

MAINE STATE LEGISLATURE

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Date: 4/1/08

L.D. 2189
(Filing No. H-892)

INSURANCE AND FINANCIAL SERVICES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
123RD LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1559, L.D. 2189, Bill, "An Act To Protect Homeowners from Equity Stripping during Foreclosure"

Amend the bill by striking out all of section 1.

Amend the bill in section 2 in §6192 by inserting before subsection 1 the following:

'As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.'

Amend the bill in section 2 in §6192 in subsection 1 in the last line (page 1, line 20 in L.D.) by inserting after the following: "Regulation" the following: ', except that "administrator" means the Superintendent of Financial Institutions with regard to a supervised financial organization as defined in Title 9-A, section 1-301, subsection 38-A'

Amend the bill in section 2 in §6192 by striking out all of subsection 2 (page 1, lines 21 to 32 in L.D.) and inserting the following:

'2. Bona fide purchaser. "Bona fide purchaser" means any person acting in good faith who:

A. Purchases property from a foreclosure purchaser for consideration or makes a mortgage loan to a foreclosure purchaser or a subsequent bona fide purchaser as long as the person had no notice of:

(1) The foreclosed homeowner's continuing right to possess the property;

(2) The foreclosed homeowner's continuing legal or equitable interest in the property, including, but not limited to, the right to repurchase, or of any facts that may create an equitable mortgage; or

(3) Any violations of this chapter;

B. Purchases property at a foreclosure sale; or

C. Accepts a deed in lieu of foreclosure.

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1 **3. Consideration.** "Consideration" means any payment or thing of value provided
2 to the foreclosed homeowner, including payment of or forgiveness of unpaid rent or
3 contract for deed, land installment contract or bond for deed payments owed by the
4 foreclosed homeowner prior to the date of eviction or voluntary relinquishment of the
5 property, reasonable costs paid to 3rd parties necessary to complete the foreclosure
6 reconveyance transaction, payment of money to satisfy a debt or legal obligation of the
7 foreclosed homeowner or the reasonable cost of repairs for damage to the dwelling
8 caused by the foreclosed homeowner. "Consideration" does not include amounts imputed
9 as a down payment or fee to the foreclosure purchaser or a person acting in participation
10 with the foreclosure purchaser incident to a contract for deed, land installment contract,
11 bond for deed, lease or option to purchase entered into as part of the foreclosure
12 reconveyance, except for reasonable costs paid to 3rd parties necessary to complete the
13 foreclosure reconveyance.'

14 Amend the bill in section 2 in §6192 by striking out all of subsection 4 (page 2, lines
15 4 to 9 in L.D.) and inserting the following:

16 **'4. Foreclosure purchaser.** "Foreclosure purchaser" means a person acting as the
17 acquirer in a foreclosure reconveyance. "Foreclosure purchaser" also includes a person
18 acting in a joint venture or joint enterprise with one or more acquirers in a foreclosure
19 reconveyance. "Foreclosure purchaser" does not include:

- 20 A. A bona fide purchaser; or
- 21 B. A natural person who is not in the business of foreclosure purchasing and has a
- 22 prior personal relationship with the foreclosed homeowner.'

23 Amend the bill in section 2 in §6192 by striking out all of subsection 5 (page 2, lines
24 10 to 21 in L.D.) and inserting the following:

25 **'5. Foreclosure reconveyance.** "Foreclosure reconveyance" means a transaction
26 involving:

- 27 A. The transfer of title to a residence in foreclosure, either by transfer of interest
- 28 from the foreclosed homeowner or by creation of a mortgage or other lien or
- 29 encumbrance during the foreclosure process that allows the acquirer to obtain title to
- 30 the property by redeeming the property as a junior lienholder; and
- 31 B. The subsequent conveyance, or promise of a subsequent conveyance, of an
- 32 interest back to the foreclosed homeowner by the acquirer or a person acting in
- 33 participation with the acquirer that allows the foreclosed homeowner to possess either
- 34 the residence in foreclosure or other real property. For the purposes of this
- 35 paragraph, "interest" includes, but is not limited to, an interest in a contract for deed,
- 36 a land installment contract, a bond for deed, a purchase agreement, an option to
- 37 purchase or a lease.

38 "Foreclosure reconveyance" does not include a supervised loan subject to Title 9-A,
39 Article 8 or the federal Truth in Lending Act made by a supervised lender or supervised
40 financial organization to refinance any existing mortgage.'

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1 Amend the bill in section 2 in §6192 in subsection 8 in the last line (page 2, line 29
2 in L.D.) by inserting after the following: "deed" the following: 'land installment
3 contract or bond for deed'

4 Amend the bill in section 2 in §6192 by renumbering the subsections to read
5 consecutively.

6 Amend the bill in section 2 by striking out all of §6193 (page 2, lines 30 to 33 in
7 L.D.) and inserting the following:

8 **§6193. License required**

9 A foreclosure purchaser may not engage in the business of foreclosure purchasing in
10 this State without first obtaining a license from the administrator, except that a supervised
11 financial organization as defined in Title 9-A, section 1-301, subsection 38-A is not
12 required to be licensed. The requirements for obtaining a license under this chapter must
13 be substantially similar to the requirements for a supervised lender license as provided in
14 Title 9-A, section 2-301.'

15 Amend the bill in section 2 in §6194 in subsection 2 in paragraph F in the last line
16 (page 3, line 15 in L.D.) by inserting after the following "deed" the following: 'land
17 installment contract, bond for deed'

18 Amend the bill in section 2 in §6194 by inserting after subsection 3 the following:

19 **4. Advance disclosure of contract.** The contract required by this section must be
20 given to the foreclosed homeowner at least 3 business days prior to the consummation of
21 the foreclosure reconveyance.

22 **5. Filing with register of deeds.** The foreclosure purchaser shall file a
23 memorandum of the contract required by this section with the register of deeds in the
24 county in which the residence in foreclosure is located.'

25 Amend the bill in section 2 in §6195 in subsection 3 in the 4th line (page 4, line 26 in
26 L.D.) by striking out the following: "12-point" and inserting the following: '14-point'

27 Amend the bill in section 2 in §6195 in subsection 3 in the 8th line (page 4, line 30 in
28 L.D.) by striking out the following: "10-point" and inserting the following: '12-point'

29 Amend the bill in section 2 in §6197 in the indented paragraph in the last line (page
30 5, line 22 in L.D.) by striking out the following: "foreclosed" and inserting the following:
31 'foreclosed'

32 Amend the bill in section 2 in §6198 in subsection 1 by striking out all of paragraph E
33 (page 6, lines 16 to 23 in L.D.) and inserting the following:

34 'E. The foreclosure purchaser complies with the requirements for disclosure, loan
35 terms and conduct in Title 9-A, sections 8-206-A, 8-206-C and 8-206-D for any
36 foreclosure reconveyance in which the foreclosed homeowner obtains a vendee
37 interest in a contract for deed, land installment contract or bond for deed, regardless
38 of whether the terms of the contract for deed, land installment contract or bond for

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1 deed meet the annual percentage rate or points and fees requirements for a covered
2 loan.'

3 Amend the bill in section 2 in §6198 in subsection 2 in paragraph B by striking out all
4 of the first 8 lines (page 6, lines 28 to 35 in L.D.) and inserting the following:

5 'B. Make a payment to the foreclosed homeowner in an amount of at least 82% of
6 the fair market value of the property less any payments related to the discharge of an
7 existing mortgage within 150 days of either the eviction or voluntary relinquishment
8 of possession of the residence in foreclosure by the foreclosed homeowner. The
9 foreclosure purchaser shall make a detailed accounting of the basis for the payment
10 amount, including providing written documentation of expenses, within this 150-day
11 period. Expenses may include any payments related to the discharge of an existing
12 mortgage made by the foreclosure purchaser to 3rd parties on behalf of the foreclosed
13 homeowner. The accounting must be on a form prescribed by the administrator. For
14 purposes of this paragraph.'

15 Amend the bill in section 2 in §6198 by inserting after subsection 5 the following:

16 '6. Door-to-door solicitation prohibited. A foreclosure purchaser may not solicit a
17 foreclosure reconveyance door-to-door prior to receiving an invitation from a foreclosed
18 homeowner.'

19 Amend the bill in section 2 in §6198 by renumbering the subsections to read
20 consecutively.

21 Amend the bill in section 2 by striking out all of §6199 (page 8, lines 12 to 39 and
22 page 9, lines 1 to 22 in L.D.) and inserting the following:

23 **§6199. Enforcement**

24 This section applies to any violation of this chapter in connection with the actions of
25 a foreclosure purchaser.

26 **1. Enforcement.** In addition to other actions allowed pursuant to this section, the
27 administrator may undertake any authorized actions pursuant to Title 9-A, Article 6 to
28 ensure compliance with this chapter.

29 **2. Private action.** A private cause of action may be brought by a foreclosed
30 homeowner on the basis of a violation of this chapter. A foreclosed homeowner may be
31 awarded actual and consequential damages and costs, including reasonable attorney's
32 fees, and may be granted injunctive, declaratory and other equitable relief the court
33 determines appropriate in an action to enforce compliance with this chapter.

34 **3. Remedies cumulative.** The remedies provided in this section are cumulative and
35 do not restrict any remedy that is otherwise available. The provisions of this chapter are
36 not exclusive and are in addition to any other requirements, rights, remedies and penalties
37 provided by state or federal law.

38 **4. Improvident transfer.** The remedies provided under Title 33, chapter 20 apply to
39 any violation of this chapter in connection with actions of a foreclosure purchaser.

1 5. Stay of eviction action. The automatic stay of an eviction action is governed by
2 this subsection.

3 A. A court hearing an eviction action against a foreclosed homeowner must issue an
4 automatic stay without imposition of a bond if a defendant makes a prima facie
5 showing that the defendant:

6 (1) Has commenced an action concerning a foreclosure reconveyance; asserts a
7 defense under that action that the property that is the subject of the eviction
8 action is also the subject of a foreclosure reconveyance in violation of this
9 chapter; or asserts a claim or affirmative defense of fraud, false pretense, false
10 promise, misrepresentation, misleading statement or deceptive practice in
11 connection with a foreclosure reconveyance;

12 (2) Owned the residence in foreclosure;

13 (3) Conveyed title to the residence in foreclosure to a 3rd party upon a promise
14 that the defendant would be allowed to occupy the residence or other real
15 property in which the foreclosure purchaser or a person acting in participation
16 with the foreclosure purchaser has an interest and that the residence or other real
17 property would be the subject of a foreclosure reconveyance; and

18 (4) Since the conveyance, has continuously occupied the residence in foreclosure
19 or other real property in which the foreclosure purchaser or a person acting in
20 participation with the foreclosure purchaser has an interest. For purposes of this
21 subparagraph, notarized affidavits are acceptable means of proof to meet the
22 defendant's burden. Upon good cause shown, a defendant may request and the
23 court may grant up to an additional 2 weeks to produce evidence required to
24 make the prima facie showing.

25 B. The automatic stay expires upon the later of:

26 (1) The failure of the foreclosed homeowner to commence an action in a court of
27 competent jurisdiction in connection with a foreclosure reconveyance within 90
28 days after the issuance of the stay; and

29 (2) The issuance of an order lifting the stay by a court hearing claims related to
30 the foreclosure reconveyance.

31 6. Unfair trade practice. The Attorney General may bring an action under Title 5,
32 chapter 10 for any violation of this chapter.

33 **§6200. Rulemaking**

34 The administrator may adopt rules as necessary to carry out the purposes of this
35 chapter. Rules adopted pursuant to this chapter are routine technical rules as defined in
36 Title 5, chapter 375, subchapter 2-A.'

37 Amend the bill by inserting after section 2 the following:

38 'Sec. 3. **Additional review by Bureau of Consumer Credit Protection.** By
39 March 1, 2009, the Superintendent of Consumer Credit Protection, in consultation with

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1 the Superintendent of Financial Institutions, shall make recommendations to the joint
2 standing committee of the Legislature having jurisdiction over insurance and financial
3 services matters whether statutory changes are needed in the Maine Revised Statutes,
4 Title 32, chapter 80-B, including, but not limited to, changes to the debt-to-income ratio
5 and definition of primary housing expenses specified in Title 32, section 6198, subsection
6 1 and to the 82% threshold specified in Title 32, section 6198, subsection 2 and the
7 addition of a requirement that a foreclosure reconveyance contract include a minimum
8 time period within which a foreclosed homeowner may repurchase the home.'

9 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
10 section number to read consecutively.

11 **SUMMARY**

12 This amendment makes the following changes to the bill.

13 1. It removes the requirement in the bill that foreclosure purchasers be licensed as
14 supervised lenders. Under the amendment, foreclosure purchasers must be licensed and
15 those licensing requirements must be substantially similar to the requirements for
16 supervised lenders.

17 2. It clarifies that the Superintendent of Financial Institutions is responsible for
18 regulating banks and credit unions to the extent that they engage in the business of
19 foreclosure purchasing.

20 3. It adds a definition of "bona fide purchaser."

21 4. It adds references to land installment contracts and bonds for deeds in those
22 instances where the bill refers to contracts for deeds.

23 5. It removes cross-references to federal law and instead cross-references state law
24 related to mortgage lending.

25 6. It requires that foreclosed homeowners be provided with a copy of the foreclosure
26 reconveyance contract at least 3 business days prior to execution and requires that a
27 memorandum of the contract be filed with the registry of deeds in the county in which the
28 property is located.

29 7. It requires that the notice of cancellation be provided in 12-point type rather than
30 10-point type.

31 8. It corrects a spelling error.

32 9. It prohibits door-to-door solicitation by foreclosure purchasers.

33 10. It makes a violation of the provisions of the Foreclosure Purchasers Act, enacted
34 in the bill, subject to enforcement as a violation of the Maine Unfair Trade Practices Act
35 and incorporates a cross-reference to the improvident transfer laws.

36 11. It clarifies that a foreclosed homeowner may be awarded actual and consequential
37 damages and costs, including reasonable attorney's fees, in a private action brought for a
38 violation of the Foreclosure Purchasers Act.



Approved: 03/19/08 *mac*

123rd MAINE LEGISLATURE

LD 2189

LR 2752(02)

An Act To Protect Homeowners from Equity Stripping during Foreclosure

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

Committee: Insurance and Financial Services

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor cost increase - Other Special Revenue Funds
Minor revenue increase - General Fund

Correctional and Judicial Impact Statements

Increases the number of civil suits. The collection of additional filing fees may also increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

Any additional costs to the Department of Professional and Financial Regulation can be absorbed by the department utilizing existing budgeted resources.