

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

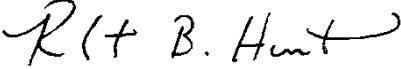
No. 111

H.P. 83

House of Representatives, January 22, 2015

An Act To Ensure That Defendants Receive Proper Notification in Foreclosure Proceedings

Reference to the Committee on Judiciary suggested and ordered printed.


ROBERT B. HUNT
Clerk

Presented by Representative DAUGHTRY of Brunswick.
Cosponsored by Senator MILLETT of Cumberland and
Representatives: DeCHANT of Bath, EVANGELOS of Friendship, JORGENSEN of Portland,
KRUGER of Thomaston, MOONEN of Portland, TUCKER of Brunswick.

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

2 **Sec. 1. 14 MRSA §6111, sub-§3**, as amended by PL 1997, c. 579, §2, is further
3 amended to read:

4 **3. Notice procedure.** A mortgagee shall provide notice to a mortgagor and any
5 cosigner under this section to the last known addresses of the mortgagor and cosigner by:

6 A. Certified mail, return receipt requested. For the purposes of this paragraph, the
7 time when the notice is given to the mortgagor or cosigner is the date the mortgagor
8 or cosigner signs the receipt or, if the notice is undeliverable, the date the post office
9 last attempts to deliver it; ~~or,~~

10 ~~B. Ordinary first class mail, postage prepaid. For the purposes of this paragraph, the~~
11 ~~time when the notice is given to the mortgagor or cosigner is the date when the~~
12 ~~mortgagor or cosigner receives that notice. A post office department certificate of~~
13 ~~mailing to the mortgagor or cosigner is conclusive proof of receipt on the 3rd~~
14 ~~calendar day after mailing.~~

15 **Sec. 2. 14 MRSA §6321, 3rd ¶**, as amended by PL 2009, c. 476, Pt. B, §5 and
16 affected by §9, is further amended to read:

17 The foreclosure must be commenced in accordance with the Maine Rules of Civil
18 Procedure, and the mortgagee shall within 60 days of commencing the foreclosure also
19 record a copy of the complaint or a clerk's certificate of the filing of the complaint in each
20 registry of deeds in which the mortgage deed is or by law ought to be recorded and such a
21 recording thereafter constitutes record notice of commencement of foreclosure. The
22 mortgagee shall further certify and provide evidence that all steps mandated by law to
23 provide notice to the mortgagor pursuant to section 6111 were strictly performed. All
24 notices and correspondence sent by the mortgagee to the mortgagor must be by certified
25 mail. The mortgagee shall certify proof of ownership of the mortgage note and produce
26 evidence of the mortgage note, mortgage and all assignments and endorsements of the
27 mortgage note and mortgage. The complaint must allege with specificity the plaintiff's
28 claim by mortgage on such real estate, describe the mortgaged premises intelligibly,
29 including the street address of the mortgaged premises, if any, which must be
30 prominently stated on the first page of the complaint, state the book and page number of
31 the mortgage, if any, state the existence of public utility easements, if any, that were
32 recorded subsequent to the mortgage and prior to the commencement of the foreclosure
33 proceeding and without mortgagee consent, state the amount due on the mortgage, state
34 the condition broken and by reason of such breach demand a foreclosure and sale. If a
35 clerk's certificate of the filing of the complaint is presented for recording pursuant to this
36 section, the clerk's certificate must bear the title "Clerk's Certificate of Foreclosure" and
37 prominently state, immediately after the title, the street address of the mortgaged
38 premises, if any, and the book and page number of the mortgage, if any. Service of
39 process on all parties in interest and all proceedings must be in accordance with the
40 Maine Rules of Civil Procedure. "Parties in interest" includes mortgagors, holders of fee
41 interest, mortgagees, lessees pursuant to recorded leases or memoranda thereof, lienors
42 and attaching creditors all as reflected by the indices in the registry of deeds and the
43 documents referred to therein affecting the mortgaged premises, through the time of the

1 recording of the complaint or the clerk's certificate. Failure to join any party in interest
2 does not invalidate the action nor any subsequent proceedings as to those joined. Failure
3 of the mortgagee to join, as a party in interest, the holder of any public utility easement
4 recorded subsequent to the mortgage and prior to commencement of foreclosure
5 proceedings is deemed consent by the mortgagee to that easement. Any other party
6 having a claim to the real estate whose claim is not recorded in the registry of deeds as of
7 the time of recording of the copy of the complaint or the clerk's certificate need not be
8 joined in the foreclosure action, and any such party has no claim against the real estate
9 after completion of the foreclosure sale, except that any such party may move to
10 intervene in the action for the purpose of being added as a party in interest at any time
11 prior to the entry of judgment. Within 10 days of submitting the complaint for filing with
12 the court, the mortgagee shall provide a copy of the complaint or of the clerk's certificate
13 as submitted to the court that prominently states, immediately after the title, the street
14 address of the mortgaged premises, if any, and the book and page number of the
15 mortgage, if any, to the municipal tax assessor of the municipality in which the property
16 is located and, if the mortgaged premises is manufactured housing as defined in Title 10,
17 section 9002, subsection 7, to the owner of any land leased by the mortgagor. The failure
18 to provide the notice required by this section does not affect the validity of the
19 foreclosure sale.

20

SUMMARY

21 This bill requires that the notice of right to cure and all other notices and
22 correspondence sent by a mortgagee to the mortgagor in a foreclosure action must be sent
23 by certified mail.