122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document	**No. 626**
H.P. 459	House of Representatives, February 8, 2005

An Act To Require the Net Proceeds from the Sale of a Foreclosed Property To Be Returned to the Former Owner

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Reference to the Committee on Taxation suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative TWOMEY of Biddeford.
Cosponsored by Senator BRYANT of Oxford and
Representatives: EDER of Portland, GERZOFSKY of Brunswick, GLYNN of South Portland, MARLEY of Portland, McKANE of Newcastle, PERCY of Phippsburg, RINES of Wiscasset, SAVIELLO of Wilton.

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

Sec. 1. 36 MRSA §949 is enacted to read:

§949. Disbursement of excess funds

A municipality that obtains title to residential real estate under the operation of this article shall disburse to the former owner the excess of any funds as provided in this section.

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Excess of any funds" means the amount obtained for the disposition of residential real estate less:

(1) All tax liens imposed on the residential real estate by the municipality, including interest;

(2) Fees for recordation and discharge of the lien, as established by Title 33, section 751, plus $13;

(3) The fee established in section 943 for sending a notice if the notice is actually sent, including certified mail, return receipt requested fees;

(4) Any court costs; and

(5) All expenses incurred in disposing of the residential real estate.

B. "Former owner" means a party named on the tax lien mortgage at the time of the levy of the tax lien or that party's successors, heirs or assigns.

2. Time and form of return; notice. Within 30 days of the disposition of residential real estate or 180 days of foreclosure, whichever is earlier, a municipality shall mail by certified mail, return receipt requested, to the former owner's last known address, notice of the excess of any funds. The notice must include an itemized statement showing the amount for which the real estate was sold and all deductions made from that amount. The notice also must include directions for the redemption of the excess of any funds, including the hours of the operation of the clerk of the municipality.

3. Escrow; failure to redeem. A municipality shall hold the excess of any funds in escrow for 36 months for the benefit of the former owner. The municipality shall pay immediately the excess of any funds upon the personal appearance of the former owner or a legal representative of the former owner. If the former owner or a legal representative of the former owner fails to appear personally within 36 months, the excess of any funds must be paid to the Treasurer of State to be credited to the General Fund until the excess of any funds becomes abandoned under the Uniform Unclaimed Property Act, at which point it must be reported and paid to the State in accordance with that Act.

4. Failure to dispose of residential real estate. If a municipality does not dispose of residential real estate within 180 days of foreclosure, the excess of any funds is determined by subtracting from the fair market value of the real estate at the time of foreclosure, as determined by an independent appraisal, the costs specified in subsection 1, paragraph A and the cost of the appraisal performed pursuant to this subsection.

Sec. 2. Retroactivity. This Act applies retroactively to January 1, 2000.

SUMMARY

Under current law, if a municipality forecloses on a parcel of real estate for failure to pay taxes owed on that real estate, the municipality is under no obligation to return any funds that exceed the amount owed in taxes after the sale of the property.

This bill, modeled on the foreclosure proceedings initiated by a mortgagee, requires a municipality that forecloses on residential real estate to return the excess funds, after subtracting the tax lien, interest, fees for recording the lien, costs of mailing notice, court costs and any other expenses incurred in disposing of the real estate. Notice of the availability of the excess funds must be provided to the former owner within 30 days of sale of the real estate or 180 days of the foreclosure, whichever is sooner. If the former owner fails to claim the excess funds within 36 months, the municipality must remit the excess funds to the Treasurer of State for credit to the General Fund.

This bill applies retroactively to January 1, 2000, thus requiring any municipality that has availed itself of the tax lien foreclosure process since that date to return any excess funds to the former owners.