, or any person claiming by, through or under such a person, may preserve his right or interest by recording the notice set forth in subsection 3, within 2 years after the effective date of this section, in the registry of deeds where the pertinent subdivision plan is recorded; and [PL 1987, c. 385, §2 (NEW).]

B. When a structure is located within a proposed, unaccepted way laid out on a subdivision plan recorded in the registry of deeds less than 20 years before the effective date of this section, any person, other than the owner of the structure, who claims a right or interest of any kind in the land within the proposed, unaccepted way, or any person claiming by, through or under such a person, may preserve his right or interest by recording the notice set forth in subsection 3, in the registry of deeds where the pertinent subdivision plan is recorded, within the later of:

(1) Twenty years from the date of the recording of the subdivision plan, on which the way is laid out, in the registry of deeds; or

(2) Two years after the effective date of this section. [PL 1987, c. 385, §2 (NEW).]

A person seeking to preserve a right or interest under paragraph A or B, within one year after the recording of the notice, shall bring an action to quiet title to establish the existence and extent of his claimed right or interest.

[PL 1987, c. 385, §2 (NEW).]

**3. Notice.** The notice required under subsection 2, paragraphs A and B, shall contain:

A. An intelligible description of the land in which the right or interest is claimed; [PL 1987, c. 385, §2 (NEW).]

B. The name and address of the person on whose behalf the right or interest is claimed; [PL 1987, c. 385, §2 (NEW).]

C. A description of the structure claimed to be within the proposed, unaccepted way in which the person claims a right or interest; [PL 1987, c. 385, §2 (NEW).]

D. The name and address of the owner of the structure; [PL 1987, c. 385, §2 (NEW).]

E. A description, including specific reference, by date of recording and the volume and page numbers, of the recorded instrument upon which the person claims the right to or interest in the recorded source of title; and [PL 1987, c. 385, §2 (NEW).]

F. A duly verified oath taken by the person claiming the right or interest before a person authorized to administer oaths. [PL 1987, c. 385, §2 (NEW).]

[PL 1987, c. 385, §2 (NEW).]

**4. Register's duties.** In indexing a notice presented for recording under subsection 2, the register of deeds shall make an entry:

A. In the grantee index of deeds under the name of the person making the claim in the notice; and [PL 1987, c. 385, §2 (NEW).]

B. In the grantor index of deeds under the name of the owner of the structure described in the notice. [PL 1987, c. 385, §2 (NEW).]

The register of deeds may charge the same fee for recording the notice that is charged for recording deeds.

[PL 1987, c. 385, §2 (NEW).]

**5. Who may present notice for recording.** The notice required under subsection 2 may be presented for recording by the person claiming the right or interest or a person acting on his behalf. Disability or lack of knowledge by the person claiming the right or interest shall not extend the time limitations related to the recording of the notice.

[PL 1987, c. 385, §2 (NEW).]

**6. Mailing the notice.** Within 20 days of the recording of the notice required under subsection 2, the person who presented the notice for recording shall deliver or mail, to the owner's last-known address, a copy of the notice to the owner of the structure described in the notice.

[PL 1987, c. 385, §2 (NEW).]

#### SECTION HISTORY

PL 1987, c. 385, §2 (NEW).

#### §3035. Construction of laws

Nothing in sections 3031 to 3034 may be construed to extend the period for the bringing of an action or for the doing of any other required act under any statute of limitations. Nothing in those sections may be construed to affect the nature of any right or interest which may be claimed in property to which those sections apply, or to affect the law regarding the sale, release or other disposition of such a right or interest. [PL 1987, c. 385, §2 (NEW).]

Sections 3031 to 3034 shall be liberally construed to affect the legislative purpose of enhancing the merits of title to land by eliminating the possibility of ancient claims to proposed, unaccepted, unconstructed ways that are outstanding on the record but unclaimed. [PL 1987, c. 385, §2 (NEW).]

#### SECTION HISTORY

PL 1987, c. 385, §2 (NEW).

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