

# MAINE STATE LEGISLATURE

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# 124th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2009

Legislative Document

No. 1418

H.P. 994

House of Representatives, April 7, 2009

**An Act To Preserve Home Ownership and Stabilize the Economy by  
Preventing Unnecessary Foreclosures**

(EMERGENCY)

Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative TREAT of Hallowell.  
Cosponsored by Senator BOWMAN of York and  
Representatives: ADAMS of Portland, BERRY of Bowdoinham, BRIGGS of Mexico,  
BRYANT of Windham, CLARK of Millinocket, CORNELL du HOUX of Brunswick,  
DRISCOLL of Westbrook, DUCHESNE of Hudson, EVES of North Berwick, FLEMINGS of  
Bar Harbor, FOSSEL of Alna, GILBERT of Jay, GOODE of Bangor, LEGG of Kennebunk,  
MacDONALD of Boothbay, MAGNAN of Stockton Springs, MAZUREK of Rockland,  
MILLER of Somerville, PERRY of Calais, PETERSON of Rumford, Speaker PINGREE of  
North Haven, PIOTTI of Unity, PRATT of Eddington, PRIEST of Brunswick, RUSSELL of  
Portland, SCHATZ of Blue Hill, STEVENS of Bangor, STUCKEY of Portland, THERIAULT  
of Madawaska, VALENTINO of Saco, WAGNER of Lyman, Senators: ALFOND of  
Cumberland, BARTLETT of Cumberland, GOODALL of Sagadahoc, MARRACHÉ of  
Kennebec, President MITCHELL of Kennebec, SCHNEIDER of Penobscot, SIMPSON of  
Androscoggin.

1           **Emergency preamble. Whereas,** acts and resolves of the Legislature do not  
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3           **Whereas,** the State's rate of mortgages in foreclosure is rising to unprecedented  
4 levels, both for prime and subprime mortgages; and

5           **Whereas,** foreclosures are expected to continue in the State because homeowners  
6 will not be able to afford payments due to rising adjustable mortgage payments, rising  
7 unemployment and job loss; and

8           **Whereas,** homeowners are expected to have continued problems selling their  
9 properties at the value of their mortgages due to falling housing prices; and

10          **Whereas,** foreclosures contribute to the decline in the State's housing market, loss of  
11 property values and loss of tax revenues; and

12          **Whereas,** the number of foreclosure actions in the courts is rapidly increasing and  
13 the current system for resolving foreclosure actions is creating a burden on the court  
14 system; and

15          **Whereas,** in the judgment of the Legislature, these facts create an emergency within  
16 the meaning of the Constitution of Maine and require the following legislation as  
17 immediately necessary for the preservation of the public peace, health and safety; now,  
18 therefore,

19          **Be it enacted by the People of the State of Maine as follows:**

20               **Sec. 1. 4 MRSA §18-B, sub-§12** is enacted to read:

21               **12. Mediation involving mortgage foreclosures on owner-occupied residential**  
22 **property. The mandatory foreclosure mediation program is a program within the Court**  
23 **Alternative Dispute Resolution Service.**

24               **A. The Director of the Court Alternative Dispute Resolution Service shall administer**  
25 **the mandatory foreclosure mediation program established pursuant to Title 14,**  
26 **section 6321-A, subsection 2.**

27               **B. A mandatory foreclosure mediation program fund is established as a nonlapsing,**  
28 **dedicated fund within the Administrative Office of the Courts. Fees collected for**  
29 **mediation services pursuant to Title 14, section 6321-A, subsection 3 must be**  
30 **deposited in the fund. The Administrative Office of the Courts shall use the**  
31 **resources in the fund to cover the costs of providing mediation services as required**  
32 **under Title 14, section 6321-A, subsection 2.**

33               **Sec. 2. 9-A MRSA §9-404,** as enacted by PL 1987, c. 396, §12, is amended to  
34 read:

1           **§9-404. Stay, modification, revocation or relief from judgment**

2           At any time after the entry of a judgment in favor of a creditor against a consumer in  
3           an action arising from a consumer credit transaction, the court, for cause and upon motion  
4           of a party or on its own motion, while such court retains jurisdiction, may modify, revoke  
5           or stay enforcement of the judgment by order upon just and equitable conditions and  
6           continue, modify or revoke the order as the interests of justice may require. This  
7           provision may not be limited by the timelines for seeking relief from judgment pursuant  
8           to the Maine Rules of Civil Procedure.

9           **Sec. 3. 9-A MRSA §9-405, sub-§5,** as enacted by PL 1987, c. 396, §12, is  
10          repealed.

11          **Sec. 4. 9-A MRSA §9-408** is enacted to read:

12          **§9-408. Violation of the Maine Unfair Trade Practices Act**

13          Any violation of this article or any other provision of the Maine Consumer Credit  
14          Code constitutes a violation of the Maine Unfair Trade Practices Act.

15          **Sec. 5. 14 MRSA §2401, sub-§3,** as amended by PL 1993, c. 114, §2 and  
16          affected by §4, is further amended to read:

17          **3. Judgment required; recording and contents.** The judgment in the proceeding  
18          must be signed by the judge and contain the following provisions:

19           A. The names and addresses, if known, of all parties to the action, including the  
20           counsel of record;

21           B. The docket number;

22           C. A finding that all parties have received notice of the proceedings in accordance  
23           with the applicable provisions of the Maine Rules of Civil Procedure and, if the  
24           notice was served or given pursuant to an order of a court, including service by  
25           publication, that the notice was served or given pursuant to the order;

26           D. An adequate description of real estate involved; ~~and~~

27           F. A certification to be signed by the clerk after the appeal period has expired,  
28           certifying that the applicable period has expired without action or the final judgment  
29           has been entered after remand following appeal; and

30           G. With regard to mortgage foreclosure actions, the title "judgment of foreclosure  
31           and sale," the street address of the real estate involved and the book and page number  
32           of the mortgage.

33          Unless a proposed judgment with the provisions required in this subsection is presented  
34          to the court at the time of the court's decision, the court shall name the party responsible  
35          for preparing a judgment with the required provisions. An attested copy of the judgment  
36          with the signed clerk's certification must be recorded in the registry of deeds for the  
37          county or counties where the subject property is located within one year of the entry of  
38          the final judgment unless otherwise ordered by the court. For the purposes of this

1 section, a judgment is not final until all applicable appeal periods have expired and any  
2 appellate proceedings and subsequent actions on remand, if any, have been concluded.  
3 The court shall name the party responsible for recording the attested copy of the judgment  
4 and for paying the appropriate recording fees. The judgment has no effect as to any  
5 person not a party to the proceeding who has no actual knowledge of the judgment unless  
6 an attested copy of the judgment is recorded in accordance with this section. A register  
7 of deeds may not accept a judgment of foreclosure and sale for recording unless it is in  
8 compliance with the requirements of this section. Failure to comply with this section  
9 does not affect the validity of the underlying judgment.

10 **Sec. 6. 14 MRSA §6001, sub-§2-A** is enacted to read:

11 **2-A. Foreclosure does not terminate a tenancy.** A party that acquires property  
12 pursuant to foreclosure of a mortgage, whether as a result of a judicial or nonjudicial  
13 process, may only terminate a tenancy with the mortgagor as set forth in the lease or  
14 rental agreement with the mortgagor or a tenancy at will as set forth in section 6002.  
15 Foreclosure does not terminate the tenancy agreement of a tenant with the mortgagor.

16 **Sec. 7. 14 MRSA §6021, sub-§1,** as enacted by PL 1977, c. 401, §4, is repealed  
17 and the following enacted in its place:

18 **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
19 following terms have the following meanings.

20 **A. "Dwelling unit" means mobile homes, apartments, buildings or other structures,**  
21 **including the common areas thereof, rented for human habitation.**

22 **B. "Landlord" includes a mortgagee that has commenced a foreclosure action to**  
23 **enforce terms of a mortgage agreement either through a judicial or nonjudicial**  
24 **process.**

25 **Sec. 8. 14 MRSA §6111, sub-§1,** as amended by PL 1997, c. 579, §1, is further  
26 amended to read:

27 **1. Notice; payment.** With respect to mortgages upon residential property located in  
28 this State when the mortgagor is occupying all or a portion of the property as the  
29 mortgagor's primary residence and the mortgage secures a loan for personal, family or  
30 household use, the mortgagee may not accelerate maturity of the unpaid balance of the  
31 obligation or otherwise enforce the mortgage because of a default consisting of the  
32 mortgagor's failure to make any required payment, tax payment or insurance premium  
33 payment, by any method authorized by this chapter until at least 30 90 days after the date  
34 that written notice pursuant to subsection 1-A is given by the mortgagee to the mortgagor  
35 and any cosigner against whom the mortgagee is enforcing the obligation secured by the  
36 mortgage at the last known addresses of the mortgagor and any cosigner that the  
37 mortgagor has the right to cure the default by full payment of all amounts that are due  
38 without acceleration, including reasonable interest and late charges specified in the  
39 mortgage or note as well as reasonable attorney's fees. If the mortgagor tenders payment  
40 of the amounts before the date specified in the notice, the mortgagor is restored to all  
41 rights under the mortgage deed as though the default had not occurred.

1           **Sec. 9. 14 MRSA §6111, sub-§1-A** is enacted to read:

2           **1-A. Contents of notice.** A mortgagee shall include in the notice under subsection 1  
3 the following:

4           A. The mortgagor's right to cure the default as provided in subsection 1;

5           B. An itemization of all past due amounts causing the loan to be in default;

6           C. An itemization of any other charges that must be paid in order to satisfy the full  
7 obligations of the loan;

8           D. A statement that the mortgagor may have options available other than foreclosure,  
9 that the mortgagor may discuss available options with the mortgagee, the mortgage  
10 servicer or a counselor approved by the United States Department of Housing and  
11 Urban Development and that the mortgagor is encouraged to explore available  
12 options prior to the end of the right-to-cure period;

13           E. The address, telephone number and other contact information for persons  
14 authorized to work with the mortgagor to avoid foreclosure, including, but not limited  
15 to, the mortgagee, the mortgage servicer and an agent of the mortgagee;

16           F. The name, address, telephone number and other contact information for all  
17 counseling agencies approved by the United States Department of Housing and  
18 Urban Development operating to assist mortgagors in the State to avoid foreclosure;  
19 and

20           G. A statement that all parties are required to participate in a mandatory mediation,  
21 as set forth in section 6321-A, to explore options for avoiding foreclosure.

22           **Sec. 10. 14 MRSA §6111, sub-§3-A** is enacted to read:

23           **3-A. Information; Maine State Housing Authority.** Within 3 days of providing  
24 notice to the mortgagor as required by subsection 1-A, the mortgagee shall file with the  
25 Maine State Housing Authority, in electronic format as designated by the Maine State  
26 Housing Authority, information including:

27           A. The name and address of the mortgagor and the date the notice required by  
28 subsection 1-A was mailed to the mortgagor and the address to which the notice was  
29 sent;

30           B. The address, telephone number and other contact information for persons  
31 authorized to work with the mortgagor to avoid foreclosure, including, but not limited  
32 to, the mortgagee, the mortgage servicer and an agent of the mortgagee; and

33           C. Other information, as permitted by state and federal law, requested of the  
34 mortgagor by the Maine State Housing Authority.

35           On a quarterly basis the Maine State Housing Authority shall transmit foreclosure data to  
36 the Department of Professional and Financial Regulation for the purposes of data  
37 collection and reporting to the Legislature pursuant to section 6113.

38           **Sec. 11. 14 MRSA §6111, sub-§4-A** is enacted to read:

1           **4-A. Letter to mortgagor.** Within 7 days of receiving electronic information from  
2 the mortgagee as set forth in subsection 3-A, the Maine State Housing Authority shall  
3 send a notice to the mortgagor that includes a summary of the mortgagor's rights and  
4 available resources, including information concerning the mandatory foreclosure  
5 mediation program as established in section 6321-A.

6           **Sec. 12. 14 MRSA §6111, sub-§5,** as enacted by PL 1997, c. 579, §4, is amended  
7 to read:

8           **5. Exceptions.** This section does not apply to:

9           A. A mortgage subject to the provisions of Title 9-A, section 5-111 or a mortgage,  
10 other than a first lien mortgage, that is made subject to the provisions of Title 9-A,  
11 section 5-111 by agreement of the parties to the mortgage; or

12 ~~B. A mortgage that contains a requirement that a reinstatement notice, a notice of~~  
13 ~~right to cure or an equivalent notice be given to the mortgagor at least 30 days prior~~  
14 ~~to accelerating the maturity of the unpaid balance of the obligation or otherwise~~  
15 ~~enforcing the mortgage against the mortgagor, if the mortgagee gives such a notice to~~  
16 ~~the mortgagor and to any cosigner against whom the mortgagee seeks to enforce the~~  
17 ~~obligation secured by the mortgage; or~~

18           C. A mortgage when the mortgagee accelerates the maturity of the unpaid balance  
19 of the obligation or otherwise enforces the mortgage on or after July 4, 1996 if the  
20 mortgage meets the requirements of paragraph A ~~or B.~~

21           **Sec. 13. 14 MRSA §6112** is enacted to read:

22           **§6112. Statewide hotline**

23           The Maine State Housing Authority shall establish a statewide hotline to facilitate a  
24 mortgagor's communication with housing counselors certified by the United States  
25 Department of Housing and Urban Development for the purposes of discussing options to  
26 avoid foreclosure.

27           **Sec. 14. 14 MRSA §6113** is enacted to read:

28           **§6113. Report**

29           The Department of Professional and Financial Regulation shall report quarterly to the  
30 joint standing committee of the Legislature having jurisdiction over insurance and  
31 financial services matters on the number of foreclosure notifications received pursuant to  
32 section 6111, subsection 3-A.

33           **Sec. 15. 14 MRSA §6203-A, first ¶,** as amended by PL 1995, c. 106, §1, is  
34 further amended to read:

35           Any holder of a mortgage on real estate that is granted by a corporation, partnership,  
36 including a limited partnership, limited liability company or trustee of a trust and that  
37 contains a power of sale, or a person authorized by the power of sale, or an attorney duly  
38 authorized by a writing under seal, or a person acting in the name of the holder of such

1 mortgage or any such authorized person, may, upon breach of condition and without  
2 action, do all the acts authorized or required by the power; except that a sale under the  
3 power is not effectual to foreclose a mortgage unless, previous to the sale, notice has been  
4 published once in each of 3 successive weeks, the first publication to be not less than 21  
5 days before the day of the sale in a newspaper of general circulation in the town where  
6 the land lies and which notice must prominently state the street address of the real estate  
7 encumbered by the mortgage deed and the book and page number of the mortgage. This  
8 provision is implied in every power of sale mortgage in which it is not expressly set forth.  
9 For mortgage deeds executed on or after October 1, 1993, the power of sale may be used  
10 only if the mortgage deed states that it is given primarily for a business, commercial or  
11 agricultural purpose. A copy of the notice must, at least 21 days before the date of the  
12 sale under the power in the mortgage, be recorded in each registry of deeds in which the  
13 mortgage deed is or by law ought to be recorded and must be served on the mortgagor or  
14 its representative in interest, or and must be served upon a tenant as a party in interest.  
15 The mortgagee shall provide such notice to a tenant if the mortgagee knows or should  
16 know by exercise of due diligence that the property is occupied as a rental unit. Notice  
17 may be sent by registered mail addressed to ~~it~~ the mortgagor or the mortgagor's  
18 representative at ~~its~~ the mortgagor's last known address, or to the person and to the  
19 address as may be agreed upon in the mortgage, at least 21 days before the date of the  
20 sale under the power in the mortgage. Notice may be served on a tenant by registered  
21 mail at the tenant's last known address only after the mortgagee has made 3 good faith  
22 efforts to serve the tenant in person. Any power of sale incorporated into a mortgage is  
23 not affected by the subsequent transfer of the mortgaged premises from the corporation,  
24 partnership, including a limited partnership, limited liability company or trustee of the  
25 trust to any other type of organization or to an individual or individuals. The power of  
26 sale may not be used to foreclose a mortgage deed granted by a trustee of a trust if at the  
27 time the mortgage deed is given the real estate is used exclusively for residential  
28 purposes, the real estate has 4 or fewer residential units and one of the units is the  
29 principal residence of the owner of at least 1/2 of the beneficial interest in the trust. If the  
30 mortgage deed contains a statement that at the time the mortgage deed is given the real  
31 estate encumbered by the mortgage deed is not used exclusively for residential purposes,  
32 that the real estate has more than 4 residential units or that none of the residential units is  
33 the principal residence of the owner of at least 1/2 of the beneficial interest in the trust,  
34 the statement conclusively establishes these facts and the mortgage deed may be  
35 foreclosed by the power of sale. The method of foreclosure of real estate mortgages  
36 provided by this section is specifically subject to the order of priorities set out in section  
37 6205.

38 **Sec. 16. 14 MRSA §6203-A**, as amended by PL 1995, c. 106, §1, is further  
39 amended by adding after the first paragraph a new paragraph to read:

40 A party that acquires property pursuant to foreclosure of a mortgage, whether as a  
41 result of a judicial or nonjudicial process, may only terminate a tenancy with the  
42 mortgagor as set forth in the lease or rental agreement with the mortgagor or a tenancy at  
43 will as set forth in section 6002. Foreclosure does not terminate the tenancy agreement of  
44 a tenant with the mortgagor.



1           **Sec. 17. 14 MRSA §6321, 2nd ¶**, as amended by PL 2007, c. 391, §9, is further  
2 amended to read:

3           After breach of condition of any mortgage other than one of the first priority, the  
4 mortgagee or any person claiming under the mortgagee may proceed for the purpose of  
5 foreclosure by a civil action against all parties in interest, except for parties in interest  
6 having a superior priority to the foreclosing mortgagee, in either the Superior Court or the  
7 District Court in the division in which the mortgaged premises or any part of the  
8 mortgaged premises is located. In a foreclosure proceeding commenced by a mortgagee,  
9 whether by judicial or nonjudicial process, notice of process must be served upon a tenant  
10 as a party in interest. The tenant so named as a party in interest is not required to file any  
11 responsive pleadings and must receive notice of all subsequent proceedings including all  
12 matters through and including sale of the property. The mortgagee is obligated to provide  
13 notice to the tenant if it knows or should know by exercise of due diligence that the  
14 property is occupied as a rental unit. Parties in interest having a superior priority may not  
15 be joined nor will their interests be affected by the proceedings, but the resulting sale  
16 under section 6323 is of the defendant or mortgagor's equity of redemption only. The  
17 plaintiff shall notify the priority parties in interest of the action by sending a copy of the  
18 complaint to the parties in interest by certified mail.

19           **Sec. 18. 14 MRSA §6321, 3rd ¶**, as amended by PL 2007, c. 391, §9, is further  
20 amended to read:

21           The foreclosure must be commenced in accordance with the Maine Rules of Civil  
22 Procedure, and the mortgagee shall within 10 days of commencing the foreclosure also  
23 record a copy of the complaint or a clerk's certificate of the filing of the complaint in each  
24 registry of deeds in which the mortgage deed is or by law ought to be recorded and such a  
25 recording thereafter constitutes record notice of commencement of foreclosure. The  
26 mortgagee shall further certify and provide evidence that all steps mandated by law to  
27 provide notice to the mortgagor pursuant to section 6111 were strictly performed. The  
28 mortgagee shall certify proof of ownership of the mortgage note and produce evidence of  
29 the mortgage note, mortgage and all assignments and endorsements of the mortgage note  
30 and mortgage. The complaint must allege with specificity the plaintiff's claim by  
31 mortgage on such real estate, describe the mortgaged premises intelligibly, including the  
32 street address of the mortgaged premises, which must be prominently stated on the first  
33 page of the complaint, state the book and page number of the mortgage, state the  
34 existence of public utility easements, if any, that were recorded subsequent to the  
35 mortgage and prior to the commencement of the foreclosure proceeding and without  
36 mortgagee consent, state the amount due on the mortgage, state the condition broken and  
37 by reason of such breach demand a foreclosure and sale. A clerk's certificate presented  
38 for recording pursuant to this section may not be accepted by the registry of deeds unless  
39 the certificate bears the title "Clerk's Certificate of Foreclosure and Sale" and  
40 prominently states, immediately after the title, the street address of the mortgaged  
41 premises and the book and page number of the mortgage. Service of process on all  
42 parties in interest and all proceedings must be in accordance with the Maine Rules of  
43 Civil Procedure. "Parties in interest" includes mortgagors, holders of fee interest,  
44 mortgagees, tenants, lessees pursuant to recorded leases or memoranda thereof, lienors  
45 and attaching creditors all as reflected by the indices in the registry of deeds and the

1 documents referred to therein affecting the mortgaged premises, through the time of the  
2 recording of the complaint or the clerk's certificate. Failure to join any party in interest  
3 does not invalidate the action nor any subsequent proceedings as to those joined. Failure  
4 of the mortgagee to join, as a party in interest, the holder of any public utility easement  
5 recorded subsequent to the mortgage and prior to commencement of foreclosure  
6 proceedings is deemed consent by the mortgagee to that easement. Any other party  
7 having a claim to the real estate whose claim is not recorded in the registry of deeds as of  
8 the time of recording of the copy of the complaint or the clerk's certificate need not be  
9 joined in the foreclosure action, and any such party has no claim against the real estate  
10 after completion of the foreclosure sale, except that any such party may move to  
11 intervene in the action for the purpose of being added as a party in interest at any time  
12 prior to the entry of judgment.

13 **Sec. 19. 14 MRSA §6321**, as amended by PL 2007, c. 391, §9, is further amended  
14 by adding at the end a new paragraph to read:

15 Upon commencement of a foreclosure proceeding, by either judicial or nonjudicial  
16 process, the mortgagor and mortgagee are jointly liable for maintenance and repair of the  
17 premises pursuant to section 6021. If the mortgagor fails to maintain the premises as  
18 required by the implied warranty of fitness for human habitation as established in section  
19 6021 then the mortgagee shall ensure that the property remains in compliance. If either  
20 the mortgagor or mortgagee fails to maintain the premises as required by the implied  
21 warranty of fitness for human habitation then the tenant may petition the court with  
22 jurisdiction over the foreclosure proceedings to enforce the tenant's rights pursuant to  
23 section 6021. In the case of a nonjudicial foreclosure process the tenant may petition any  
24 court of competent jurisdiction for said relief. In any such action brought by the tenant,  
25 the court in its discretion may establish an escrow account into which the tenant may  
26 make escrow payments and the court may distribute the funds as necessary to maintain  
27 the property pursuant to section 6021. The court may also direct that payment be made to  
28 the mortgagee and direct the mortgagee to expend such funds as are necessary to maintain  
29 the premises as required by section 6021.

30 **Sec. 20. 14 MRSA §6321-A** is enacted to read:

31 **§6321-A. Mandatory foreclosure mediation program**

32 **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
33 following terms have the following meanings.

34 A. "Court" means the Supreme Judicial Court.

35 B. "Program" means the mandatory foreclosure mediation program.

36 **2. Notice; summons and complaint; foreclosure proceedings.** When a plaintiff  
37 commences an action for the foreclosure of a mortgage on an owner-occupied residential  
38 real property, the plaintiff shall give notice to the defendant of the mandatory foreclosure  
39 mediation program established in subsection 3 by attaching to the front of the foreclosure  
40 complaint that is served on the defendant a copy of the notice of the availability of  
41 foreclosure mediation, in a form as prescribed by the Supreme Judicial Court.

1 **3. Mandatory foreclosure mediation program established.** Under the authority  
2 granted in Title 4, section 18-B, the Supreme Judicial Court shall adopt rules to establish  
3 a mandatory foreclosure mediation program within the Court Alternative Dispute  
4 Resolution Service to provide mediation in actions for foreclosure of mortgages on  
5 owner-occupied residential property. The program must address all issues of foreclosure,  
6 including but not limited to reinstatement of the mortgage, modification of the loan and  
7 restructuring of the mortgage debt. Mediations conducted pursuant to the program must  
8 utilize the calculations, assumptions and forms that are established by the Federal Deposit  
9 Insurance Corporation and published in the Federal Deposit Insurance Corporation Loan  
10 Modification Program Guide as set out on the Federal Deposit Insurance Corporation's  
11 publicly accessible website.

12 Communications during mediation are confidential and may not be used in subsequent  
13 legal proceedings.

14 The plaintiff's or defendant's rights in the foreclosure action are not waived by  
15 participating in the program.

16 **4. Provisions of mediation services; filing and fees.** The Court Alternative Dispute  
17 Resolution Service, established in Title 4, section 18-B, shall provide mediation services  
18 under this section. The Court Alternative Dispute Resolution Service shall:

19 A. Assign mediators who:

20 (1) Are trained in mediation and all relevant aspects of the law;

21 (2) Have knowledge of community-based resources that are available in the  
22 judicial districts in which they serve;

23 (3) Have knowledge of mortgage assistance programs; and

24 (4) Are trained in using the relevant Federal Deposit Insurance Corporation  
25 forms and worksheets.

26 The court may establish a training program for mediators and require that mediators  
27 receive such training prior to being appointed;

28 B. Report quarterly to the joint standing committee of the Legislature having  
29 jurisdiction over insurance and financial services matters and the joint standing  
30 committee of the Legislature having jurisdiction over judiciary matters on:

31 (1) The performance of the program, including numbers of homeowners who are  
32 notified of mediation, who attend mediation and who receive legal counseling or  
33 legal assistance; and

34 (2) The outcome of the mediation process, including the number of loans  
35 restructured, number of principal write-downs, interest rate reductions and  
36 number of homeowners who default on mortgages within a year after  
37 restructuring; and

38 C. Establish a fee for mediation services to be paid for by the plaintiff.

39 **5. Stay of foreclosure process.** Further action in the foreclosure proceeding may  
40 not be pursued during the mediation's pendency and the court process is stayed during the

1 mediation process under this section. The foreclosure process may commence again only  
2 upon certification and proof of evidence to the court that requirements under the program  
3 were satisfied, as determined by the court. All fees and costs related to the foreclosure  
4 and delinquency remain fixed from the date of the scheduled mediation until the date that  
5 the mediator's report pursuant to subsection 10 is filed.

6 **6. Application of mediation provisions to ongoing foreclosure proceedings.** The  
7 requirements of this section apply to foreclosures filed after the effective date of this  
8 section and to owner-occupied residential properties in the foreclosure process but not  
9 scheduled for sale before the effective date of this section. Nothing in this section  
10 precludes the court from exercising its discretion to require mediation for other  
11 properties, including but not limited to owner-occupied residential properties already  
12 scheduled for sale or other multifamily housing properties.

13 **7. Preforeclosure mediation.** The court maintains the discretion to require  
14 mediation prior to the filing of the foreclosure action as long as the mediation satisfies the  
15 standards and requirements of this section. The court's discretion includes the authority  
16 to require additional notice to defendants prior to a plaintiff's filing of the foreclosure  
17 complaint.

18 **8. Parties to mediation.** A mediator shall include in the mediation process under  
19 this section any person the mediator determines is necessary for effective mediation.  
20 Mediation and appearance in person is mandatory for:

21 A. The mortgagee, who has the authority to agree to a proposed settlement, loan  
22 modification or dismissal of the loan, except that the mortgagee may participate by  
23 telephone;

24 B. The defendant;

25 C. Counsel for the plaintiff and the defendant; and

26 D. Counsel for the defendant, if represented.

27 **9. Good faith effort.** If the court finds that either party failed to make a good faith  
28 effort to mediate, the court may impose sanctions that include dismissal of the foreclosure  
29 action with prejudice and costs and fees.

30 **10. Report.** The mediator's report must include the certification in a manner as  
31 determined by the court that the parties completed in full and in good faith the Net  
32 Present Value Worksheet in the Federal Deposit Insurance Corporation Loan  
33 Modification Program Guide. The mediator shall retain a copy of the worksheet until  
34 completion of the foreclosure proceedings. If the report is not the result of a settlement or  
35 dismissal of the case, the report must include the outcomes of the Net Present Value  
36 Worksheet.

37 **11. Waive mediation.** With the court's approval, a defendant may waive the  
38 mediation requirement under this section under the following conditions:

1 A. The defendant desires foreclosure because of personal circumstances and has  
2 certification by an independent 3rd-party counselor or attorney that the defendant  
3 understands what it means to waive the mediation; and

4 B. The waiver includes language that prohibits the homeowner from signing away  
5 any claim related to the mortgage origination.

6 Any waiver of mediation agreed to by the defendant must include an agreement by the  
7 plaintiff to waive any deficiency that may result upon sale of the property.

8 **Sec. 21. 36 MRSA §4641-C, sub-§2**, as repealed and replaced by PL 1993, c.  
9 680, Pt. A, §31, is amended to read:

10 **2. Mortgage deeds.** Mortgage deeds, discharges of mortgage deeds and partial  
11 releases of mortgage deeds, ~~deeds from a mortgagor to a mortgagee in lieu of foreclosure~~  
12 ~~and deeds from a mortgagee to itself at a public sale held pursuant to Title 14, section~~  
13 ~~6323.~~ In the event of a deed to a 3rd party at such a public sale, the tax imposed upon the  
14 grantor by section 4641-A applies only to that portion of the proceeds of sale that exceeds  
15 the sums required to satisfy in full the claims of the mortgagee and all junior claimants  
16 originally made parties in interest in the proceedings or having subsequently intervened in  
17 the proceedings as established by the judgment of foreclosure and sale. The tax must be  
18 deducted from the excess proceeds;

19 **Sec. 22. 36 MRSA §4641-C, sub-§13**, as enacted by PL 1993, c. 398, §4, is  
20 repealed.

21 **Sec. 23. Rules.** The Supreme Judicial Court shall adopt rules pursuant to the  
22 Maine Revised Statutes, Title 14, section 6321-A, subsection 3 no later than 60 days after  
23 the effective date of this Act.

24 The court shall also amend its existing rules to remove Rule 16B(b)(7), which exempts  
25 actions for nonpayment in mortgage foreclosures from the court's requirements for  
26 alternative dispute resolution.

27 **Sec. 24. Outreach program.** The Maine State Housing Authority shall conduct a  
28 pilot project regarding the coordination of an outreach program to help families with their  
29 housing needs through the NeighborWorks Program with the intent of expanding the  
30 outreach program statewide.

31 **Sec. 25. Collaboration with community organizations.** The Maine Supreme  
32 Court and the Maine State Housing Authority shall facilitate outreach with community  
33 organizations to help increase mortgagors' awareness of options other than foreclosure.

34 **Emergency clause.** In view of the emergency cited in the preamble, this  
35 legislation takes effect when approved.

36 **SUMMARY**

37 This bill amends the laws pertaining to foreclosures.

1           1. It establishes the mandatory foreclosure mediation program within the Court  
2 Alternative Dispute Resolution Service.

3           2. It makes violation of provisions of the Maine Consumer Credit Code a violation of  
4 the Maine Unfair Trade Practices Act.

5           3. It requires that the words "judgment of foreclosure and sale," the street address of  
6 the real estate involved and the book and page number of the mortgage be on a  
7 foreclosure judgment when filed in the registry of deeds.

8           4. It clarifies that a foreclosure on a rental property does not terminate a tenancy.

9           5. It describes what a mortgagee must include in a notice of foreclosure to a  
10 mortgagor.

11           6. It requires a mortgagee to provide certain information to the Maine State Housing  
12 Authority about foreclosure, which the Maine State Housing Authority shall transmit to  
13 the Department of Professional and Financial Regulation.

14           7. It requires the Maine State Housing Authority to notify a mortgagor who is a party  
15 to a foreclosure about the mortgagor's rights and available resources as they relate to the  
16 foreclosure as well as the mandatory foreclosure mediation program. It also requires the  
17 Maine State Housing Authority to establish a statewide hotline to help mortgagors  
18 communicate with housing counselors certified by the United States Department of  
19 Housing and Urban Development.

20           8. It requires the Department of Professional and Financial Regulation to report  
21 quarterly on the number of foreclosure notifications received to the joint standing  
22 committee of the Legislature having jurisdiction over insurance and financial services  
23 matters.

24           9. It amends the procedure and notice for foreclosures.

25           10. It amends the procedure for commencement of foreclosure by civil action.