

# MAINE STATE LEGISLATURE

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# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 1327

S.P. 415

In Senate, March 19, 2019

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**An Act To Require Residential Mortgage Loan Servicers To Act in  
Good Faith in Dealings with Homeowners**

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

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator CLAXTON of Androscoggin.  
Cosponsored by Senators: DESCHAMBAULT of York, MOORE of Washington.

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

2 **Sec. 1. 14 MRSA §6113** is enacted to read:

3 **§6113. Mortgage servicer duty of good faith**

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

6 A. "Good faith" means honesty in fact and the observance of reasonable commercial  
7 standards of fair dealing.

8 B. "Mortgage servicer" means a person that is responsible for:

9 (1) Receiving scheduled periodic payments from an obligor pursuant to the terms  
10 of a mortgage described in section 6111, subsection 1, including amounts for  
11 escrow accounts;

12 (2) Making or advancing payments to the owner of the loan or other 3rd parties  
13 with respect to the amounts received from the obligor pursuant to a loan servicing  
14 contract; and

15 (3) Evaluating obligors for loss mitigation or loan modification options.

16 C. "Obligation" means a debt or other duty or liability of an obligor secured by a  
17 mortgage of the type described in section 6111, subsection 1.

18 D. "Obligor" means a person that:

19 (1) Owes payment or performance of an obligation;

20 (2) Has provided property other than the mortgaged property to secure payment  
21 of the obligation;

22 (3) Has granted a mortgage interest with respect to the mortgaged property; or

23 (4) Is otherwise accountable in whole or in part for payment of the obligation.

24 E. "Servicer" means a person responsible for servicing an obligation, including a  
25 person that holds or owns an obligation or originates a mortgage loan if the person  
26 also services the obligation.

27 F. "Servicing" means any combination of the following:

28 (1) Receiving a periodic payment from an obligor under the terms of an  
29 obligation, including an amount received for an escrow account;

30 (2) Making or advancing payments to the owner of an obligation on account of  
31 an amount due from the obligor under a mortgage servicing loan document or a  
32 servicing contract;

33 (3) Making a payment to the obligor under a home equity conversion mortgage  
34 or reverse mortgage;

35 (4) Evaluating the obligor for loss mitigation or communicating with the obligor  
36 with respect to loss mitigation;

1                   (5) Collecting funds from a homeowner for deposit into an escrow account and  
2                   making payments out of an escrow account; and

3                   (6) Taking any other action with respect to an obligation that affects the obligor's  
4                   payment or performance of the obligation or that relates to the enforcement of the  
5                   obligation.

6                   **2. Duty of good faith.** A mortgage servicer shall act in good faith toward an obligor  
7                   in the servicing of an obligation secured by a mortgage and in any foreclosure action  
8                   relating to such an obligation.

9                   **3. Effect of violation during foreclosure.** If during a foreclosure action a servicer  
10                  controlling or managing the action on its own behalf or on behalf of the owner of the  
11                  obligation subject to foreclosure is shown to have committed a violation of its duty of  
12                  good faith under subsection 2, the court may dismiss the action, stay the action on  
13                  appropriate terms and conditions or impose other appropriate sanctions until the violation  
14                  is cured.

15                  **4. Remedies for violation.** The following are remedies for a violation of the duty of  
16                  good faith under subsection 2.

17                  A. A homeowner or obligor injured by a violation of the duty of good faith may  
18                  bring an action against the servicer for all actual damages sustained by the  
19                  homeowner or obligor.

20                  B. In addition to the damages recoverable under this subsection, the court may award  
21                  a homeowner or obligor statutory damages not exceeding \$15,000 for a pattern or  
22                  practice of the servicer's violating the duty of good faith. In determining whether to  
23                  award statutory damages and the amount of statutory damages, the court shall  
24                  consider all relevant factors, including:

25                         (1) The frequency and persistence of violations by the servicer;

26                         (2) The nature of the violations;

27                         (3) The extent to which the violations were intentional; and

28                         (4) The extent to which the actions that constitute violations are prohibited by  
29                         state or federal laws, rules or regulations, and the extent to which such actions  
30                         constitute violations by the servicer of any consent judgments to which it is a  
31                         party.

32                  C. If the court determines during a foreclosure action or an independent action for  
33                  damages that there has been a violation of the duty of good faith:

34                         (1) The servicer may not charge the loan owner for, or add to the amount of the  
35                         obligation, any attorney's fees or costs incurred as a result of the violation or any  
36                         other attorney's fees or costs incurred before the servicer cures the violation; and

37                         (2) The court shall order the servicer to pay to the obligor the obligor's costs  
38                         incurred in the action and reasonable attorney's fees as determined by the court.

39                  **Sec. 2. 14 MRSA §6321-A, sub-§11**, as amended by PL 2009, c. 476, Pt. B, §6  
40                  and affected by §9, is further amended to read:

1           **11. Parties to mediation.** A mediator shall include in the mediation process under  
2 this section any person the mediator determines is necessary for effective mediation.  
3 Mediation and appearance in person is mandatory for:

- 4           A. The mortgagee, who has the authority to agree to a proposed settlement, loan  
5           modification or dismissal of the action, except that the mortgagee may participate by  
6           telephone or electronic means as long as that mortgagee is represented with authority  
7           to agree to a proposed settlement;
- 8           B. The defendant;
- 9           C. Counsel for the plaintiff; and
- 10          D. Counsel for the defendant, if represented.

11           A mortgage servicer as defined in section 6113, subsection 1, paragraph B participating  
12           in the mediation process submits to the jurisdiction of the court with respect to the power  
13           of the court to sanction parties who fail to participate in the mediation process in good  
14           faith as required by section 6113, subsection 2.

15           **Sec. 3. 14 MRSA §6321-A, sub-§12,** as enacted by PL 2009, c. 402, §18, is  
16 amended to read:

17           **12. Good faith effort.** Each party and each party's attorney, if any, must be present  
18 at mediation as required by this section and shall make a good faith effort to mediate all  
19 issues. If any party or attorney fails to attend or to make a good faith effort to mediate,  
20 the court may impose appropriate sanctions. A mortgage servicer as defined in section  
21 6113, subsection 1, paragraph B participating in the mediation process shall participate in  
22 good faith as required by section 6113, subsection 2. In determining the nature and  
23 extent of appropriate sanctions, the court shall consider the need for deterrence of similar  
24 future conduct by the entity being sanctioned and by others and may take into account  
25 prior orders imposing sanctions upon the sanctioned party, whether in the same case or in  
26 other previous cases. The imposition of any sanction does not bar any independent action  
27 by a defendant to seek recovery with respect to the actions giving rise to the order of  
28 sanctions.

29           **Sec. 4. 14 MRSA §6321-A, sub-§13,** as amended by PL 2013, c. 521, Pt. F, §2,  
30 is further amended to read:

31           **13. Report.** A mediator must complete a report for each mediation conducted under  
32 this section. The mediator's report must indicate in a manner as determined by the court  
33 that the parties completed in full the Net Present Value Worksheet in the Federal Deposit  
34 Insurance Corporation Loan Modification Program Guide or other reasonable  
35 determination of net present value. If the mediation did not result in the settlement or  
36 dismissal of the action, the report must include the outcomes of the Net Present Value  
37 Worksheet or other determination of net present value. As part of the report, the mediator  
38 may notify the court if, in the mediator's opinion, either party failed to negotiate in good  
39 faith. The mediator's report must also include a statement of all agreements reached at  
40 mediation, with sufficient specificity to put all parties on notice of their obligations under  
41 agreements reached at mediation, including but not limited to a description of all  
42 documents that must be completed and provided pursuant to the agreements reached at

1 mediation and the time frame during which all actions are required to be taken by the  
2 parties, including decisions and determinations of eligibility for all loss mitigation  
3 options. The mediator's report must identify the name of any mortgage servicer as  
4 defined in section 6113, subsection 1, paragraph B that participates in the mediation  
5 process, and any order of sanctions must likewise identify the name of the mortgage  
6 servicer.

7

## SUMMARY

8 This bill requires servicers of residential mortgage loans to act in good faith when  
9 dealing with homeowners who are the borrowers under those loans. The bill changes the  
10 foreclosure mediation program to allow the courts to directly sanction a mortgage  
11 servicer when the servicer's conduct evidences a failure to mediate in good faith. The bill  
12 requires an order of sanctions to identify the name of the mortgage servicer so that, when  
13 a servicer is found to have failed to act in good faith, the court may take into account  
14 previous misconduct in fashioning a sanction sufficient to deter continuation of the  
15 misconduct in the same case or in future cases.