

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1492

6
7 S.P. 563

In Senate, May 9, 1985

8 Reference to the Committee on Judiciary suggested and ordered printed.

9 JOY J. O'BRIEN, Secretary of the Senate

10 Presented by Senator Najarian of Cumberland.

Cosponsored by Senator Dow of Kennebec, Senator Baldacci of
Penobscot and Representative Martin of Van Buren.

11
12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
16

17 AN ACT to Prevent Unjust Enrichment by
18 Retention of Surplus Upon Foreclosure
19 of Municipalities, Public Utilities
20 and Sewer Districts.
21

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

24 Sec. 1. 35 MRS §316 is enacted to read:

25 §316. Disposition of proceeds of foreclosure by pub-
26 lic utilities

27 1. Disposition of surplus upon sale of real
28 property. Any public utility as defined in section
29 15, which is authorized to foreclose on property,
30 shall be required to remit any surplus remaining af-
31 ter the amount of delinquent rates, tolls, rents or
32 other charges and any costs associated with the fore-
33 closure of the property have been deducted from the
34 proceeds of the foreclosure sale together with a
35 written account of the foreclosure to the record own-
36 er at the time the public utility acquired title.

1 2. Determination of damages when property re-
2 tained. If any public utility, having acquired title
3 to property pursuant to this section, retains that
4 property, the public utility shall remit any damages,
5 less the amount of delinquent rates, tolls, rents or
6 other charges and any costs, including, but not lim-
7 ited to, the cost of estimating damages, to the
8 record owner at the time the public utility acquired
9 title. Damages shall be estimated in the same manner
10 as provided by law for land taken by municipal offi-
11 cers under Title 30, sections 4001 to 4003. It is
12 prima facie evidence that a public utility intends to
13 retain the real estate if it has not made a bona fide
14 effort to sell the real estate within an 18-month pe-
15 riod after foreclosure.

16 3. Applicability. This section shall apply only
17 to foreclosures of liens of public utilities, as de-
18 defined in section 15, placed on record after the ef-
19 fective date of this section.

20 Sec. 2. 36 MRSA §949 is enacted to read:

21 §949. Disposition of surplus

22 1. Disposition of surplus upon sale of property.
23 Any municipality having acquired title to real estate
24 by failure to redeem a tax collector's deed or by
25 foreclosure of a tax lien mortgage, whether for real
26 estate taxes or for a special tax authorized by law
27 to be assessed and collected in the same manner as
28 other state, county and municipal taxes are col-
29 lected, shall, upon sale of the property, remit any
30 surplus remaining after the taxes, interest and any
31 cost, including, but not limited to, reasonable ex-
32 penditures of sale, have been deducted from the proceeds,
33 together with a written account of the surplus to the
34 record owner at the time the municipality acquired
35 title.

36 2. Determination of damages when property re-
37 tained. If any municipality, having acquired title to
38 real estate by failure to redeem a tax collector's
39 deed or by foreclosure of a tax lien mortgage, wheth-
40 er for real estate taxes or for a special tax autho-
41 rized by law to be assessed and collected in the same
42 manner as other state, county and municipal taxes are

1 collected, retains that real estate or intends to re-
2 tain that real estate, the municipality shall remit
3 any damages, less the amount of delinquent taxes, in-
4 terest and any cost, including, but not limited to,
5 the cost of estimating damages, to the record owner
6 at the time the municipality acquired title. Damages
7 shall be estimated in the same manner as provided by
8 law for land taken by municipal officers under Title
9 30, sections 4001 to 4003. It is prima facie evidence
10 that a municipality intends to retain the real estate
11 if it has not made a bona fide effort to sell the
12 real estate within an 18-month period after foreclo-
13 sure.

14 3. Applicability. This section shall apply only
15 to foreclosures of tax liens or redemption of a tax
16 collector's deed placed on record after the effective
17 date of this section.

18 Sec. 3. 36 MRSA §1283, 5th ¶, as amended by PL
19 1967, c. 271, §8, is repealed.

20 Sec. 4. 36 MRSA §1283-A is enacted to read:

21 §1283-A. Disposition of surplus

22 1. Disposition of surplus upon sale of property.
23 When the State Tax Assessor has sold real estate pur-
24 suant to section 1283, he shall remit any surplus re-
25 maining after the taxes, interest and any cost, in-
26 cluding, but not limited to, reasonable expenses of
27 sale, have been deducted from the proceeds, together
28 with a written account to the record owner at the
29 time the State acquired title.

30 2. Determination of damages when property is re-
31 tained. The State, having acquired title to property
32 pursuant to this subchapter, shall remit any damages,
33 less the amount of delinquent taxes, interests and
34 any costs, including, but not limited to, the cost of
35 estimating damages, to the record owner at the time
36 the State acquired title. Damages shall be estimated
37 in the same manner as provided by law for land taken
38 by municipal officers under Title 30, sections 4001
39 to 4003. It is prima facie evidence that the State
40 intends to retain the real estate if it has not made
41 a bona fide effort to sell the real estate within an
42 18-month period after foreclosure.

1 3. Applicability. This section shall apply only
2 to foreclosure of a mortgage, as provided in section
3 1282, placed on record on or after the effective date
4 of this section.

5 Sec. 5. 38 MRSA §1208-A is enacted to read:

6 §1208-A. Disposition of proceeds of foreclosure by
7 sewer districts or sanitary districts

8 1. Disposition of surplus upon sale of real
9 property. Any sewer district or sanitary district
10 having foreclosed on any property pursuant to this
11 subchapter shall be required to remit any surplus re-
12 maining, after the amount of delinquent rates, tolls,
13 rents or other charges and any costs associated with
14 the foreclosure of the property have been deducted
15 from the proceeds of the foreclosure sale, to the
16 record owner at the time the district acquired the
17 title.

18 2. Determination of damages when property re-
19 tained. If any sewer district or sanitary district,
20 having acquired title to property pursuant to this
21 subchapter, retains that property, the district shall
22 remit any damages, less the amount of delinquent
23 rates, tolls, rents or other charges and any costs,
24 including, but not limited to, the cost of estimating
25 damages, to the record owner at the time the district
26 acquired the title.

27 Damage shall be estimated in the same manner as pro-
28 vided by law for land taken by municipal officers un-
29 der Title 30, sections 4001 to 4003. It is prima fa-
30 cie evidence that a sewer district or sanitary dis-
31 trict intends to retain the real estate if it has not
32 made a bona fide effort to sell the real estate with-
33 in an 18-month period after foreclosure.

34 3. Applicability. This section shall apply only
35 to foreclosures of sewer district and sanitary dis-
36 trict liens placed on record after the effective date
37 of this section.

1 STATEMENT OF FACT

2 The purpose of this bill is to assure justice and
3 fairness to property owners who lose their properties
4 to municipalities, sewer districts, public utilities
5 or the State for delinquent tax and toll payments.
6 This bill requires the State Tax Assessor and any mu-
7 nicipality, public utility and sewer or sanitary dis-
8 trict that forecloses on real estate for delinquent
9 taxes or fees be required to remit to the property
10 owner any surplus proceeds from the sale after taxes,
11 costs or fees, and any other costs incurred, includ-
12 ing demolition or removal of structures, have been
13 deducted.

14 This bill also provides for the remittance of
15 damages, less all amounts owed, including any cost,
16 to the owner if the property is retained by the
17 State, municipality, public utility or sewer or sani-
18 tary district. Damages are estimated in the same man-
19 ner that damages are estimated for a taking of land
20 by municipal officials.

21 An example of this process relates to property
22 owned by a family or individual who possesses full
23 title to the property and has no mortgage. In this
24 case, an elderly couple or person who occupies a res-
25 idence that has been in the family for several gener-
26 ations or a family which, after 30 years, has finally
27 paid the mortgage and finds themselves in financial
28 straits, could be unable to pay property taxes or
29 other fees. If the State, public utility, municipali-
30 ty or a sewer district forecloses on the property
31 which has incurred a \$5,000 tax liability, the gov-
32 ernmental entity or utility foreclosing on the prop-
33 erty, under current law, could auction the property.
34 If the foreclosing organization auctions or sells the
35 property for \$40,000 and if costs and delinquent
36 taxes or fees total \$6,500, the governmental entity
37 or utility would net \$33,500. Under current law, the
38 State, municipality or utility retains all the pro-
39 ceeds. The elderly couple, person or family realize
40 absolutely nothing, after perhaps many years or a
41 lifetime of investment in the property. Under this
42 bill, the sewer district, utility, municipality or
43 the State could keep the taxes with interest due and
44 expenses incurred in the disposal of the property.

1 The remainder would go back to the former owner and
2 rightful recipient of the surplus proceeds of the
3 property.

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