



116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 861

S.P. 291

In Senate, March 15, 1993

An Act to Amend the Laws Governing the Effect of a Tender in Foreclosure Actions.

Reference to the Committee on Judiciary suggested and ordered printed.

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JOY J. O'BRIEN Secretary of the Senate

Presented by Senator HANLEY of Oxford.

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

Sec. 1. 14 MRSA §6204, as amended by PL 1991, c. 134, §2, is further amended to read:

6 §6204. Redemption in one year

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8 The mortgagor or person claiming under him <u>the mortgagor</u> may redeem the mortgaged premises within one year after the first 10 publication or the service of the notice mentioned in section 6203, and if not so redeemed, his <u>the mortgagor's</u> right of 12 redemption is forever foreclosed.

14 The mortgagor and mortgagee may agree upon any period of time not less than one year in which the mortgage shall-be is forever foreclosed,-which. If made, this agreement shall must be inserted in the mortgage and be is binding on the parties, their l8 heirs, legal representatives and assigns and shall-apply applies to all the modes of foreclosure of mortgages on real estate.

The mortgagor or those claiming under the mortgagor have the 22 right to redeem the mortgaged premises from any or all sales of the mortgaged premises under and by virtue of authority and power 24 contained in the mortgage or from any sale of the mortgaged premises under or by virtue of a separate instrument executed at 26 or about the same time with the mortgage, and being a part of the same transaction, by paying or tendering to the mortgagee or to 28 those claiming under the mortgagee as appears by record at the registry of deeds where the mortgage is properly recorded, the debt, interest, costs of foreclosure and other obligations 30 provided in the mortgage, at any time within one year from the 32 date of the sale. Nothing in this section applies to a sale under the statutory power of sale in a mortgage as provided for 34 in sections 6203-A to 6203-E, to railroad mortgages, so called, or to bond issues of corporations, or to bonds forming a part of 36 a mortgage indebtedness of any corporation or corporations wherein when the method of sale is provided in the deed of trust 38 or any similar instrument.

40 The Except with regard to foreclosures commenced by civil action under section 6321, the acceptance, before the expiration the right of redemption and after the commencement of 42 of of foreclosure proceedings of any mortgage of real property, 44 anything of value to be applied on or to the mortgage indebtedness by the mortgagee or any person holding under him 46 shall-constitute the mortgagee constitutes a waiver of such the foreclosure, unless an agreement to the contrary in writing be is signed by the person from whom the same payment is accepted. 48 Except-the The receipt of income from the mortgaged premises, by the mortgagee or his the mortgagee's assigns while in possession 50

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thereof of the premises, shall does not constitute a waiver of the foreclosure proceedings of the mortgage on such premises.

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STATEMENT OF FACT

The purpose of this bill is to mitigate the onerous effect 8 of waiver of foreclosure in circumstances where a mortgagor attempts to make a payment on the debt due to a mortgagee, but 10 less than the full amount due, after the mortgagee has initiated a foreclosure by possession under the Maine Revised Statutes, 12 Title 14, section 6201 or by public notice or service of notice under Title 14, section 6203. While the waiver required under 14 the present Title 14, section 6204 probably was intended to apply only to foreclosure by possession or by notice, where a single act initiated the foreclosure process and no further act was 16 performed until the period of the right of redemption expired and 18 foreclosure was completed, it has been used to upset civil action foreclosures by mortgagors who induce unknowing bank tellers to 20 accept even a partial single payment on the mortgage debt and has prevented the mortgagor from making voluntary payments during the 22 civil action foreclosure process, enabling the mortgagor to reduce the debt during the proceedings.