

# MAINE STATE LEGISLATURE

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**INSURANCE AND FINANCIAL SERVICES**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
124TH LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 994, L.D. 1418, Bill, "An Act To Preserve Home Ownership and Stabilize the Economy by Preventing Unnecessary Foreclosures"

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

**Sec. 1. 4 MRSA §18-B, sub-§12** is enacted to read:

**12. Mediation involving mortgage foreclosures on owner-occupied residential property.** The foreclosure mediation program is a program within the Supreme Judicial Court to provide mediation in the courts throughout the State pursuant to Title 14, section 6321-A.

A. The Supreme Judicial Court, or a person or organization designated by the court, shall administer the foreclosure mediation program.

B. A foreclosure mediation program fund is established as a nonlapsing, dedicated fund within the Administrative Office of the Courts. Fees collected to support mediation services pursuant to Title 14, section 6321-A, subsection 3 must be deposited in the fund. The Administrative Office of the Courts shall use the resources in the fund to cover the costs of providing mediation services as required under Title 14, section 6321-A.

**Sec. 2. 4 MRSA §104**, as amended by PL 2009, c. 136, §1, is further amended to read:

**§104. Active retired justices**

Any Justice of the Superior Court who has retired from the court under this chapter in effect prior to December 1, 1984, or any Justice of the Superior Court who retires or terminates that justice's service on the court in accordance with chapter 27, except for a disability retirement, is eligible for appointment as an Active Retired Justice of the Superior Court. The Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary matters and to confirmation by the

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1 Legislature, may appoint any eligible justice as an Active Retired Justice of the Superior  
2 Court for a term of 7 years, unless sooner removed. That justice may be reappointed for a  
3 like term. Any justice so appointed and designated thereupon constitutes a part of the  
4 court from which that justice has retired and has the same jurisdiction and is subject to the  
5 same restrictions therein as before retirement. An Active Retired Justice of the Superior  
6 Court may serve as an arbitrator and conduct arbitration in accordance with rules that  
7 may be adopted by the Supreme Judicial Court, except that nothing in this section  
8 requires the Supreme Judicial Court to adopt those rules. An Active Retired Justice of the  
9 Superior Court may chair screening panels in accordance with Title 24, chapter 21,  
10 subchapter 4-A. An Active Retired Justice of the Superior Court may act only in the  
11 cases and matters and hold court only at the terms and times as that justice is directed and  
12 assigned by the Chief Justice of the Superior Court. Any Active Retired Justice of the  
13 Superior Court may be directed by the Chief Justice to hold any term of the Superior  
14 Court in any county and when so directed has authority and jurisdiction therein the same  
15 as if that justice were the regular justice of that court. Whenever the Chief Justice of the  
16 Superior Court so orders, that justice may hear all matters and issue all orders, notices,  
17 decrees and judgments in vacation that any justice of that Superior Court is authorized to  
18 hear and issue. An Active Retired Justice of the Superior Court may be assigned by the  
19 Chief Justice of the Superior Court to act as a mediator for the foreclosure mediation  
20 program in accordance with Title 14, section 6321-A, subsection 7. An Active Retired  
21 Justice of the Superior Court receives reimbursement for expenses actually and  
22 reasonably incurred in the performance of that justice's duties.

23 **Sec. 3. 4 MRS §157-B**, as amended by PL 2009, c. 136, §2, is further amended  
24 to read:

25 **§157-B. Active retired judges; appointment**

26 Any Judge of the District Court who has retired from the court under this chapter  
27 prior to December 1, 1984, or any Judge of the District Court who retires or terminates  
28 that judge's service on the court in accordance with chapter 27, except for a disability  
29 retirement, is eligible for appointment as an Active Retired Judge of the District Court as  
30 provided. The Governor, subject to review by the joint standing committee of the  
31 Legislature having jurisdiction over judiciary matters and to confirmation by the  
32 Legislature, may appoint any eligible judge to be an Active Retired Judge of the District  
33 Court for a term of 7 years, unless sooner removed. That judge may be reappointed for a  
34 like term. Any judge so appointed and designated thereupon constitutes a part of the court  
35 from which that judge has retired and has the same jurisdiction and is subject to the same  
36 restrictions therein as before retirement. An Active Retired Judge of the District Court  
37 may serve as an arbitrator and conduct arbitration in accordance with rules that may be  
38 adopted by the Supreme Judicial Court, except that nothing in this section requires the  
39 Supreme Judicial Court to adopt those rules. An Active Retired Judge of the District  
40 Court may chair screening panels in accordance with Title 24, chapter 21, subchapter  
41 4-A. An Active Retired Judge of the District Court may act only in those cases and  
42 matters and hold court only at those sessions and times as that judge is directed and  
43 assigned by the Chief Judge of the District Court. Any Active Retired Judge of the  
44 District Court may be directed by the Chief Judge to hold any session of the District  
45 Court in any district and when so directed has authority and jurisdiction therein the same  
46 as if that judge were the regular judge of that court and, whenever the Chief Judge of the

1 District Court so orders, may hear all matters and issue all orders, notices, decrees and  
2 judgments that any Judge of that District Court is authorized to hear and issue. An Active  
3 Retired Judge of the District Court receives reimbursement for expenses actually and  
4 reasonably incurred in the performance of that judge's duties. An Active Retired Judge of  
5 the District Court may be assigned by the Chief Judge of the District Court to act as a  
6 mediator for the foreclosure mediation program in accordance with Title 14, section  
7 6321-A, subsection 7.

8 **Sec. 4. 9-A MRSA §6-116, sub-§2**, as amended by PL 1995, c. 397, §1, is further  
9 amended to read:

10 2. Financial information not normally available to the public that is submitted in  
11 confidence by an individual or organization to comply with the licensing, registration or  
12 other regulatory functions of the administrator; and

13 **Sec. 5. 9-A MRSA §6-116, sub-§3**, as enacted by PL 1985, c. 763, Pt. A, §51, is  
14 amended to read:

15 3. Proposed loan documents and other commercial paper submitted to be approved  
16 for use and not yet available to the general public or customers of the submitting  
17 institution or firm; and

18 **Sec. 6. 9-A MRSA §6-116, sub-§4** is enacted to read:

19 4. Any contact information or financial information relating to a mortgagor  
20 submitted pursuant to Title 14, section 6111, subsection 3-A and any written notice sent  
21 to a mortgagor pursuant to Title 14, section 6111, subsection 4-A that includes a  
22 mortgagor's contact information.

23 **Sec. 7. 9-A MRSA §9-408** is enacted to read:

24 **§9-408. Violation of the Maine Unfair Trade Practices Act**

25 Any violation of this article constitutes a violation of the Maine Unfair Trade  
26 Practices Act.

27 **Sec. 8. 9-B MRSA §162, sub-§6** is enacted to read:

28 **6. Disclosure of notice of mortgagor's right to cure.** The financial records pertain  
29 to a notice of mortgagor's right to cure and are disclosed to the Bureau of Consumer  
30 Credit Protection pursuant to Title 14, section 6111, subsection 3-A.

31 **Sec. 9. 14 MRSA §2401, sub-§3**, as amended by PL 1993, c. 114, §2 and  
32 affected by §4, is further amended to read:

33 **3. Judgment required; recording and contents.** The judgment in the proceeding  
34 must be signed by the judge and contain the following provisions:

35 A. The names and addresses, if known, of all parties to the action, including the  
36 counsel of record;

37 B. The docket number;

38 C. A finding that all parties have received notice of the proceedings in accordance  
39 with the applicable provisions of the Maine Rules of Civil Procedure and, if the



1 notice was served or given pursuant to an order of a court, including service by  
2 publication, that the notice was served or given pursuant to the order;

3 D. An adequate description of real estate involved; and

4 F. A certification to be signed by the clerk after the appeal period has expired,  
5 certifying that the applicable period has expired without action or the final judgment  
6 has been entered after remand following appeal; and

7 G. With regard to mortgage foreclosure actions, the title "judgment of foreclosure  
8 and sale," the street address of the real estate involved, if any, and the book and page  
9 number of the mortgage.

10 Unless a proposed judgment with the provisions required in this subsection is presented  
11 to the court at the time of the court's decision, the court shall name the party responsible  
12 for preparing a judgment with the required provisions. An attested copy of the judgment  
13 with the signed clerk's certification must be recorded in the registry of deeds for the  
14 county or counties where the subject property is located within one year of the entry of  
15 the final judgment unless otherwise ordered by the court. For the purposes of this  
16 section, a judgment is not final until all applicable appeal periods have expired and any  
17 appellate proceedings and subsequent actions on remand, if any, have been concluded.  
18 The court shall name the party responsible for recording the attested copy of the judgment  
19 and for paying the appropriate recording fees. The judgment has no effect as to any  
20 person not a party to the proceeding who has no actual knowledge of the judgment unless  
21 an attested copy of the judgment is recorded in accordance with this section. A judgment  
22 of foreclosure and sale for recording may not be recorded in the registry of deeds unless it  
23 is in compliance with the requirements of this section. Failure to comply with this section  
24 does not affect the validity of the underlying judgment.

25 **Sec. 10. 14 MRSA §6111, sub-§1**, as amended by PL 1997, c. 579, §1, is further  
26 amended to read:

27 **1. Notice; payment.** With respect to mortgages upon residential property located in  
28 this State when the mortgagor is occupying all or a portion of the property as the  
29 mortgagor's primary residence and the mortgage secures a loan for personal, family or  
30 household use, the mortgagee may not accelerate maturity of the unpaid balance of the  
31 obligation or otherwise enforce the mortgage because of a default consisting of the  
32 mortgagor's failure to make any required payment, tax payment or insurance premium  
33 payment, by any method authorized by this chapter until at least ~~30~~ 35 days after the date  
34 that written notice pursuant to subsection 1-A is given by the mortgagee to the mortgagor  
35 and any cosigner against whom the mortgagee is enforcing the obligation secured by the  
36 mortgage at the last known addresses of the mortgagor and any cosigner that the  
37 mortgagor has the right to cure the default by full payment of all amounts that are due  
38 without acceleration, including reasonable interest and late charges specified in the  
39 mortgage or note as well as reasonable attorney's fees. If the mortgagor tenders payment  
40 of the amounts before the date specified in the notice, the mortgagor is restored to all  
41 rights under the mortgage deed as though the default had not occurred.

42 **Sec. 11. 14 MRSA §6111, sub-§1-A** is enacted to read:

43 **1-A. Contents of notice.** A mortgagee shall include in the written notice under  
44 subsection 1 the following:

- 1           A. The mortgagor's right to cure the default as provided in subsection 1;  
2           B. An itemization of all past due amounts causing the loan to be in default;  
3           C. An itemization of any other charges that must be paid in order to satisfy the full  
4           obligations of the loan;  
5           D. A statement that the mortgagor may have options available other than foreclosure,  
6           that the mortgagor may discuss available options with the mortgagee, the mortgage  
7           servicer or a counselor approved by the United States Department of Housing and  
8           Urban Development and that the mortgagor is encouraged to explore available  
9           options prior to the end of the right-to-cure period;  
10          E. The address, telephone number and other contact information for persons having  
11          authority to modify a mortgage loan with the mortgagor to avoid foreclosure,  
12          including, but not limited to, the mortgagee, the mortgage servicer and an agent of the  
13          mortgagee;  
14          F. The name, address, telephone number and other contact information for all  
15          counseling agencies approved by the United States Department of Housing and  
16          Urban Development operating to assist mortgagors in the State to avoid foreclosure;  
17          and  
18          G. Where mediation is available as set forth in section 6321-A, a statement that a  
19          mortgagor may request mediation to explore options for avoiding foreclosure  
20          judgment.

21           **Sec. 12. 14 MRSA §6111, sub-§3-A** is enacted to read:

22           **3-A. Information; Bureau of Consumer Credit Protection.** Within 3 days of  
23           providing written notice to the mortgagor as required by subsections 1 and 1-A, the  
24           mortgagee shall file with the Department of Professional and Financial Regulation,  
25           Bureau of Consumer Credit Protection, in electronic format as designated by the Bureau  
26           of Consumer Credit Protection, information including:

- 27           A. The name and address of the mortgagor and the date the written notice required  
28           by subsections 1 and 1-A was mailed to the mortgagor and the address to which the  
29           notice was sent;  
30           B. The address, telephone number and other contact information for persons having  
31           authority to modify a mortgage loan with the mortgagor to avoid foreclosure,  
32           including, but not limited to, the mortgagee, the mortgage servicer and an agent of the  
33           mortgagee; and  
34           C. Other information, as permitted by state and federal law, requested of the  
35           mortgagor by the Bureau of Consumer Credit Protection.

36           **Sec. 13. 14 MRSA §6111, sub-§3-B** is enacted to read:

37           **3-B. Report.** On a quarterly basis, the Department of Professional and Financial  
38           Regulation, Bureau of Consumer Credit Protection shall report to the joint standing  
39           committee of the Legislature having jurisdiction over insurance and financial services  
40           matters on the number of notices received pursuant to subsection 3-A. To the extent  
41           information is available, the report must also include information on the number of

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1 foreclosure filings based on data collected from the court and the Department of  
2 Professional and Financial Regulation, Bureau of Financial Institutions and on the types  
3 of lenders that are filing foreclosures.

4 **Sec. 14. 14 MRSA §6111, sub-§4-A** is enacted to read:

5 **4-A. Letter to mortgagor.** Within 3 days of receiving electronic information from  
6 the mortgagee as set forth in subsection 3-A, the Department of Professional and  
7 Financial Regulation, Bureau of Consumer Credit Protection shall send a written notice to  
8 the mortgagor that includes a summary of the mortgagor's rights and available resources,  
9 including information concerning the foreclosure mediation program as established in  
10 section 6321-A.

11 **Sec. 15. 14 MRSA §6112** is enacted to read:

12 **§6112. Statewide outreach**

13 To the extent resources are available pursuant to subsection 4, the Department of  
14 Professional and Financial Regulation, Bureau of Consumer Credit Protection shall  
15 engage in the following activities.

16 **1. Hotline.** The Department of Professional and Financial Regulation, Bureau of  
17 Consumer Credit Protection shall establish a statewide hotline to facilitate a mortgagor's  
18 communication with housing counselors approved by the United States Department of  
19 Housing and Urban Development for the purposes of discussing options to avoid  
20 foreclosure.

21 **2. Outreach; housing counseling services.** The Department of Professional and  
22 Financial Regulation, Bureau of Consumer Credit Protection, in consultation with the  
23 Maine State Housing Authority, shall coordinate an outreach program to help families  
24 with their housing needs with the intent of expanding the outreach program statewide.  
25 The bureau shall use a portion of the funds received pursuant to subsection 4 for contracts  
26 with nonprofit organizations that provide housing counseling services and mortgage  
27 assistance.

28 **3. Form.** The Department of Professional and Financial Regulation, Bureau of  
29 Consumer Credit Protection, after consultation with interested parties, shall develop for  
30 use by the Supreme Judicial Court one form for making a request for mediation and  
31 making an answer to a foreclosure complaint as described in section 6321-A, subsection  
32 2.

33 **4. Funding.** The Department of Professional and Financial Regulation, Bureau of  
34 Consumer Credit Protection shall establish a nonlapsing, dedicated account for the  
35 deposit of revenues transferred from the Department of Administrative and Financial  
36 Services, Maine Revenue Services pursuant to Title 36, section 4641-B, subsection 6 and  
37 for any funds received from any public or private source. The Bureau of Consumer Credit  
38 Protection shall use the account to cover the costs of carrying out the duties in this section  
39 and section 6111, subsections 3-A, 3-B and 4-A, and the funds in the account may not be  
40 used for any other purpose.

41 **5. Report.** Beginning January 1, 2010, the Department of Professional and Financial  
42 Regulation, Bureau of Consumer Credit Protection shall report every 6 months on the

1 revenues received pursuant to subsection 4, the expenditures made to carry out the  
2 purposes of this section, any financial orders submitted by the bureau and any updated  
3 assumptions related to the bureau's revenues and expenditures in accordance with this  
4 section. The report must be submitted to the joint standing committee of the Legislature  
5 having jurisdiction over appropriations and financial affairs and the joint standing  
6 committee of the Legislature having jurisdiction over insurance and financial services  
7 matters.

8 **Sec. 16. 14 MRSA §6203-A, first ¶**, as amended by PL 1995, c. 106, §1, is  
9 further amended to read:

10 Any holder of a mortgage on real estate that is granted by a corporation, partnership,  
11 including a limited partnership, limited liability company or trustee of a trust and that  
12 contains a power of sale, or a person authorized by the power of sale, or an attorney duly  
13 authorized by a writing under seal, or a person acting in the name of the holder of such  
14 mortgage or any such authorized person, may, upon breach of condition and without  
15 action, do all the acts authorized or required by the power; except that a sale under the  
16 power is not effectual to foreclose a mortgage unless, previous to the sale, notice has been  
17 published once in each of 3 successive weeks, the first publication to be not less than 21  
18 days before the day of the sale in a newspaper of general circulation in the town where  
19 the land lies and which notice must prominently state the street address of the real estate  
20 encumbered by the mortgage deed, if any, and the book and page number of the  
21 mortgage. This provision is implied in every power of sale mortgage in which it is not  
22 expressly set forth. For mortgage deeds executed on or after October 1, 1993, the power  
23 of sale may be used only if the mortgage deed states that it is given primarily for a  
24 business, commercial or agricultural purpose. A copy of the notice must, at least 21 days  
25 before the date of the sale under the power in the mortgage, be recorded in each registry  
26 of deeds in which the mortgage deed is or by law ought to be recorded and must be  
27 served on the mortgagor or its representative in interest, or may be sent by registered mail  
28 addressed to the mortgagor or the mortgagor's representative at the mortgagor's last  
29 known address, or to the person and to the address as may be agreed upon in the  
30 mortgage, at least 21 days before the date of the sale under the power in the mortgage.  
31 The mortgagee shall provide a copy of the notice to a tenant if the mortgagee knows or  
32 should know by exercise of due diligence that the property is occupied as a rental unit.  
33 Upon request from a mortgagee, the mortgagor or its representative in interest shall  
34 provide the name, address and other contact information for any tenant. Notice to a  
35 tenant may be served on the tenant by sheriff or may be sent by first class mail and  
36 registered mail at the tenant's last known address. No less than 21 days after service of  
37 the notice required by this section, the mortgagee may institute an action pursuant to  
38 section 6001. This paragraph may not be construed to prohibit an action for forcible  
39 entry and detainer in accordance with section 6001 for a reason that is not related to a  
40 foreclosure sale. Any power of sale incorporated into a mortgage is not affected by the  
41 subsequent transfer of the mortgaged premises from the corporation, partnership,  
42 including a limited partnership, limited liability company or trustee of the trust to any  
43 other type of organization or to an individual or individuals. The power of sale may not  
44 be used to foreclose a mortgage deed granted by a trustee of a trust if at the time the  
45 mortgage deed is given the real estate is used exclusively for residential purposes, the real  
46 estate has 4 or fewer residential units and one of the units is the principal residence of the  
47 owner of at least 1/2 of the beneficial interest in the trust. If the mortgage deed contains a



1 statement that at the time the mortgage deed is given the real estate encumbered by the  
2 mortgage deed is not used exclusively for residential purposes, that the real estate has  
3 more than 4 residential units or that none of the residential units is the principal residence  
4 of the owner of at least 1/2 of the beneficial interest in the trust, the statement  
5 conclusively establishes these facts and the mortgage deed may be foreclosed by the  
6 power of sale. The method of foreclosure of real estate mortgages provided by this  
7 section is specifically subject to the order of priorities set out in section 6205.

8 **Sec. 17. 14 MRSA §6321, 3rd ¶**, as amended by PL 2007, c. 391, §9, is further  
9 amended to read:

10 The foreclosure must be commenced in accordance with the Maine Rules of Civil  
11 Procedure, and the mortgagee shall within 10 days of commencing the foreclosure also  
12 record a copy of the complaint or a clerk's certificate of the filing of the complaint in each  
13 registry of deeds in which the mortgage deed is or by law ought to be recorded and such a  
14 recording thereafter constitutes record notice of commencement of foreclosure. The  
15 mortgagee shall further certify and provide evidence that all steps mandated by law to  
16 provide notice to the mortgagor pursuant to section 6111 were strictly performed. The  
17 mortgagee shall certify proof of ownership of the mortgage note and produce evidence of  
18 the mortgage note, mortgage and all assignments and endorsements of the mortgage note  
19 and mortgage. The complaint must allege with specificity the plaintiff's claim by  
20 mortgage on such real estate, describe the mortgaged premises intelligibly, including the  
21 street address of the mortgaged premises, if any, which must be prominently stated on the  
22 first page of the complaint, state the book and page number of the mortgage, state the  
23 existence of public utility easements, if any, that were recorded subsequent to the  
24 mortgage and prior to the commencement of the foreclosure proceeding and without  
25 mortgagee consent, state the amount due on the mortgage, state the condition broken and  
26 by reason of such breach demand a foreclosure and sale. If a clerk's certificate of the  
27 filing of the complaint is presented for recording pursuant to this section, the clerk's  
28 certificate must bear the title "Clerk's Certificate of Foreclosure" and prominently state,  
29 immediately after the title, the street address of the mortgaged premises, if any, and the  
30 book and page number of the mortgage. Service of process on all parties in interest and  
31 all proceedings must be in accordance with the Maine Rules of Civil Procedure. "Parties  
32 in interest" includes mortgagors, holders of fee interest, mortgagees, lessees pursuant to  
33 recorded leases or memoranda thereof, lienors and attaching creditors all as reflected by  
34 the indices in the registry of deeds and the documents referred to therein affecting the  
35 mortgaged premises, through the time of the recording of the complaint or the clerk's  
36 certificate. Failure to join any party in interest does not invalidate the action nor any  
37 subsequent proceedings as to those joined. Failure of the mortgagee to join, as a party in  
38 interest, the holder of any public utility easement recorded subsequent to the mortgage  
39 and prior to commencement of foreclosure proceedings is deemed consent by the  
40 mortgagee to that easement. Any other party having a claim to the real estate whose  
41 claim is not recorded in the registry of deeds as of the time of recording of the copy of the  
42 complaint or the clerk's certificate need not be joined in the foreclosure action, and any  
43 such party has no claim against the real estate after completion of the foreclosure sale,  
44 except that any such party may move to intervene in the action for the purpose of being  
45 added as a party in interest at any time prior to the entry of judgment. Within 3 days of  
46 recording a copy of the complaint or a clerk's certificate of the filing in the registry of  
47 deeds, the mortgagee shall provide a copy of the complaint or of the clerk's certificate

1 that prominently states, immediately after the title, the street address of the mortgaged  
2 premises, if any, and the book and page number of the mortgage to the municipal assessor  
3 of the municipality in which the property is located and, if the mortgaged premises is  
4 manufactured housing as defined in Title 10, section 9002, subsection 7, to the owner of  
5 any land leased by the mortgagor.

6 **Sec. 18. 14 MRSA §6321-A** is enacted to read:

7 **§6321-A. Foreclosure mediation program**

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

10 A. "Court" means the Supreme Judicial Court.

11 B. "Program" means the foreclosure mediation program established pursuant to  
12 subsection 3.

13 **2. Notice; summons and complaint; foreclosure proceedings.** When a plaintiff  
14 commences an action for the foreclosure of a mortgage on an owner-occupied residential  
15 real property of no more than 4 units, the plaintiff shall attach to the front of the  
16 foreclosure complaint a one-page form notice to the defendant as developed by the  
17 Department of Professional and Financial Regulation, Bureau of Consumer Credit  
18 Protection in accordance with this subsection and section 6112, subsection 3. The form  
19 notice must be written in language that is plain and readily understandable by the general  
20 public.

21 At a minimum, the form notice must contain the following:

22 A. A statement that failure to answer the complaint will result in foreclosure of the  
23 property subject to the mortgage;

24 B. A sample answer and an explanation that the defendant may fill out the form and  
25 return it to the court in the envelope provided as the answer to the complaint. If the  
26 debtor returns the form to the court, the defendant does not need to file a more formal  
27 answer or responsive pleading and will be scheduled for mediation in accordance  
28 with this section; and

29 C. A description of the program.

30 **3. Foreclosure mediation program established.** Under the authority granted in  
31 Title 4, section 18-B, the court shall adopt rules to establish a foreclosure mediation  
32 program to provide mediation in actions for foreclosure of mortgages on owner-occupied  
33 residential property with no more than 4 units. The program must address all issues of  
34 foreclosure, including but not limited to reinstatement of the mortgage, modification of  
35 the loan and restructuring of the mortgage debt. Mediations conducted pursuant to the  
36 program must use the calculations, assumptions and forms that are established by the  
37 Federal Deposit Insurance Corporation and published in the Federal Deposit Insurance  
38 Corporation Loan Modification Program Guide as set out on the Federal Deposit  
39 Insurance Corporation's publicly accessible website.

40 **4. Financial information confidential.** Except for financial information included as  
41 part of a foreclosure complaint or any answer filed with the court, any financial statement

1 or information provided to the court or to the parties during the course of mediation in  
2 accordance with this section is confidential and is not available for public inspection.  
3 Any financial statement or information must be made available as necessary, to the court,  
4 the attorneys whose appearances are entered in the case and the parties to the mediation.  
5 Any financial statement or information designated as confidential under this subsection  
6 must be kept separate from other papers in the case and may not be used for purposes  
7 other than mediation.

8 **5. No waiver of rights.** The plaintiff's or defendant's rights in the foreclosure action  
9 are not waived by participating in the program.

10 **6. Commencement of mediation.** When a defendant returns the notice required  
11 under subsection 2 or otherwise requests mediation or makes an appearance in a  
12 foreclosure action, the court shall refer the plaintiff and defendant to mediation pursuant  
13 to this section.

14 **7. Provisions of mediation services; filing and fees.** The court shall:

15 **A. Assign mediators, including active retired justices and judges pursuant to Title 4,**  
16 **sections 104 and 157-B, who:**

17 **(1) Are trained in mediation and all relevant aspects of the law;**

18 **(2) Have knowledge of community-based resources that are available in the**  
19 **judicial districts in which they serve;**

20 **(3) Have knowledge of mortgage assistance programs; and**

21 **(4) Are trained in using the relevant Federal Deposit Insurance Corporation**  
22 **forms and worksheets.**

23 **The court may establish a training program for mediators and require that mediators**  
24 **receive such training prior to being appointed;**

25 **B. Report annually to the joint standing committee of the Legislature having**  
26 **jurisdiction over insurance and financial services matters and the joint standing**  
27 **committee of the Legislature having jurisdiction over judiciary matters on:**

28 **(1) The performance of the program, including numbers of homeowners who are**  
29 **notified of mediation, who attend mediation and who receive legal counseling or**  
30 **legal assistance; and**

31 **(2) The results of the mediation process, including the number of loans**  
32 **restructured, number of principal write-downs, interest rate reductions and**  
33 **number of homeowners who default on mortgages within a year after**  
34 **restructuring, to the extent the court has available information;**

35 **C. Notwithstanding subsection 10, establish a fee upon a foreclosure filing made on**  
36 **or after June 15, 2009 to support mediation services to be paid for by the plaintiff;**  
37 **and**

38 **D. Make recommendations for any changes to the program to the Legislature.**

1 **8. Referral to mortgage assistance programs.** At any time during the mediation  
2 process, the mediator may refer the defendant to housing counseling or mortgage  
3 assistance programs.

4 **9. No entry of judgment.** For any foreclosure complaint filed after January 1, 2010  
5 that is scheduled for mediation in accordance with this section, a final judgment may not  
6 issue until a mediator's report has been completed pursuant to subsection 13.

7 **10. Application of mediation provisions to ongoing foreclosure proceedings.** The  
8 requirements of this section apply to foreclosures filed after January 1, 2010. The court  
9 may in its discretion require mediation for owner-occupied residential properties in the  
10 foreclosure process but not scheduled for sale before January 1, 2010 and owner-  
11 occupied residential properties with no more than 4 units already scheduled for sale.

12 **11. Parties to mediation.** A mediator shall include in the mediation process under  
13 this section any person the mediator determines is necessary for effective mediation.  
14 Mediation and appearance in person is mandatory for:

15 A. The mortgagee, who has the authority to agree to a proposed settlement, loan  
16 modification or dismissal of the loan, except that the mortgagee may participate by  
17 telephone or electronic means as long as that mortgagee is represented with authority  
18 to agree to a proposed settlement;

19 B. The defendant;

20 C. Counsel for the plaintiff; and

21 D. Counsel for the defendant, if represented.

22 **12. Good faith effort.** Each party and each party's attorney, if any, must be present  
23 at mediation as required by this section and shall make a good faith effort to mediate all  
24 issues. If any party or attorney fails to attend or to make a good faith effort to mediate,  
25 the court may impose appropriate sanctions.

26 **13. Report.** A mediator must complete a report for each mediation conducted under  
27 this section. The mediator's report must indicate in a manner as determined by the court  
28 that the parties completed in full the Net Present Value Worksheet in the Federal Deposit  
29 Insurance Corporation Loan Modification Program Guide. If the report is not the result of  
30 a settlement or dismissal of the case, the report must include the outcomes of the Net  
31 Present Value Worksheet. As part of the report, the mediator may notify the court if, in  
32 the mediator's opinion, either party failed to negotiate in good faith.

33 **14. Records.** The court shall maintain records or other information relating to the  
34 program as necessary to meet the reporting requirements in subsection 7, paragraph B.

35 **Sec. 19. 14 MRSA §6322-A** is enacted to read:

36 **§6322-A. Notice to tenants of foreclosure judgment**

37 The mortgagee shall, after entry of final judgment in favor of the mortgagee, provide  
38 a copy of the foreclosure judgment to any residential tenant of the premises. Upon request  
39 from a mortgagee, the mortgagor shall provide the name, address and other contact  
40 information for any tenant. A tenant who receives written notice under this section is not  
41 required to file any responsive pleadings and must receive written notice of all

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1 subsequent proceedings including all matters through and including sale of the property.  
2 The mortgagee shall provide written notice to the tenant if the mortgagee knows or  
3 should know by exercise of due diligence that the property is occupied as a residential  
4 rental unit. Notice may be provided to a tenant by first class mail and registered mail at  
5 the tenant's last known address only after the mortgagee has made 2 good faith efforts to  
6 provide written notice to the tenant in person. After providing the notice required by this  
7 section, and upon expiration of the redemption period, the mortgagee may institute an  
8 action for forcible entry and detainer pursuant to section 6001. This section may not be  
9 construed to prohibit an action for forcible entry and detainer in accordance with section  
10 6001 for a reason that is not related to a judicial foreclosure action.

11 **Sec. 20. 14 MRSA §6323, sub-§3** is enacted to read:

12 **3. Extension of deadline.** Upon a showing of good cause, the court may extend a  
13 deadline established by this section for the publication of the notice of sale or conducting  
14 the public sale.

15 **Sec. 21. 36 MRSA §4641-B, sub-§6** is enacted to read:

16 **6. Transfer of tax on deeds of foreclosure or in lieu of foreclosure.**  
17 Notwithstanding subsection 4, the State Tax Assessor shall monthly pay to the  
18 Department of Professional and Financial Regulation, Bureau of Consumer Credit  
19 Protection the revenues derived from the tax imposed on the transfer of real property by  
20 deeds that convey real property back to a lender holding a bona fide mortgage that is  
21 genuinely in default, either by deeds from a mortgagor to a mortgagee in lieu of  
22 foreclosure or by deeds from a mortgagee to itself at a public sale pursuant to Title 14,  
23 section 6323.

24 **Sec. 22. 36 MRSA §4641-C, sub-§2**, as repealed and replaced by PL 1993, c.  
25 680, Pt. A, §31, is amended to read:

26 **2. Mortgage deeds.** Mortgage deeds, discharges of mortgage deeds and partial  
27 releases of mortgage deeds, ~~deeds from a mortgagor to a mortgagee in lieu of foreclosure~~  
28 ~~and deeds from a mortgagee to itself at a public sale held pursuant to Title 14, section~~  
29 ~~6323. For the purposes of this subsection, only the mortgagor is exempt from the tax~~  
30 ~~imposed for a deed in lieu of foreclosure.~~ In the event of a deed to a 3rd party at such a  
31 public sale, the tax imposed upon the grantor by section 4641-A applies only to that  
32 portion of the proceeds of sale that exceeds the sums required to satisfy in full the claims  
33 of the mortgagee and all junior claimants originally made parties in interest in the  
34 proceedings or having subsequently intervened in the proceedings as established by the  
35 judgment of foreclosure and sale. The tax must be deducted from the excess proceeds. In  
36 the event of a deed from a mortgagee to itself at a public sale held pursuant to Title 14,  
37 section 6323, the mortgagee is considered to be both the grantor and grantee for purposes  
38 of section 4641-A. In the event of a deed in lieu of foreclosure and a deed from a  
39 mortgagee to itself at a public sale held pursuant to Title 14, section 6323, the tax applies  
40 to the value of the property as that term is defined in section 4641, subsection 3;

41 **Sec. 23. 36 MRSA §4641-C, sub-§13**, as enacted by PL 1993, c. 398, §4, is  
42 repealed.

1           **Sec. 24. Phase-in of foreclosure mediation program.** Notwithstanding the  
 2 Maine Revised Statutes, Title 14, section 6321-A, subsection 10, beginning July 1, 2009,  
 3 the Supreme Judicial Court may, in its discretion, implement the foreclosure mediation  
 4 program established pursuant to Title 14, section 6321-A in those judicial districts that  
 5 the court determines that the mediation program is most needed as long as the mediation  
 6 program is available in all judicial districts by January 1, 2010. In any judicial district in  
 7 which the foreclosure mediation program is implemented before January 1, 2010, the  
 8 Supreme Judicial Court shall schedule mediation for those foreclosures filed on or after  
 9 July 1, 2009 in which mediation is required in accordance with Title 14, section 6321-A,  
 10 subsection 6 and may not issue a foreclosure judgment on those foreclosures until a  
 11 mediator's report is received pursuant to Title 14, section 6321-A, subsection 13. Before  
 12 February 15, 2010, the court shall report to the Joint Standing Committee on Insurance  
 13 and Financial Services on the mediation program and recommend whether changes are  
 14 needed. The Joint Standing Committee on Insurance and Financial Services may report  
 15 out a bill to the Second Regular Session of the 124th Legislation based on the  
 16 recommendations.

17           **Sec. 25. Appropriations and allocations.** The following appropriations and  
 18 allocations are made.

19           **JUDICIAL DEPARTMENT**

20           **Courts - Supreme, Superior and District 0063**

21 Initiative: Provides funds for the foreclosure mediation program, including funds for one  
 22 Director, foreclosure mediation program position, 3 Assistant Clerk positions and one  
 23 Administrative Assistant position.

24	<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2009-10</b>	<b>2010-11</b>
25	POSITIONS - LEGISLATIVE COUNT	5.000	5.000
26	Personal Services	\$297,231	\$319,602
27	All Other	\$451,870	\$425,050
28			
29	<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<b>\$749,101</b>	<b>\$744,652</b>

30	<b>JUDICIAL DEPARTMENT</b>		
31	<b>DEPARTMENT TOTALS</b>	<b>2009-10</b>	<b>2010-11</b>
32			
33	<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>\$749,101</b>	<b>\$744,652</b>
34			
35	<b>DEPARTMENT TOTAL - ALL FUNDS</b>	<b>\$749,101</b>	<b>\$744,652</b>

36           **PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF**

37           **Bureau of Consumer Credit Protection 0091**

38 Initiative: Allocates funds for one Office Specialist II position and related costs to  
 39 establish a statewide hotline to facilitate a mortgagor's communication with housing

1 counselors and an outreach program in coordination with the Maine State Housing  
 2 Authority including contracting with nonprofit organizations that provide housing  
 3 counseling services and mortgage assistance and to collect and disseminate foreclosure  
 4 information.

5	<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2009-10</b>	<b>2010-11</b>
6	POSITIONS - LEGISLATIVE COUNT	1,000	1,000
7	Personal Services	\$65,473	\$69,405
8	All Other	\$159,534	\$136,631
9			
10	<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<b>\$225,007</b>	<b>\$206,036</b>

11	<b>PROFESSIONAL AND FINANCIAL</b>		
12	<b>REGULATION, DEPARTMENT OF</b>		
13	<b>DEPARTMENT TOTALS</b>	<b>2009-10</b>	<b>2010-11</b>
14			
15	<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>\$225,007</b>	<b>\$206,036</b>
16			
17	<b>DEPARTMENT TOTAL - ALL FUNDS</b>	<b>\$225,007</b>	<b>\$206,036</b>

18	<b>SECTION TOTALS</b>	<b>2009-10</b>	<b>2010-11</b>
19			
20	<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>\$974,108</b>	<b>\$950,688</b>
21			
22	<b>SECTION TOTAL - ALL FUNDS</b>	<b>\$974,108</b>	<b>\$950,688</b>
23			

24 **SUMMARY**

25 This amendment retains the emergency preamble and emergency clause, but replaces  
 26 the substantive provisions of the bill. The amendment does the following.

27 1. It establishes a court-supervised mediation process in judicial foreclosure  
 28 proceedings on owner-occupied residential properties of one to 4 units. The mediation  
 29 process is modeled after the program used in the State of Connecticut. Beginning July 1,  
 30 2009, the amendment allows the Supreme Judicial Court to implement the mediation  
 31 program first in those judicial districts most affected by foreclosure filings, but requires  
 32 the program to be implemented throughout the State by January 1, 2010. The mediation  
 33 program applies to judicial foreclosure filings made after January 1, 2010 except in those  
 34 judicial districts where the mediation program is implemented by the court on July 1,  
 35 2009. The court is authorized to establish fees to support the mediation program.

36 2. It makes violation of provisions of the Maine Consumer Credit Code related to  
 37 mortgage lending a violation of the Maine Unfair Trade Practices Act.







# 124th MAINE LEGISLATURE

LD 1418

LR 1678(02)

## An Act To Preserve Home Ownership and Stabilize the Economy by Preventing Unnecessary Foreclosures

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

Committee: Insurance and Financial Services

Fiscal Note Required: Yes

### Fiscal Note

	2009-10	2010-11	Projections 2011-12	Projections 2012-13
<b>Net Cost (Savings)</b>				
General Fund	\$0	\$0	\$0	\$0
<b>Appropriations/Allocations</b>				
Other Special Revenue Funds	\$974,108	\$950,688	\$964,482	\$978,816
<b>Revenue</b>				
General Fund	\$0	\$0	\$0	\$0
Other Special Revenue Funds	\$1,100,000	\$1,030,000	\$974,000	\$929,200

### Fiscal Detail and Notes

This bill includes Other Special Revenue Funds allocations of \$749,101 in fiscal year 2009-10 and \$744,652 in fiscal year 2010-11 for the Judicial Branch to establish the Foreclosure Medication Program. The Judicial Branch will also experience an annual increase of \$750,000 in Other Special Revenue Funds revenue as a result of the increase in the foreclosure filing fee.

The bill's provision to remove the exemption under the Real Estate Transfer tax for foreclosure sales and deeds in lieu of foreclosure is estimated to increase General Fund revenue by \$350,000 in 2009-10 and by \$280,000 in 2010-11. This revenue will be transferred to an Other Special Revenue Funds account in the Bureau of Consumer Credit Protection in the Department of Professional and Financial Regulation to fund additional duties under the bill. Because the change to the Real Estate Transfer tax only repeals certain transactions currently exempted from that tax there is no net loss of revenue to the General Fund or the Housing Opportunities for Maine (HOME) Fund administered by the Maine State Housing Authority.

CA(H-524)

The bill provides an allocation of \$225,007 in 2009-10 and \$206,036 in 2010-11 to the Bureau of Consumer Credit Protection in the Department of Professional and Financial Regulation for the creation of one Office Specialist II position and related costs of the bureau to establish a statewide hotline to facilitate a mortgagor's communication with housing counselors, an outreach program in coordination with the Maine State Housing Authority including contracting with nonprofit organizations that provide housing counseling services and mortgage assistance, and to collect and disseminate foreclosure information.

Additional costs to the Maine State Housing Authority associated with consulting with the Bureau of Consumer Credit Protection on the outreach program can be absorbed within existing budgeted resources.