

# MAINE STATE LEGISLATURE

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Date: 2/24/12

L.D. 145  
(Filing No. H-721)

majority

JUDICIARY

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

COMMITTEE AMENDMENT "B" 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, but prior to entry of judgment, the defendant sends to the plaintiff and the plaintiff's attorney of record 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 less than 7 days from the date the written response was sent and not more than 45 days after the making of the request for inspection, unless an extension is granted for good cause shown, 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. The right of the defendant to request inspection of the note as provided for in this section and any corresponding obligation of the plaintiff to produce the note for inspection under this section terminate upon the entry of a judgment of foreclosure or other termination of the

COMMITTEE AMENDMENT

1 foreclosure action. The defendant has the right to request inspection and copying of the  
2 original note under this section only once during the pendency of the foreclosure action  
3 unless the court in which the action is pending for good cause shown otherwise orders.  
4 Nothing in this paragraph alters in any respect the elements of proof and evidentiary  
5 standards applicable in any foreclosure action.

6 If the plaintiff claims that it is not in possession of the note but is entitled to enforce  
7 the note pursuant to Title 11, section 3-1309 or for some other reason, the furnishing to  
8 the defendant of a sworn affidavit setting forth the proof required by Title 11, section  
9 3-1309, or setting forth the reason why the plaintiff asserts that it may enforce the note  
10 even though the plaintiff is not in possession of the original note, at the time and place  
11 specified for production pursuant to this section or by mail in advance of the date for  
12 production constitutes sufficient compliance with the requirements concerning the  
13 production of the original note established in this section. If the plaintiff claims the note  
14 is an electronic transferable record as defined in Title 10, section 9416, subsection 1, the  
15 furnishing to the defendant of a sworn affidavit setting forth the proof required by Title  
16 10, section 9416, subsection 6 at the time and place specified for production pursuant to  
17 this section or by mail in advance of the date for production constitutes sufficient  
18 compliance with the requirements concerning the production of the original note  
19 established in this section. Nothing in this paragraph alters in any respect the elements of  
20 proof and evidentiary standards applicable in any foreclosure action.'

21 **SUMMARY**

22 This amendment is the majority report of the Joint Standing Committee on Judiciary.

23 This amendment replaces the bill but retains the proposed requirement that a plaintiff  
24 seeking to foreclose on a mortgage is required, upon request of the defendant, to produce  
25 the original mortgage note, evidencing that the plaintiff has the right to foreclose, during  
26 the foreclosure action.

27 This amendment requires that the plaintiff respond within 30 days to a written request  
28 for production of the original note to allow the defendant to inspect and copy or  
29 photograph the original mortgage note. The plaintiff must specify the date, time and  
30 place for production of the note. The place may be at the courthouse, in an attorney's  
31 office or in a financial institution or any other place to which the plaintiff and defendant  
32 agree. The date of production must be at least 7 days after the plaintiff's written response  
33 and within 45 days of the request for production, which may be extended for good cause  
34 shown.

35 If the plaintiff fails to produce the original note, the defendant may ask the court to  
36 dismiss the action without prejudice.

37 The right of the defendant to request inspection of the note and any corresponding  
38 obligation of the plaintiff to produce the note for inspection terminate upon the entry of a  
39 judgment of foreclosure or other termination of the foreclosure action. The defendant  
40 may request inspection and copying only once, although a court may order otherwise for  
41 good cause shown.

42 If the plaintiff is not in possession of the note but the Uniform Commercial Code  
43 provisions on lost, stolen or destroyed instruments apply, the plaintiff's provision of a

1 sworn affidavit pursuant to the Maine Revised Statutes, Title 11, section 3-1309 to the  
2 defendant constitutes sufficient compliance with the production requirements. Nothing in  
3 the 2 paragraphs added by this amendment alter in any respect the elements of proof and  
4 evidentiary standards applicable in any foreclosure action.

5 If the plaintiff claims the note is an electronic transferable record, as defined in the  
6 Uniform Electronic Transactions Act, the plaintiff's furnishing of a sworn affidavit setting  
7 forth the proof required pursuant to Title 10, section 9416, subsection 6 constitutes  
8 sufficient compliance with the production requirements. If the plaintiff claims it is not in  
9 possession of the original note in circumstances other than those to which Title 11,  
10 section 3-1309 applies, the plaintiff may satisfy the production requirements by providing  
11 a sworn affidavit setting forth the basis for the assertion that it is nonetheless entitled to  
12 enforce the note.