

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

SECOND REGULAR SESSION-1992

Legislative Document

No. 2031

H.P. 1419

House of Representatives, January 7, 1992

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.
Reference to the Committee on Legal Affairs suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative PARADIS of Augusta.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-TWO

An Act to Ensure the Retention of Utility Easements in Foreclosure Proceedings.



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

2
4 14 MRSA §6323, as repealed and replaced by PL 1983, c. 447,
§4, is amended to read:

6 **§6323. Sale following expiration of period of redemption**

8 Upon expiration of the period of redemption, if the
10 mortgagor, ~~his~~ or the mortgagor's successors, heirs or assigns
12 have not redeemed the mortgage, any remaining rights of the
14 mortgagor to possession shall terminate, and the mortgagee shall
16 cause notice of a public sale of the premises stating the time,
18 place and terms ~~thereof~~ of the sale to be published once in each
20 of 3 successive weeks in a newspaper of general circulation in
22 the county in which the premises are located; the first such
24 publication to be made not more than 90 days after the expiration
26 of the period of redemption. The public sale shall must be held
28 not less than 30 days nor more than 45 days after the first date
30 of that publication. The mortgagee, in its sole discretion, may
32 allow the mortgagor to redeem or reinstate the loan after the
34 expiration of the period of redemption but before the public
36 sale. The mortgagee may convey the property to the mortgagor
38 (redemption) or execute a waiver of foreclosure (reinstatement)
40 and all other rights of all other parties shall remain as if no
42 foreclosure had been commenced. The mortgagee shall sell the
44 premises to the highest bidder at the public sale and deliver a
46 deed of that sale to the purchaser, which deed shall must convey
48 the premises free and clear of all interests of the parties in
50 interest joined in the action; except that easements granted to
52 public utilities, for the purpose of providing telephone and
electric service, may not be extinguished by the public sale of
the premises. The mortgagee or any other party in interest may
bid at the public sale. Should the mortgagee be the highest
bidder at the public sale, there shall ~~be~~ is no obligation to
account for any surplus upon a subsequent sale by the mortgagee.
Any rights of the mortgagee to a deficiency claim against the
mortgagors shall ~~be~~ is limited to the amount established as of
the date of the public sale. The "public sale" shall ~~be~~ is the
date on which bids are received to establish the sales price, no
matter when the sale is completed by the delivery of the deed to
the highest bidder.

42
44 **STATEMENT OF FACT**

46 When property is sold in a foreclosure action on a mortgage,
48 utility easements granted subsequent to the mortgage are
50 routinely wiped out. This leaves the property, in most cases a
52 dwelling or a development, without an utility easement providing
service. This bill provides that an easement granted to a public
utility for the purpose of providing utility service is preserved
by the court decree and the subsequent foreclosure sale of the
premises.