

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 851

H.P. 602

House of Representatives, March 5, 2013

An Act To Require the Return of Excess Funds by a Municipality That Forecloses on Real Estate

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative DICKERSON of Rockland.
Cosponsored by Senator MAZUREK of Knox and
Representatives: CASAVANT of Biddeford, CHIPMAN of Portland, GOODE of Bangor,
KUMIEGA of Deer Isle, MASTRACCIO of Sanford, VILLA of Harrison.

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

2 **Sec. 1. 36 MRSA §949** is enacted to read:

3 **§949. Disbursement of excess funds**

4 A municipality that obtains title to real estate under the operation of this article shall
5 disburse to the former owner the excess of any funds as provided in this section.

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

8 A. "Excess of any funds" means the amount obtained for the disposition of real estate
9 less:

10 (1) All tax liens imposed on the real estate by the municipality, including
11 interest;

12 (2) Fees for recording and discharge of the lien, as established by Title 33,
13 section 751, plus \$13;

14 (3) The fee established in section 943 for sending a notice if the notice is actually
15 sent, including fees for certified mail, return receipt requested;

16 (4) Any court costs;

17 (5) Any property taxes that would have been due on the real estate but for it
18 being in foreclosure, including interest; and

19 (6) All expenses incurred in disposing of the real estate.

20 B. "Former owner" means a party named on the tax lien mortgage at the time of the
21 levy of the tax lien or that party's representative or a successor, heir or assign or a
22 representative of that successor, heir or assign.

23 C. "Municipality" means, for real estate located in the unorganized territory, the
24 State Tax Assessor.

25 **2. Time and form of return; notice.** Within 30 days of the disposition of real estate
26 or 180 days of foreclosure, whichever is earlier, a municipality shall mail by certified
27 mail, return receipt requested, to the former owner's last known address notice of the
28 excess of any funds. The notice must include an itemized statement showing the amount
29 for which the real estate was sold or appraised and all deductions made from that amount.
30 The notice also must include directions for the redemption of the excess of any funds,
31 including requiring the personal appearance of the former owner to claim the excess
32 funds and the location and hours of operation of the clerk of the municipality or, for real
33 estate located in the unorganized territory, the bureau.

34 **3. Escrow; negotiation; failure to redeem.** A municipality shall hold the excess of
35 any funds for the benefit of the former owner in escrow in a segregated account for 90
36 days or until the completion of negotiation, as required by this subsection, or arbitration,
37 as required by subsection 4, whichever is later. Upon the request of the former owner and
38 within 90 days of the notice provided pursuant to subsection 2, the municipality shall

1 enter into negotiations for the return of the excess of any funds. If the former owner is
2 dissatisfied with the result of the negotiations, the former owner, within 30 days of
3 negotiation, may seek arbitration as provided in subsection 4. If the former owner fails to
4 appear personally within 90 days of the notice provided pursuant to subsection 2, the
5 excess of any funds may be retained by the municipality.

6 **4. Arbitration.** The former owner, within 90 days of the notice provided pursuant to
7 subsection 2 or 30 days of the negotiation with the municipality pursuant to subsection 3,
8 may request that the controversy regarding the return of the excess of any funds be
9 submitted to binding arbitration. The arbitration may be by one arbitrator, mutually
10 agreed upon by the municipality and the former owner. If agreement on one arbitrator is
11 not reached, the arbitration must be submitted to a panel of 3 arbitrators, one of whom is
12 selected by the former owner; one of whom is selected by the municipality; and one of
13 whom is a neutral arbitrator who is selected jointly by the other 2 arbitrators. Each party
14 shall pay its chosen arbitrator and half of the cost of the neutral arbitrator. Determination
15 of disputed matters by the panel of arbitrators is final and binding on the parties. The
16 arbitration must be administered under the auspices of the American Arbitration
17 Association or a successor organization and, except for the selection of arbitrators, is
18 governed by the commercial rules and procedures of the American Arbitration
19 Association. The concept of "last best offer" must be used.

20 **5. Failure to dispose of real estate.** If a municipality does not dispose of real estate
21 within 180 days of foreclosure, the excess of any funds is determined by subtracting from
22 the fair market value of the real estate at the time of foreclosure, as determined by an
23 independent appraisal, the costs specified in subsection 1, paragraph A and the cost of the
24 appraisal performed pursuant to this subsection.

25 **Sec. 2. Application.** This Act applies to real estate foreclosed on by a
26 municipality or, for real estate located in the unorganized territory, the State Tax
27 Assessor, on or after the effective date of this Act.

28 SUMMARY

29 Under current law, if a municipality, or the State Tax Assessor for real estate located
30 in the unorganized territory, forecloses on a parcel of real estate for failure to pay taxes
31 owed on that real estate, the municipality is under no obligation to return any funds that
32 exceed the amount owed in taxes after the sale of the real estate.

33 This bill requires the municipality, which includes the State Tax Assessor for real
34 estate located in the unorganized territory, to provide notice of the availability of the
35 excess funds, after subtracting the tax lien, interest, fees for recording the lien, costs of
36 mailing notice, court costs and any other expenses incurred in disposing of the real estate,
37 to the former owner within 30 days of sale of the real estate or 180 days of the
38 foreclosure, whichever is sooner. The municipality is required to keep the excess funds
39 in a segregated escrow account. If the former owner fails to claim the excess funds in
40 person within 90 days of the notice, the municipality is allowed to retain the excess funds.
41 If the former owner or the former owner's representative notifies the municipality within
42 90 days of the notice, the municipality must negotiate with the former owner over the

1 return of the excess funds. If the former owner is dissatisfied with the municipality's
2 offer, the former owner may seek binding arbitration for resolution of the matter.