

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1960

H. P. 1526

House of Representatives, May 23, 1973

Approved by a Majority of the Committee on Reference of Bills pursuant to Joint Rule No. 10. Referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mr. McMahan of Kennebunk.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT Providing for the Foreclosure of Real Property Mortgages.

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

Sec. 1. R. S., T. 4, § 152, amended. The 2nd sentence of section 152 of Title 4 of the Revised Statutes, as enacted by chapter 236 of the public laws of 1965, is amended to read as follows:

This limitation as to damages shall not apply in any action of divorce, annulment or separation of marriage or in any action to enforce judgment of support or alimony; nor shall this limitation apply to a civil action of foreclosure and sale which shall not be removable to the Superior Court.

Sec. 2. R. S., T. 14, § 1901, amended. The first sentence of section 1901 of Title 14 of the Revised Statutes is amended to read as follows:

Any appeal shall be taken from the District Court to the Superior Court for the county embracing the division in which the judgment was rendered within 10 days after judgment; except that any party shall appeal from a District Court judgment in an action of foreclosure and sale directly to the law court within 30 days or such further time as may be granted by the court pursuant to a rule of court.

Sec. 3. R. S., T. 14, c. 712-A, additional. Title 14 of the Revised Statutes is amended by adding a new chapter 712-A to read as follows:

CHAPTER 712-A

FORECLOSURE OF REAL PROPERTY MORTGAGES

§ 6091. Commencement of foreclosure

After breach of a condition in the mortgage, the mortgagee or any person claiming under him may proceed for the purpose of foreclosure by a civil action against all parties in interest in either the District or Superior Court in a division or county where the mortgaged premises or any part thereof are located. The foreclosure shall be commenced by filing a complaint with the court and recording a copy thereof in each registry of deeds in which the mortgage deed is or by law ought to be recorded and such recording shall thereafter constitute record notice of commencement of foreclosure. The complaint shall allege with specificity the plaintiff's claim by mortgage on such real estate, describe the mortgaged premises intelligibly, 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 shall be in accordance with the Maine Rules of Civil Procedure. "Parties in interest" shall be 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 said registry of deeds and the documents referred to therein affecting the mortgaged premises. Failure to join any party in interest shall not invalidate the action and subsequent proceedings as to those joined.

§ 6092. Hearing and judgment

After hearing, the court shall determine whether there has been a breach of condition in the plaintiff's mortgage, the amount due thereon including reasonable attorney's fees and court costs, and the order of priority and such amounts, if any, as may be due to such other parties as may appear. If the court determines that such a breach exists, a judgment of foreclosure and sale shall issue providing that if the mortgagor, his successors, heirs and assigns, do not pay the sum that the court adjudges to be due and payable, with interest, within 90 days of the date of the judgment, the mortgagee shall proceed with a sale as provided. If the mortgagor, his successors, heirs and assigns, pay to the mortgagee the sum that the court adjudges to be due and payable to the mortgagee with interest within 90 days of the date of the judgment, then the mortgagee shall forthwith discharge the mortgage and file a dismissal of the action for foreclosure with the clerk of the court.

§ 6093. Sale following expiration of period of redemption

Upon expiration of the period of redemption if the mortgagor, his successors, heirs or assigns, have not redeemed the mortgage, the mortgagee shall cause notice of a public sale of the premises stating the time, place and terms thereof 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 such publication to be made no more than 90 days after the expiration of the period of redemption with the public sale to be held no less than 30 days nor more than 45 days after the first date of publication. The mortgagee shall sell the premises to the highest bidder at the public sale and deliver a deed of such sale to the purchaser, which deed shall convey 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.

§ 6094. 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. Any deficiency shall be assessed against the mortgagor, and an execution shall be issued by the court therefor. Any surplus shall be paid to the mortgagor, his successors, heirs or assigns.

§ 6095. Exceptions

The method of foreclosure set forth in sections 6091 to 6094 shall be the exclusive method of foreclosure of all real property mortgages except for railroad mortgages, so called, or for indentures or deeds of trust securing bond issues of corporations wherein the method of foreclosure or sale is provided in the indenture or deed of trust or any similar instrument; provided that any such railroad mortgage, corporate indenture, deed of trust or similar instrument executed subsequent to January 1, 1974 shall be subject to this chapter unless the applicability of this chapter is expressly negated.

Sec. 4. R. S., T. 14, § 6151, amended. The last sentence of the first paragraph of section 6151 of Title 14 of the Revised Statutes is amended to read as follows:

After breach of the condition, he may, in person or by his agent, make use of the like means for the purpose of foreclosure, which an individual mortgagee might, as prescribed in ~~sections 6201 and 6203~~ section 6091.

Sec. 5. R. S., T. 14, § 6301, amended. The 2nd sentence of section 6301 of Title 14 of the Revised Statutes is amended to read as follows:

If he unreasonably refuses or neglects to render such account in writing, or in any other way by his default prevents the plaintiff from performing or tendering performance of the condition of the mortgage, he may bring a civil action for the redemption of the mortgaged premises within the time limited in section ~~6204~~ 6092, and therein offer to pay the sum found to be equitably due, or to perform any other condition, as the case may require.

Sec. 6. R. S., T. 14, § 6308, amended. The 2nd sentence of section 6308 of Title 14 of the Revised Statutes is repealed and the following enacted in place thereof:

On notice of pendency of the action, in accordance with the Maine Rules of Civil Procedure, the Superior Court may decree a discharge of such mortgage.

Sec. 7. R. S., T. 14, certain §§, repealed. Sections 6101, 6103, 6201, 6202, 6203, 6203-A to 6203-D, as enacted by section 2 of chapter 424 of the public laws of 1967, and sections 6204, 6207, 6208, 6251, 6252, 6305, 6306 and 6313 of Title 14 of the Revised Statutes are repealed.

Sec. 8. R. S., T. 33, § 501-A, repealed. Section 501-A of Title 33 of the Revised Statutes, as enacted by section 4 of chapter 424 of the public laws of 1967, is repealed.

Sec. 9. R. S., T. 14, c. 713, renamed. Chapter 713 of Title 14 of the Revised Statutes is to be entitled "MISCELLANEOUS PROVISIONS RELATING TO FORECLOSURE OF REAL PROPERTY MORTGAGES."

Sec. 10. Provision for transition. Foreclosures of real property mortgages validly started before the effective date of this Act and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed or enforced as required or permitted by any statute or other law amended or repealed by this Act as though such amendment or repeal had not occurred.

Sec. 11. Effective date. This Act shall become effective January 1, 1974.

STATEMENT OF FACT

The purpose of this bill is reflected in the title.