

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION
(EMERGENCY)

ONE HUNDRED AND FIRST LEGISLATURE

Legislative Document

No. 1632

S. P. 675

In Senate, January 6, 1964

The Committee on Judiciary suggested.

CHESTER T. WINSLOW, Secretary

Presented by Senator Farris of Kennebec.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-FOUR

**AN ACT to Clarify the Disposition of Surpluses with Regard to Real Estate
Mortgage Foreclosures.**

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

Whereas, an adequate supply of capital is essential to the construction of buildings to house industry, businesses and our inhabitants; and

Whereas, safe and adequate housing is essential to the health and welfare of the inhabitants of this State; and

Whereas, certain legal complications have arisen with regard to chapter 418 of the private and special laws of 1963, an act shortening the period of real estate mortgage foreclosure, which may impair the free flow of capital; and

Whereas, the following legislation is intended to remove any legal complications which may have arisen under said chapter 418; and

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

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

R. S., c. 177, § 7-B, amended. Section 7-B of chapter 177 of the Revised Statutes, as enacted by section 5 of chapter 418 of the public laws of 1963, is amended to read as follows:

Sec. 7-B. Application of surplus. If a mortgagee within 2 years after ~~the~~

completion of a foreclosure under this chapter expiration of the right of redemption sells the property at public or private sale and the sales price proceeds of sale plus net income received by the mortgagee from the mortgaged premises while in possession thereof exceeds the balance of the principal due on the mortgage on said completion date, interest to the date of sale, taxes, tax liens, federal, state or municipal, insurance, costs of maintenance, repairs and improvements to said property, and expenses of foreclosure, removal of other encumbrances affecting the title of the mortgagee and expenses of sale, he shall pay over such surplus to the mortgagor within 30 days after written request therefor, made by or on behalf of the mortgagor within 30 days after mailing by the mortgagee to the mortgagor at his last address, as furnished by him to the mortgagee, of written notice of such sale. Sale for purpose of this section shall also include conveyance of the property to the United States or any instrumentality thereof, which has insured or guaranteed the mortgage loan, and public sale on the initiative of the mortgagee, at which the mortgagee may be a bidder after such notice as is provided for hereinafter in this section. No purchaser from the mortgagee need look to the application of the purchase money. A mortgagee who has purchased the property at public sale shall be under no obligation to account for or pay to the mortgagor any part of the proceeds of any subsequent sale of the property thereafter made by him. ~~This section shall apply to mortgages created on or after January 1, 1964.~~

During such 2-year period if the mortgagee has not sold nor contracted to sell such property, the mortgagor may require the mortgagee by notice in writing, delivered to him and filed within such 2-year period in the Registry of Deeds of the county where the property is located to sell within a reasonable period of time such property at public sale, at which sale the mortgagee may be a bidder and the surplus from said sale, if any, as defined in this section, when held, shall be paid over to the mortgagor as aforesaid. Notice of the time and place of such sale shall be published by the mortgagee in a newspaper of general circulation in the county where the property is situated once a week for 2 successive weeks, the last publication to be at least 7 days prior to the date of the sale, and shall be given to the mortgagor in writing at his last address as furnished by him to the mortgagee.

Mortgagor in this section shall mean, as the case may be, the mortgagor or the record owner of the right of redemption immediately before its expiration. Mortgagee in this section shall mean, as the case may be, the mortgagee or the person claiming under him who acquires title upon the expiration of the right of redemption.

A mortgagee who purchases such property at public sale may record in the Registry of Deeds in the county where the property is located his affidavit as to the public sale, the notices given, his purchase and the amount of the purchase price, which affidavit shall be prima facie evidence in all courts of this State of the facts therein stated. No purchaser from the mortgagee need look to the application of the purchase money.

This section shall apply to all mortgages created on or after January 1, 1964.'

Emergency clause. In view of the emergency cited in the preamble, this act shall take effect when approved.