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REPORT OF THE JUDICIAL BRANCH
COMMISSION ON FORECLOSURE DIVERSION

**GOAL: DEVELOPMENT OF AN ALTERNATIVE DISPUTE RESOLUTION
PROCESS FOR PROMPT AND FAIR RESOLUTIONS OF RESIDENTIAL
FORECLOSURE CASES**

June 8, 2009

REPORT OF THE JUDICIAL BRANCH COMMISSION ON FORECLOSURE DIVERSION

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**I. THE JUDICIAL BRANCH COMMISSION ON FORECLOSURE
DIVERSION MEMBERSHIP ROSTER**

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II. EXECUTIVE SUMMARY

In light of the recent upswing in foreclosure cases filed within Maine, mirroring the trend throughout the nation, the Maine Supreme Judicial Court (hereinafter “SJC”) formed the Commission on Foreclosure Diversion and tasked it with recommending a proposal for an “effective alternative dispute resolution process” that will “promote prompt and fair resolutions” for parties in foreclosure proceedings. This report provides the SJC with such a proposal.

Consistent with the Commission’s charter, the Commission reviewed all aspects of the judicial process as it pertains to foreclosure proceedings; investigated alternative methods for organizing a foreclosure diversion program; and proposes the following foreclosure diversion program in Maine utilizing mediation. Additionally, the Commission’s proposal includes a recommendation for the foreclosure process to require notice to self-represented parties regarding free or low-cost “legal assistance, credit counseling, and other services.” Because of time constraints, the Commission did not address the question of an implementation timetable for the proposal.

The Commission commenced its work with the ambition to establish consensus for the recommendations and proposal it would eventually produce for the SJC’s consideration. Despite its size, limited timeframe, scope of its task, and the varied interests and experiences that resulted in many diverging views and opinions, the Commission remained true to its ambition, producing a proposal with consensus on every component except one. In regards to that one component, as important as it is, the Commission chose to express itself by identifying two view points rather than with a majority-minority report.

It is important to note that just days before the Commission's last meeting, the state legislature's Joint Standing Committee on Insurance and Financial Services unanimously voted out LD 1418, an omnibus bill on foreclosure, as ought to pass as amended. The bill addresses many important considerations for a foreclosure mediation program. Consequently, the Commission used its last meeting to address several key areas not resolved by LD 1418. The Commission sought to provide the SJC with direction in those areas by making specific proposals.

The following is a brief summary of the key recommendations for an alternative dispute resolution ("ADR") process for foreclosure cases in Maine:

- **Provide Mediation as an Alternative to Foreclosure**
 1. Establish mediation as the preferred ADR alternative to foreclosure. However, allow parties to freely negotiate other ADR alternatives if desired.
 2. Reject the automatic scheduling of mediation upon filing of the summons and complaint but make it mandatory when requested by the homeowner.
 3. Limit required mediation in foreclosure cases to owner-occupied, one to four family, residential properties.
- **Create a Program Accessible to Unrepresented Homeowners throughout Foreclosure**
 4. Adopt a simplified, single-page form that notifies homeowners of their right to request mediation and includes a simple check box to actually request mediation.
 5. Ensure that the form is distributed to homeowners along with the summons and complaint, with any motion for judgment, and at the time a judgment is issued.

6. Encourage mediation as early in the foreclosure case as practical after service of the summons and complaint.
7. Provide that mediation may be requested and scheduled at any time through the sixtieth day of the redemption period.
- **Bring Both Lenders and Homeowners to the Mediation Table to Maximize Alternatives to Foreclosure**
8. When mediation is scheduled, mandate the lender's attendance at the mediation proceeding through persons authorized to reach agreements concerning modifications to the mortgage loan. However, do not require homeowners to participate without a showing of good cause.
- **Establish a Mediation Program that does not Unduly Lengthen Foreclosure**
9. Provide that the pending outcome of the mediation will not stay foreclosure proceedings.

III. INTRODUCTION AND BACKGROUND

A. The Foreclosure Crisis

National and local media as well as many institutional reports from a variety of sources indicate that the country is in the grips of a foreclosure crisis that has already had a dramatic impact on our economy, our courts, and our communities. Though Maine has not experienced severe concentrations of foreclosure activity in the same manner as some places (including Michigan, Ohio, Florida, Nevada, or California), Maine is nonetheless

experiencing unprecedented rates of foreclosures, particularly in those loans held by national lenders.

According to recent data from the State of Maine Judicial Branch, the number of foreclosure court filings for all state courts reached 5,293 in 2008, and the Judicial Branch projects over 5,586 foreclosure filings in 2009. The reported filings for 2008 reflect a 46.5 percent increase over 2007 and a 148 percent increase over the prior five year period.¹ The Maine Bureau of Consumer Credit Protection, relying on data from RealtyTrac, likewise reported significant increases in foreclosure filings, and stated in its report to the Joint Standing Committee on Insurance and Financial Services that the “rate of foreclosure for the State of Maine in 2008 was approximately two times greater in 2008 than in 2007.”² The Center for Responsible Lending (“CRL”), a national nonprofit and consumer advocacy group, reported in January 2009 that Maine’s foreclosure rate exceeded the national average, and, as of the third quarter of 2008, Maine was second in New England in foreclosure starts. CRL projections, based on data from the Mortgage Bankers Association, predict that foreclosure starts in Maine will reach 6,900 in 2009.³ According to data collected through the third quarter of 2008, the Federal Reserve Bank of Boston reported

¹ The Judicial Branch indicates that the rate of filings data does not distinguish between commercial and residential properties. However, anecdotal information obtained from a number of court clerk offices suggests that the percentage of those filing who may include commercial properties is just 3 percent or less. It is also worth observing that the data does not reflect the actual number of properties foreclosed or the number of homeowners displaced. There is no link for the data on the court page, but individuals may contact Sherry Wilkins, Court Management Analyst, Maine Administrative Office of the Courts, at sherry.wilkins@maine.gov.

² Memorandum from Will Lund, Superintendent, Bureau of Consumer Credit Protection to Members, Joint Standing Committee on Insurance and Financial Services (Jan. 15, 2009), available at http://www.maine.gov/pfr/consumercredit/documents/PredLendingRepot1_09.rtf (last visited May 30, 2009).

³ Center for Responsible Lending, *Maine Foreclosures: Impact & Opportunities*, available at <http://www.responsiblelending.org/mortgage-lending/tools-resources/factsheets/me-foreclosure-fact-sheet.pdf> (last visited May 30, 2009).

that Maine has the second highest foreclosure rate in New England.⁴ Other data from the Maine Bureau of Financial Institutions reflect a modest increase in foreclosures among state chartered financial institutions. A recent press release issued by that agency observed that foreclosure rates between 2007 and 2008 more than doubled, though they remained modest in relation to the total number of loans held by Maine chartered institutions.⁵ These are just a few of the many statistics charting Maine's foreclosure situation.

Though the data discussed above are from different sources and conflict in some respects, it is evident that Maine courts have experienced a dramatic rise in foreclosure filings on residential properties. Moreover, the Commission concluded that the current rise in foreclosures represents a lose-lose situation because lenders incur increased transaction costs and reduced return from their collateral, and homeowners lose their homes. Additionally, communities lose as they suffer from the associated consequences of the proceedings.

B. History of the Commission

Faced with the dramatic rise in foreclosure filings on residential properties in Maine, the Maine Justice Action Group (JAG), under the leadership of SJC Justice Jon D.

⁴ Federal Reserve Bank of Boston, *Foreclosure rates for United States, New England, and New England states, Q4-08*, (2009) available at http://www.bos.frb.org/commdev/foreclosures/2008data/08_Q4/state%20packets%20ME%2008_Q4.pdf (last visited May 30, 2009).

⁵ Department of Professional & Financial Regulation, *Bureau of Financial Institutions' Survey Shows Continuing Modest Increase in Home Foreclosures at Maine Banks and Credit Unions*, (2009) available at http://www.maine.gov/pfr/financialinstitutions/press/foreclosure_3rdqtr.htm (last visited May 30, 2009).

Levy, sought ways to address the rise in foreclosure cases and provide interventions that could increase early resolution of foreclosure cases with the goal of maximizing homeowner retention. JAG observed that “efforts by courts, bar associations, and lender and real estate organizations across America establish that providing borrowers with expanded loan counseling, legal assistance, and a meaningful opportunity to workout defaulted loans early in the foreclosure process, will reduce the number of families who lose their homes to foreclosure.”⁶ JAG concluded that a foreclosure diversion project should be established. JAG then resolved to request that the SJC enter an administrative order establishing a “Foreclosure Diversion Commission or Task Force comprised of individuals who represent the various public and private interests affected by the foreclosure process.”⁷

On March 31, 2009, Chief Justice Leigh Saufley, approved JAG’s request and entered an order establishing “The Judicial Branch Commission on Foreclosure Diversion.”⁸ The SJC charged the Commission with the goal to create a process that would “[a]fford the parties to foreclosure proceedings relevant information and an effective alternative dispute resolution process that will promote prompt and fair resolutions.”⁹ Pursuant to the order, the SJC directed the Commission to provide its report by June 5, 2009 and to complete its work by December 1, 2009. The SJC selected a membership for the Commission that reflects a wide range of public and private interests.

⁶ Maine Justice Action Group, Resolution Regarding The Establishment Of A Foreclosure Diversion Commission or Task Force, (February 2009). Attached as Exhibit A.

⁷ *Id.*

⁸ Charter for the “Judicial Branch Commission on Foreclosure Diversion,” attached hereto as Exhibit B.

⁹ *Id.*

C. Resources Relied on by the Commission

The Commission began its work on April 13, 2009. Over the course of six weeks and throughout its four meetings, the Commission relied on a wide range of resources to accomplish its task. The Commission relied first and foremost on the significant and diverse experience of its membership as reflected by the membership roster. The membership not only provided for diverse views on issues, but also provided the Commission with exceptional depth of expertise and knowledge in critical areas considered by the Commission. These included areas of foreclosure law, court proceedings, alternative dispute resolution, existing court resources, state resources, nonprofit and community resources, banking processes, and housing counseling processes. In addition, the membership had a wide range of experience in areas of banking, foreclosure litigation, public relations, regulatory enforcement, community outreach, as well as experience serving and interacting with unrepresented and uninformed Maine homeowners.

The Commission also took advantage of some out-of-state resources. The Commission interviewed administrators at several court-based mediation programs from three states—Connecticut,¹⁰ Ohio,¹¹ and New Jersey¹²—and one municipality—Philadelphia.¹³ These interviews significantly influenced, informed, and helped shape the

¹⁰ Connecticut Judicial Branch, *Connecticut Law About Foreclosure Mediation*, available at http://www.jud.state.ct.us/LawLib/Law/foreclosure_mediation.htm (last viewed May 30, 2009).

¹¹ The Supreme Court of Ohio & The Ohio Judicial System, *Foreclosure Mediation Program Model Overview*, available at <http://www.sconet.state.oh.us/JCS/disputeResolution/foreclosure/overview.asp> (last viewed May 30, 2009).

¹² The New Jersey Judiciary, *NJ Judiciary Foreclosure Mediation Program*, available at <http://www.nj.gov/foreclosuremediation/index.html> (last viewed May 30, 2009).

¹³ The Philadelphia Courts First Judicial District of Pennsylvania, *2008 Orders & Regulations*, available at <http://courts.phila.gov/regs/regs08.html> (last viewed May 30, 2009).

views and impressions of the Commission members. The Commission also reviewed the forms utilized by these programs. The Commission is grateful to these programs for taking the time to share their experiences and expertise.

The Connecticut program particularly impressed the Commission. The Commission invited the program manager of the court-based Connecticut foreclosure mediation program, Roberta Palmer, to meet with the Commission. Of the four programs, Connecticut had the most comprehensive data on the rate of participation and outcomes for the foreclosure mediation program. Connecticut reported that foreclosure mediation requests were filed in approximately 34 percent of eligible foreclosure cases. Of those that participated, 73 percent of the cases resolved. Out of those cases that settled, 59 percent of the cases experienced resolutions that resulted in the homeowner staying in the home, while in 14 percent of the cases the homeowner relinquished the home.¹⁴ The Commission specifically considered a number of the Connecticut program's components in its deliberations.¹⁵ The Commission noted current efforts in Connecticut to simplify its mediation program requirements and forms to increase homeowner participation in mediation.

The Commission also reviewed and considered other materials including the Maine Foreclosure statutes, a sample summons and complaint for foreclosure, and various rules and statutes related to current mediation and ADR processes in Maine. Finally, the Commission relied on local resources to help make its determinations. In particular, one member of the public who routinely represents national lenders and mortgage servicers

¹⁴ See Exhibit C.

¹⁵ A summary of the Connecticut program, together with the program's enabling statute, is attached to this report as Exhibit D and E.

offered his insight and thoughts about important matters for the Commission's consideration.

IV. THE FORECLOSURE AND ADR PROCESSES IN MAINE

Before beginning deliberations on what a "fair and prompt alternative dispute resolution process in foreclosures" might look like in Maine, the Commission reviewed the foreclosure process as well as the ADR programs currently utilized in Maine. Because review of both the foreclosure process and ADR programs were critical to Commission considerations, it is appropriate and important to set forth a brief summary of each here.

A. Foreclosure in Maine

The Commission received an overview of the foreclosure process.¹⁶ The nature and length of foreclosure process in Maine informed many of the Commission's decisions. The foreclosure process in Maine may proceed in two ways: (1) a power of sale foreclosure; or (2) foreclosure through judicial process. A power of sale foreclosure is regulated by statute, but does not require any court proceeding. This method of foreclosure is quick, but cannot be used where the property is owned by an individual. Rather, this process may only be used where the mortgage states that it is given primarily for a business, commercial, or agricultural purpose. Thus, this method of foreclosure cannot be used for the types of loan transactions examined by the Commission.

¹⁶ The relevant statutory provisions for foreclosure cases in Maine are found at: ME. REV. STAT. ANN. tit. 14, §§ 6111, 6321, 6322, 6323 & 6324. See Exhibit F. Attached as Exhibit G are a flow chart and graph of the foreclosure process in Maine.

Foreclosures of mortgages upon owner-occupied property in Maine commences with service on the homeowner of a “notice of mortgagor’s right to cure.”¹⁷ The notice informs the homeowner of a default and the homeowner has 30 days to pay any outstanding arrears, costs, fees, taxes, and insurance. Upon expiration of the 30 day period, the foreclosing entity may commence a civil action in either Superior or District Court. Judicial foreclosures in Maine commence in the same manner as any civil action and require service of a summons and complaint upon the homeowner, typically by a sheriff.¹⁸ The homeowner must then answer the complaint for foreclosure within 20 days. If the homeowner fails to file an answer, the foreclosing entity may file a motion for default judgment or motion for summary judgment. If the homeowner answers, the foreclosing entity may then file a motion for summary judgment pursuant to Rule 56 of the Maine Rules of Civil Procedure. If the motion for summary judgment is granted, then a 90 day waiting period—called the “redemption period”—begins to run, during which time the homeowner has the right to pay the loan secured by the mortgage and obtain the release of the property from that mortgage and the judgment.¹⁹ If the motion for summary judgment is denied, then the case will proceed to trial. If trial results in judgment for the foreclosing entity, then the redemption period commences at that time. Upon expiration of the redemption period, the homeowner’s rights in the property terminate and the foreclosing entity may sell the property at auction after publishing three weekly sale notices in a local newspaper, with the auction being held between thirty and forty-five days after the date of the first publication.²⁰ The foreclosing entity must file a report of the auction with the

¹⁷ ME. REV. STAT. ANN. tit. 14, § 6111.

¹⁸ ME. REV. STAT. ANN. tit. 14, § 6321.

¹⁹ ME. REV. STAT. ANN. tit. 14, § 6322.

²⁰ ME. REV. STAT. ANN. tit. 14, § 6323.

court. If the amount realized at the auction is less than what is owed to the foreclosing entity, then a judgment will ordinarily be issued a further judgment for that amount against the homeowner.²¹

The Commission heard discussion by members with experience in foreclosure cases that the foreclosure process in Maine takes approximately nine months to complete if the foreclosure matter is not contested. If contested, the foreclosure process may extend well beyond a year.²²

For purposes of this report, the Commission defined “foreclosure” as the judicial process provided for in Title 14 of the Maine Revised Statutes Annotated (M.R.S.A.) and found there primarily in sections 6111, 6321, and 6322. The Commission identified for this report three stages of the foreclosure process: (1) “pre-foreclosure” which includes the period between service of the notice to cure and commencement of the foreclosure by the filing or service of the foreclosure summons and complaint;²³ (2) the “judicial foreclosure” process which represents the legal process between commencement of the civil action and entry of judgment;²⁴ and (3) the “post-judgment” process which represents the period between judgment and expiration of the redemption period 90 days after entry of judgment.²⁵ The Commission observed that the Maine Rules of Civil Procedure apply to

²¹ ME. REV. STAT. ANN. tit. 14, § 6324. If the foreclosing party purchases the property at the auction, then the resulting judgment is limited to the difference between the fair market value of the premises at the time of the auction, as established by an independent appraisal, and the sum due the foreclosing entity. *Id.*

²² See 73 Fed. Reg. 6294 at 6302-6303 (February 1, 2008) (Department of Veterans Affairs estimates that Maine has the fourth longest foreclosure process in the country); Fannie Mae 2006 Servicing Guide, Part VIII, Ch. 1, Exhibit 4 (Maine has third second longest allowance for foreclosure proceedings in the country).

²³ ME. REV. STAT. ANN. tit. 14, §§ 6111-6321.

²⁴ ME. REV. STAT. ANN. tit. 14, § 6321.

²⁵ ME. REV. STAT. ANN. tit. 14, § 6322.

foreclosure proceedings, including the rules for discovery and motion practice such as motions for summary judgment.²⁶

B. Alternative Dispute Processes in Maine

The Commission also received an overview of existing ADR processes relied on in Maine to facilitate settlement of civil cases.²⁷ The Commission then heard the impressions and experiences of two litigators regarding ADR generally and regarding foreclosure litigation in the absence of an ADR process tailored to foreclosure cases specifically.

There are essentially five available ADR processes utilized in Maine. They include use of: (1) a mediator; (2) a neutral; (3) an arbiter; (4) a judge in the form of a judicial settlement conference; or (5) a referee. Mediation is the most common ADR process employed in Maine. The ADR process in Maine, depending on the nature of the proceeding, may be mandatory or voluntary.²⁸ There are several contexts in which mediation is required. Under Rule 92 of the Maine Rules of Civil Procedure all general civil actions in Superior Court are subject to ADR unless exempted. Rule 92(a)(3) states that:

By agreement of the parties or in the Court's discretion upon a finding of good cause, any civil action not otherwise governed or exempted by statute, rule or order, may be referred to ADR through the Court Alternative Dispute Resolution Service ("CADRES") or another ADR agreed to by the parties.

²⁶ ME. R. CIV. PROC. 56.

²⁷ There are several sources of authority for existing ADR processes in Maine. The relevant statute pertaining to ADR is 4 M.R.S.A § 18-B. The relevant Court Rule is M.R.Civ.Proc. 92. The relevant rule for Superior Court matters is M.R.Civ.Proc. 16B. In addition, there is the Maine Judicial Branch Court Alternative Dispute Resolution Service (CADRES) Operational Rules ("Operational Rules").

²⁸ ME. R. CIV. PROC. 92.

Family law cases are subject to mandatory mediation unless waived.²⁹ In contrast, small claims cases and eviction cases “may be required to participate in mediation.”³⁰

The CADRES currently maintains rosters of trained mediators for District Court matters including mediation in family law cases, small claims cases, evictions, land use and environmental cases, and general civil matters. The CADRES likewise maintains rosters of trained individuals for mediation, arbitration, and early neutral evaluation in Superior Court cases. Pursuant to the Operational Rules for CADRES, the CADRES developed rules for the application, selection, and placement of ADR providers on the rosters.

Foreclosure cases in Maine are currently exempt from any existing ADR processes under the existing authorities for ADR or mediation, or are not specifically included by the rules.³¹

V. FINDINGS, CONSIDERATIONS, AND CONCLUSIONS

With a background in the foreclosure process and ADR in Maine, the Commission then considered numerous factors that characterize the foreclosure process and weighed the benefits of inserting an ADR program into that process. The Commission further considered which ADR process or blend of processes would be best suited for foreclosure cases.

A. Characteristics of the Foreclosure Process in Maine Affecting Outcomes and Prompt Fair Resolutions

²⁹ ME. R. CIV. PROC. 92(b).

³⁰ ME. R. CIV. PROC. 92(c), (f).

³¹ ME. R. CIV. PROC. 16B(a)(7).

The Commission paid careful attention to the characteristics of the parties involved in foreclosure cases as well as the elements of the foreclosure process. The Commission observed that many of these characteristics directly affect outcomes and prompt fair resolutions in foreclosure proceedings, and may have an impact on an ADR process in foreclosure cases.

1. Characteristics of the Parties in Foreclosure Cases

The Commission reviewed the characteristics of the parties involved in foreclosure cases and noted that the trustees or servicers of loans held in the secondary market file the vast majority of foreclosure cases. In contrast, local financial institutions file only a small fraction of foreclosure cases, and filings by non-institutional lenders are rare. Additionally, the Commission noted that lenders are typically represented at all three stages of the foreclosure process—from pre-foreclosure through sale. However, the Commission also noted that the vast majority of homeowners are not represented in the foreclosure process.

Experience shows that decision makers at local financial institutions are typically available to homeowners seeking to avoid foreclosure. In contrast, experience shows that it is often difficult for homeowners seeking to avoid foreclosure to access decision makers at national lenders or servicers of securitized loans, who file the majority of foreclosure cases in Maine. These characteristics mean that, in the majority of cases, homeowners do not have a meaningful opportunity to avoid foreclosure by contacting and negotiating with national lenders to obtain relief and avoid foreclosure. This is true despite a finding that the

majority of homeowners want to remain in their homes and obtain loan terms with which they can comply.

Perhaps because most homeowners are unrepresented, the majority of them do not respond to foreclosure cases. Even if homeowners do respond, they often cannot manage the procedural hurdles that must be met to succeed in defending against foreclosure. Experience indicates that 70 percent of foreclosure cases are not responded to by homeowners, and almost all foreclosure cases are resolved at the summary judgment stage. An answer by a pro se litigant to the foreclosure complaint could allow homeowners to reach the motion for summary judgment stage. However, after that point, homeowners cannot typically manage the process on their own.

The presence of so many pro se homeowners creates two problems: (1) generally, unrepresented litigants are at a tremendous disadvantage in court cases, as they typically experience procedurally-related difficulties navigating the legal process; and (2) these procedurally-related difficulties present challenges for both lenders and the courts.

The abundance of pro se litigants at all stages of the foreclosure process suggested to the Commission that steps should be taken to address this reality. Consequently, the Commission found that the foreclosure process should be improved to increase homeowner participation in the process. To accomplish this, forms should be improved or created, providing homeowners with a better understanding of the process. Steps should be taken to increase homeowner response to foreclosure cases. Two strategies that could be implemented include: (1) the use of a simplified answer form; and (2) enhanced notice to homeowners with information about resources and the foreclosure process. The

identification of and contact information for foreclosure prevention counseling services and providers should be included in the notices to cure and posted in public places.

2. Certain Characteristics of the Foreclosure Process

Several observations concerning the foreclosure process are instructive. First, although an ADR process is available in many civil court cases, it is not available in most foreclosure cases. However, the Commission found that the legal process for foreclosure cases is similar to most civil proceedings. As such, there are several points procedurally when mediation could take place, including at a point prior to the filing of a foreclosure case. Moreover, the foreclosure process may continue well beyond the issuance of judgment. Despite concluding that there are ample opportunities when resolution could occur, the Commission found that the current foreclosure process now affords very little flexibility for dispute resolution short of the judicial outcome.

B. Characteristics of ADR in Maine and Its Use in Foreclosure Cases

The potential for ADR to have a positive effect on the foreclosure process seems apparent. Experience has shown that ADR processes, and mediation programs in particular, when used in other types of civil cases in Maine, as well as in foreclosures in other jurisdictions, are often effective in resolving civil actions. Effective and timely ADR processes can reduce the cost of litigation for both the plaintiff and defendant in civil cases. Existing mediation programs in Maine provide a precedent for a potential ADR process in

foreclosure proceedings. Mediation could be effective even in a situation where a homeowner does not have income. The Commission further found that the earlier in the default process ADR occurs, the more effective it will be. The Commission also found that ADR is only efficient and effective when the parties with authority to make and accept settlement proposals participate directly. Consequently, as a result of direct participation, such processes are generally more effective when the parties attend in person.

Though the Commission concluded that ADR can have a positive effect on outcomes in foreclosure cases, the Commission remained cautious about several aspects of ADR. The Commission found that if there were foreclosure mediation, pro se litigants would generally not be equipped to understand their rights in the process. In a similar vein, the Commission found that, if not carefully crafted, an ADR process in foreclosure cases could have the unintended consequences of unduly lengthening the foreclosure process. The costs of mediation also weighed on the Commission. The Commission noted that administration costs are a challenge for any ADR, and this would be a concern for ADR in foreclosure proceedings.

Information considered by the Commission indicated that successful mediation outcomes in foreclosures often rely on assistance from housing counselors and community outreach efforts. Administrators of ADR in other states indicated that housing counselors play a large role in the process of mediation. However, in Maine housing counselor resources are limited. There are currently 15 or fewer U.S. Department of Housing and Urban Development (“HUD”) certified housing counselors providing default/foreclosure counseling services in Maine. Consequently, finding sufficient resources to assist homeowners may represent a continuing challenge.

It is evident that despite the potential positive effect an ADR process can have on foreclosure cases and outcomes of those proceedings, it will not all happen at once. It is reasonable to expect, based on the experience of other state mediation programs and current homeowner default rates, that homeowners' participation in a mediation program may initially be low, but will increase as homeowners become aware of the program.

C. Matters Considered by the Commission and Conclusions Reached

Armed with considerable data and with the body of findings reached and reviewed above, the Commission considered numerous aspects of the foreclosure process and ADR, and made its conclusions leading to the recommendations set forth below. A review of several of the matters considered and conclusions reached is important in order to clarify the final proposal of the Commission.

1. *Mediation as the preferred ADR method.* The Commission considered which method of ADR to apply to foreclosure cases. The Commission observed that the most familiar and frequently employed method in Maine is mediation. The CADRES currently manages a number of mediation programs. The Commission considered whether to combine mediation with a case management conference and rejected the concept because of resource limitations. Accordingly, the Commission concluded that mediation represents the best of the ADR processes available, but did not want to restrict the parties to only mediation and further concluded that the parties should be free to agree to another ADR process.

2. *Eligibility for mediation.* The Commission considered which homeowners and which properties should be eligible for court supervised mediation. The Commission

promptly concluded that required mediation in foreclosure cases should be limited to owner occupied, one- to-four-family residential properties.

3. *Timing.* The Commission considered whether mediation should occur during the pre-foreclosure process, foreclosure, or in the post-judgment process. The Commission weighed the potential benefits of early mediation during the pre-foreclosure process but feared low participation, and the Commission believed that court supervised mediation would be most effective. The Commission noted that the service of the summons and complaint tended to focus the attention of homeowners on the immediate need to deal with defaults and related issues. The Commission concluded that mediation should occur as early as practical after service of the summons and complaint. The Commission further concluded that given the length of the foreclosure process, mediation could occur at several stages including during the foreclosure process and in the post-judgment process, but not after the expiration of the redemption period. More specifically, the Commission concluded that the mediation could be requested and scheduled at any time through the sixtieth day of the redemption period. Additionally, the Commission felt strongly that mediation should not delay the sale of the home except by agreement of the parties.

Finally, the Commission considered whether a homeowner should be allowed to request another mediation session following an unsuccessful mediation. The Commission concluded that the homeowner should be permitted to make the request, but that the mortgagee should not be required to participate in the second mediation session.

4. *Automatic Mediation Rejected.* The Commission considered whether mediation should be automatically scheduled upon filing of the summons and complaint. The Commission rejected a proposal for automatic mediation. The Commission feared that the

homeowner may fail to appear, resulting in wasted court resources. The Commission concluded that the homeowner should be required to take some action in the foreclosure process before mediation is scheduled such as entering an appearance, answering the complaint, or requesting mediation before mediation would be scheduled.

5. *Simplified form for notice of mediation and request, answer, and entry of appearance.* In light of its decision to require homeowner action, and in light of the high homeowner default rates in foreclosure actions, the Commission considered how to reduce homeowner defaults and increase the likelihood of homeowner participation in mediation. The Commission concluded that a simplified form should be implemented to notify the homeowner of a right to request mediation. The homeowner could use such a form to take the necessary action to ensure that mediation is scheduled. The Commission concluded that to have mediation scheduled the homeowner should merely have to check a box on the form and return it to the court. The Commission further concluded that the form should be limited to a single page. The Commission also considered how and when the homeowner should receive the simplified form. The Commission concluded that the form should be given to the homeowner with the summons and complaint, with any motion for judgment, and with issuance of judgment. The Commission further noted that the pro se homeowner should not be required to use the form. The Commission concluded that the notice should also include a list of housing counselors and low-cost and free legal services. Lastly, the Commission urged that, to the extent possible, any notice of the right to mediation included in the notice to cure given during the pre-foreclosure process should make clear that the right to request mediation does not arise until commencement of the foreclosure action.

The Commission also considered ways to facilitate increased homeowner answers to foreclosure complaints. The Commission noted that the most effective form would only require the homeowner to check a box to fully answer the foreclosure complaint. One option the Commission discussed was that the single page form, described above, might also allow the homeowner to file an answer and/or enter an appearance by checking additional boxes on the form. The Commission also considered, but did not conclude, that the form could be organized in such a way as to allow the homeowner to certify that she owns and occupies the property and that it is a one to four unit residential property.

The Commission agreed that the intent of any form should be to maximize participation of homeowners in mediation, while requiring some action by the homeowner that indicates the homeowners desire to engage in mediation.

6. *Participation Required.* The Commission considered whether mediation participation should be required or voluntary. In light of the finding that ADR is most effective when the parties with authority to settle are present, and that homeowners frequently experience difficulty contacting national lenders to arrange appropriate resolutions, the Commission concluded that attendance should be mandatory for the plaintiff in foreclosure cases. The Commission further concluded that the plaintiff in the foreclosure action should have authority to approve settlement at the mediation session.

The Commission further considered whether mediation should be mandatory for the homeowner once mediation is requested. The Commission concluded that because the consequence to the homeowner will be that the foreclosure may proceed, there was no value in mandating attendance.

7. *Implications on use of mediation of a) second liens; and b) loans held in the secondary market.* The Commission considered how mediation would be affected by junior mortgages and liens on a home. The Commission concluded that as parties-in-interest, these parties should be notified of the mediation session. The Commission noted that in Connecticut junior lien holders rarely appeared for mediation despite being provided notice. The Commission noted that because settlement is voluntary, the plaintiff could decide whether it could settle the foreclosure despite the existence of the junior lien holder.

In the case of loans held in the secondary market, the Commission observed that other state foreclosure mediation programs it consulted indicated that many foreclosures involving loans held in the secondary market were being resolved. Therefore, the Commission concluded that, despite the fact that a loan is held in the secondary market, mediation remains an option.

8. *No Stay of Foreclosure Proceeding Pending Mediation.* The Commission considered whether the foreclosure proceeding should be stayed pending the outcome of the mediation. The Commission concluded, in light of concerns that mediation should not unduly lengthen the foreclosure process, that the foreclosure proceeding would not be automatically stayed during the mediation process.

9. *Homeowner not required to respond to Motion for Summary Judgment until after completion of mediation.* The Commission considered whether the homeowner should be required to file an opposition to a motion for summary judgment while mediation was pending. Specifically, the Commission considered the following:

Although the foreclosure process will not be stayed, the homeowner will not be required to file an objection to a motion for summary judgment until 10

days after completion of the mediation and the filing of the mediators report with the Court.

This point is the single consideration that split the Commission and upon which consensus could not be reached.

The Commission heard strong arguments from two points of views. One view considered the delay in the response to a motion for summary judgment, while mediation is pending, as critical. Proponents of this view noted that the majority of homeowners cannot functionally respond to motions for summary judgment and frequently fail to file a proper response to such motions and consequently judgment is granted against the homeowner. Issuance of judgment during mediation will change the bargaining positions of the parties, in most instances to the detriment of the homeowner, while the parties are actually negotiating. This view noted that in cases involving represented parties, counsel routinely agree to extension of motion deadlines while efforts to settle are pending. In addition, requiring a response to the motion for summary judgment would suggest to the homeowner that settlement was not being seriously considered or mediation conducted in earnest. The same view feared confusion by the homeowner because the homeowner may fairly consider that judgment would not enter against them while mediation proceeded. The same view considered that the short delay in filing the response would not prejudice the foreclosing entity.

The opposing view argued strongly that the foreclosure process in Maine is already one of the longest in the nation, and that, given the timing requirements currently in place for summary judgment proceedings, as well as a mediation process that may require multiple meetings over a several week period, any postponement of the time within which

the homeowner would otherwise be required to respond to such a motion could easily cause significant delay in the overall foreclosure process. In this view, such a delay would undermine the benefits of the mediation process to foreclosing entities. This view notes that mediation can continue while foreclosure proceedings are ongoing and, indeed, that mediation can continue even after a foreclosure judgment is entered. Therefore, the holders of this view contend that proceedings on a motion for summary judgment need not and should not be delayed during mediation.

In light of this split opinion, the Commission concluded that consensus could not be reached, but agreed to present the issue for the SJC's consideration.

10. *Requirement for housing counselor consultation declined.* The Commission considered whether to require homeowners to meet with a housing counselor prior to engaging in mediation or during the mediation process. The Commission noted the importance of housing counseling in aiding homeowners' comprehension of their responsibilities, assisting homeowners' collection of financial documents, and reviewing homeowners' ability to pay. The Commission also noted that mediation would likely be most efficient if the homeowners had financial documents completed, such as a budget, before mediation. However, the Commission noted the limited counseling resources in Maine and the rise of private for-profit entities that have scammed or misled homeowners. The Commission determined that housing counseling should be an integral part of an effective mediation program, however, mediation can proceed independent of the housing counseling component.

11. *Defenses and Claims in Mediation.* The Commission observed that defenses to foreclosure may exist for the homeowner, and that those defenses may need to be

addressed in an ADR process. The Commission did not reach a conclusion on how these legal defenses might be affected by an ADR process in foreclosure cases, but seeks to draw attention to this issue for the SJC.

12. *Requests for mediation by the foreclosing entity.* The Commission considered whether the plaintiff in a foreclosure action should be entitled to request mediation and whether the homeowner would then be required to participate. The Commission noted that a benefit could be that the reluctant homeowner would then have an opportunity to save her home. However, the Commission expressed concern that a foreclosing entity could compel a reluctant homeowner to participate and extract unfair terms from the homeowner. The Commission concluded that the foreclosing entity could request mediation, but that the court would only require the homeowner to participate upon a showing of good cause.

13. *Sanctions.* The Commission considered whether sanctions should be used to ensure participation by the foreclosing entity in the mediation program. The Commission likewise considered sanctions or consequences that could be used to ensure participation by a homeowner. The Commission observed that pending legislation, LD 1418, prohibits the entry of a judgment until completion of the mediation process and required good faith participation. The Commission found that failure to give the required notice and forms for the homeowner to request mediation should give rise to a stay until the homeowner could request and participate in mediation. The Commission rejected the imposition of a sanction on the homeowner other than the expectation that if the homeowner failed to appear or participate after mediation was scheduled that the foreclosure could proceed along its usual course, likely resulting in judgment under which the homeowner would eventually lose her home.

14. *Pending Legislation.* The Commission reviewed those portions of LD 1418 related to mediation in foreclosure cases at its last meeting. The Commission discussed several components of the bill and discussed the bill with Commission members who had direct involvement with the bill. The Commission learned that the bill provided for a filing fee to help pay for mediation as well as an allocation from the property transfer tax to help pay for outreach and homeowner education. The Commission also learned that the bill prohibited entry of judgment until completion of the mediation. In addition, the bill provides for the application of mediation to ongoing foreclosure proceedings; a good faith requirement; a mediator's report; and commencement of the foreclosure mediation program by July 1, 2009 in some Maine counties, with the option to phase in mediation throughout the state by January 2010. With this knowledge and given time constraints, as well as ongoing legislative proceedings concerning the bill,³² the Commission did not give due consideration to these potential components.

³² As of the date of this Report, the Maine Legislature has not yet taken a final vote on LD 1418. Several of the provisions referred to above, however, have been modified since the Commission completed its deliberations. *See* Exhibit H.

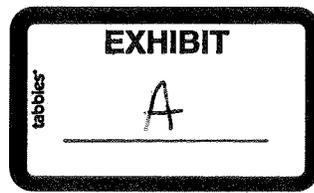
VI. PROPOSAL

- A. **Eligibility:** An ADR process in foreclosure cases filed with the court shall be limited to owner occupied, one to four family residential properties.
- B. **Mediation:** Mediation is the preferred ADR process.
- C. **Timing:** Mediation will occur after the filing of the summons and complaint that begins the judicial foreclosure process.
- D. **Homeowner Action Required:** A request for mediation must be made by the homeowner before mediation will be required. A homeowner must make a request in writing.
- E. **Form for Homeowner Request:** A form for the homeowner request shall be provided but not required. The form will be written in plain English and use techniques designed to make it as accessible as possible. The form to request mediation will only require the homeowner to check a box indicating the desire to participate in mediation. The form shall advise the homeowner of the list of housing counselors and low-cost and free legal services. The form for the homeowner to request mediation will be provided to the homeowner together with the summons and complaint, the request for judgment, and judgment.
- F. **Notice to Homeowner of Right to Mediation:** A homeowner must receive notice of the opportunity to participate in mediation. The homeowner shall receive notice of a right to participate in mediation at four stages: (1) with the notice to cure (however, clear language should be used in the notice to make it clear that mediation is only available once a foreclosure action is filed); (2) with the service of the summons and complaint; (3) with any request for judgment; and (4) with the judgment. The last notice shall warn that the homeowner must make the request within 60 days of the issuance of judgment and if made after that period, the lender will not be required to participate and mediation shall not result in the delay of sale except by agreement of the parties.
- G. **Expedited Mediation:** A mediation that is scheduled post-judgment should be scheduled on an expedited basis.
- H. **Sanction For Failure to Give Required Notice:** If at any time the court determines that the required notice has not been given, the court may upon its own motion or upon the motion of the homeowner issue an order that no judgment may issue or may stay the sale of the property until the homeowner has been given notice, an opportunity to request mediation, and provided an opportunity to participate in mediation.

- I. Participation Required:** Mediation is mandatory for the mortgagee once the homeowner request for mediation is filed. The mortgagor and mortgagee must appear in person and shall have authority to agree to a proposed settlement except that if the mortgagee is represented by counsel and counsel has authority to agree to a proposed settlement then the mortgagee may participate by telephone or electronic means.
- J. Timing for Mediation:** Mediation must be scheduled within 14 days of the filing of a request and the first mediation must occur within 45 days. Mediation must be completed within 90 days of the request for mediation except by agreement of the parties. In all cases mediation must be completed prior to the end of the redemption period unless agreed to by the parties. By agreement of the parties, or for good cause shown, the Court may extend the deadlines for mediation.
- K. Successive or Subsequent Requests for Mediation:** Following an unsuccessful mediation, a homeowner may request another mediation session but the mortgagee is not required to attend.
- L. Requests Permitted by Other Parties:** A plaintiff and any other party-in-interest may request mediation and, for good cause shown, the court may order mediation to occur.
- M. Mediators:** The mediation shall be conducted by mediators trained in all relevant areas of law and who are fully aware of the services and programs available to the homeowner, including the availability of housing counselors and low-cost or free legal services, and who have knowledge of mortgage assistance programs. Mediators shall appear on a specialized roster. Private mediation may occur upon agreement of the parties.
- N. Mediation:** The mediation may address all issues of foreclosure including modification of the mortgage, reinstatement of the mortgage, and ability to pay. The mediator may provide to any homeowner not represented by counsel a copy of any material approved by the court that is designed or intended to assist unrepresented homeowners to understand their rights and responsibilities in the foreclosure process. The mediator shall advise the homeowner that the foreclosure process is not stayed and that the homeowner has an obligation to respond to the foreclosure as required by rules of court. If a motion for summary judgment or other motion for judgment is filed by the mortgagee prior to or during the pendency of the mediation, the mortgagee's counsel shall notify the mediator at the initial mediation or at any subsequent mediation session of the filing and the status of the motion. The mediator should then provide the homeowner with legal information during the mediation session regarding the purpose of the motion, the consequence of not filing an opposition, and any deadline for

filing a response. The mediator should refer the homeowner to all available legal resources for a consult and/or representation.

- O. Information Required for Mediation:** Mediation is most successful when homeowners arrive with a completed budget sheet. It is left to the court's discretion to decide how this should be accomplished.
- P. Mediators Report:** Upon completion of the mediation, the mediator shall file a report with the court. The report shall describe the proceedings, specify the issues resolved if any and the issues not resolved.
- Q. Motion for Summary Judgment (*no consensus*):** Although the foreclosure process will not be stayed, the homeowner will not be required to file an objection to a motion for summary judgment until 10 days after completion of the mediation and the filing of the mediator's report with the court.
- R. No Waiver of Rights:** None of the mortgagor's or mortgagee's rights in the foreclosure action will be waived by the request for mediation.



MAINE JUSTICE ACTION GROUP

RESOLUTION REGARDING THE ESTABLISHMENT OF A FORECLOSURE DIVERSION COMMISSION OR TASK FORCE

WHEREAS, the Justice Action Group is a coalition of individuals and organizations established in 1995 to provide leadership and coordination in planning for the provision of civil legal aid to low-income and elderly Maine citizens;

WHEREAS, the current upswing in the number of new mortgage defaults and foreclosure filings across America has been aptly described as a “tidal wave,”¹ and it is estimated that one in 33 current U.S. homeowners will experience foreclosures as a result of sub-prime mortgages made in 2005 and 2006;²

WHEREAS, Maine has the second highest foreclosure rate among the New England states, and nearly 12% of major conventional loans in Maine are experiencing delinquency of 60-days or greater;³

WHEREAS, the high rate of residential loan foreclosures will have substantial adverse effects for families, lenders, schools, employers, communities, and state and local governments. As foreclosures increase, more families will be left homeless, property values and the tax base will decrease, and greater demands will be made on local and state governments for public assistance;

WHEREAS, efforts by courts, bar associations, and lender and real estate organizations across America establish that providing borrowers with expanded loan counseling, legal assistance, and a meaningful opportunity to workout defaulted loans early in the foreclosure process, will reduce the number of families who lose their homes to foreclosure;

¹ Alan Mallach, *Tackling the Mortgage Crisis: 10 Action Steps for State Government* 1 (Brookings 2008).

² Pew Charitable Trusts, *Defaulting on the Dream: States Respond to America’s Foreclosure Crisis* 9 (2008).

³ Federal Reserve Bank of Boston, *Foreclosure Rates for United States, New England and New England States, Q3-08* (2008).

WHEREAS, the Hon. Leigh I. Saufley, Chief Justice of the Maine Supreme Judicial Court, has encouraged the Justice Action Group to examine the need for a foreclosure diversion program in Maine; and

WHEREAS, the Upstream Intervention Task Force of the Maine Justice Action Group has concluded and recommend that a foreclosure diversion project, using currently available resources, should be established immediately.

NOW, THEREFORE, be it resolved by the Board of Directors that:

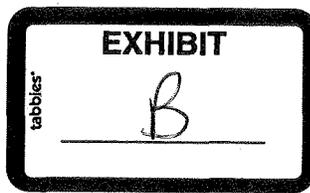
1. The Chair and Vice Chair of the Justice Action Group will request the Maine Supreme Judicial Court to enter an Administrative Order establishing a Foreclosure Diversion Commission or Task Force comprised of individuals who represent the various public and private interests affected by the foreclosure process. The Chair and Vice Chair shall submit a list of proposed members to the Supreme Judicial Court.

2. The Commission or Task Force will develop and propose to the Supreme Judicial Court a foreclosure diversion process that will (a) provide appropriate information to self-represented parties regarding opportunities for free or low-cost legal assistance, credit counseling and other services; (b) provide for the early diversion of the parties in foreclosure cases to mediation or other forums that will foster reasonable loan workouts or other resolutions; (c) identify new or revised statutes, rules, or orders needed to implement the Commission's recommendations; and (d) recommend an implementation timetable.

3. The Commission or Task Force may also recommend additional Federal and State initiatives needed to reduce the number of unnecessary foreclosure judgments in the State of Maine.

4. The Commission or Task Force should issue its recommendations regarding paragraph 2 no later than July 1, 2009; and its recommendations regarding paragraph 3 no later than October 1, 2009.

Approved this 28th day of January, 2009, by the Justice Action Group's Board of Directors.



**JUDICIAL BRANCH
COMMISSION ON FORECLOSURE DIVERSION**

Type: Commission, Judicial Branch
Established: March 31, 2009
Chair: Chet Randall, Esq.
Report Dates: June 5, 2009, and October 1, 2009
Reports to: Supreme Judicial Court
Completion Date: December 1, 2009

I. Commission Established:

The Judicial Branch Commission on Foreclosure Diversion is hereby established to develop and propose a foreclosure diversion process that will

- A. Provide appropriate information to self-represented parties regarding opportunities for free or low-cost legal assistance, credit counseling, and other services;
- B. Provide for the early diversion of the parties in foreclosure cases to an alternative dispute resolution process that will foster reasonable loan workouts or other resolutions;
- C. Identify new or revised statutes, rules, or orders needed to implement the Commission's recommendations; and
- D. Recommend an implementation timetable.

II. Goal:

Afford the parties to foreclosure proceedings relevant information and an effective alternative dispute resolution process that will promote prompt and fair resolutions.

III. Duties:

The Commission will:

- A. Review all aspects of the judicial process as it pertains to foreclosure proceedings;
- B. Investigate and consider alternative methods of organizing a diversion program using existing resources; and

- C. Report its findings and recommended actions and proposals for foreclosure diversion process.
- D. The Commission may also recommend additional Federal and State initiatives needed to improve the foreclosure process and reduce the number of unnecessary foreclosure judgments in the State of Maine.

IV. Authority:

The Commission may seek input, suggestions, and recommendations from individuals and groups within and outside the Judicial Branch. The Commission may invite consultants to its meetings as needed.

The Commission Chair may establish subgroups to study designated issues and report recommendations for consideration by the Commission as a whole.

There is no funding authorized for the work of the Commission.

V. Membership:

The membership in the Commission shall consist of members from the Executive, Legislative, and Judicial Branches of Maine State Government, as well as representatives of interested stakeholder organizations, individual attorneys, and others with valuable knowledge and experience to contribute. The specific names shall be listed in a separate membership roster, and membership may be changed or expanded as ordered by the Chief Justice.

VI. Meetings:

The Commission shall meet as often as is necessary to fulfill its responsibilities. The Chair shall schedule the meetings of the Commission.

VII. Reporting:

The Commission shall report its findings and recommendations to the Supreme Judicial Court regarding section III(A)-(C) no later than June 5, 2009; and its recommendations regarding section III(D) no later than October 1, 2009.

VIII. Commission Duration:

Unless the Chief Justice extends this charter, the Commission will cease to exist on December 1, 2009.

Dated: March 31, 2009

Approved by:

/s/
Chief Justice Leigh I. Saufley
Maine Supreme Judicial Court

**JUDICIAL BRANCH
COMMISSION ON FORECLOSURE DIVERSION
MEMBERSHIP ROSTER**

Judicial Branch

Hon. J. David Kennedy, Maine District Court Judge
Diane Kenty, Esq., Director, Court Mediation Service

Executive Branch

Patrick Ende, Esq., Legal Counsel to the Governor

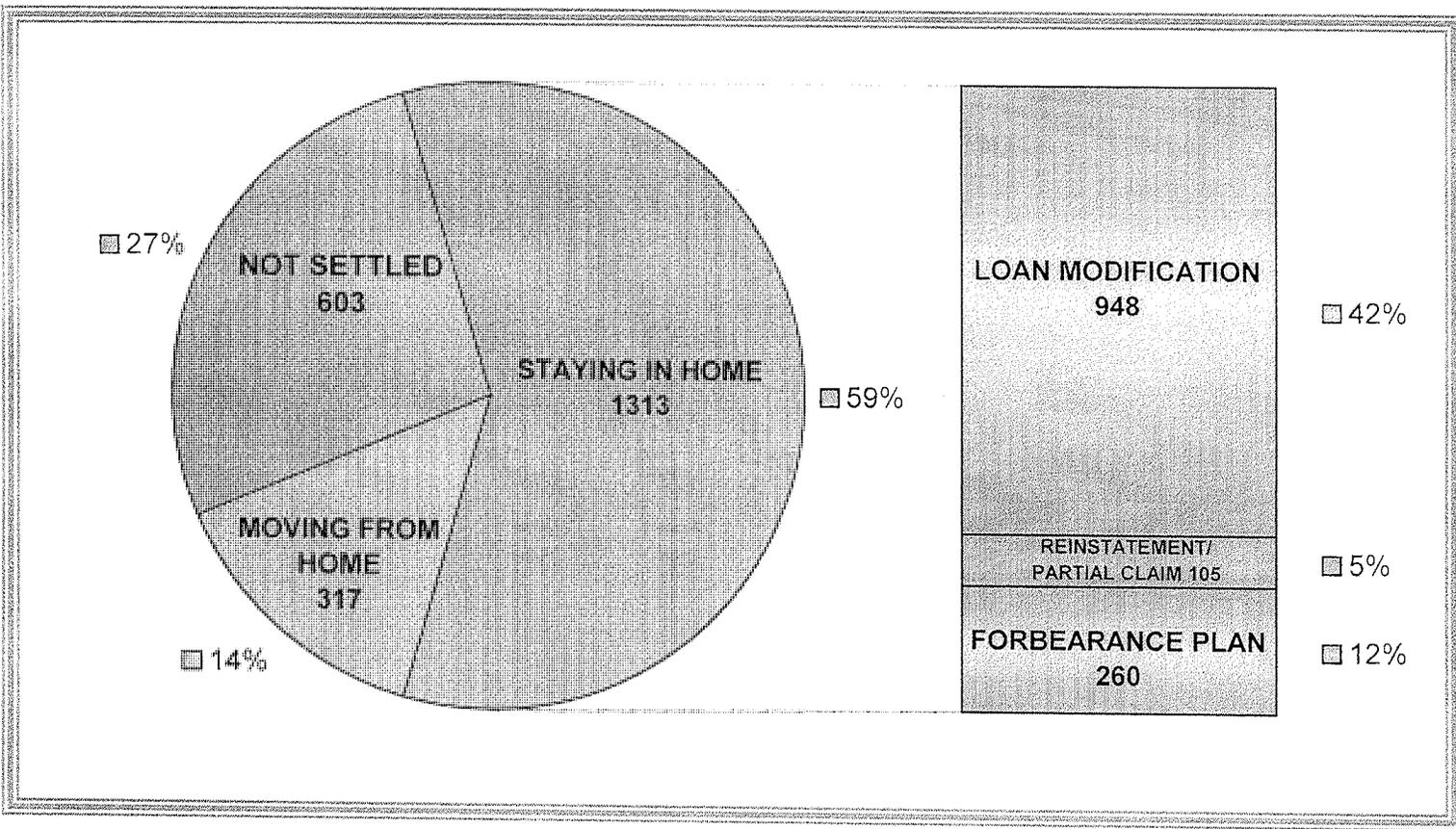
Legislative Branch

Hon. Sharon Treat, Maine House of Representatives
Hon. Wesley Richardson, Maine House of Representatives
Hon. Cynthia Dill, Maine House of Representatives
Attorney General, or her designee

Stakeholder and Individual Representatives

Richard Goldman, Esq., bankruptcy debtor interests
Bruce Sleeper, Esq., bankruptcy creditor interests
Carla Dickstein, Vice President, Coastal Enterprise, Inc.
Christopher Pinkham, Maine Association of Community Bankers
Wendy Paradis, Esq., mortgage creditor interests
William Devoe, Esq., mortgage debtor interests
Jerrol Crouter, Esq., Maine State Bar Association
Peter Malia, Esq., Maine Association of Mediators
John Murphy, President, Maine Credit Union League
Jaye Martin, Esq., Legal Services for the Elderly
Juliet Holmes-Smith, Esq., Executive Director, Maine Volunteer Lawyers Project
Debbie Johnson King, Maine State Housing Authority
Chris LaRoche, Housing Services, York County Community Action
Chet Randall, Esq., Pine Tree Legal Assistance, **Chair**
William N. Lund, Esq., Consumer Credit Protection
Sara Gagne-Holmes, Esq., ME Equal Justice Partners, Inc.

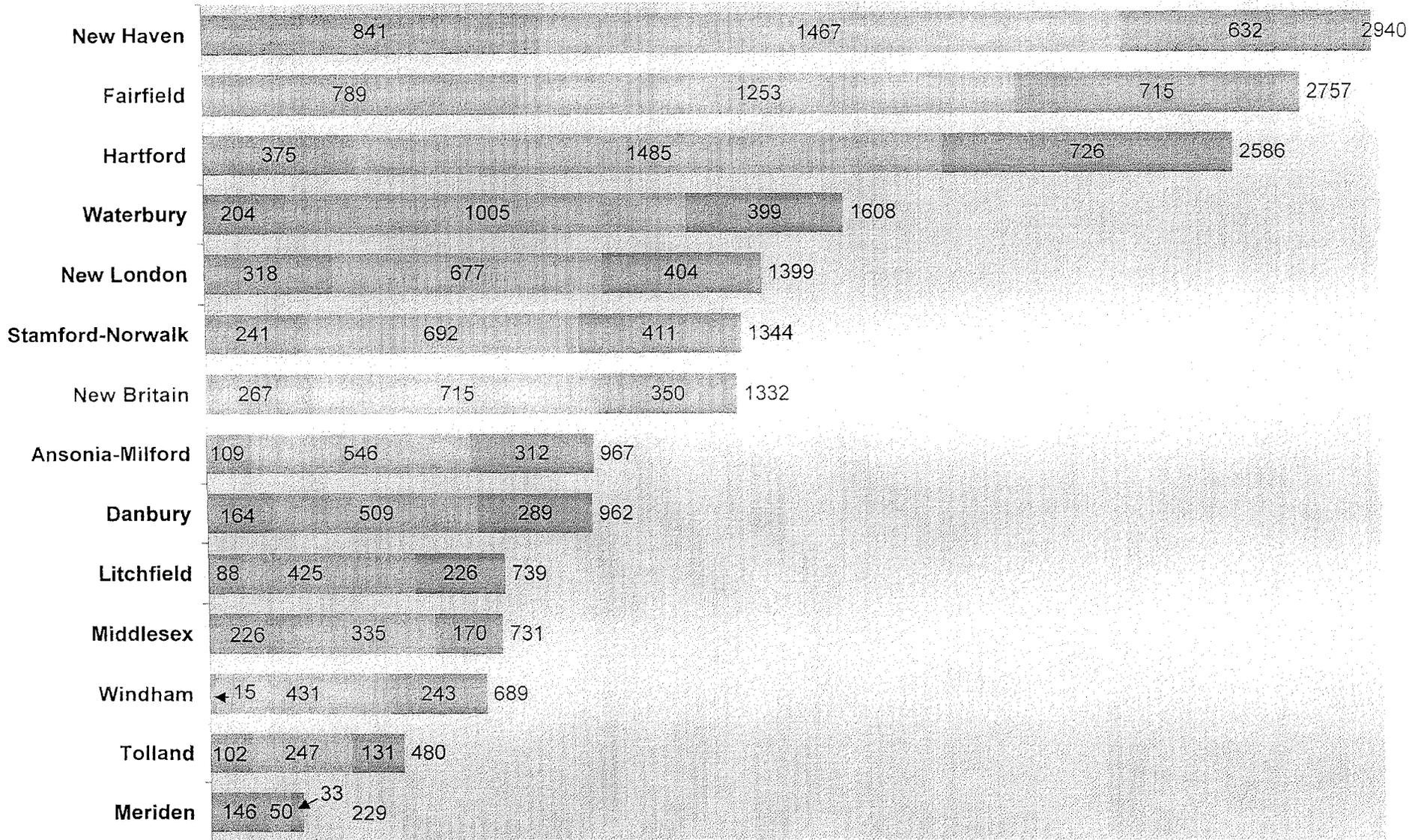
Foreclosure Mediation Program (FMP) Results Cases Terminated As of 3/31/2009



- STATEWIDE, 2,233 CASES HAVE COMPLETED MEDIATION AS OF MARCH 31, 2009. THIS CHART ILLUSTRATES THE OUTCOME OF THESE CASES.
- THE CATEGORY "MOVING FROM HOME" INCLUDES AGREEMENTS FOR A SHORT SALE, A DEED IN LIEU, OR AN EXTENSION OF THE LAW DAY OR SALE DATE.
- THE CATEGORIES "MOVING FROM HOME" AND "STAYING IN HOME" WHEN ADDED TOGETHER RESULT IN A **SETTLEMENT RATE OF 73%**.

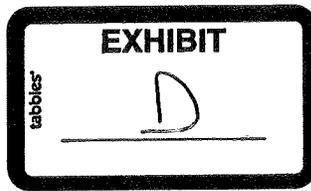


Foreclosure Mediation Program (FMP) Statistics As of 3/31/2009



Not Eligible
 Eligible - No Foreclosure Mediation Request Filed
 Eligible - Foreclosure Mediation Request Filed
 Total P00

- Statewide, there were 18,763 foreclosure cases filed between July 1 and March 31, 2009.
- Foreclosure mediation requests (5,041) have been filed in 34% of the 14,878 eligible cases.



P.A. 08-176, An Act Concerning Responsible Lending and Economic Security

P.A.08-176 was passed by the Connecticut legislature during its 2008 session and became effective July 1, 2008. It required the Chief Court Administrator to establish a **foreclosure mediation program** in each Judicial District. Connecticut General Statutes, Sections 49-31k through 49-31o outlines the program as it has been amended.

Actions that are subject to the Foreclosure Mediation Program:

- mortgage foreclosure actions with a return date on or after July 1, 2008
- actions where the residential real property is a one-to-four family dwelling located in Connecticut
- actions where the property is the mortgagor's primary residence

Requirements for Mortgagee:

- copies of the *Notice to Homeowner: Availability of Foreclosure Mediation Form (JD-CV-94)* and the *Foreclosure Mediation Request Form (JD-CV-93)* must be attached to the front of the complaint that is served on the mortgagor
- if the notice requirement is not met, the court may order that no judgment enter for 15 days during which period the mortgagor may submit a *Foreclosure Mediation Request Form*

Request for Foreclosure Mediation by the Mortgagor:

- mortgagors may submit to the court a *Foreclosure Mediation Request Form (JD-CV-93)* together with an *Appearance Form (JD-CL-12)* not more than 15 days after the return date
- the court may grant the mortgagor not more than 10 additional days to submit the *Foreclosure Mediation Request Form* and *Appearance Form* **for good cause shown**
- upon receipt of the *Foreclosure Mediation Request Form*, the court shall send notice within 3 business days to all appearing parties that the request has been received

- the mediation period commences when the court sends notice to each appearing party that a *Foreclosure Mediation Form* has been received

Foreclosure Mediation:

- the mediation shall be conducted by foreclosure mediators who are Judicial Branch employees
- the mediation shall address all issues of foreclosure, including, but not limited to, reinstatement of the mortgage, assignment of law days, assignment of sale date, restructuring of the mortgage debt and foreclosure by decree of sale
- the first mediation must be held no later than 15 business days after the court sends notice that the *Foreclosure Mediation Request form* has been received
- the mortgagor and mortgagee are to appear in person at each mediation session and must have authority to agree to a proposed settlement. If the mortgagee is represented by counsel then counsel may appear at the mediation in lieu of the mortgagee so long as counsel has authority to agree to a proposed settlement and the mortgagee is available during the mediation session either by telephone or electronic means.
- The mediator shall file a report with the court no later than 2 days after the conclusion of the first mediation session indicating the mediator's determination that:
 - the parties may benefit from further mediation, and the mediation period shall continue, OR
 - the parties will not benefit from further mediation, in which event the mediation period terminates automatically.
 - a copy of this first report shall be mailed to each appearing party.
- If the mediation continues, the mediator shall file a final report with the court not more than two days after the conclusion of the mediation; however; the mediator's final report must be filed no later than the termination of the mediation period set forth in the statute.
 - the final report shall describe the proceedings and specify the issues resolved, if any, and any issues not resolved.
 - the mediation period automatically terminates upon the filing of the mediator's final report.

- The mediation period shall end not more than 60 days from the return date; however, the court may on its own motion or a motion of any party, for good cause, may shorten the mediation period, or extend the mediation period by not more than 30 days. The court may extend the mediation period by not more than 30 days upon written request of the mediator as well.

Other Important Points:

- None of the mortgagor's or mortgagee's rights in the foreclosure action shall be waived by a foreclosure mediation request.
- Mediators may refer mortgagors to community-based resources and to mortgage assistance programs. Any such referral shall not delay the mediation process and a mortgagee may proceed to judgment when the mediation has terminated as specified in the statute.
- The mediation process does not suspend the mortgagor's obligation to respond to the foreclosure action in accordance with the rules of the court.
- A determination of the mediator shall not form a basis for appeal of a foreclosure judgment.
- A mortgagee shall not be required to modify a mortgage or change the terms of payment without its consent.
- No foreclosure mediation request form may be submitted to the court on or after July 1, 2010.



Sec. 49-31k. **Definitions.** As used in this section and sections 49-31l to 49-31o, inclusive:

(1) "Mortgagor" means the owner-occupant of one-to-four family residential real property located in this state who is also the borrower under a mortgage encumbering such residential real property, which is the primary residence of such owner-occupant;

(2) "Residential real property" means a one-to-four family dwelling occupied as a residence by a mortgagor;

(3) "Mortgagee" means the original lender or servicer under a mortgage, or its successors or assigns, who is the holder of any mortgage on residential real property securing a loan made primarily for personal, family or household purposes that is the subject of a foreclosure action;

(4) "Authority" means the Connecticut Housing Finance Authority created under section 8-244; and

(5) "Mortgage assistance programs" means the mortgage assistance programs developed and implemented by the authority in accordance with sections 8-265cc to 8-265kk, inclusive, 8-265rr and 8-265ss.

(P.A. 08-176, S. 15.)

History: P.A. 08-176 effective July 1, 2008.

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Sec. 49-31l. **Notice of foreclosure mediation program. Request form.** (a) Prior to July 1, 2010, when a mortgagee commences an action for the foreclosure of a mortgage on residential real property with a return date on or after July 1, 2008, the mortgagee shall give notice to the mortgagor of the foreclosure mediation program established in section 49-31m by attaching to the front of the foreclosure complaint that is served on the mortgagor: (1) A copy of the notice of the availability of foreclosure mediation, in such form as the Chief Court Administrator prescribes, and (2) a foreclosure mediation request form, in such form as the Chief Court Administrator prescribes.

(b) (1) Except as provided in subdivision (2) of this subsection, a mortgagor may request foreclosure mediation by submitting the foreclosure mediation request form to the court and filing an appearance not more than fifteen days after the return day for the foreclosure action. Upon receipt of the foreclosure mediation request form, the court shall notify each appearing party that a foreclosure mediation request form has been submitted by the mortgagor.

(2) The court may grant a mortgagor permission to submit a foreclosure mediation request form and file an appearance after the fifteen-day period established in subdivision (1) of this subsection, for good cause shown, except that no foreclosure mediation request form may be submitted and no appearance may be filed more than twenty-five days after the return date.

(3) No foreclosure mediation request form may be submitted to the court on or after July 1, 2010.

(c) If at any time on or after July 1, 2008, but prior to July 1, 2010, the court determines that the notice requirement of subsection (a) of this section has not been met, the court may, upon its own

motion or upon the written motion of the mortgagor, issue an order that no judgment may enter for fifteen days during which period the mortgagor may submit a foreclosure mediation request form to the court.

(d) Notwithstanding any provision of the general statutes or any rule of law to the contrary, prior to July 1, 2010, no judgment of strict foreclosure nor any judgment ordering a foreclosure sale shall be entered in any action instituted by the mortgagee to foreclose a mortgage on residential real property unless: (1) Notice to the mortgagor has been given by the mortgagee in accordance with subsection (a) of this section and the time for submitting a foreclosure mediation request form has expired and no foreclosure mediation request form has been submitted, or if such notice has not been given, the time for submitting a foreclosure mediation request form pursuant to subsection (b) or (c) of this section has expired and no foreclosure mediation request form has been submitted, or (2) the mediation period set forth in section 49-31n has expired or has otherwise terminated, whichever is earlier.

(e) None of the mortgagor's or mortgagee's rights in the foreclosure action shall be waived by the mortgagor's submission of a foreclosure mediation request form to the court.

(P.A. 08-176, S. 16.)

History: P.A. 08-176 effective July 1, 2008.

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Sec. 49-31m. Foreclosure mediation program. Not later than July 1, 2008, the Chief Court Administrator shall establish in each judicial district a foreclosure mediation program in actions to foreclose mortgages on residential real property. Such foreclosure mediation shall (1) address all issues of foreclosure, including, but not limited to, reinstatement of the mortgage, assignment of law days, assignment of sale date, restructuring of the mortgage debt and foreclosure by decree of sale, and (2) be conducted by foreclosure mediators who (A) are employed by the Judicial Branch, (B) are trained in mediation and all relevant aspects of the law, as determined by the Chief Court Administrator, (C) have knowledge of the community-based resources that are available in the judicial district in which they serve, and (D) have knowledge of the mortgage assistance programs. Such mediators may refer mortgagors who participate in the foreclosure mediation program to community-based resources when appropriate and to the mortgage assistance programs.

(P.A. 08-176, S. 17.)

History: P.A. 08-176 effective June 12, 2008.

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Sec. 49-31n. Mediation period. (a) The mediation period under the foreclosure mediation program established in section 49-31m shall commence when the court sends notice to each appearing party that a foreclosure mediation request form has been submitted by a mortgagor to the court, which notice shall be sent not later than three business days after the court receives a completed foreclosure mediation request form. The mediation period shall conclude not more than sixty days after the return day for the

foreclosure action, except that the court may, in its discretion, for good cause shown, (1) extend, by not more than thirty days, or shorten the mediation period on its own motion or upon motion of any party, or (2) extend by not more than thirty days the mediation period upon written request of the mediator.

(b) The first mediation session shall be held not later than fifteen business days after the court sends notice to all parties that a foreclosure mediation request form has been submitted to the court. The mortgagor and mortgagee shall appear in person at each mediation session and shall have authority to agree to a proposed settlement, except that if the mortgagee is represented by counsel, the mortgagee's counsel may appear in lieu of the mortgagee to represent the mortgagee's interests at the mediation, provided such counsel has the authority to agree to a proposed settlement and the mortgagee is available during the mediation session by telephone or electronic means.

(c) Not later than two days after the conclusion of the first mediation session, the mediator shall determine whether the parties will benefit from further mediation. The mediator shall file with the court a report setting forth such determination and mail a copy of such report to each appearing party. If the mediator reports to the court that the parties will not benefit from further mediation, the mediation period shall terminate automatically. If the mediator reports to the court after the first mediation session that the parties may benefit from further mediation, the mediation period shall continue.

(d) If the mediator has submitted a report to the court that the parties may benefit from further mediation pursuant to subsection (c) of this section, not more than two days after the conclusion of the mediation, but no later than the termination of the mediation period set forth in subsection (a) of this section, the mediator shall file a report with the court describing the proceedings and specifying the issues resolved, if any, and any issues not resolved pursuant to the mediation. The filing of the report shall terminate the mediation period automatically. If certain issues have not been resolved pursuant to the mediation, the mediator may refer the mortgagor to any appropriate community-based services that are available in the judicial district, but any such referral shall not cause a delay in the mediation process.

(e) The Chief Court Administrator shall establish policies and procedures to implement this section. Such policies and procedures shall, at a minimum, provide that the mediator shall advise the mortgagor at the first mediation session required by subsection (b) of this section that: (1) Such mediation does not suspend the mortgagor's obligation to respond to the foreclosure action in accordance with applicable rules of the court; and (2) a judgment of strict foreclosure or foreclosure by sale may cause the mortgagor to lose the residential real property to foreclosure.

(f) In no event shall any determination issued by a mediator under this program form the basis of an appeal of any foreclosure judgment.

(g) Foreclosure mediation request forms shall not be accepted by the court on or after July 1, 2010, and the foreclosure mediation program shall terminate when all mediation has concluded with respect to any applications submitted to the court prior to July 1, 2010.

(h) At any time during the mediation period, the mediator may refer the mortgagor to the mortgage assistance programs, except that any such referral shall not prevent a mortgagee from proceeding to judgment when the conditions specified in subsection (d) of section 49-311 have been satisfied.

(P.A. 08-176, S. 18; Nov. 24 Sp. Sess. P.A. 08-2, S. 8.)

History: P.A. 08-176 effective July 1, 2008; Nov. 24 Sp. Sess. P.A. 08-2 amended Subsec. (a) to designate existing provision re extension of mediation period as Subdiv. (1), increase extension period

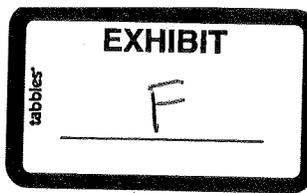
therein from ten to thirty days; add Subdiv. (2) re extension of mediation period by not more than thirty days upon written request of the mediator and make technical changes, and amended Subsec. (b) to extend deadline for first mediation session from ten to fifteen business days after court notice, effective November 25, 2008.

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Sec. 49-31o. Consent of mortgagee required for changes. Nothing in sections 49-31k to 49-31n, inclusive, shall require a mortgagee to modify a mortgage or change the terms of payment of a mortgage without its consent.

(P.A. 08-176, S. 19)

History: P.A. 08-176 effective July 1, 2008.



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RELATING TO FORCLOSURE OF REAL PROPERTY MORTGAGES
Subchapter 1: GENERAL PROVISIONS

§6111. Notice of mortgagor's right to cure

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

[1997, c. 579, §1 (AMD) .]

2. No application to supervised lender or supervised financial organization.

[1995, c. 654, §2 (RP) .]

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

A. Certified mail, return receipt requested. For the purposes of this paragraph, the time when the notice is given to the mortgagor or cosigner is the date the mortgagor or cosigner signs the receipt or, if the notice is undeliverable, the date the post office last attempts to deliver it; or [1997, c. 579, §2 (NEW) .]

B. Ordinary first class mail, postage prepaid. For the purposes of this paragraph, the time when the notice is given to the mortgagor or cosigner is the date when the mortgagor or cosigner receives that notice. A post office department certificate of mailing to the mortgagor or cosigner is conclusive proof of receipt on the 3rd calendar day after mailing. [1997, c. 579, §2 (NEW) .]

[1997, c. 579, §2 (AMD) .]

4. Notice not required.

[1997, c. 579, §3 (RP) .]

5. Exceptions. This section does not apply to:

A. A mortgage subject to the provisions of Title 9-A, section 5-111 or a mortgage, other than a first lien mortgage, that is made subject to the provisions of Title 9-A, section 5-111 by agreement of the parties to the mortgage; [1997, c. 579, §4 (NEW) .]

B. A mortgage that contains a requirement that a reinstatement notice, a notice of right to cure or an equivalent notice be given to the mortgagor at least 30 days prior to accelerating the maturity of the unpaid balance of the obligation or otherwise enforcing the mortgage against the mortgagor, if the mortgagee gives such a notice to the mortgagor and to any cosigner against whom the mortgagee seeks to enforce the obligation secured by the mortgage; or [1997, c. 579, §4 (NEW) .]

C. A mortgage when the mortgagee accelerates the maturity of the unpaid balance of the obligation or otherwise enforces the mortgage on or after July 4, 1996 if the mortgage meets the requirements of paragraph A or B. [1997, c. 579, §4 (NEW) .]

[1997, c. 579, §4 (NEW) .]

SECTION HISTORY

1991, c. 707, §1 (NEW). 1993, c. 373, §1 (AMD). 1995, c. 654, §§1-4 (AMD). 1997, c. 579, §§1-4 (AMD).

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RELATING TO FORCLOSURE OF REAL PROPERTY MORTGAGES Subchapter 6: FORECLOSURE PROCEEDINGS BY CIVIL ACTION

§6321. Commencement of foreclosure by civil action

After breach of condition in a mortgage of first priority, the mortgagee or any person claiming under the mortgagee may proceed for the purpose of foreclosure by a civil action against all parties in interest in either the Superior Court or the District Court in the division in which the mortgaged premises or any part of the mortgaged premises is located, regardless of the amount of the mortgage claim. [2007, c. 391, §9 (AMD).]

After breach of condition of any mortgage other than one of the first priority, the mortgagee or any person claiming under the mortgagee may proceed for the purpose of foreclosure by a civil action against all parties in interest, except for parties in interest having a superior priority to the foreclosing mortgagee, in either the Superior Court or the District Court in the division in which the mortgaged premises or any part of the mortgaged premises is located. Parties in interest having a superior priority may not be joined nor will their interests be affected by the proceedings, but the resulting sale under section 6323 is of the defendant or mortgagor's equity of redemption only. The plaintiff shall notify the priority parties in interest of the action by sending a copy of the complaint to the parties in interest by certified mail. [2007, c. 391, §9 (AMD).]

The foreclosure must be commenced in accordance with the

Maine Rules of Civil Procedure, and the mortgagee shall also record a copy of the complaint or a clerk's certificate of the filing of the complaint in each registry of deeds in which the mortgage deed is or by law ought to be recorded and such a recording thereafter constitutes record notice of commencement of foreclosure. The complaint must allege with specificity the plaintiff's claim by mortgage on such real estate, describe the mortgaged premises intelligibly, state the existence of public utility easements, if any, that were recorded subsequent to the mortgage and prior to the commencement of the foreclosure proceeding and without mortgagee consent, state the amount due on the mortgage, state the condition broken and by reason of such breach demand a foreclosure and sale. Service of process on all parties in interest and all proceedings must be in accordance with the Maine Rules of Civil Procedure. "Parties in interest" includes mortgagors, holders of fee interest, mortgagees, lessees pursuant to recorded leases or memoranda thereof, lienors and attaching creditors all as reflected by the indices in the registry of deeds and the documents referred to therein affecting the mortgaged premises, through the time of the recording of the complaint or the clerk's certificate. Failure to join any party in interest does not invalidate the action nor any subsequent proceedings as to those joined. Failure of the mortgagee to join, as a party in interest, the holder of any public utility easement recorded subsequent to the mortgage and prior to commencement of foreclosure proceedings is deemed consent by the mortgagee to that easement. Any other party having a claim to the real estate whose claim is not recorded in the registry of deeds as of the time of recording of the copy of the complaint or the clerk's certificate need not be joined in the foreclosure action, and any such party has no claim against the real estate after completion of the foreclosure sale, except that any such party may move to intervene in the action for the purpose of being added as a party in interest at any time prior to the entry of judgment. [2007, c. 391, §9 (AMD).]

For purposes of this section, "public utility easements" means any easements held by public utilities, as defined in Title 35-A, section 102; sewer districts, as defined in Title 38, section 1251; or sanitary districts, as formed under Title 38, chapter 11. [2007, c. 391, §9 (AMD).]

The acceptance, before the expiration of the right of redemption and after the commencement of foreclosure proceedings of any mortgage of real property, of anything of value to be applied on or to the mortgage indebtedness by the mortgagee or any person holding under the mortgagee constitutes a waiver of the foreclosure unless an agreement to the contrary in writing is signed by the person from whom the payment is accepted or unless the bank returns the payment to the mortgagor within 10 days of receipt. The receipt of income from the mortgaged premises by the mortgagee or the mortgagee's assigns while in possession of the premises does not constitute a

waiver of the foreclosure proceedings of the mortgage on the premises. [2007, c. 391, §9 (NEW).]

The mortgagee and the mortgagor may enter into an agreement to allow the mortgagor to bring the mortgage payments up to date with the foreclosure process being stayed as long as the mortgagor makes payments according to the agreement. If the mortgagor does not make payments according to the agreement, the mortgagee may, after notice to the mortgagor, resume the foreclosure process at the point at which it was stayed. [2007, c. 391, §9 (NEW).]

SECTION HISTORY

1975, c. 552, §5 (NEW). 1977, c. 564, §69 (AMD). 1981, c. 429, §§2,3 (AMD). 1983, c. 447, §2 (AMD). 1991, c. 744, §§1,2 (AMD). 2007, c. 391, §9 (AMD).

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shall be one year from the date of the judgment. On mortgages executed on or after October 1, 1975, the period of redemption shall be 90 days from the date of the judgment. In either case, the redemption period shall begin to run upon entry of the judgment of foreclosure, provided that no appeal is taken. [1983, c. 447, §3 (AMD) .]

SECTION HISTORY

1975, c. 552, §5 (NEW). 1977, c. 618, (RPR). 1983, c. 447, §3 (AMD). 1991, c. 744, §3 (AMD) .

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RELATING TO FORCLOSURE OF REAL PROPERTY MORTGAGES Subchapter 6: FORECLOSURE PROCEEDINGS BY CIVIL ACTION

§6323. Sale following expiration of period of redemption

1. Procedures for all civil actions. Upon expiration of the period of redemption, if the mortgagor or the mortgagor's successors, heirs or assigns have not redeemed the mortgage, any remaining rights of the mortgagor to possession terminate, and the mortgagee shall cause notice of a public sale of the premises stating the time, place and terms of the sale to be published once in each of 3 successive weeks in a newspaper of general circulation in the county in which the premises are located, the first publication to be made not more than 90 days after the expiration of the period of redemption. The public sale must be held not less than 30 days nor more than 45 days after the first date of that publication and may be adjourned, for any time not exceeding 7 days and from time to time until a sale is made, by announcement to those present at each adjournment. The mortgagee, in its sole discretion, may allow the mortgagor to redeem or reinstate the loan after the expiration of the period of redemption but before the public sale. The mortgagee may convey the property to the mortgagor or execute a waiver of foreclosure, and all other rights of all other parties remain as if no foreclosure had been commenced. The mortgagee shall sell the premises to the highest bidder at the public sale and deliver a deed of that sale and the writ of possession, if a writ of possession was obtained during the foreclosure process, to the purchaser. The deed conveys the premises free and clear of all interests of the parties in interest joined in the action. The mortgagee

or any other party in interest may bid at the public sale. If the mortgagee is the highest bidder at the public sale, there is no obligation to account for any surplus upon a subsequent sale by the mortgagee. Any rights of the mortgagee to a deficiency claim against the mortgagors are limited to the amount established as of the date of the public sale. The date of the public sale is the date on which bids are received to establish the sales price, no matter when the sale is completed by the delivery of the deed to the highest bidder. If the property is conveyed by deed pursuant to a public sale in accordance with this subsection, a copy of the judgment of foreclosure and evidence of compliance with the requirements of this subsection for the notice of public sale and the public sale itself must be attached to or included within the deed, or both, or otherwise be recorded in the registry of deeds.

[2007, c. 103, §1 (AMD) .]

2. Additional notice requirements for civil actions commenced on or after January 1, 1995. In foreclosures by civil action commenced on or after January 1, 1995, the mortgagee shall cause notice of the public sale to be mailed by ordinary mail to all parties who appeared in the foreclosure action or to their attorneys of record. The notice must be mailed no less than 30 calendar days before the date of sale. Failure to provide notice of the public sale to any party who appeared does not affect the validity of the sale.

[1993, c. 544, §1 (NEW) .]

SECTION HISTORY

1975, c. 552, §5 (NEW). 1983, c. 447, §4 (RPR). 1993, c. 373, §2 (AMD). 1993, c. 544, §1 (RPR). 2005, c. 291, §1 (AMD). 2007, c. 103, §1 (AMD).

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RELATING TO FORCLOSURE OF REAL PROPERTY MORTGAGES Subchapter 6: FORECLOSURE PROCEEDINGS BY CIVIL ACTION

§6324. Proceeds of sale

After first deducting the expenses incurred in making the sale, the mortgagee shall disburse the remaining proceeds in accordance with the provisions of the judgment. The mortgagee shall file a report of the sale and the disbursement of the proceeds therefrom with the court and shall mail a copy to the mortgagor at the mortgagor's last known address. This report need not be accepted or approved by the court, provided that the mortgagor or any other party in interest may contest the accounting by motion filed within 30 days of receipt of the report, but any such challenge may be for money only and does not affect the title to the real estate purchased by the highest bidder at the public sale. Any deficiency must be assessed against the mortgagor and an execution must be issued by the court therefor. In the event the mortgagee has been the purchaser at the public sale, any deficiency is limited to the difference between the fair market value of the premises at the time of the public sale, as established by an independent appraisal, and the sum due the mortgagee as established by the court with interest plus the expenses incurred in making the sale. Any surplus must be paid to the mortgagor, the mortgagor's successors, heirs or assigns in the proceeding. If the mortgagor has not appeared personally or by an attorney, the surplus must be paid to the clerk of courts, who shall hold the surplus in escrow for 6 months for the benefit of the mortgagor, the mortgagor's successors, heirs or assigns and, if the surplus remains unclaimed after 6 months, the

clerk shall pay the surplus to the Treasurer of State to be credited to the General Fund until it becomes unclaimed under the Uniform Unclaimed Property Act, and report and pay it to the State in accordance with that Act. [2003, c. 20, Pt. T, §10 (AMD).]

SECTION HISTORY

1975, c. 552, §5 (NEW). 1983, c. 447, §5 (AMD). 1987, c. 691, §2 (AMD). 1997, c. 508, §B4 (AMD). 1997, c. 508, §A3 (AFF). 2003, c. 20, §T10 (AMD).

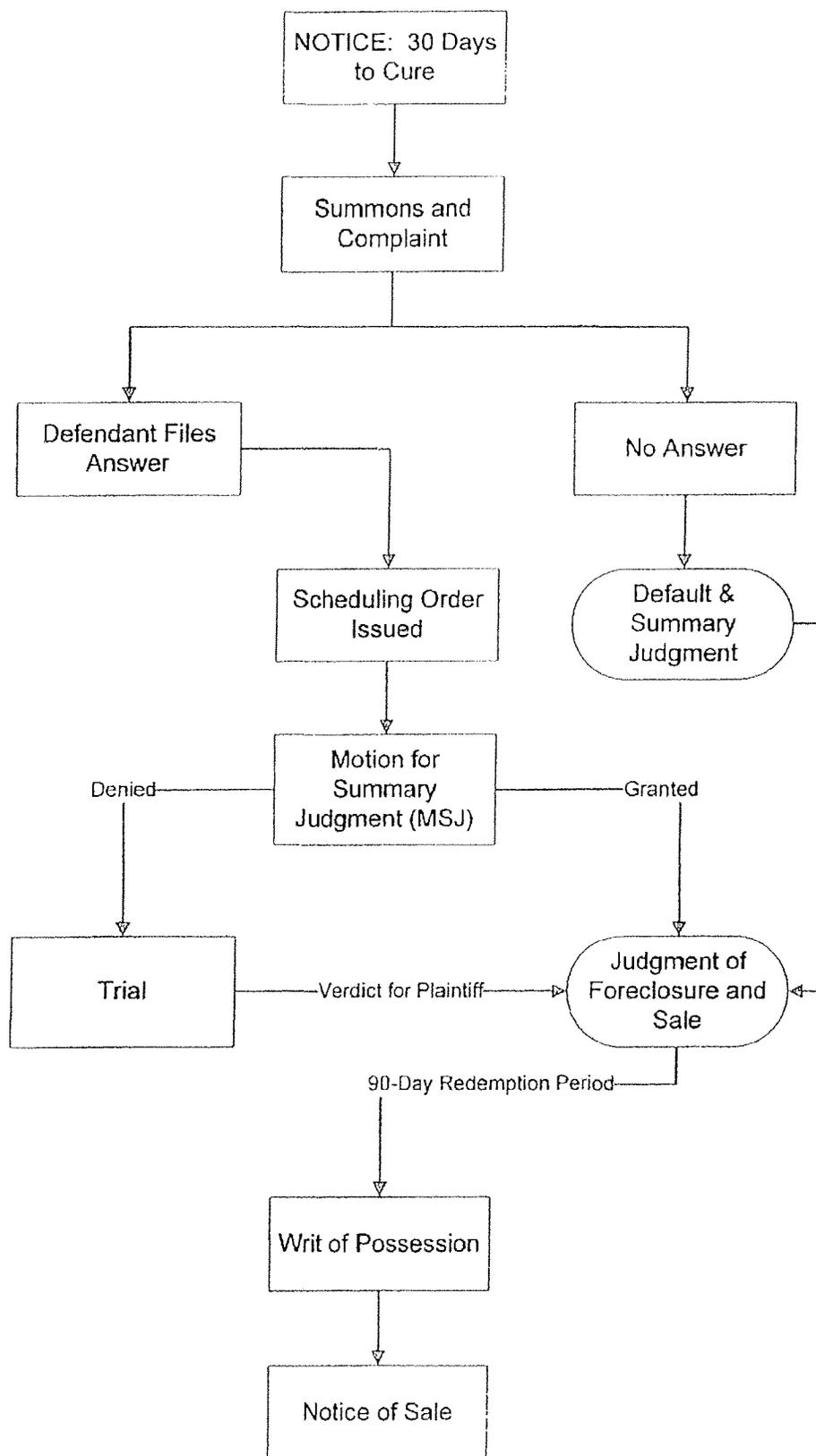
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FORECLOSURE PROCEDURES IN MAINE

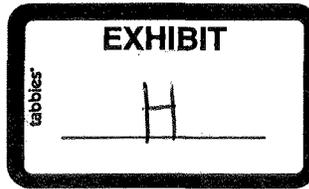
1. 30 Day Notice to Cure. 14 M.R.S.A. § 6111
2. Summons and Complaint Served by Sheriff. 14 M.R.S.A. §6321
3. Answer. Defendant must file an answer within 20 days of service
4. Scheduling order Issued (pursuant to M.R.Civ.P. 16 and 16A)
5. If no answer, Default & Summary Judgment
6. If answer, Discovery may be conducted.
7. Motion for Summary Judgment commonly filed.
8. Opposition to Motion for Summary Judgment. (Must be filed within 21 days)
9. Reply to Opposition (must be filed within 7 days)
10. Hearing. (If an opposition is filed, court will schedule a hearing)
11. Judgment of Foreclosure and Sale. (If no opposition or after hearing)
12. 90-day redemption period. (runs from date the order is signed)
13. Trial and Judgment. (if Summary Judgment not granted trial is scheduled) 14 M.R.S.A. §6322
14. 90 day redemption period (90 days to payoff in full)
15. Owner loses ownership
16. Writ of Possession (served by sheriff and is a 48 hour eviction notice)
- 17 Notice of Sale. 14 M.R.S.A. §6323
18. Sale
19. Report of Sale. 14 M.R.S.A. §6324



Draft Reviewed by IFS 5/15/09

LD 1418
OTP-A

Committee: IFS
LA: CMR
File Name:
LR (item) #: 1678 (02)
New Title?: n
Add Emergency?: n
Date: May 17, 2009



COMMITTEE AMENDMENT " TO L.D. 1418. An Act To Preserve Home Ownership and Stabilize the Economy by Preventing Unnecessary Foreclosures

Amend the bill by striking out everything after the enacting clause and before the emergency clause and inserting in its place the following:

Sec. 1. 4 MRSA § 104 is amended to read:

§104. Active retired justices

Any Justice of the Superior Court who has retired from the court under this chapter in effect prior to December 1, 1984, or any Justice of the Superior Court who retires or terminates his service on the court in accordance with chapter 27, except for a disability retirement, is eligible for appointment as an Active Retired Justice of the Superior Court. The Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary and to confirmation by the Legislature, may appoint any eligible justice as an Active Retired Justice of the Superior Court for a term of 7 years, unless sooner removed. That justice may be reappointed for a like term. Any justice so appointed and designated shall thereupon constitute a part of the court from which he has retired and shall have the same jurisdiction and be subject to the same restrictions therein as before retirement, except that he shall act only in the cases and matters and hold court only at the terms and times as he may be directed and assigned to by the Chief Justice of the Supreme Judicial Court. Any Active Retired Justice of the Superior Court may be directed by the Chief Justice to hold any term of the Superior Court in any county and when so directed shall have authority and jurisdiction therein the same as if he were the regular justice of that court. Whenever the Chief Justice of the Supreme Judicial Court so orders, that justice may hear all matters and issue all orders, notices, decrees and judgments in vacation that any Justice of that Superior Court is authorized to hear and issue. An Active Retired Justice of the Superior Court may be assigned by the Chief Judge of the Superior Court to act as a mediator for the foreclosure mediation program established pursuant to Title 14, section 6321-A, subsection 2.

Sec. 2. 4 MRSA § 157-B is amended to read:

157-B. Active retired judges; appointment

Any Judge of the District Court who has retired from the court under this chapter prior to December 1, 1984, or any Judge of the District Court who retires or terminates his service on the court in accordance with chapter 27, except for a disability retirement, is eligible for appointment as an Active Retired Judge of the District Court as provided. The Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary and to confirmation by the Legislature, may appoint any eligible judge to be an Active Retired Judge of the District Court for a term of 7 years, unless sooner removed. That judge may be reappointed for a like term. Any judge so appointed and designated shall thereupon constitute a part of the court from which he has retired and shall have the same jurisdiction and be subject to the same restrictions therein as before retirement, except that he shall act only in those cases and matters and hold court only at those sessions and times as he may be directed and assigned to by the Chief Judge of the District Court. Any Active Retired Judge of the District Court may be directed by the Chief Judge to hold any session of the District Court in any

district and when so directed shall have authority and jurisdiction therein the same as if he were the regular judge of that court; and whenever the Chief Judge of the District Court so orders, may hear all matters and issue all orders, notices, decrees and judgments that any Judge of that District Court is authorized to hear and issue. An Active Retired Judge shall receive reimbursement for his expenses actually and reasonably incurred in the performance of his duties. An Active Retired Justice of the District Court may be assigned by the Chief Judge of the District Court to act as a mediator for the foreclosure mediation program established pursuant to Title 14, section 6321-A, subsection 2.

Sec. 3. 4 MRSA §18-B, sub-§12 is enacted to read:

12. Mediation involving mortgage foreclosures on owner-occupied residential property. The foreclosure mediation program is a program within the Supreme Judicial Court to provide mediation in the courts throughout the State pursuant to Title 14, section 6321-A.

A. The Supreme Judicial Court, or a person or organization designated by the court, shall administer the foreclosure mediation program.

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

Sec. 4. 9-A MRSA § 6-116, sub-§ 4 is enacted to read:

4. Any information submitted pursuant to Title 14 section §6111, subsections 3-A and 4-A. Such information includes but is not limited to any electronic communication, correspondence, or notice evidencing the default of a homeowner on their mortgage.

Sec. 5. 9-A MRSA §9-408 is enacted to read:

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

Any violation of this article constitutes a violation of the Maine Unfair Trade Practices Act.

Sec. 6. 9-B MRSA § 162, sub-§ 6 is enacted to read:

6. Disclosure of notice of mortgagor's right to cure. The financial records pertain to a notice of mortgagor's right to cure and are disclosed to the Bureau of Consumer Credit Protection pursuant to Title 14, section 6111, sub-§3-A.

Sec. 7. 14 MRSA §2401, sub-§3, as amended by PL 1993, c. 114, §2 and affected by §4, is further amended to read:

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

- A. The names and addresses, if known, of all parties to the action, including the counsel of record;
- B. The docket number;

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

D. An adequate description of real estate involved; and

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

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

Unless a proposed judgment with the provisions required in this subsection is presented to the court at the time of the court's decision, the court shall name the party responsible for preparing a judgment with the required provisions. An attested copy of the judgment with the signed clerk's certification must be recorded in the registry of deeds for the county or counties where the subject property is located within one year of the entry of the final judgment unless otherwise ordered by the court. For the purposes of this section, a judgment is not final until all applicable appeal periods have expired and any appellate proceedings and subsequent actions on remand, if any, have been concluded. The court shall name the party responsible for recording the attested copy of the judgment and for paying the appropriate recording fees. The judgment has no effect as to any person not a party to the proceeding who has no actual knowledge of the judgment unless an attested copy of the judgment is recorded in accordance with this section. A judgment of foreclosure and sale for recording may not be recorded in the registry of deeds unless it is in compliance with the requirements of this section. Failure to comply with this section does not affect the validity of the underlying judgment.

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

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

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

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

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

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

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

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

E. The address, telephone number and other contact information for persons having authority to modify a mortgage loan with the mortgagor to avoid foreclosure, including, but not limited to, the mortgagee, the mortgage servicer and an agent of the mortgagee;

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

G. A statement that a mortgagor may request mediation, as set forth in section 6321-A, to explore options for avoiding foreclosure.

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

3-A. Information; Bureau of Consumer Credit Protection. Within 3 days of providing notice to the mortgagor as required by subsection 1-A, the mortgagee shall file with the Bureau of Consumer Credit Protection, in electronic format as designated by the Bureau of Consumer Credit Protection, information including:

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

B. The address, telephone number and other contact information for persons having authority to modify a mortgage loan with the mortgagor to avoid foreclosure, including, but not limited to, the mortgagee, the mortgage servicer and an agent of the mortgagee; and

C. Other information, as permitted by state and federal law, requested of the mortgagor by the Bureau of Consumer Credit Protection.

3-B. Report. On a quarterly basis, the Bureau of Consumer Credit Protection shall report to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters on the number of notices received pursuant to section 6111, subsection 3-A. To the extent information is available, the report must also include information on the number of foreclosure filings based on data collected from the court, and the Bureau of Financial Institutions and on the types of lenders that are filing foreclosures.

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

4-A. Letter to mortgagor. Within 3 days of receiving electronic information from the mortgagee as set forth in subsection 3-A, the Bureau of Consumer Credit Protection shall send a notice to the mortgagor that includes a summary of the mortgagor's rights and available resources, including information concerning the mandatory foreclosure mediation program as established in section 6321-A.

Sec. 12. 14 MRSA §6112 is enacted to read:

§ 6112. Statewide outreach

To the extent resources are available from the Fund established in subsection 4, the Bureau of Consumer

Credit Protection shall engage in the following activities.

1. **Hotline.** The Bureau of Consumer Credit Protection shall establish a statewide hotline to facilitate a mortgagor's communication with housing counselors approved by the United States Department of Housing and Urban Development for the purposes of discussing options to avoid foreclosure.

2. **Outreach.** The Bureau of Consumer Credit Protection, in consultation with the Maine State Housing Authority, shall coordinate an outreach program to help families with their housing needs with the intent of expanding the outreach program statewide. The outreach program shall support the efforts of nonprofit organizations that provide housing counseling services and mortgage assistance.

3. **Form.** The Bureau of Consumer Credit Protection, after consultation with interested parties, shall develop for use by the Supreme Judicial Court one form for making a request for mediation and making an answer to a foreclosure complaint as described in section 6321-A, subsection 2.

4. **Funding.** The Housing and Mortgage Assistance Fund is created as a nonlapsing, dedicated fund within the Bureau of Consumer Credit Protection for the deposit of revenue transferred from Maine Revenue Services pursuant to Title 36, section 4641-B, subsection 6 and from any funds received from any public or private source. The Bureau of Consumer Credit Protection shall use the fund to cover the costs of carrying out the duties in this section and section 6111, subsections 3-A, 3-B and 4-A.

Sec. 13. 14 MRSA §6203-A, first ¶, as amended by PL 1995, c. 106, §1, is further amended to read:

Any holder of a mortgage on real estate that is granted by a corporation, partnership, including a limited partnership, limited liability company or trustee of a trust and that contains a power of sale, or a person authorized by the power of sale, or an attorney duly authorized by a writing under seal, or a person acting in the name of the holder of such mortgage or any such authorized person, may, upon breach of condition and without action, do all the acts authorized or required by the power; except that a sale under the power is not effectual to foreclose a mortgage unless, previous to the sale, notice has been published once in each of 3 successive weeks, the first publication to be not less than 21 days before the day of the sale in a newspaper of general circulation in the town where the land lies and which notice must prominently state the street address of the real estate encumbered by the mortgage deed and the book and page number of the mortgage. This provision is implied in every power of sale mortgage in which it is not expressly set forth. For mortgage deeds executed on or after October 1, 1993, the power of sale may be used only if the mortgage deed states that it is given primarily for a business, commercial or agricultural purpose. A copy of the notice must, at least 21 days before the date of the sale under the power in the mortgage, be recorded in each registry of deeds in which the mortgage deed is or by law ought to be recorded and must be served on the mortgagor or its representative in interest, or may be sent by registered mail addressed to the mortgagor or the mortgagor's representative at its the mortgagor's last known address, or to the person and to the address as may be agreed upon in the mortgage, at least 21 days before the date of the sale under the power in the mortgage. The mortgagee shall provide a copy of the notice to a tenant if the mortgagee knows or should know by exercise of due diligence that the property is occupied as a rental unit. Upon request from a mortgagee, the mortgagor or its representative in interest shall provide the name, address and other contact information for any tenant. Notice to a tenant may be served on the tenant by sheriff or may be sent by first class mail and registered mail at the tenant's last known address. No less than 21 days after service of the notice required by this section the mortgagee may institute an action pursuant to section 6001. This paragraph may not be construed to prohibit an action for forcible entry and detainer in accordance with section 6001 for a reason that is not related to a foreclosure sale.

Any power of sale incorporated into a mortgage is not affected by the subsequent transfer of the mortgaged premises from the corporation, partnership, including a limited partnership, limited liability company or trustee of the trust to any other type of organization or to an individual or individuals. The power of sale may not be used to foreclose a mortgage deed granted by a trustee of a trust if at the time the mortgage deed is given the real estate is used exclusively for residential purposes, the real estate has 4 or fewer residential units and one of the

units is the principal residence of the owner of at least 1/2 of the beneficial interest in the trust. If the mortgage deed contains a statement that at the time the mortgage deed is given the real estate encumbered by the mortgage deed is not used exclusively for residential purposes, that the real estate has more than 4 residential units or that none of the residential units is the principal residence of the owner of at least 1/2 of the beneficial interest in the trust, the statement conclusively establishes these facts and the mortgage deed may be foreclosed by the power of sale. The method of foreclosure of real estate mortgages provided by this section is specifically subject to the order of priorities set out in section 6205.

Sec. 14. 14 MRSAS 6322-A is enacted to read:

§ 6322-A Notice to Tenants of Foreclosure Judgment

The mortgagee shall, after entry of final judgment in favor of the mortgagee, provide a copy of the foreclosure judgment to any residential tenant of the premises. Upon request from a mortgagee, the mortgagor shall provide the name, address and other contact information for any tenant. A tenant who receives written notice under this section is not required to file any responsive pleadings and must receive written notice of all subsequent proceedings including all matters through and including sale of the property. The mortgagee is obligated to provide written notice to the tenant if the mortgagee knows or should know by exercise of due diligence that the property is occupied as a residential rental unit. Notice may be provided to a tenant by first class mail and registered mail at the tenant's last known address only after the mortgagee has made 2 good faith efforts to provide written notice to the tenant in person. After providing the notice required by this section, and upon expiration of the redemption period, the mortgagee may institute an action for forcible entry and detainer pursuant to section 6001. This subsection may not be construed to prohibit an action for forcible entry and detainer in accordance with section 6001 for a reason that is not related to a judicial foreclosure action.

Sec. 15. 14 MRSAS 6321, 3rd ¶, as amended by PL 2007, c. 391, §9, is further amended to read:

The foreclosure must be commenced in accordance with the Maine Rules of Civil Procedure, and the mortgagee shall within 10 days of commencing the foreclosure also record a copy of the complaint or a clerk's certificate of the filing of the complaint in each registry of deeds in which the mortgage deed is or by law ought to be recorded and such a recording thereafter constitutes record notice of commencement of foreclosure. The mortgagee shall further certify and provide evidence that all steps mandated by law to provide notice to the mortgagor pursuant to section 6111 were strictly performed. The mortgagee shall certify proof of ownership of the mortgage note and produce evidence of the mortgage note, mortgage and all assignments and endorsements of the mortgage note and mortgage. The complaint must allege with specificity the plaintiff's claim by mortgage on such real estate, describe the mortgaged premises intelligibly, including the street address of the mortgaged premises, which must be prominently stated on the first page of the complaint, state the book and page number of the mortgage, state the existence of public utility easements, if any, that were recorded subsequent to the mortgage and prior to the commencement of the foreclosure proceeding and without mortgagee consent, state the amount due on the mortgage, state the condition broken and by reason of such breach demand a foreclosure and sale. A clerk's certificate may not be presented for recording pursuant to this section unless the certificate bears the title "Clerk's Certificate of Foreclosure and Sale" and prominently states, immediately after the title, the street address of the mortgaged premises and the book and page number of the mortgage. Service of process on all parties in interest and all proceedings must be in accordance with the Maine Rules of Civil Procedure. "Parties in interest" includes mortgagors, holders of fee interest, mortgagees, lessees pursuant to recorded leases or memoranda thereof, lienors and attaching creditors all as reflected by the indices in the registry of deeds and the documents referred to therein affecting the mortgaged premises, through the time of the recording of the complaint or the clerk's certificate. Failure to join any party in interest does not invalidate the action nor any subsequent proceedings as to those joined. Failure of the mortgagee to join, as a party in interest, the holder of any public utility easement recorded subsequent to the mortgage and prior to commencement of foreclosure proceedings is deemed consent by the mortgagee to that easement. Any other party having a claim to the real estate whose claim is not recorded in the registry of deeds as of the time of recording of the copy of the

complaint or the clerk's certificate need not be joined in the foreclosure action, and any such party has no claim against the real estate after completion of the foreclosure sale, except that any such party may move to intervene in the action for the purpose of being added as a party in interest at any time prior to the entry of judgment.

Within 3 days of the commencement of a foreclosure action the mortgagee as required by this section, the mortgagee shall provide a copy of the clerk's certificate that bears the title "Clerk's Certificate of Foreclosure and Sale" and prominently states, immediately after the title, the street address of the mortgaged premises and the book and page number of the mortgage to the municipal assessor of the municipality in which the property is located and, if the mortgaged premises is a manufactured home, to the owner of any land leased by the mortgagor.

Sec. 16. 14 MRSA §6321-A is enacted to read:

§ 6321-A. Foreclosure mediation program

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

A. "Court" means the Supreme Judicial Court.

B. "Program" means the foreclosure mediation program.

2. Notice; summons and complaint; foreclosure proceedings. When a plaintiff commences an action for the foreclosure of a mortgage on an owner-occupied residential real property of no more than four units which is the primary residence of the owner-occupant, the plaintiff shall attach to the front of the foreclosure complaint one form notice to the defendant as developed by the Bureau of Consumer Credit Protection in accordance with this subsection and section 6112, subsection 3. The form notice must be written in language that is plain and readily understandable by the general public.

At a minimum, the form notice must contain the following:

1. A statement that failure to answer the complaint will result in foreclosure of the property subject to the mortgage;
2. A sample answer and an explanation that the defendant may fill out the form and return it to the court in the envelope provided as the answer to the complaint. If the debtor returns the form to the court, the defendant does not need to file a more formal answer or responsive pleading; and
3. A description of the mediation program established in subsection 3 of and a statement that the defendant may fill out the form to request mediation pursuant to this section.

3. Foreclosure mediation program established. Under the authority granted in Title 4, section 18-B, the Supreme Judicial Court shall adopt rules to establish a foreclosure mediation program to provide mediation in actions for foreclosure of mortgages on owner-occupied residential property with no more than four units. The program must address all issues of foreclosure, including but not limited to reinstatement of the mortgage, modification of the loan and restructuring of the mortgage debt. Mediations conducted pursuant to the program must utilize the calculations, assumptions and forms that are established by the Federal Deposit Insurance Corporation and published in the Federal Deposit Insurance Corporation Loan Modification Program Guide as set out on the Federal Deposit Insurance Corporation's publicly accessible website.

4. Financial information confidential. Except for financial information included as part of the foreclosure complaint or any answer filed by the parties, any financial statement or information provided to the court or to the parties during the course of mediation in accordance with this section is confidential and is not available for public inspection. Any financial statement or information must be made available, as necessary, to the court, the attorneys whose appearances are entered in the case, and the parties to the mediation. Any financial statement or information designated as confidential under this subsection must be kept separate from other papers in the case and may not be used purposes other than mediation

5. No waiver of rights. The plaintiff's or defendant's rights in the foreclosure action are not waived by participating in the program.

6. Commencement of mediation. When a defendant requests mediation pursuant to subsection 2 or makes an appearance in a foreclosure action, the court shall refer the plaintiff and defendant to mediation pursuant to this section.

7. Provisions of mediation services; filing and fees. The Court shall:

A. Assign mediators, including retired active justices pursuant to Title 4, sections 104 ad 157-B, who:

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

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

(3) Have knowledge of mortgage assistance programs; and

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

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

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

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

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

C. Establish a fee upon a foreclosure filing to support mediation services to be paid for by the plaintiff; and

D. Make recommendations for any changes to the mediation program to the Legislature.

8. Referral to mortgage assistance programs. At any time during the mediation process, the mediator may refer the defendant for housing counseling or mortgage assistance programs.

9. No Entry of Judgment. No final judgment shall issue until a mediator's report has been filed pursuant to subsection 13.

10. Application of mediation provisions to ongoing foreclosure proceedings. The requirements of this section apply to foreclosures filed after the effective date of this section and to owner-occupied residential properties in the foreclosure process but not scheduled for sale before the effective date of this section. The court may in its discretion require mediation for owner-occupied residential properties with no more than four units already scheduled for sale.

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

- A. The mortgagee, who has the authority to agree to a proposed settlement, loan modification or dismissal of the loan, except that the mortgagee may participate by telephone or electronic means provided that mortgagee is represented with authority to agree to a proposed settlement;
- B. The defendant;
- C. Counsel for the plaintiff; and
- D. Counsel for the defendant, if represented.

12. Good faith effort. Each party and their attorney, if any, shall be present at mediation as required by this section and shall make a good faith effort to mediate all issues. If any party or attorney fails to attend or to make a good faith effort to mediate, the court may impose appropriate sanctions.

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

Sec. 17. 14 MRSA §6323, sub-§3 is enacted to read:

3. Extension of deadline. Upon a showing of good cause, the court may extend a deadline established by this section for the publication of the notice of sale or conducting the public sale.

Sec. 18. 36 MRSA § 4641-B, sub-§ 6 is enacted to read:

6. Transfer of tax on deeds of foreclosure or in lieu of foreclosure. Notwithstanding subsection 4, the State Tax Assessor shall monthly pay to the Bureau of Consumer Credit Protection the revenues derived from the tax imposed on the transfer of real property by deeds conveying real property back to a lender holding a bona fide mortgage that is genuinely in default, either by sheriff conducting a public sale or be the mortgagor in lieu of foreclosure, by deeds from a mortgagor to a mortgagee in lieu of foreclosure and by deeds from a mortgagee to itself at a public sale pursuant to Title 14, section 6323.

Sec. 19. 36 MRSA §4641-C, sub-§2, as repealed and replaced by PL 1993, c. 680, Pt. A, §31, is

amended to read:

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

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

Sec. 21. **Phase-in of Foreclosure mediation program.** Beginning July 1, 2009, the Supreme Judicial Court may, in its discretion, implement the Foreclosure Mediation Program established pursuant to Title 14, section 6321-A in those judicial districts that the Court determines that the mediation program is most needed as long as the mediation program is available in all judicial districts by January 1, 2010. Before February 15, 2010, the Court shall report to the Joint Standing Committee on Insurance and Financial Services on the mediation program and recommend whether changes are needed. The Joint Standing Committee on Insurance and Financial Services may report out a bill to the Second Regular Session of the 124th Legislation based on the recommendations.

SUMMARY

This amendment retains the emergency preamble and emergency clause, but replaces the substantive provisions of the bill. The amendment does the following.

1. It establishes a court-supervised mediation process in judicial foreclosure proceedings on owner-occupied residential properties of one to four units. The mediation process is modeled after the program used in the State of Connecticut. Beginning July 1, 2010, the amendment allows the Supreme Judicial Court to implement the mediation program first in those judicial districts most affected by foreclosure filings, but requires the program to be implemented throughout the State by January 1, 2010.

2. It makes violation of provisions of the Maine Consumer Credit Code related to the mortgage lending a violation of the Maine Unfair Trade Practices Act.

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

4. It requires notice to municipalities and owners of mobile home parks after foreclosure judgments.

4. It requires at least 90 days notice to tenants in judicial foreclosure proceedings and at least 21 days notice to tenants in non-judicial foreclosure proceedings.

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

6. It requires a mortgagee to provide certain information to the Bureau of Consumer Credit Protection about foreclosure and requires reporting on a quarterly basis to the Legislature related to foreclosures.

7. It requires the Bureau of Consumer Credit Protection to notify a mortgagor who is a party to a foreclosure about the mortgagor's rights and available resources as they relate to the foreclosure as well as the mandatory foreclosure mediation program. It also requires the Bureau of Consumer Credit Protection, in consultation with the Maine State Housing Authority, to establish a statewide hotline to help mortgagors communicate with housing counselors certified by the United States Department of Housing and Urban Development.

9. It amends the procedure and notice for foreclosures.

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

11. It allows a court upon a showing of good cause to extend a deadline for a notice of sale or conducting a public sale in a foreclosure action.

12. It removes the exemption under the Real Estate Transfer tax for foreclosure sales and deeds in lieu of foreclosure and directs those tax revenues to the Bureau of Consumer Credit Protection to fund the agency's additional duties.