

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)



Date: 06-08-07

(Filing No. S- 255)

JUDICIARY

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE

SENATE

123RD LEGISLATURE

FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 561, L.D. 1617, Bill, "An Act To Repeal Strict Foreclosure"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

Sec. 1. 14 MRSA §6201, as amended by PL 1987, c. 736, §16, is repealed.

Sec. 2. 14 MRSA §6202 is repealed.

Sec. 3. 14 MRSA §6203, as amended by PL 1987, c. 667, §13, is repealed.

Sec. 4. 14 MRSA §6204, as amended by PL 1993, c. 321, §1, is repealed.

Sec. 5. 14 MRSA §6204-B, as enacted by PL 1989, c. 829, §2, is repealed.

Sec. 6. 14 MRSA §6251 is amended to read:

§6251. Form of complaint

The mortgagee or person claiming under him the mortgagee in an action for possession may declare on his the mortgagee's own seizin, in a real action, without naming the mortgage or assignment. If it appears that the plaintiff is entitled to possession and that the condition had been broken when the action was commenced, the court shall, on motion of either party, award the conditional judgment, unless it appears that the tenant is not the mortgagor or a person claiming under him the mortgagor, or that the owner of the mortgage proceeded for foreclosure conformably to sections 6203 and 6204 before the action was commenced, the plaintiff not consenting to such judgment. Unless such judgment is awarded, judgment shall be is entered as at common law.

Sec. 7. 14 MRSA §6301 is amended to read:

§6301. Accounting required

Any mortgagor or other person having a right to redeem lands mortgaged may demand of the mortgagee or person claiming under him the mortgagee a true account of

COMMITTEE AMENDMENT

1 the sum due on the mortgage, and of the rents and profits, and money expended in repairs  
2 and improvements, if any. If ~~he~~ the mortgagee unreasonably refuses or neglects to render  
3 such an account in writing, or in any other way by ~~his~~ default prevents the plaintiff from  
4 performing or tendering performance of the condition of the mortgage, ~~he~~ the mortgagor  
5 may bring a civil action for the redemption of the mortgaged premises within the time  
6 limited in former section 6204, and therein offer to pay the sum found to be equitably  
7 due, or to perform any other condition, as the case may require. Such an offer has the  
8 same force as a tender of payment or performance before the commencement of the  
9 action. The action ~~shall~~ must be sustained without such a tender, and thereupon ~~he~~ shall  
10 ~~be the mortgagor~~ is entitled to judgment for redemption and costs.

11 **Sec. 8. 14 MRSA §6306** is amended to read:

12 **§6306. -- payment to clerk of court**

13 When a mortgagee or person claiming under ~~him~~ a mortgagee residing out of the  
14 State, or whose residence is unknown to the party entitled to redeem, has commenced  
15 proceedings ~~under section 6203~~ in accordance with this chapter, or when such a  
16 mortgagee or claimant having no tenant, agent or attorney in possession on whom service  
17 can be made has commenced proceedings ~~under section 6204~~ in accordance with this  
18 chapter, in either case the party entitled to redeem may bring the civil action, as  
19 prescribed in section 6301, and pay at the same time to the clerk of the court and sum  
20 due, which payment ~~shall have~~ has the same effect as a tender before the action. The  
21 court shall order such a notice to be given of the pendency of the action, as it judges  
22 proper.

23 **Sec. 9. 14 MRSA §6321**, as amended by PL 1991, c. 744, §§1 and 2, is further  
24 amended to read:

25 **§6321. Commencement of foreclosure by civil action**

26 After breach of condition in a mortgage of first priority, the mortgagee or any person  
27 claiming under ~~him~~ the mortgagee may proceed for the purpose of foreclosure by a civil  
28 action against all parties in interest in either the Superior Court or the District Court in the  
29 division ~~wherein in which~~ wherein in which the mortgaged premises or any part ~~thereof of the mortgaged~~  
30 premises is located, regardless of the amount of the mortgage claim. ~~The method of~~  
31 ~~foreclosure of real estate mortgages provided by this section is an alternative method to~~  
32 ~~those provided in sections 6201 and 6203 and is specifically subject to the order of~~  
33 ~~priorities set out in section 6205.~~

34 After breach of condition of any mortgage other than one of the first priority, the  
35 mortgagee or any person claiming under ~~him~~ the mortgagee may proceed for the purpose  
36 of foreclosure by a civil action against all parties in interest, except for parties in interest  
37 having a superior priority to the foreclosing mortgagee, in either the Superior Court or the  
38 District Court in the division ~~wherein in which~~ wherein in which the mortgaged premises or any part  
39 ~~thereof of the mortgaged premises~~ is located. Parties in interest having a superior priority  
40 ~~shall may~~ may not be joined nor will their interests be affected by the proceedings, but the  
41 resulting sale under section 6323 ~~shall be~~ is of the defendant or mortgagor's equity of  
42 redemption only. The plaintiff shall notify the priority parties in interest of the action by  
43 sending a copy of the complaint to the parties in interest by certified mail.

COMMITTEE AMENDMENT "A" to S.P. 561, L.D. 1617

1 The foreclosure must be commenced in accordance with the Maine Rules of Civil  
2 Procedure, and the mortgagee shall also record a copy of the complaint or a clerk's  
3 certificate of the filing of the complaint in each registry of deeds in which the mortgage  
4 deed is or by law ought to be recorded and such a recording thereafter constitutes record  
5 notice of commencement of foreclosure. The complaint must allege with specificity the  
6 plaintiff's claim by mortgage on such real estate, describe the mortgaged premises  
7 intelligibly, state the existence of public utility easements, if any, that were recorded  
8 subsequent to the mortgage and prior to the commencement of the foreclosure proceeding  
9 and without mortgagee consent, state the amount due on the mortgage, state the condition  
10 broken and by reason of such breach demand a foreclosure and sale. Service of process  
11 on all parties in interest and all proceedings must be in accordance with the Maine Rules  
12 of Civil Procedure. "Parties in interest" ~~include~~ includes mortgagors, holders of fee  
13 interest, mortgagees, lessees pursuant to recorded leases or memoranda thereof, lienors  
14 and attaching creditors all as reflected by the indices in the registry of deeds and the  
15 documents referred to therein affecting the mortgaged premises, through the time of the  
16 recording of the complaint or the clerk's certificate. Failure to join any party in interest  
17 does not invalidate the action nor any subsequent proceedings as to those joined. Failure  
18 of the mortgagee to join, as a party in interest, the holder of any public utility easement  
19 recorded subsequent to the mortgage and prior to commencement of foreclosure  
20 proceedings is deemed consent by the mortgagee to ~~such~~ that easement. Any other party  
21 having a claim to the real estate whose claim is not recorded in the registry of deeds as of  
22 the time of recording of the copy of the complaint or the clerk's certificate need not be  
23 joined in the foreclosure action, and any such party has no claim against the real estate  
24 after completion of the foreclosure sale; ~~provided, except~~ that any such party may move  
25 to intervene in the action for the purpose of being added as a party in interest at any time  
26 prior to the entry of judgment.

27 For purposes of this section, "public utility easements" means any easements held by:  
28 public utilities, as defined in Title 35-A, section 102; sewer districts, as defined in Title  
29 38, section 1251; or sanitary districts, as formed under Title 38, chapter 11.

30 The acceptance, before the expiration of the right of redemption and after the  
31 commencement of foreclosure proceedings of any mortgage of real property, of anything  
32 of value to be applied on or to the mortgage indebtedness by the mortgagee or any person  
33 holding under the mortgage constitutes a waiver of the foreclosure unless an agreement  
34 to the contrary in writing is signed by the person from whom the payment is accepted or  
35 unless the bank returns the payment to the mortgagor within 10 days of receipt. The  
36 receipt of income from the mortgaged premises by the mortgagee or the mortgagee's  
37 assigns while in possession of the premises does not constitute a waiver of the foreclosure  
38 proceedings of the mortgage on the premises.

39 The mortgagee and the mortgagor may enter into an agreement to allow the  
40 mortgagor to bring the mortgage payments up to date with the foreclosure process being  
41 stayed as long as the mortgagor makes payments according to the agreement. If the  
42 mortgagor does not make payments according to the agreement, the mortgagee may, after  
43 notice to the mortgagor, resume the foreclosure process at the point at which it was  
44 stayed.'

1

**SUMMARY**

2       This amendment replaces the bill. It repeals the provisions for strict foreclosure but  
3 leaves in place the provisions for power of sale foreclosures that are used by financial  
4 institutions for commercial loans.

**FISCAL NOTE REQUIRED**  
**(See attached)**



# 123rd MAINE LEGISLATURE

LD 1617

LR 2252(02)

An Act To Repeal Strict Foreclosure

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Judiciary

Fiscal Note Required: Yes

---

## Fiscal Note

Minor savings - General Fund

Minor revenue decrease - General Fund

### Correctional and Judicial Impact Statements

This bill may decrease the number of civil suits filed in the court system.

Reductions in the collection of filing fees may decrease General Fund revenue by minor amounts.