

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 148

H.P. 127

House of Representatives, January 15, 2009

An Act To Provide Notice of Foreclosures to Tenants

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative PRIEST of Brunswick.
Cosponsored by Senator BOWMAN of York and
Representatives: BEAUDOIN of Biddeford, FOSSEL of Alna, GOODE of Bangor,
RICHARDSON of Warren, TREAT of Hallowell.

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

2 **Sec. 1. 14 MRSA §6321**, as amended by PL 2007, c. 391, §9, is repealed and the
3 following enacted in its place:

4 **§6321. Commencement of foreclosure by civil action**

5 **1. Commencement of foreclosure proceeding.** After breach of condition in a
6 mortgage of first priority, the mortgagee or any person claiming under the mortgagee may
7 proceed for the purpose of foreclosure by a civil action against all parties in interest in
8 either the Superior Court or the District Court in the division in which the mortgaged
9 premises or any part of the mortgaged premises is located, regardless of the amount of the
10 mortgage claim.

11 After breach of condition of any mortgage other than one of the first priority, the
12 mortgagee or any person claiming under the mortgagee may proceed for the purpose of
13 foreclosure by a civil action against all parties in interest, except for parties in interest
14 having a superior priority to the foreclosing mortgagee, in either the Superior Court or the
15 District Court in the division in which the mortgaged premises or any part of the
16 mortgaged premises is located. Parties in interest having a superior priority may not be
17 joined nor will their interests be affected by the proceedings, but the resulting sale under
18 section 6323 is of the defendant's or mortgagor's equity of redemption only. The plaintiff
19 shall notify the priority parties in interest of the action by sending a copy of the complaint
20 to the parties in interest by certified mail.

21 The foreclosure must be commenced in accordance with the Maine Rules of Civil
22 Procedure, and the mortgagee shall also record a copy of the complaint or a clerk's
23 certificate of the filing of the complaint in each registry of deeds in which the mortgage
24 deed is or by law ought to be recorded and such a recording thereafter constitutes record
25 notice of commencement of foreclosure. The complaint must allege with specificity the
26 plaintiff's claim by mortgage on such real estate, describe the mortgaged premises
27 intelligibly, state the existence of public utility easements, if any, that were recorded
28 subsequent to the mortgage and prior to the commencement of the foreclosure proceeding
29 and without mortgagee consent, state the amount due on the mortgage, state the condition
30 broken and by reason of such breach demand a foreclosure and sale. Service of process
31 on all parties in interest and all proceedings must be in accordance with the Maine Rules
32 of Civil Procedure. "Parties in interest" includes mortgagors, holders of fee interest,
33 mortgagees, lessees pursuant to recorded leases or memoranda thereof, lienors and
34 attaching creditors all as reflected by the indices in the registry of deeds and the
35 documents referred to therein affecting the mortgaged premises, through the time of the
36 recording of the complaint or the clerk's certificate. Failure to join any party in interest
37 does not invalidate the action nor any subsequent proceedings as to those joined. Failure
38 of the mortgagee to join, as a party in interest, the holder of any public utility easement
39 recorded subsequent to the mortgage and prior to commencement of foreclosure
40 proceedings is deemed consent by the mortgagee to that easement. Any other party
41 having a claim to the real estate whose claim is not recorded in the registry of deeds as of
42 the time of recording of the copy of the complaint or the clerk's certificate need not be
43 joined in the foreclosure action, and any such party has no claim against the real estate
44 after completion of the foreclosure sale, except that any such party may move to

1 intervene in the action for the purpose of being added as a party in interest at any time
2 prior to the entry of judgment.

3 For purposes of this section, "public utility easements" means any easements held by
4 public utilities, as defined in Title 35-A, section 102; sewer districts, as defined in Title
5 38, section 1251; or sanitary districts, as formed under Title 38, chapter 11.

6 The acceptance, before the expiration of the right of redemption and after the
7 commencement of foreclosure proceedings of any mortgage of real property, of anything
8 of value to be applied on or to the mortgage indebtedness by the mortgagee or any person
9 holding under the mortgagee constitutes a waiver of the foreclosure unless an agreement
10 to the contrary in writing is signed by the person from whom the payment is accepted or
11 unless the bank returns the payment to the mortgagor within 10 days of receipt. The
12 receipt of income from the mortgaged premises by the mortgagee or the mortgagee's
13 assigns while in possession of the premises does not constitute a waiver of the foreclosure
14 proceedings of the mortgage on the premises.

15 The mortgagee and the mortgagor may enter into an agreement to allow the mortgagor to
16 bring the mortgage payments up to date with the foreclosure process being stayed as long
17 as the mortgagor makes payments according to the agreement. If the mortgagor does not
18 make payments according to the agreement, the mortgagee may, after notice to the
19 mortgagor, resume the foreclosure process at the point at which it was stayed.

20 **2. Additional notice of foreclosure to occupants of mortgaged premises. In**
21 **foreclosures by civil action commenced on or after January 1, 2010, the mortgagee shall**
22 **provide notice of the commencement of the foreclosure proceeding to all occupants of the**
23 **mortgaged premises by sending by ordinary first class mail a copy of the complaint**
24 **against the mortgagor to the physical location of the mortgaged premises subject to the**
25 **foreclosure proceeding. The notice must be mailed no less than 14 calendar days after the**
26 **foreclosure proceeding is commenced in either Superior Court or District Court. Failure**
27 **to provide notice of the proceeding under this subsection does not affect the validity of**
28 **the civil action commenced pursuant to subsection 1.**

29 **SUMMARY**

30 This bill requires mortgagees to provide notice of foreclosure proceedings to all
31 occupants of mortgaged premises subject to the foreclosure action by mailing a copy of
32 the complaint to the physical address of the mortgaged premises. The notice must be
33 mailed no less than 14 calendar days after the foreclosure proceeding is commenced.