

# MAINE STATE LEGISLATURE

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(After Deadline)

FIRST REGULAR SESSION

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ONE HUNDRED AND ELEVENTH LEGISLATURE

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Legislative Document

No. 1523

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H.P. 1153

House of Representatives, April 26, 1983

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.

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

EDWIN H. PERT, Clerk

Presented by Representative Soule of Westport.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-THREE

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AN ACT to Amend the Foreclosure Laws.

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

Sec. 1. 4 MRSA §152, as amended by PL 1981, c. 645, §1, is repealed and the following enacted in its place:

§152. Jurisdiction

The District Court shall have jurisdiction in the following matters:

1. Jurisdiction exercised by trial justices and municipal courts. The civil jurisdiction exercised by all trial justices and municipal courts in the State on September 16, 1981;

1        2. Civil actions with damages claimed which do  
2 not exceed \$20,000. Original jurisdiction, concu-  
3 rent with that of the Superior Court, of all civil  
4 actions when no equitable relief is demanded and the  
5 damages claimed do not exceed \$20,000;

6        3. Civil actions to enforce liens. Original  
7 jurisdiction, concurrent with the Superior Court, of  
8 all civil actions to enforce liens under Title 10,  
9 chapter 603, and the court shall determine the amount  
10 pursuant to Title 10, section 3258; and

11        4. Other actions. Original jurisdiction, con-  
12 current with that of the Superior Court, of the fol-  
13 lowing types of actions, and in these actions the  
14 District Court may grant equitable relief:

15        A. Actions for divorce, annulment of marriage or  
16 judicial separation and of proceedings under  
17 Title 19;

18        B. Actions to quiet title to real estate under  
19 Title 14, sections 6651 to 6658;

20        C. Actions to quiet title to real estate under  
21 Title 36, section 946;

22        D. Actions for breach of implied warranty and  
23 covenant of habitability under Title 14, section  
24 6021;

25        E. Actions to foreclose mortgages under Title  
26 14, chapter 713, subchapter VI;

27        F. Mental health commitment hearings under Title  
28 34, chapter 229;

29        G. Mental retardation certification hearings  
30 under Title 34, chapter 229; and

31        H. Small claims actions under Title 14, chapter  
32 738.

33        Actions for divorce, annulment or separation may  
34 be remanded, upon agreement of the parties, from the  
35 Superior Court to the District Court in accordance  
36 with rules promulgated by the Supreme Judicial Court.

1 An action so remanded shall remain in the District  
2 Court, which shall have exclusive jurisdiction there-  
3 after, subject to the rights of appeal to the Super-  
4 ior Court as to matters of law.

5 The District Court shall possess the criminal  
6 jurisdiction exercised by all trial justices and  
7 municipal courts in the State on September 16, 1961,  
8 except as provided in Title 29, section 2302.

9 The District Court shall also possess, concurrent  
10 with the Superior Court, original jurisdiction to  
11 receive pleas of guilty in criminal cases in which  
12 the maximum term of imprisonment to which the defen-  
13 dant may be sentenced upon conviction of that crime  
14 is one year or more in which the defendant has in  
15 writing waived his right to indictment by grand jury  
16 and his right to appearance and trial in the Superior  
17 Court and has indicated his intention to enter a plea  
18 of guilty to the charges pending against him. When  
19 exercising such jurisdiction, the District Court  
20 shall possess all of the powers of the Superior  
21 Court. That jurisdiction shall be exercised in the  
22 manner which the Supreme Judicial Court shall by rule  
23 provide. Any person sentenced under this section  
24 shall be entitled to the rights provided by Title 15,  
25 chapter 306.

26 Sec. 2. 14 MRSA §6321, as amended by PL 1981, c.  
27 429, §§2 and 3, is further amended to read:

28 §6321. Commencement of foreclosure by civil action

29 After breach of condition in a mortgage of first  
30 priority, the mortgagee or any person claiming under  
31 him may proceed for the purpose of foreclosure by a  
32 civil action against all parties in interest in  
33 either the Superior Court or the District Court in  
34 the division wherein the mortgaged premises or any  
35 part thereof is located, regardless of the amount of  
36 the mortgage claim. The method of foreclosure of  
37 real estate mortgages provided by this section is an  
38 alternative method to those provided in sections 6201  
39 and 6203 and is specifically subject to the order of  
40 priorities set out in section 6205.

1 After breach of condition of any mortgage other  
2 than one of the first priority, the mortgagee or any  
3 person claiming under him may proceed for the purpose  
4 of foreclosure by a civil action against all parties  
5 in interest, except for parties in interest having a  
6 superior priority to the foreclosing mortgagee, in  
7 either the Superior Court or the District Court in  
8 the division wherein the mortgaged premises or any  
9 part thereof is located. Parties in interest having a  
10 superior priority shall not be joined nor will their  
11 interests be affected by the proceedings, but the  
12 resulting sale under section 6323 shall be of the  
13 defendant or mortgagor's equity of redemption only.  
14 The plaintiff shall notify the priority parties in  
15 interest of the action by sending a copy of the com-  
16 plaint to the parties in interest by certified mail.

17 The foreclosure shall be commenced in accordance  
18 with the Maine Rules of Civil Procedure, by filing a  
19 complaint with the court and recording and the mort-  
20 gagee shall also record a copy of the complaint or a  
21 clerk's certificate of the filing thereof in each  
22 registry of deeds in which the mortgage deed is or by  
23 law ought to be recorded and such recording shall  
24 thereafter constitute record notice of commencement  
25 of foreclosure. Any other party having a claim to the  
26 real estate whose claim is not recorded in the regis-  
27 try of deeds as of the time of recording of the copy  
28 of the complaint or the clerk's certificate need not  
29 be joined in the foreclosure action, and any such  
30 party shall have no claim against the real estate  
31 after completion of the foreclosure sale; provided  
32 that any such party may move to intervene in the ac-  
33 tion for the purpose of being added as a party in  
34 interest at any time prior to the entry of judgment.  
35 The complaint shall allege with specificity the  
36 plaintiff's claim by mortgage on such real estate,  
37 describe the mortgaged premises intelligibly, state  
38 the amount due on the mortgage, state the condition  
39 broken and by reason of such breach demand a foreclo-  
40 sure and sale. Service of process on all parties in  
41 interest and all proceedings shall be in accordance  
42 with the Maine Rules of Civil Procedure. "Parties in  
43 interest" shall include mortgagors, holders of fee  
44 interest, mortgagees, lessees pursuant to recorded  
45 leases or memoranda thereof, lienors and attaching  
46 creditors all as reflected by the indices in said

1 registry of deeds and the documents referred to  
2 therein affecting the mortgaged premises. Failure to  
3 join any party in interest shall not invalidate the  
4 action nor any subsequent proceedings as to those  
5 joined. In either case, the redemption period shall  
6 begin to run upon entry of the judgment of foreclo-  
7 sure, provided that no appeal is taken.

8       Sec. 3. 14 MRSa §6323, as enacted by PL 1975, c.  
9 552, §5, is repealed and the following enacted in its  
10 place:

11 §6323. Sale following expiration of period of  
12 redemption

13       Upon expiration of the period of redemption, if  
14 the mortgagor, his successors, heirs or assigns have  
15 not redeemed the mortgage, any remaining rights of  
16 the mortgagor to possession shall terminate, and the  
17 mortgagee shall cause notice of a public sale of the  
18 premises stating the time, place and terms thereof to  
19 be published once in each of 3 successive weeks in a  
20 newspaper of general circulation in the county in  
21 which the premises are located; the first such publi-  
22 cation to be made not more than 90 days after the  
23 expiration of the period of redemption. The public  
24 sale shall be held not less than 30 days nor more  
25 than 45 days after the first date of that publi-  
26 cation. The mortgagee, in its sole discretion, may  
27 allow the mortgagor to redeem or reinstate the loan  
28 after the expiration of the period of redemption but  
29 before the public sale. The mortgagee may convey the  
30 property to the mortgagor (redemption) or execute a  
31 waiver of foreclosure (reinstatement) and all other  
32 rights of all other parties shall remain as if no  
33 foreclosure had been commenced. The mortgagee shall  
34 sell the premises to the highest bidder at the public  
35 sale and deliver a deed of that sale to the pur-  
36 chaser, which deed shall convey the premises free and  
37 clear of all interests of the parties in interest  
38 joined in the action. The mortgagee or any other  
39 party in interest may bid at the public sale. Should  
40 the mortgagee be the highest bidder at the public  
41 sale, there shall be no obligation to account for any  
42 surplus upon a subsequent sale by the mortgagee. Any  
43 rights of the mortgagee to a deficiency claim against  
44 the mortgagors shall be limited to the amount estab-

1 lished as of the date of the public sale. The  
2 "public sale" shall be the date of the public auction  
3 which establishes the sale price, no matter when the  
4 sale is finalized with the highest bidder.

5 Sec. 4. 14 MRSA §6324, as enacted by PL 1975, c.  
6 552, §5, is amended to read:

7 §6324. Proceeds of sale

8 After first deducting the expenses incurred in  
9 making the sale, the mortgagee shall disburse the  
10 remaining proceeds in accordance with the provisions  
11 of the judgment. The mortgagee shall file a report of  
12 the sale and the disbursement of the proceeds there-  
13 from with the court, and this report need not be ac-  
14 cepted or approved by the court; provided that any  
15 party who has appeared in the action and given rights  
16 by the judgment may contest the accounting by motion  
17 filed within 30 days of receipt of the report, but  
18 any such challenge shall be for money only and shall  
19 not affect the title to the real estate purchased by  
20 the highest bidder at the public sale. Any defi-  
21 ciency shall be assessed against the mortgagor and an  
22 execution shall be issued by the court therefor. In  
23 the event the mortgagee has been the purchaser at the  
24 public sale, any deficiency shall be limited to the  
25 difference between the fair market value of the prem-  
26 ises at the time of the sale, as established by an  
27 independent appraisal, and the sum due the mortgagee  
28 as established by the court with interest plus the  
29 expenses incurred in making the sale. Any surplus  
30 shall be paid to the mortgagor, his successors, heirs  
31 or assigns in the proceeding. If the mortgagor has  
32 not appeared personally or by an attorney, the sur-  
33 plus shall be paid to the clerk of courts, who shall  
34 hold the surplus in escrow for 6 months for the bene-  
35 fit of the mortgagor, his successors, heirs or  
36 assigns and, if the surplus remains unclaimed after 6  
37 months, the clerk shall pay the surplus to the Treas-  
38 urer of State to be credited to the General Fund.

39 STATEMENT OF FACT

40 The purposes of this bill are as follows.

1           Section 1 redrafts the District Court jurisdic-  
2           tion statute, both to organize the entire first sen-  
3           tence and to make it clear that mortgages in excess  
4           of \$20,000 may be foreclosed in District Court.  
5           Section 2 further clarifies this point, and clears  
6           up the conflict between the decisions of the  
7           Aroostook County Superior Court in Northern National  
8           Bank v. Nichols, Dkt. CV80-248 (1981) and the Cumber-  
9           land County Superior Court in Gorham Savings Bank v.  
10          Seavey, Dkt. CV80-1334 (1982), which differ on the  
11          precise method by which an action must be commenced.  
12          This bill conforms the foreclosure statute to civil  
13          action practice in general. Section 2 makes it  
14          clear that any creditor who attaches the interest of  
15          the mortgagors after the plaintiff has commenced its  
16          action would not have to be joined by the plaintiff,  
17          which is generally implied under the "lis pendens"  
18          doctrine. Section 2 also makes it clear that the  
19          redemption period begins to run upon judgment, not  
20          after the defendant mortgagor's appeal period has  
21          expired.

22          Section 3 makes it clear that once the redemption  
23          period has expired, the mortgagee is entitled to pos-  
24          session for the purposes of securing the property and  
25          preparing it for the public foreclosure sale.  
26          Section 3 also allows a mortgagor more time to settle  
27          with the mortgagee, although it would only be avail-  
28          able with the consent of the plaintiff mortgagee.  
29          The parties in interest would have no standing to  
30          object to any workout. This change follows current  
31          practice. Section 3 makes it clear that if a mort-  
32          gagee buys the property at its own sale, it becomes  
33          the absolute owner and has no further duty to account  
34          to the mortgagor or any other party. It also limits  
35          the deficiency claim in time to the public auction.

36          Section 4 makes it clear that the court does not  
37          have to approve or review reports filed subsequent to  
38          the foreclosure sale, and provides a mechanism for  
39          parties to review and contest the accounting.

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