

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

SECOND REGULAR SESSION-1994

Legislative Document

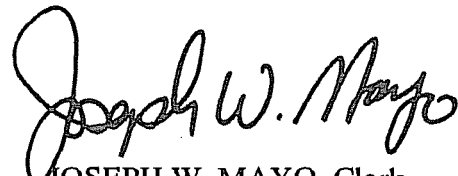
No. 1754

H.P. 1299

House of Representatives, January 20, 1994

An Act Regarding the Discharge of Mortgages.

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.


JOSEPH W. MAYO, Clerk

Presented by Representative LIBBY of Kennebunk.
Cosponsored by Representatives: BENNETT of Norway, CARLETON of Wells, LIPMAN of Augusta, STEVENS of Sabattus, Senator: HANDY of Androscoggin.

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

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3 Sec. 1. 33 MRSA §553 is repealed.

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5 Sec. 2. 33 MRSA §553-A is enacted to read:

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7 §553-A. Discharge by attorney

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9 1. Affidavit. A recorded mortgage may be discharged in the
10 office of the registry of deeds by an attorney-at-law licensed to
11 practice in the State if the mortgagee, after receipt of payment
12 of the mortgage in accordance with the payoff statement furnished
13 to the mortgagor by the mortgagee, fails to make that discharge
14 or to execute and acknowledge a deed of release of the mortgage.
15 The attorney shall execute and record an affidavit in the
16 registry of deeds affirming that:

17 A. The affiant is an attorney-at-law in good standing and
18 licensed to practice in the State;

19 B. The affidavit is made at the request of the mortgagor or
20 the mortgagor's executor, administrator, successor, assignee
21 or transferee or the transferee's mortgagee;

22 C. The mortgagee has provided a payoff statement with
23 respect to the loan secured by the mortgage;

24 D. The mortgagee has received payment that has been proved
25 by a bank check, certified check or attorney client funds
26 account check negotiated by the mortgagee or by evidence of
27 receipt of payment by the mortgagee;

28 E. More than 30 days have elapsed since the payment was
29 received by the mortgagee; and

30 F. The mortgagee has received written notification by
31 certified mail 15 days in advance, sent to the mortgagee's
32 last known address, that the affiant intends to execute and
33 record an affidavit in accordance with this section,
34 enclosing a copy of the proposed affidavit; the mortgagee
35 has not delivered a discharge or deed of release in response
36 to the notification; and the mortgagor has complied with any
37 request made by the mortgagee for additional payment at
38 least 15 days before the date of the affidavit.

39 2. Name; address; mortgagee; mortgagor. The affidavit must
40 include the names and addresses of the mortgagor and the
41 mortgagee, the date of the mortgage, the title reference and
42 similar information with respect to recorded assignment of the
43 mortgage.

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3. Copy. The affiant shall attach to the affidavit the following, certifying that each copy is a true copy of the original document:

A. Photostatic copies of the documentary evidence that payment has been received by the mortgagee, including the mortgagee's endorsement of a bank check, certified check or attorney client funds account check; and

B. A photostatic copy of the payoff statement if that statement is made in writing.

STATEMENT OF FACT

This bill strengthens existing law by permitting attorneys admitted to practice and in good standing in the State to discharge mortgages by affidavit after appropriate notice to the prior mortgagees. This affidavit will be based on the attorney's knowledge concerning the payment of the prior mortgage and the affidavit will be recorded in the registry of deeds in which the property lies.

This document has not yet been reviewed to determine the need for cross-reference, stylistic and other technical amendments to conform existing law to current drafting standards.