

MAINE STATE LEGISLATURE

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Date: 5/31/11

L.D. 145
(Filing No. H-425)

JUDICIARY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
125TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 128, L.D. 145, Bill, "An Act To Protect Homeowners Subject to Foreclosure by Requiring the Foreclosing Entity To Provide the Court with Original Documents"

Amend the bill by striking out the title and substituting the following:

'An Act To Clarify and Streamline Foreclosure Proceedings'

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

'Sec. 1. 14 MRSA §6321, as amended by PL 2009, c. 476, Pt. B, §5 and affected by §9, is further amended by adding after the 2nd paragraph 2 new paragraphs to read:

If, during the course of a foreclosure action in which the defendant has appeared, the defendant sends to the plaintiff a written request to be allowed to inspect and copy or photograph the original mortgage note, the plaintiff shall produce the original note together with all existing indorsements of the note in accordance with the following provisions. Within 30 days of the defendant's making of such a written request, the plaintiff shall send to the defendant a written response stating the date, time and place for the production of the original note. The date for production must be not more than 40 days after the making of the request for inspection or must be at such other time as the plaintiff and defendant may agree upon. The place for inspection must be, at the election of the plaintiff, the courthouse where the action is pending, the office of an attorney within the county in which the action is pending, an office of a banking institution or credit union within the county where the action is pending or such other place upon which the plaintiff and defendant agree. If the plaintiff fails to produce the original note in accordance with this section, the court shall, upon motion of the defendant supported by a proper affidavit, dismiss the foreclosure action without prejudice and award to the defendant reasonable attorney's fees incurred for the representation of the plaintiff in the action. If the defendant elects not to request dismissal of the action, the case proceeds but the court may not allow for the recovery by the plaintiff of any interest or late fees on the mortgage loan between the date required for production of the note pursuant to this section and the date on which the note is later produced for inspection.

COMMITTEE AMENDMENT

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If the plaintiff claims that it is not in possession of the note but is entitled to enforce the note pursuant to Title 11, section 3-1309, the furnishing to the defendant of a sworn affidavit setting forth the proof required by Title 11, section 3-1309 at the time and place specified for production pursuant to this section or by mail in advance of the date for production constitutes sufficient compliance with the requirements concerning the production of the original note established in this section. If the plaintiff claims the note is an electronic transferable record as defined in Title 10, section 9416, subsection 1, the furnishing to the defendant of a sworn affidavit setting forth the proof required by Title 10, section 9416, subsection 6 at the time and place specified for production pursuant to this section or by mail in advance of the date for production constitutes sufficient compliance with the requirements concerning the production of the original note established in this section.'

SUMMARY

This amendment replaces the bill but retains the proposed requirement that a plaintiff seeking to foreclose on a mortgage is required to produce the original mortgage note, evidencing that the plaintiff has the right to foreclose, before a foreclosure action may proceed.

This amendment requires the plaintiff to produce the original note and all the indorsements associated with the note within 30 days of the defendant's request for production to allow the defendant to inspect and copy or photograph the original mortgage note. The plaintiff must specify the date, time and place for production of the note. The place may be at the courthouse, in an attorney's office or in a financial institution or any other place to which the plaintiff and defendant agree. The date of production must be within 40 days of the request for production.

If the plaintiff fails to produce the original note, the defendant may ask the court to dismiss the action without prejudice and the court shall award the defendant reasonable attorney's fees. If the defendant chooses not to request the dismissal of the action, the court may not allow the plaintiff to recover any interest or late fees on the mortgage loan between the date required for the note's production and the date when the note is produced.

If the plaintiff is not in possession of the note but the Uniform Commercial Code provisions on lost, stolen or destroyed instruments apply, the plaintiff's provision of a sworn affidavit pursuant to the Maine Revised Statutes, Title 11, section 3-1309 to the defendant constitutes sufficient compliance with the production requirements.

If the plaintiff claims the note is an electronic transferable record, as defined in the Uniform Electronic Transactions Act, the plaintiff's furnishing of a sworn affidavit setting forth the proof required pursuant to Title 10, section 9416, subsection 6 constitutes sufficient compliance with the production requirements.