

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1283

S. P. 397

In Senate, March 25, 1975

Referred to the Committee on Judiciary. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Collins of Knox.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT Insuring Due Process of Law to Consumers in the Foreclosure of Real Estate Mortgages and to Require Accounting for Surplus Therefrom.

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

Sec. 1. 4 MRSA § 152, first sentence, as last amended by PL 1971, c. 544, § 6, is further amended to read:

The District Court shall possess the civil and criminal jurisdiction exercised by all trial justices and municipal courts in the State on September 16, 1961, and in addition, original jurisdiction, concurrent with that of the Superior Court of all civil actions in which neither damages in excess of \$20,000 nor, **except as herein provided**, equitable relief is demanded; ~~of proceedings under Title 14, sections 6651 to 6658 and~~ of actions for divorce or annulment of marriage and of proceedings under Title 19; ~~and~~ original jurisdiction, concurrent with that of the probate court, of actions for separation; **original jurisdiction, concurrent with that of the Superior Court, of actions to quiet title to real estate under Title 14, sections 6651 to 6658, and in such actions the District Court may grant equitable relief; and original jurisdiction, concurrent with that of the Superior Court, of actions to foreclose mortgages under Title 14, chapter 712-A.**

Sec. 2. 14 MRSA § 1901, first sentence, is amended to read:

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 Supreme Judicial Court within 30 days.**

Sec. 3. 14 MRSA c. 712 is enacted to read:

CHAPTER 712

FORECLOSURE OF REAL PROPERTY MORTGAGES

§ 6091. Commencement of foreclosure

After breach of 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 Superior Court or the District Court in the division wherein the mortgaged premises or any part thereof is located.

The foreclosure shall be commenced by filing a complaint with the court and recording a copy of the complaint or a clerk's certificate of the filing 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 include 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 nor any 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 news-

paper of general circulation in the county in which the premises are located; the first such publication to be made not more than 90 days after the expiration of the period of redemption. The public sale shall be held not less than 30 days nor more than 45 days after the first date of such 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, if the mortgagor has appeared personally or by an attorney, the surplus shall be paid to the clerk of courts, who shall hold the surplus in escrow for 6 months for the benefit of the mortgagor, his 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.

§ 6095. Exceptions

The method of foreclosure set forth in sections 6091 to 6094 may be used for the 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, 1976 shall be subject to this chapter unless the applicability of this chapter is expressly negated in such instrument. The method of foreclosure set forth in sections 6091 to 6094 shall not apply to tax lien mortgages created under Title 36.

Sec. 4. 14 MRSA § 6151, first ¶, last sentence is amended to read:

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~~ section 6091 ~~6201 and 6203~~.

Sec. 5. 14 MRSA § 6308, 2nd sentence 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 court having jurisdiction of the action may decree a discharge of such mortgage.

Sec. 6. 14 MRSA § 6101, as amended by PL 1967, c. 424, § 1, is repealed.

Sec. 7. 14 MRSA §§ 6103, 6201 and 6202 are repealed.

Sec. 8. 14 MRSA § 6203, as last amended by PL 1973, c. 625, § 84, is repealed.

Sec. 9. 14 MRSA § 6203-A, as amended by PL 1971, c. 113, is repealed.

Sec. 10. 14 MRSA §§ 6203-B, 6203-C and 6203-D, as enacted by 1967, c. 424, § 2, are repealed.

Sec. 11. 14 MRSA § 6204, as amended by PL 1967, c. 424, § 3, is repealed.

Sec. 12. 14 MRSA §§ 6207, 6208, 6251, 6252, 6305, 6306 and 6313 are repealed.

Sec. 13. 33 MRSA § 501-A, as enacted by PL 1967, c. 424, § 4, is repealed.

Sec. 14. Transitional provision. Foreclosures of real property mortgages 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. 15. Effective date. This Act shall become effective January 1, 1976.

STATEMENT OF FACT

In a recent series of decisions, commencing with **Fuentes v. Shevin**, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972), the Supreme Court of the United States has held in substance that the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States requires that, before any person is deprived of a substantial property right, that person is entitled to notice that action is being taken to terminate the right, and to a hearing before an impartial person to determine whether that right is being validly terminated.

It is arguable that 2 of the 3 existing methods of foreclosing mortgages in Maine fail to pass constitutional muster. The most common method, publication, usually provides notice to the delinquent mortgagor, but no hearing. The 2nd method, peaceable entry, suffers from the same lack. The 3rd method, using existing court procedures, meets the Supreme Court's requirements but is seldom used because it requires the mortgagee to take physical possession of the premises, which most mortgagees have no desire to do.

This bill provides an additional method of foreclosure, which includes notice to the delinquent mortgagor, a prompt hearing on the merits in either of 2 courts, and a provision that if foreclosure is awarded and the property sold, the balance of the price over and above the mortgage and any valid liens will be returned to the mortgagor. It is believed that this new method of foreclosure passes constitutional muster.