

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1546

H.P. 1099

House of Representatives, May 24, 1995

An Act to Expedite the Appeal Process in the Case of a Writ of Possession.

Reference to the Committee on Legal and Veterans Affairs suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative DAGGETT of Augusta.
Cosponsored by Representatives: MURPHY of Berwick, POULIN of Oakland.

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

2
4 **Sec. 1. 14 MRSA §§6006 and 6007** are repealed.

6 **Sec. 2. 14 MRSA §6008**, as amended by PL 1989, c. 377, is
repealed and the following enacted in its place:

8 **§6008. Appeal**

10 **1. Right to appeal.** Either party may appeal on questions
12 of law from a judgment to the Superior Court as in other civil
14 actions. Either party may appeal on any issue triable by right
by a jury to a trial de novo in the Superior Court as provided in
this section.

16 **2. Appeal by defendant; record; stay.** When the defendant
18 appeals, the District Court shall promptly transmit the record to
20 the Superior Court without waiting for the preparation of a
transcript of recorded testimony. The Superior Court may stay
the issuance of a writ of possession pending disposition of the
appeal.

22 **A.** The Superior Court shall condition the granting and
24 continuation of the stay on the defendant's payment of the
26 current rent for the premises to the plaintiff or, if there
28 is a dispute about the rent, into an escrow account to be
30 administered by the clerk of the Superior Court. Upon
32 application of either party, the Superior Court may
authorize payments from the escrow account for appropriate
expenses related to the premises. The appeal decision or an
agreement of the parties must provide for the disposition of
the escrowed rent.

34 **B.** The Superior Court may condition the granting and
36 continuation of the stay, in appropriate cases, on the
38 defendant's agreement to refrain from causing any nuisance
or damage.

40 **3. Vacation of stay; security; remedial order.** Upon
42 finding a violation of the conditions for granting the stay, the
44 Superior Court shall vacate the stay and may issue a writ of
46 possession. The Superior Court may require the plaintiff to
provide security as may be necessary to protect the defendant's
interest while the appeal is pending. If the defendant prevails,
the Superior Court may issue a remedial order as necessary to
make the defendant whole, including damages.

48 **4. Claim of title.** In disputes involving a claim of title,
50 the District Court may provide for discovery on an expedited
schedule.

2 **5. Security.** For the purposes of this section, "security"
4 may include a bond, an escrow account, a lien, a mortgage, an
6 order to make payments under a lease or contract as they become
8 due or any other financial protection as is reasonably necessary
10 to protect the interests of a party. The District Court and the
12 Superior Court may make any necessary orders with respect to the
14 provision of security, revise the orders when required by the
16 interests of justice, sanction a party for failure to comply with
18 a security requirement and waive or modify the requirement of
20 security for good cause shown and recited in an order.

22 **Sec. 3. 14 MRSA §6009**, as repealed and replaced by PL 1979,
24 c. 172, §2, is repealed.

26 **Sec. 4. 14 MRSA §6012**, as amended by PL 1979, c. 231, is
28 repealed and the following enacted in its place:

30 **§6012. Personal property**

32 **1. Action to resolve dispute.** If 2 or more persons claim
34 rights in, title to or possession of personal property, any
36 claimant may bring an action in District Court to resolve a
38 dispute among the claimants.

40 **2. Evidence; discovery.** When the plaintiff claimant serves
42 a copy of the complaint on the defendant claimants, the plaintiff
44 shall include with the complaint a copy of any security
46 instrument, bill of sale or other evidence of title. In the
48 court hearing, the plaintiff shall produce the best available
50 evidence under which the plaintiff claims an interest in the
personal property. The defendant then shall show why possession
of the property should not be delivered immediately to the
plaintiff. The District Court may provide for discovery on an
expedited schedule.

3. Court authority. The court has equitable power to make
all appropriate orders, including but not limited to turnover
orders, in relation to the personal property and the parties to
the action, to compel obedience to its judgment and orders.

4. Appeal. Any party may appeal within 30 days of the
judgment. Any issue triable by right by a jury may be appealed
to a trial de novo in the Superior Court. Security may be
required in accordance with the provisions of section 6008,
subsection 5.

5. Rules. The Maine Rules of Civil Procedure governing
forcible entry and detainer apply in actions under this section
as applicable.

2 6. Equity. The remedy provided in this section is a remedy
3 in equity and is in addition to and not in lieu of other
4 remedies. There is no right of removal.

6

STATEMENT OF FACT

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10 This bill revises the forcible entry and detainer laws
11 concerning both appeals and personal property.

12 The plaintiff in a forcible entry and detainer action
13 regarding real property is the owner of the property. The
14 plaintiff institutes a forcible entry and detainer action to
15 evict a tenant. The current law provides standards and
16 procedures for these actions. This bill corrects a problem that
17 has occurred when the plaintiff prevails at the District Court
18 level and the defendant tenant appeals to the Superior Court.
19 This bill requires the District Court to transmit the case to the
20 Superior Court without waiting for the preparation of a
21 transcript of recorded testimony. It also specifically provides
22 for the Superior Court to issue a stay of the writ of possession,
23 delaying the eviction pending the appeal. The stay must be
24 conditioned on the defendant's payment of the rent to the
25 plaintiff or into escrow. The Superior Court may also condition
26 the stay on refraining from causing any nuisance or damage. If
27 the conditions are violated, the Superior Court may vacate the
28 stay. If it does so, it may require the plaintiff to provide
29 security to protect the defendant's interest while the appeal is
30 pending. If the defendant prevails, the Superior Court may issue
31 a remedial order to make the defendant whole.

32

33 In disputes involving claim of title, the District Court may
34 provide for discovery on an expedited schedule.

36

 The bill also defines the term "security."

38

39 The bill revises the provisions concerning forcible entry
40 and detainer actions for personal property. It makes the
41 procedures consistent with other forcible entry and detainer
42 actions.