

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 145

H.P. 128

House of Representatives, January 25, 2011

**An Act To Protect Homeowners Subject to Foreclosure by
Requiring the Foreclosing Entity To Provide the Court with
Original Documents**

Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative BEAVERS of South Berwick.
Cosponsored by Representatives: BEAUDOIN of Biddeford, BENNETT of Kennebunk,
BERRY of Bowdoinham, CLARK of Millinocket, CRAFTS of Lisbon, Senators:
BRANNIGAN of Cumberland, MASON of Androscoggin.

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

2 **Sec. 1. 14 MRSA §6321, 3rd ¶**, as amended by PL 2009, c. 476, Pt. B, §5 and
3 affected by §9, is further amended to read:

4 The foreclosure must be commenced in accordance with the Maine Rules of Civil
5 Procedure, and the mortgagee shall within 60 days of commencing the foreclosure also
6 record a copy of the complaint or a clerk's certificate of the filing of the complaint in each
7 registry of deeds in which the mortgage deed is or by law ought to be recorded and such a
8 recording thereafter constitutes record notice of commencement of foreclosure. The
9 mortgagee shall further certify and provide evidence that all steps mandated by law to
10 provide notice to the mortgagor pursuant to section 6111 were strictly performed. The
11 mortgagee shall certify proof of ownership of the mortgage note and produce ~~evidence of~~
12 the original mortgage note signed by the mortgagor, and evidence of the mortgage and all
13 assignments and endorsements of the mortgage note and mortgage. The complaint must
14 allege with specificity the plaintiff's claim by mortgage on such real estate, describe the
15 mortgaged premises intelligibly, including the street address of the mortgaged premises,
16 if any, which must be prominently stated on the first page of the complaint, state the book
17 and page number of the mortgage, if any, state the existence of public utility easements, if
18 any, that were recorded subsequent to the mortgage and prior to the commencement of
19 the foreclosure proceeding and without mortgagee consent, state the amount due on the
20 mortgage, state the condition broken and by reason of such breach demand a foreclosure
21 and sale. If a clerk's certificate of the filing of the complaint is presented for recording
22 pursuant to this section, the clerk's certificate must bear the title "Clerk's Certificate of
23 Foreclosure" and prominently state, immediately after the title, the street address of the
24 mortgaged premises, if any, and the book and page number of the mortgage, if any.
25 Service of process on all parties in interest and all proceedings must be in accordance
26 with the Maine Rules of Civil Procedure. "Parties in interest" includes mortgagors,
27 holders of fee interest, mortgagees, lessees pursuant to recorded leases or memoranda
28 thereof, lienors and attaching creditors all as reflected by the indices in the registry of
29 deeds and the documents referred to therein affecting the mortgaged premises, through
30 the time of the recording of the complaint or the clerk's certificate. Failure to join any
31 party in interest does not invalidate the action nor any subsequent proceedings as to those
32 joined. Failure of the mortgagee to join, as a party in interest, the holder of any public
33 utility easement recorded subsequent to the mortgage and prior to commencement of
34 foreclosure proceedings is deemed consent by the mortgagee to that easement. Any other
35 party having a claim to the real estate whose claim is not recorded in the registry of deeds
36 as of the time of recording of the copy of the complaint or the clerk's certificate need not
37 be joined in the foreclosure action, and any such party has no claim against the real estate
38 after completion of the foreclosure sale, except that any such party may move to
39 intervene in the action for the purpose of being added as a party in interest at any time
40 prior to the entry of judgment. Within 10 days of submitting the complaint for filing with
41 the court, the mortgagee shall provide a copy of the complaint or of the clerk's certificate
42 as submitted to the court that prominently states, immediately after the title, the street
43 address of the mortgaged premises, if any, and the book and page number of the
44 mortgage, if any, to the municipal tax assessor of the municipality in which the property
45 is located and, if the mortgaged premises is manufactured housing as defined in Title 10,
46 section 9002, subsection 7, to the owner of any land leased by the mortgagor. The failure

1 to provide the notice required by this section does not affect the validity of the
2 foreclosure sale.

3

SUMMARY

4 This bill requires a mortgagee bringing a civil foreclosure action on real property to
5 produce the original mortgage note, signed by the mortgagor, as part of the complaint.