

# MAINE STATE LEGISLATURE

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Date: 2/3/10

(Filing No. H-604)

**INSURANCE AND FINANCIAL SERVICES**

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

COMMITTEE AMENDMENT "A" to H.P. 1208, L.D. 1707, Bill, "An Act To Clarify the Application of Certain Statutory Requirements to Foreclosures"

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

**'PART A**

**Sec. A-1. 9-A MRSA §5-111, sub-§6** is enacted to read:

6. Notwithstanding the other provisions of this section, a notice to cure default for a consumer credit transaction secured by a mortgage subject to Title 14, section 6111 must satisfy the requirements of Title 14, section 6111 and not the requirements of this section.

**Sec. A-2. 14 MRSA §6111, sub-§5**, as enacted by PL 1997, c. 579, §4, is repealed.

**Sec. A-3. Application.** This Part applies to any mortgage required to comply with the Maine Revised Statutes, Title 14, section 6111 for which a notice to cure default pursuant Title 14, section 6111 has not been issued by a mortgagee before the effective date of this Part.

**PART B**

**Sec. B-1. 14 MRSA §2401, sub-§3, ¶G**, as enacted by PL 2009, c. 402, §9, is amended to read:

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

**Sec. B-2. 14 MRSA §6111, sub-§1-A, ¶C**, as enacted by PL 2009, c. 402, §11, is amended to read:

C. An itemization of any other charges that must be paid in order to satisfy the full obligations of the loan cure the default;

Sec. B-3. 14 MRSA §6203-A, as amended by PL 2009, c. 402, §16, is repealed and the following enacted in its place:

**§6203-A. Power of sale; procedure; notice; form**

**1. Power of sale.** Any holder of a mortgage on real estate that is granted by a corporation, partnership, including a limited partnership, limited liability company or trustee of a trust and that contains a power of sale, or a person authorized by the power of sale, or an attorney duly authorized by a writing under seal, or a person acting in the name of the holder of such mortgage or any such authorized person, may, upon breach of condition and without action, do all the acts authorized or required by the power; except that a sale under the power is not effectual to foreclose a mortgage unless, previous to the sale, notice has been published once in each of 3 successive weeks, the first publication to be not less than 21 days before the day of the sale in a newspaper of general circulation in the town where the land lies and which notice must prominently state the street address of the real estate encumbered by the mortgage deed, if any, and the book and page number of the mortgage, if any. This provision is implied in every power of sale mortgage in which it is not expressly set forth. For mortgage deeds executed on or after October 1, 1993, the power of sale may be used only if the mortgage deed states that it is given primarily for a business, commercial or agricultural purpose. A copy of the notice must, at least 21 days before the date of the sale under the power in the mortgage, be recorded in each registry of deeds in which the mortgage deed is or by law ought to be recorded and must be served on the mortgagor or its representative in interest, or may be sent by registered mail addressed to the mortgagor or the mortgagor's representative at the mortgagor's last known address, or to the person and to the address as may be agreed upon in the mortgage, at least 21 days before the date of the sale under the power in the mortgage. Any power of sale incorporated into a mortgage is not affected by the subsequent transfer of the mortgaged premises from the corporation, partnership, including a limited partnership, limited liability company or trustee of the trust to any other type of organization or to an individual or individuals. The power of sale may not be used to foreclose a mortgage deed granted by a trustee of a trust if at the time the mortgage deed is given the real estate is used exclusively for residential purposes, the real estate has 4 or fewer residential units and one of the units is the principal residence of the owner of at least 1/2 of the beneficial interest in the trust. If the mortgage deed contains a statement that at the time the mortgage deed is given the real estate encumbered by the mortgage deed is not used exclusively for residential purposes, that the real estate has more than 4 residential units or that none of the residential units is the principal residence of the owner of at least 1/2 of the beneficial interest in the trust, the statement conclusively establishes these facts and the mortgage deed may be foreclosed by the power of sale. The method of foreclosure of real estate mortgages provided by this section is specifically subject to the order of priorities set out in section 6205.

**2. Notice to tenants; effect on title.** In addition to the notices provided pursuant to subsection 1, the mortgagee shall provide a copy of the notice to a residential tenant if the mortgagee knows or should know by exercise of due diligence that the property is occupied as a rental unit. Upon request from a mortgagee, the mortgagor or its

1 representative in interest shall provide the name, address and other contact information  
2 for any residential tenant. Notice to a residential tenant may be served on the residential  
3 tenant by sheriff or may be sent by first class mail and registered mail at the residential  
4 tenant's last known address. A residential tenant may not be evicted unless a mortgagee  
5 institutes an action for forcible entry and detainer pursuant to section 6001 at least 21  
6 days after a mortgagee has served the notice required by this subsection. This subsection  
7 may not be construed to prohibit an action for forcible entry and detainer in accordance  
8 with section 6001 for a reason that is not related to a foreclosure sale. The failure to  
9 provide the notice required by this subsection does not affect the validity of the  
10 foreclosure sale.

11 **3. Form of foreclosure notice.** The following form of foreclosure notice may be  
12 used and may be altered as circumstances require; but nothing herein may be construed to  
13 prevent the use of other forms.

14 **FORM**

15 **Mortgagee's sale of real estate**

16 By virtue of and in execution of the Power of Sale contained in a certain Mortgage  
17 Deed given by ..... to ..... dated ..... and recorded in the  
18 ..... County Registry of Deeds, Book ....., Page ....., of which Mortgage  
19 the undersigned is the present holder, ..... (if by assignment, or in any fiduciary  
20 capacity give reference) ....., for breach of the  
21 conditions of said Mortgage and for the purpose of foreclosing the same there will be sold  
22 at Public Sale at ..... o'clock, ..... M. on the ..... day of ..... 20....., at ....., all and  
23 singular the premises described in said Mortgages, ....., (in case of partial  
24 releases state exceptions).

25 To wit: "(Description exactly as in the Mortgage, including all reference to title,  
26 restrictions, encumbrances, etc., as made in the Mortgage)".

27 Terms of Sale: (State here the amount, if any, to be paid in cash by the purchaser at  
28 the time and place of the sale, and the time or times for payment of the balance or the  
29 whole as the case may be and any other terms or conditions relating to the sale).

30 Other terms to be announced at the sale.

31 Signed: .....

32 (Present holder of Mortgage)

33 ..... 20.....

34 **4. Notice of sale.** A notice of sale in subsection 3, published in accordance with this  
35 chapter or in accordance with the power in the mortgage together with such other or  
36 further notice, if any, as is required by the mortgage, is sufficient notice of the sale, and  
37 the premises are considered to have been sold, and the deed thereunder must convey the  
38 premises subject to and with the benefit of all restrictions, easements, improvements,  
39 outstanding tax titles, municipal or other public taxes, assessments, liens or claims in the  
40 nature of liens and existing encumbrances of record created prior to the mortgage,  
41 whether or not reference to such restrictions, easements, improvements, liens or  
42 encumbrances is made in the deed; but no purchaser at the sale is bound to complete the

1 purchase if there are encumbrances, other than those named in the mortgage and included  
2 in the notice of the sale, that are not stated at the sale and included in the seller's contract  
3 with the purchase.

4 5. Public sale. At a public sale pursuant to this section, a mortgagee may bid and  
5 may purchase any real estate sold at such sale, as long as the mortgagee is the highest  
6 bidder. If the real estate is sold for an amount in excess of the outstanding balance of the  
7 mortgage together with all interest and costs, said excess must be used to satisfy any other  
8 encumbrances on said property and after all said encumbrances are satisfied together with  
9 all interest and costs, any excess then remaining must be paid to the mortgagor. If the  
10 mortgagor or any person holding an encumbrance cannot be found after a diligent search,  
11 the money must be paid into the Superior Court in the county where the land lies for the  
12 benefit of the mortgagor or the holder of any such encumbrance.

13 **Sec. B-4. 14 MRSA §6203-B**, as enacted by PL 1967, c. 424, §2, is amended to  
14 read:

15 **§6203-B. Copy of notice; affidavit; recording; evidence**

16 The person selling shall, within 30 days after the sale, cause a copy of the notice as  
17 published and ~~his~~ the person's affidavit, fully and particularly stating ~~his~~ the person's acts,  
18 or the acts of ~~his~~ the person's principal or ward, to be recorded in the registry of deeds for  
19 the county where the land lies. If the affidavit shows that the requirements of the power  
20 of sale and ~~this chapter section 6203-A, subsection 1~~ have in all respects been complied  
21 with, the affidavit or a certified copy of the record thereof ~~shall~~ must be admitted as  
22 evidence that the power of sale was duly executed. In case of an error or omission in the  
23 affidavit recorded as aforesaid, the Superior Court, on petition and after such notice as it  
24 may order may, if it ~~deems~~ determines proper, authorize the recording of an affidavit  
25 amending, correcting or in substitution for an affidavit so recorded, and the affidavit so  
26 authorized to be recorded or a certified copy of the record thereof ~~shall~~ must have the  
27 same effect and ~~shall~~ must be admitted in evidence, as if it had been recorded within said  
28 30 days, but such subsequent affidavit ~~shall~~ does not prejudicially affect any title or  
29 interest in land ~~which~~ that may have arisen or have been created between the recording of  
30 the original and of the subsequent affidavit.

31 **Sec. B-5. 14 MRSA §6321, 3rd ¶**, as amended by PL 2009, c. 402, §17, is  
32 further amended to read:

33 The foreclosure must be commenced in accordance with the Maine Rules of Civil  
34 Procedure, and the mortgagee shall within ~~10~~ 60 days of commencing the foreclosure also  
35 record a copy of the complaint or a clerk's certificate of the filing of the complaint in each  
36 registry of deeds in which the mortgage deed is or by law ought to be recorded and such a  
37 recording thereafter constitutes record notice of commencement of foreclosure. The  
38 mortgagee shall further certify and provide evidence that all steps mandated by law to  
39 provide notice to the mortgagor pursuant to section 6111 were strictly performed. The  
40 mortgagee shall certify proof of ownership of the mortgage note and produce evidence of  
41 the mortgage note, mortgage and all assignments and endorsements of the mortgage note  
42 and mortgage. The complaint must allege with specificity the plaintiff's claim by  
43 mortgage on such real estate, describe the mortgaged premises intelligibly, including the  
44 street address of the mortgaged premises, if any, which must be prominently stated on the

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first page of the complaint, state the book and page number of the mortgage, if any, state the existence of public utility easements, if any, that were recorded subsequent to the mortgage and prior to the commencement of the foreclosure proceeding and without mortgagee consent, state the amount due on the mortgage, state the condition broken and by reason of such breach demand a foreclosure and sale. If a clerk's certificate of the filing of the complaint is presented for recording pursuant to this section, the clerk's certificate must bear the title "Clerk's Certificate of Foreclosure" and prominently state, immediately after the title, the street address of the mortgaged premises, if any, and the book and page number of the mortgage, if any. Service of process on all parties in interest and all proceedings must be in accordance with the Maine Rules of Civil Procedure. "Parties in interest" includes mortgagors, holders of fee interest, mortgagees, lessees pursuant to recorded leases or memoranda thereof, lienors and attaching creditors all as reflected by the indices in the registry of deeds and the documents referred to therein affecting the mortgaged premises, through the time of the recording of the complaint or the clerk's certificate. Failure to join any party in interest does not invalidate the action nor any subsequent proceedings as to those joined. Failure of the mortgagee to join, as a party in interest, the holder of any public utility easement recorded subsequent to the mortgage and prior to commencement of foreclosure proceedings is deemed consent by the mortgagee to that easement. Any other party having a claim to the real estate whose claim is not recorded in the registry of deeds as of the time of recording of the copy of the complaint or the clerk's certificate need not be joined in the foreclosure action, and any such party has no claim against the real estate after completion of the foreclosure sale, except that any such party may move to intervene in the action for the purpose of being added as a party in interest at any time prior to the entry of judgment. ~~Within 3 10 days of recording a copy of the complaint or a clerk's certificate of the filing in the registry of deeds~~ submitting the complaint for filing with the court, the mortgagee shall provide a copy of the complaint or of the clerk's certificate as submitted to the court that prominently states, immediately after the title, the street address of the mortgaged premises, if any, and the book and page number of the mortgage, if any, to the municipal tax assessor of the municipality in which the property is located and, if the mortgaged premises is manufactured housing as defined in Title 10, section 9002, subsection 7, to the owner of any land leased by the mortgagor. The failure to provide the notice required by this section does not affect the validity of the foreclosure sale.

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**Sec. B-6. 14 MRSA §6321-A, sub-§11, ¶A**, as enacted by PL 2009, c. 402, §18, is amended to read:

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

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**Sec. B-7. 14 MRSA §6321-A, sub-§13**, as enacted by PL 2009, c. 402, §18, is amended to read:

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**13. Report.** A mediator must complete a report for each mediation conducted under this section. The mediator's report must indicate in a manner as determined by the court that the parties completed in full the Net Present Value Worksheet in the Federal Deposit Insurance Corporation Loan Modification Program Guide. If the report is mediation did

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1 not the result of a in the settlement or dismissal of the ease action, the report must include  
2 the outcomes of the Net Present Value Worksheet. As part of the report, the mediator  
3 may notify the court if, in the mediator's opinion, either party failed to negotiate in good  
4 faith.

5 **Sec. B-8. 14 MRSA §6322-A**, as enacted by PL 2009, c. 402, §19, is amended to  
6 read:

7 **§6322-A. Notice to tenants of foreclosure judgment**

8 The mortgagee shall, after entry of final judgment in favor of the mortgagee, provide  
9 a copy of the foreclosure judgment to any residential tenant of the premises. Upon  
10 request from a mortgagee, the mortgagor shall provide the name, address and other  
11 contact information for any residential tenant. A residential tenant who receives written  
12 notice under this section is not required to file any responsive pleadings and must receive  
13 written notice of all subsequent proceedings including all matters through and including  
14 sale of the property. The mortgagee shall provide written notice to the residential tenant  
15 if the mortgagee knows or should know by exercise of due diligence that the property is  
16 occupied as a residential rental unit. Notice may be provided to a residential tenant by  
17 first class mail and registered mail at the residential tenant's last known address only after  
18 the mortgagee has made 2 good faith efforts to provide written notice to the residential  
19 tenant in person. ~~After providing the notice required by this section, and upon expiration~~  
20 ~~of the redemption period, the mortgagee may institute an action for forcible entry and~~  
21 ~~detainer pursuant to section 6001.~~ A residential tenant may not be evicted unless a  
22 mortgagee institutes an action for forcible entry and detainer pursuant to section 6001  
23 after providing the notice required by this section and after the expiration of the  
24 redemption period. This section may not be construed to prohibit an action for forcible  
25 entry and detainer in accordance with section 6001 for a reason that is not related to a  
26 judicial foreclosure action. The failure to provide the notice required by this section does  
27 not affect the validity of the foreclosure sale.

28 **Sec. B-9. Retroactivity.** This Part applies retroactively to June 15, 2009.'

29 **SUMMARY**

30 This amendment replaces the bill. Part A of the amendment repeals the law allowing  
31 certain mortgages an exemption from the requirements for a notice to cure default of a  
32 mortgage. Part A clarifies that this change applies to any mortgage for which a notice to  
33 cure default has not been issued before the effective date of the bill.

34 Part B of the amendment makes several changes to clarify Public Law 2009, chapter  
35 402. It recognizes that a mortgage need not be recorded to be foreclosed in conformance  
36 with Maine case law. It clarifies that the notice to cure default must include an  
37 itemization of the charges necessary to cure the default. It clarifies that the requirements  
38 for notice of foreclosure to tenants apply only to residential tenants, not commercial  
39 tenants. It clarifies that a residential tenant may not be evicted upon foreclosure except  
40 through the forcible entry and detainer process. It clarifies that the failure to provide a  
41 notice to residential tenants does not become a title defect. It extends the time for the  
42 copy of the foreclosure complaint or clerk's certificate to be filed with the registry of  
43 deeds in which the mortgage is recorded from 10 days to 60 days and the copy to be

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COMMITTEE AMENDMENT "A" to H.P. 1208, L.D. 1707

1 submitted to the municipal tax assessor from 3 days to 10 days after filing in the registry  
2 of deeds. The changes in Part B are retroactive to June 15, 2009.

**FISCAL NOTE REQUIRED**  
(See attached)

**COMMITTEE AMENDMENT**





# 124th MAINE LEGISLATURE

LD 1707

LR 2048(03)

**An Act To Clarify the Application of Certain Statutory Requirements to Foreclosures**

**Fiscal Note for Bill as Amended by Committee Amendment "A"**  
**Committee: Insurance and Financial Services**  
**Fiscal Note Required: Yes**

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## Fiscal Note

Minor cost increase - Other Special Revenue Funds

### Fiscal Detail and Notes

Any additional costs to the Bureau of Consumer Credit Protection in the Department of Professional and Financial Regulation can be absorbed by the bureau utilizing existing budgeted resources.