

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1650, L.D. 2283, Bill, "An Act to Provide Uniformity and Fairness after Mortgage Foreclosure"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 14 MRSA §6204-A, as enacted by PL 1975, c. 552, §4, is repealed.

Sec. 2. 14 MRSA §6204-B is enacted to read:

§6204-B. Disposition of proceeds of sale after foreclosure

This section governs the disposition of proceeds from the sale of real estate acquired by foreclosure under sections 6201 and 6203.

1. Amounts retained from sale. If the mortgagee sells all or any part of the real estate to a bona fide purchaser, within 2 years after the redemption period expires, the mortgagee may retain the following out of the proceeds of the sale or sales:

A. The amount of the debt secured by the mortgage;

B. Interest on the debt secured by the mortgage, as provided in the note or the mortgage;

C. Costs of the foreclosure, including advertising costs, costs of service and reasonable attorneys fees;

D. Costs of the sale or sales, including reasonable broker's commissions, transfer tax and reasonable attorneys fees;

2 E. Expenses incurred to preserve the mortgage lien and to
protect the real estate secured by the mortgage, including:

4 (1) Real estate taxes;

6 (2) The performance of conditions, including payments,
8 of any mortgages or lien claims with priority over the
mortgage being foreclosed;

10 (3) Insurance premiums; and

12 (4) Maintenance costs to prevent waste or preserve the
14 value of the real estate; and

16 F. If an action is filed under subsection 3, the costs of
bringing that action, including reasonable attorneys fees.

18 The amounts described in this subsection must be determined as of
20 the date of the sale. If the mortgagee conveys the real estate
to anyone other than a bona fide purchaser, the grantee shall
22 assume all accounting obligations of the mortgagee under this
section.

24 2. Accounting and surplus. The mortgagee shall provide to
26 the mortgagor and any interested party a written accounting of
each sale or sales and the amounts retained under subsection 1.
28 If there is a surplus, the mortgagee shall also make a good faith
written determination of who is entitled to the surplus remaining
30 after deducting the amounts retained under subsection 1.

32 This accounting and determination, if any, must be mailed to the
mortgagor and any interested party at their last known addresses,
34 by certified mail, return receipt requested, within 30 days after
any sale or sales. If the mortgagee receives no objection to its
36 accounting and determination within 30 days after the addressees'
receipt of the accounting and determination, the mortgagee shall
38 send the surplus to the party or parties shown in its
determination by certified mail, return receipt requested. If
40 there are multiple mortgagors, the mortgagee may make any surplus
payment payable to all mortgagors jointly.

42 3. Distribution by Court. If there is a surplus, and any
of the following circumstances exist, then the mortgagee shall
44 pay the surplus to the District Court or Superior Court having
jurisdiction over the area in which the real estate is located,
46 and implead the mortgagor and all interested parties.

48 A. Any of the accountings are returned to the mortgagee
50 without being delivered to the addressee.

2 B. The mortgagee receives a written objection to its
accounting or determination within 30 days of receipt by the
4 mortgagee.

6 C. A dispute or uncertainty exists regarding to whom the
surplus should be paid.

8 The court shall, after hearing, determine the distribution of the
10 surplus to the proper parties.

12 4. Sales later than 2 years after the expiration of
redemption period. A mortgagee is not required to provide the
14 accounting or pay any surplus obtained from any sale of part or
all of the real estate that occurs more than 2 years after the
16 redemption period expires.

18 5. Definitions. For the purposes of this section, unless
the context otherwise indicates, the following terms have the
20 following meanings.

22 A. "Mortgagor" means any party obligated to the mortgagee
on the debt secured by the mortgage, and all parties signing
24 the mortgage deed, whether or not they are obligated to the
mortgagee for the debt.

26 B. "Interested party" means any party with a claim to the
real estate of record in the appropriate Registry of Deeds,
28 as of the date of either:

30 (1) Recording of the abstract, affidavit or
certificate, for foreclosures under section 6201; or

32 (2) Recording of the notice of foreclosure, for
34 foreclosures under section 6203.

36 C. "The date of a sale" means the closing date at which a
deed is delivered to the bona fide purchaser.

38 6. Application. This section applies only to mortgages
40 executed on or after the effective date of this section.

42 **FISCAL NOTE**

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46 If this legislation is enacted, the Judicial Department
48 anticipates an increase in the workload of court clerks and
judges. The additional costs associated with the filing of
50 additional cases as a result of this legislation can be absorbed
within the budgeted resources of the Judicial Department.'

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STATEMENT OF FACT

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This amendment replaces the bill.

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This amendment repeals the current law governing the disposition of proceeds of a sale of real estate after foreclosure and replaces it with a new section. The new section requires a mortgagee who acquires title to real estate through foreclosure by possession and foreclosure without possession to account to the mortgagor if the mortgagee sells the real estate within 2 years of the expiration of the one-year redemption period. The mortgagee may retain from the proceeds of the sale or sales specific costs and expenses, and then shall pay the surplus to the mortgagor and any other proper recipients. A procedure is established to direct clearly the required notice and accounting. The new section provides for court involvement if any uncertainty regarding the amounts or parties exists.

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This new section applies only to mortgages executed on or after the effective date of this Act to avoid any constitutional problems with retroactive application.

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Reported by the Committee on Judiciary
Reproduced and distributed under the direction of the Clerk of the House
3/30/90 (Filing No. H-1042)