

# MAINE STATE LEGISLATURE

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# 123rd MAINE LEGISLATURE

## SECOND REGULAR SESSION-2008

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**Legislative Document**

**No. 2189**

H.P. 1559

House of Representatives, February 5, 2008

### **An Act To Protect Homeowners from Equity Stripping during Foreclosure**

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative PRIEST of Brunswick.  
Cosponsored by Senator SULLIVAN of York and  
Representatives: BRAUTIGAM of Falmouth, CONOVER of Oakland, Speaker CUMMINGS  
of Portland, FAIRCLOTH of Bangor, PINGREE of North Haven, RICHARDSON of Warren,  
TREAT of Hallowell, Senator: SNOWE-MELLO of Androscoggin.

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

2 **Sec. 1. 9-A MRSA §2-301**, as amended by PL 1987, c. 129, §33, is further  
3 amended to read:

4 **§2-301. Authority to make supervised loans**

5 Unless a person is a supervised financial organization or has first obtained a license  
6 pursuant to this Act from the administrator authorizing ~~him~~ the person to make  
7 supervised loans, ~~he shall~~ the person may not engage in the business of:

8 1. Making supervised loans; ~~or~~

9 2. Taking assignments of and undertaking direct collection of payments from or  
10 enforcement of rights from an office in this State against debtors arising from supervised  
11 loans; or

12 3. Acting as a foreclosure purchaser as set forth in Title 32, chapter 80-B.

13 **Sec. 2. 32 MRSA c. 80-B** is enacted to read:

14 **CHAPTER 80-B**

15 **FORECLOSURE PURCHASERS**

16 **§6191. Short title**

17 This chapter may be known and cited as "the Foreclosure Purchasers Act."

18 **§6192. Definitions**

19 **1. Administrator.** "Administrator" means the Superintendent of Consumer Credit  
20 Protection within the Department of Professional and Financial Regulation.

21 **2. Consideration.** "Consideration" means any payment or thing of value provided to  
22 the foreclosed homeowner, including payment of or forgiveness of unpaid rent or contract  
23 for deed payments owed by the foreclosed homeowner prior to the date of eviction or  
24 voluntary relinquishment of the property, reasonable costs paid to 3rd parties necessary to  
25 complete the foreclosure reconveyance transaction, payment of money to satisfy a debt or  
26 legal obligation of the foreclosed homeowner or the reasonable cost of repairs for damage  
27 to the dwelling caused by the foreclosed homeowner. "Consideration" does not include  
28 amounts imputed as a down payment or fee to the foreclosure purchaser, or a person  
29 acting in participation with the foreclosure purchaser, incident to a contract for deed,  
30 lease or option to purchase entered into as part of the foreclosure reconveyance, except  
31 for reasonable costs paid to 3rd parties necessary to complete the foreclosure  
32 reconveyance.

1       **3. Foreclosed homeowner.** "Foreclosed homeowner" means an owner of residential  
2 real property, including a condominium, that is the primary residence of the owner and  
3 whose mortgage on the real property is or was in foreclosure.

4       **4. Foreclosure purchaser.** "Foreclosure purchaser" means a person acting as the  
5 acquirer in a foreclosure reconveyance. "Foreclosure purchaser" also includes a person  
6 acting in a joint venture or joint enterprise with one or more acquirers in a foreclosure  
7 reconveyance. "Foreclosure purchaser" does not include a natural person who is not in  
8 the business of foreclosure purchasing and has a prior personal relationship with the  
9 foreclosed homeowner, or a federally chartered or state-chartered financial institution.

10       **5. Foreclosure reconveyance.** "Foreclosure reconveyance" means a transaction  
11 involving:

12       A. The transfer of title to a residence in foreclosure, either by transfer of interest  
13 from the foreclosed homeowner or by creation of a mortgage or other lien or  
14 encumbrance during the foreclosure process that allows the acquirer to obtain title to  
15 the property by redeeming the property as a junior lienholder; and

16       B. The subsequent conveyance, or promise of a subsequent conveyance, of an  
17 interest back to the foreclosed homeowner by the acquirer or a person acting in  
18 participation with the acquirer that allows the foreclosed homeowner to possess  
19 either the residence in foreclosure or other real property. For the purposes of this  
20 paragraph, "interest" includes, but is not limited to, an interest in a contract for a  
21 deed, a purchase agreement, an option to purchase or a lease.

22       **6. Resale.** "Resale" means a bona fide market sale of a property subject to a  
23 foreclosure reconveyance by a foreclosure purchaser to an unaffiliated 3rd party.

24       **7. Resale price.** "Resale price" means the gross sale price of a property upon resale.

25       **8. Residence in foreclosure.** "Residence in foreclosure" means residential real  
26 property consisting of one- to 4-family dwelling units, one of which the owner occupies  
27 as the owner's principal place of residence, when there is a delinquency or default on any  
28 loan payment or debt secured by or attached to the residential real property, including, but  
29 not limited to, a contract for deed payments.

30       **§6193. License required**

31       A foreclosure purchaser may not engage in the business of foreclosure purchasing in  
32 this State without first obtaining a license as a supervised lender in accordance with Title  
33 9-A, section 2-301.

34       **§6194. Contract requirements**

35       **1. Written contract required.** A foreclosure purchaser shall enter into a foreclosure  
36 reconveyance in the form of a written contract. The contract must be written in at least  
37 12-point boldface type in the same language principally used by the foreclosure purchaser  
38 and foreclosed homeowner to negotiate the sale of the residence in foreclosure and must  
39 be fully completed and signed and dated by the foreclosed homeowner and foreclosure

1 purchaser before the execution of any instrument of conveyance of the residence in  
2 foreclosure.

3 **2. Contract terms.** A contract required by this section must contain the entire  
4 agreement of the parties and must include:

5 A. The name, business address and telephone number of the foreclosure purchaser;

6 B. The address of the residence in foreclosure;

7 C. The total consideration to be given by the foreclosure purchaser in connection  
8 with or incident to the sale;

9 D. A complete description of the terms of payment or other consideration, including,  
10 but not limited to, any services of any nature that the foreclosure purchaser will  
11 perform for the foreclosed homeowner before or after the sale;

12 E. The time at which possession is to be transferred to the foreclosure purchaser;

13 F. A complete description of the terms of any related agreement designed to allow  
14 the foreclosed homeowner to remain in the home, such as a rental agreement,  
15 repurchase agreement, contract for deed or lease with option to buy;

16 G. A notice of cancellation as provided in section 6195, subsection 3;

17 H. The following notice in at least 14-point boldface type, if the contract is printed,  
18 or in capital letters, if the contract is typed:

19 "NOTICE REQUIRED BY MAINE LAW

20 YOU ARE TRANSFERRING TITLE TO YOUR HOUSE. IF YOU DO  
21 NOT FULFILL ALL OF THE TERMS OF THIS CONTRACT, YOU  
22 WILL LOSE OWNERSHIP AND POSSESSION OF YOUR HOUSE.";  
23 and

24 I. The following notice in at least 14-point boldface type, if the contract is printed, or  
25 in capital letters, if the contract is typed, and completed with the name of the  
26 foreclosure purchaser, immediately above the statement required by section 6195,  
27 subsection 2:

28 "NOTICE REQUIRED BY MAINE LAW

29 Until your right to cancel this contract has ended, ..... (Name) or anyone  
30 working for ..... (Name) CANNOT ask you to sign or have you sign any  
31 deed or any other document."

32 **3. Effect of contract.** The contract required by this section survives delivery of any  
33 instrument of conveyance of the residence in foreclosure and has no effect on persons  
34 other than the parties to the contract.

35 **§6195. Cancellation**

36 **1. Cancellation.** In addition to any other right of rescission, a foreclosed homeowner  
37 has the right to cancel a contract with a foreclosure purchaser until midnight of the 5th

1 business day following the day on which the foreclosed homeowner signs a contract that  
2 complies with this chapter or until 8:00 a.m. on the last day of the period during which  
3 the foreclosed homeowner has a right of redemption, whichever occurs first. Cancellation  
4 occurs when the foreclosed homeowner delivers, by any means, written notice of  
5 cancellation to the address provided in subsection 3. If cancellation is mailed, delivery is  
6 effective upon mailing. If sent via e-mail, delivery is effective upon transmission. A  
7 notice of cancellation given by the foreclosed homeowner need not take the particular  
8 form as specified in the contract. Within 10 days following receipt of a notice of  
9 cancellation given in accordance with this section, the foreclosure purchaser shall return  
10 without condition any original contract and any other documents signed by the foreclosed  
11 homeowner.

12 **2. Notice of cancellation in contract.** A contract must contain in the space reserved  
13 for the foreclosed homeowner's signature a conspicuous statement in at least 14-point  
14 boldface type, if the contract is printed, or in capital letters, if the contract is typed, as  
15 follows:

16 "NOTICE REQUIRED BY MAINE LAW

17 "You may cancel this contract for the sale of your house without any  
18 penalty or obligation at any time before ..... (Date and time of day)

19 See the attached notice of cancellation form for an explanation of this  
20 right."

21 The foreclosure purchaser shall accurately enter the date and time of day on which the  
22 cancellation right ends.

23 **3. Separate notice of cancellation.** The foreclosure purchaser shall provide the  
24 foreclosed homeowner with a copy of the contract and the attached notice of cancellation  
25 at the time the contract is executed by all parties. The contract must be accompanied by a  
26 completed form in duplicate, captioned "notice of cancellation" in 12-point boldface type,  
27 if the contract is printed, or in capital letters, if the contract is typed, followed by a space  
28 in which the foreclosure purchaser shall enter the date on which the foreclosed  
29 homeowner executes the contract. This form must be attached to the contract, must be  
30 easily detachable and must contain in at least 10-point type, if the contract is printed, or in  
31 capital letters, if the contract is typed, the following statement written in the same  
32 language as used in the contract:

33 "NOTICE OF CANCELLATION..... (Enter date contract signed)

34 You may cancel this contract for the sale of your house, without any  
35 penalty or obligation, at any time before..... (Enter date)

36 To cancel this transaction, you may use any of the following methods:  
37 (1) mail or otherwise deliver a signed and dated copy of this cancellation  
38 notice; or (2) send via e-mail a notice of cancellation to..... (Name of  
39 purchaser) at ..... (Physical address of purchaser's place of business).....  
40 (E-mail address of foreclosure consultant's place of business) NOT  
41 LATER THAN ..... (Enter date).

1           I hereby cancel this transaction ..... (Date)

2           ..... (Seller's signature)"

3   At a minimum, the contract and the notice of cancellation must contain a physical address  
4   to which notice of cancellation may be mailed or otherwise delivered. A post office box  
5   does not constitute a physical address. A post office box may be designated for delivery  
6   by mail only if it is accompanied by a physical address at which the notice could be  
7   delivered by a method other than mail. An e-mail address may be provided in addition to  
8   the physical address.

9           **4. Determination of cancellation period.** The 5 business days during which the  
10   foreclosed homeowner may cancel the contract pursuant to subsection 1 does not begin to  
11   run until all parties to the contract have executed the contract and the foreclosure  
12   purchaser has complied with this section.

13   **§6196. Waiver**

14           Any waiver of the provisions of this chapter is void and unenforceable as contrary to  
15   public policy, except that a foreclosed homeowner may waive the 5-day right to cancel  
16   provided in section 6195 if the property is subject to a foreclosure sale within the 5  
17   business days and the foreclosed homeowner agrees to waive the right to cancel in a  
18   handwritten statement signed by all parties holding title to the foreclosed property.

19   **§6197. Liability**

20           Any provision in a contract entered into on or after the effective date of this chapter  
21   that attempts or purports to require arbitration of any dispute arising under this chapter is  
22   void at the option of the foreclosed homeowner.

23   **§6198. Prohibited practices**

24           **1. Permitted foreclosure reconveyance.** A foreclosure purchaser may not enter  
25   into or attempt to enter into a foreclosure reconveyance with a foreclosed homeowner  
26   unless:

27           A. The foreclosure purchaser verifies and can demonstrate that the foreclosed  
28   homeowner has a reasonable ability to pay for the subsequent conveyance of an  
29   interest back to the foreclosed homeowner. In the case of a lease with an option to  
30   purchase, payment ability also includes the reasonable ability to make the lease  
31   payments and purchase the property within the term of the option to purchase. There  
32   is a rebuttable presumption that a homeowner is reasonably able to pay for the  
33   subsequent conveyance if the owner's payments on a monthly basis for primary  
34   housing expenses and regular principal and interest payments on other personal debt  
35   do not exceed 60% of the owner's monthly gross income. For the purposes of this  
36   section, "primary housing expenses" means the sum of payments for regular  
37   principal, interest, rent, utilities, hazard insurance, real estate taxes and association  
38   dues. There is a rebuttable presumption that the foreclosure purchaser has not verified  
39   reasonable payment ability if the foreclosure purchaser has not obtained documents  
40   other than a statement by the foreclosed homeowner of assets, liabilities and income;

1 B. The foreclosure purchaser and the foreclosed homeowner complete a closing for  
2 any foreclosure reconveyance in which the foreclosure purchaser obtains a deed or  
3 mortgage from a foreclosed homeowner. For purposes of this section, "closing"  
4 means an in-person meeting to complete final documents incident to the sale of the  
5 real property or creation of a mortgage on the real property conducted by a closing  
6 agent who is not employed by or an affiliate of the foreclosure purchaser or employed  
7 by such an affiliate and who does not have a business or personal relationship with  
8 the foreclosure purchaser other than the provision of real estate settlement services;

9 C. The foreclosure purchaser obtains the written consent of the foreclosed  
10 homeowner to a grant by the foreclosure purchaser of any interest in the property  
11 during such times as the foreclosed homeowner maintains any interest in the  
12 property;

13 D. The foreclosure purchaser obtains certification from a counselor with a 3rd-party,  
14 nonprofit organization approved by the administrator that the foreclosed homeowner  
15 has received counseling on the advisability of the foreclosure reconveyance; and

16 E. The foreclosure purchaser complies with the requirements for disclosure, loan  
17 terms and conduct in the federal Home Ownership and Equity Protection Act, 15  
18 United States Code, Section 1639 or its implementing regulation, 12 Code of Federal  
19 Regulations, Sections 226.31, 226.32 and 226.34, for any foreclosure reconveyance  
20 in which the foreclosed homeowner obtains a vendee interest in a contract for deed,  
21 regardless of whether the terms of the contract for deed meet the annual percentage  
22 rate or points and fees requirements for a covered loan in 12 Code of Federal  
23 Regulations, Sections 226.32 (a) and (b).

24 **2. Failure to ensure reconveyance or to pay consideration.** A foreclosure  
25 purchaser may not fail to either:

26 A. Ensure that title to the residence in foreclosure has been reconveyed to the  
27 foreclosed homeowner; or

28 B. Make a payment to the foreclosed homeowner in an amount of at least 82% of the  
29 fair market value of the property within 150 days of either the eviction or voluntary  
30 relinquishment of possession of the residence in foreclosure by the foreclosed  
31 homeowner. The foreclosure purchaser shall make a detailed accounting of the basis  
32 for the payment amount or a detailed accounting of the reasons for failure to make a  
33 payment, including providing written documentation of expenses, within this 150-day  
34 period. The accounting must be on a form prescribed by the administrator. For  
35 purposes of this paragraph:

36 (1) There is a rebuttable presumption that an appraisal by a person licensed or  
37 certified by an agency of the Federal Government or this State to appraise real  
38 estate constitutes the fair market value of the property; and

39 (2) The time for determining the fair market value amount in the foreclosure  
40 reconveyance contract must be either at the time of the execution of the  
41 foreclosure reconveyance contract or at resale. If the contract states that the fair  
42 market value must be determined at the time of resale, the fair market value must  
43 be the resale price if it is sold within 120 days of the eviction or voluntary



1            relinquishment of the property by the foreclosed homeowner. If the contract  
2            states that the fair market value is determined at the time of resale, and the resale  
3            is not completed within 120 days of the eviction or voluntary relinquishment of  
4            the property by the foreclosed homeowner, the fair market value must be  
5            determined by an appraisal conducted during this 120-day period and payment, if  
6            required, must be made to the homeowner, but the fair market value must be  
7            recalculated as the resale price on resale and an additional payment amount, if  
8            appropriate based on the resale price, must be made to the foreclosed homeowner  
9            within 15 days of resale and a detailed accounting of the basis for the payment  
10           amount or a detailed accounting of the reasons for failure to make additional  
11           payment must be made within 15 days of resale, including providing written  
12           documentation of expenses. The accounting must be on a form prescribed by the  
13           administrator.

14           **3. Unfair or commercially unreasonable terms.** A foreclosure purchaser may not  
15           enter into repurchase or lease terms as part of the subsequent foreclosure reconveyance  
16           that are unfair or commercially unreasonable or engage in any other unfair conduct.

17           **4. Misrepresentation.** A foreclosure purchaser may not represent, directly or  
18           indirectly, that:

19           A. The foreclosure purchaser is acting as an advisor or a consultant, or in any other  
20           manner represent that the foreclosure purchaser is acting on behalf of the foreclosed  
21           homeowner;

22           B. The foreclosure purchaser has certification or licensure that the foreclosure  
23           purchaser does not have, or that the foreclosure purchaser is not a member of a  
24           licensed profession if that is untrue;

25           C. The foreclosure purchaser is assisting the foreclosed homeowner in retaining  
26           ownership to the residence in foreclosure; or

27           D. The foreclosure purchaser is assisting the foreclosed homeowner in preventing a  
28           completed foreclosure if the result of the transaction is that the foreclosed  
29           homeowner will not complete a redemption of the property.

30           **5. False, deceptive or misleading statements.** A foreclosure purchaser may not  
31           make any statements, directly or by implication, or engage in any other conduct that is  
32           false, deceptive or misleading or that has the likelihood to cause confusion or  
33           misunderstanding, including, but not limited to, statements regarding the value of the  
34           residence in foreclosure, the amount of proceeds the foreclosed homeowner may receive  
35           after a foreclosure sale, any contract term or the foreclosed homeowner's rights or  
36           obligations incident to or arising out of the foreclosure reconveyance.

37           **6. Other actions.** Until the time during which the foreclosed homeowner may cancel  
38           the transaction has fully elapsed, a foreclosure purchaser may not:

39           A. Accept from any foreclosed homeowner an execution of or induce any foreclosed  
40           homeowner to execute any instrument of conveyance of any interest in the residence  
41           in foreclosure;

1 B. Record or file with the county register of deeds any document, including, but not  
2 limited to, any instrument of conveyance, signed by the foreclosed homeowner;

3 C. Transfer or encumber or purport to transfer or encumber any interest in the  
4 residence in foreclosure to any 3rd party, except that this paragraph may not defeat or  
5 affect a grant of interest or encumbrance against a bona fide purchaser or  
6 encumbrance for value and without notice of a violation of this chapter. Knowledge  
7 on the part of any such person or entity that the property was a residence in  
8 foreclosure does not constitute notice of a violation of this chapter. This paragraph  
9 does not abrogate any duty of inquiry that exists as to rights or interests of persons in  
10 possession of the residence in foreclosure; or

11 D. Pay the foreclosed homeowner any consideration.

12 **§6199. Enforcement**

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

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

18 **2. Private action.** A private cause of action may be brought by a foreclosed  
19 homeowner on the basis of a violation of this chapter. A foreclosed homeowner may be  
20 granted injunctive, declaratory and other equitable relief the court determines appropriate  
21 in an action to enforce compliance with this chapter.

22 **3. Remedies cumulative.** The remedies provided in this section are cumulative and  
23 do not restrict any remedy that is otherwise available. The provisions of this chapter are  
24 not exclusive and are in addition to any other requirements, rights, remedies and penalties  
25 provided by law.

26 **4. Criminal penalty.** Any foreclosure purchaser who knowingly engages in any  
27 practice that operates as a fraud or deceit upon a foreclosed homeowner is guilty of a  
28 Class E crime.

29 **5. Failure of transaction.** Failure of the parties to complete a foreclosure  
30 reconveyance, in the absence of additional misconduct, may not subject a foreclosure  
31 purchaser to the criminal penalties under subsection 4.

32 **6. Stay of eviction action.** The automatic stay of an eviction action is governed by  
33 this subsection.

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

37 (1) Has commenced an action concerning a foreclosure reconveyance; asserts a  
38 defense under that action that the property that is the subject of the eviction  
39 action is also the subject of a foreclosure reconveyance in violation of this

1 chapter; or asserts a claim or affirmative defense of fraud, false pretense, false  
2 promise, misrepresentation, misleading statement or deceptive practice in  
3 connection with a foreclosure reconveyance;

4 (2) Owned the residence in foreclosure;

5 (3) Conveyed title to the residence in foreclosure to a 3rd party upon a promise  
6 that the defendant would be allowed to occupy the residence or other real  
7 property in which the foreclosure purchaser or a person acting in participation  
8 with the foreclosure purchaser has an interest and that the residence or other real  
9 property would be the subject of a foreclosure reconveyance; and

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

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

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

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

23 **SUMMARY**

24 This bill enacts measures designed to protect homeowners from equity stripping  
25 during foreclosures. Equity stripping, also known as equity skimming or foreclosure  
26 rescue, is often considered a predatory lending practice because the transactions involve  
27 companies that take title to or other mortgage interest in foreclosed properties in  
28 exchange for allowing the homeowners to remain in the properties as tenants as long as  
29 payments are made. If payments are not made, foreclosed homeowners can lose their  
30 homes and are also stripped of any equity held in the home prior to the foreclosure. This  
31 bill requires a business that engages in these transactions as a foreclosure purchaser to be  
32 licensed as a supervised lender before conducting business in this State and to meet other  
33 statutory requirements.

34 The bill requires that a foreclosure purchaser must ensure that title is transferred back  
35 to the homeowner or that the foreclosure purchaser make a payment to the homeowner of  
36 at least 82% of the fair market value of the property within 150 days of when the  
37 homeowner is evicted or voluntarily gives back possession of the home. The bill requires  
38 that foreclosure purchasers verify that a foreclosed homeowner has a reasonable ability to  
39 make the payments needed to take back title to the home. The bill provides that there is a  
40 rebuttable presumption of a reasonable ability to pay if a homeowner's monthly payments  
41 for housing expenses and principal and interest payments do not exceed 60% of the

1 owner's monthly gross income. The bill requires that the foreclosed homeowner receive  
2 counseling on the advisability of the transaction.

3 The bill also requires that the foreclosure purchaser provide a written contract and  
4 certain notices and disclosures to the homeowner. The bill gives a homeowner the right  
5 to cancel the transaction within 5 business days.

6 The bill prohibits a foreclosure purchaser from making false, deceptive or misleading  
7 statements to homeowners and from using unfair or commercially unreasonable terms as  
8 part of foreclosure purchase transactions. The bill gives administrative enforcement  
9 authority to the Bureau of Consumer Credit Protection within the Department of  
10 Professional and Financial Regulation and imposes civil and criminal penalties for  
11 violations of the bill's provisions. The bill also gives a foreclosed homeowner the right to  
12 bring a private cause of action against a foreclosure purchaser for violations.