



# 114th MAINE LEGISLATURE

## **FIRST REGULAR SESSION - 1989**

Legislative Document

No. 1467

S.P. 532

In Senate, May 4, 1989

Reference to the Committee on Judiciary suggested and ordered printed.

O'Bren

JOY J. O'BRIEN Secretary of the Senate

Presented by Senator BERUBE of Androscoggin.

STATE OF MAINE

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

An Act to Facilitate the Expeditious Resolution of Certain Superior Court Cases.

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

14 MRSA §6008, as amended by PL 1979, c. 172, §1, is further amended to read:

§6008. Appeals

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Either party may appeal on questions of law from a judgment 9 to the Superior Court as in other civil actions or on any issue triable by right by a jury trial de novo in Superior Court as provided in this section. When the plaintiff appeals, he the 11 plaintiff shall recognize in-manner--aferesaid as under section 13 6006 to the defendant, except as otherwise provided, conditioned to enter the action and to pay all costs adjudged against him the 15 plaintiff. When the defendant appeals, the Superior Court Judge may stay the issuance of a writ of possession pending disposition 17 of the appeal. The judge shall, in all appropriate cases, condition the granting and continuation of the stay on the 19 defendant's payment of the rent for the premises into an escrow account to be administered by the clerk of the Superior Court. 21 If a defendant seeks a jury trial de novo on appeal, the defendant shall recognize to the plaintiff as under section 23 6006. As a prerequisite to any jury trial, the defendant shall place all unpaid rent in controversy, all rent obligations 25 arising during the pendency of the forcible entry and detainer action and all rent obligations arising during the pendency of the appeal into an escrow account to be administered by the clerk 27 of the Superior Court. Failure to make these rent payments on a timely basis shall constitute a waiver of the right to jury trial 29 de novo. The appeal decision or an agreement of the parties shall provide for the disposition of the escrowed rent. 31

33 A party who seeks a jury trial de novo shall briefly state the grounds of the appeal and demand a jury trial in writing on the notice of appeal and shall file with the notice an affidavit 35 setting forth specific facts showing that there is a genuine 37 issue of material fact as to which there is a right to trial by jury. Failure to make a demand for a jury trial with an 39 accompanying affidavit constitutes a waiver of the right to jury trial de novo. When a jury trial has not been demanded, the appeal shall be determined by the Superior Court as provided for 41 an appeal on questions of law. When a jury trial is demanded, 43 the record on appeal shall consist of any portion of the District Court record necessary for review.

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The Superior Court may enter a judgment reversing or 47 affirming, in whole or in part, the judgment appealed from and shall thereupon remand the case to the District Court from which 49 it originated for entry of the appropriate judgment or for any further proceedings.

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 Upon the request of an appellee in an appeal for a jury trial brought under this section, the Superior Court shall
determine if the appeal was frivolous. If the court determines the appeal was frivolous, the court shall order the appellant,
the appellant's attorney, or both, to pay the appellee the appellee's reasonable attorney's fees and costs arising from the appeal.

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#### STATEMENT OF FACT

The Supreme Judicial Court is currently considering the 13 issue of whether a tenant has the right to have a forcible entry and detainer action removed from the District Court to the 15Superior Court for a jury trial. This bill establishes a procedure for a jury trial in Superior Court in forcible entry 17 and detainer actions, in the event that the law court determines 19 that such a right exists. The bill leaves in place the current statutory procedure for a District Court hearing without a jury for these landlord-tenant disputes. The bill provides that 21 either party may appeal the District Court's judgment to Superior Court not only on questions of law as provided in current law, 23 but also as a jury trial de novo. In this type of appeal, the Superior Court, with a jury, would rehear the facts of the case 25 and affirm or reverse the District Court's judgment.

The bill provides that a defendant who appeals seeking a jury trial shall set aside sufficient sums to pay all damages, costs and rents due the plaintiff should the defendant lose the appeal. Current law provides that a plaintiff who appeals in a forcible entry and detainer action must set aside sufficient sums to pay costs adjudged against the plaintiff.

35 The bill provides that the party appealed against who wins in an appeal in which a jury trial occurred may ask the court to 37 determine if the appeal was frivolous. If the court finds that the appeal was frivolous, the party who appealed must pay the 39 winning party's costs and attorney's fees.

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