

# MAINE STATE LEGISLATURE

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# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 392

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H.P. 267

House of Representatives, February 12, 2013

### **An Act To Protect Homeowners and Reduce Foreclosure Fraud**

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

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative BEAVERS of South Berwick.  
Cosponsored by Senator GRATWICK of Penobscot and  
Representatives: COOPER of Yarmouth, MITCHELL of the Penobscot Nation,  
NEWENDYKE of Litchfield, PRIEST of Brunswick, RUSSELL of Portland, TREAT of  
Hallowell, Senators: HILL of York, YOUNGBLOOD of Penobscot.

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

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

4 If, within 90 days of service of the foreclosure summons and complaint on the  
5 defendant, the defendant sends to the plaintiff and the plaintiff's attorney of record a  
6 written request to be allowed to inspect and copy or photograph the original mortgage  
7 note, the plaintiff shall produce the original note together with all existing endorsements  
8 of the note in accordance with the following provisions. Within 30 days of the  
9 defendant's making such a written request, the plaintiff shall send to the defendant a  
10 written response stating the date, time and place for the production of the original note.  
11 The date for production must be not less than 7 days from the date the written response  
12 was sent and not more than 45 days after the written request for inspection was made,  
13 unless an extension is granted for good cause shown, or must be at such other time as the  
14 plaintiff and defendant may agree upon. The place for inspection must be, at the election  
15 of the plaintiff, the courthouse where the action is pending, the office of an attorney  
16 within the county in which the action is pending, an office of a banking institution or  
17 credit union within the county where the action is pending or such other place upon  
18 which the plaintiff and defendant agree. If the plaintiff fails to produce the original note  
19 in accordance with this section, the court shall, upon motion of the defendant supported  
20 by a proper affidavit, dismiss the foreclosure action without prejudice. The right of the  
21 defendant to request inspection of the note as provided for in this section and any  
22 corresponding obligation of the plaintiff to produce the note for inspection under this  
23 section terminate upon the entry of a judgment of foreclosure or other termination of the  
24 foreclosure action. The defendant has the right to request inspection and copying of the  
25 original note under this section only once during the pendency of the foreclosure action  
26 unless the court in which the action is pending for good cause shown otherwise orders.  
27 Nothing in this paragraph alters in any respect the elements of proof and evidentiary  
28 standards applicable in any foreclosure action.

29 If the plaintiff claims that it is not in possession of the note but is entitled to enforce  
30 the note pursuant to Title 11, section 3-1309 or for some other reason, the furnishing to  
31 the defendant of a sworn affidavit setting forth the proof required by Title 11, section  
32 3-1309 or setting forth the reason why the plaintiff asserts that it may enforce the note  
33 even though the plaintiff is not in possession of the original note at the time and place  
34 specified for production pursuant to this section or by mail in advance of the date for  
35 production constitutes sufficient compliance with the requirements concerning the  
36 production of the original note established in this section. If the plaintiff claims the note  
37 is an electronic transferable record as defined in Title 10, section 9416, subsection 1, the  
38 furnishing to the defendant of a sworn affidavit setting forth the proof required by Title  
39 10, section 9416, subsection 6 at the time and place specified for production pursuant to  
40 this section or by mail in advance of the date for production constitutes sufficient  
41 compliance with the requirements concerning the production of the original note  
42 established in this section. Nothing in this paragraph alters in any respect the elements of  
43 proof and evidentiary standards applicable in any foreclosure action.

1 **SUMMARY**

2 This bill requires that a plaintiff seeking to foreclose on a mortgage is required, upon  
3 request of the defendant within 90 days of service of the foreclosure summons and  
4 complaint, to produce the original mortgage note, evidencing that the plaintiff has the  
5 right to foreclose.

6 This bill requires that the plaintiff respond within 30 days to a written request for  
7 production of the original note to allow the defendant to inspect and copy or photograph  
8 the original mortgage note. The plaintiff must specify the date, time and place for  
9 production of the note. The place may be at the courthouse, in an attorney's office or in a  
10 financial institution or any other place to which the plaintiff and defendant agree. The  
11 date of production must be at least 7 days after the plaintiff's written response and within  
12 45 days of the request for production, which may be extended for good cause shown.

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

15 The right of the defendant to request inspection of the note and any corresponding  
16 obligation of the plaintiff to produce the note for inspection terminate upon the entry of a  
17 judgment of foreclosure or other termination of the foreclosure action. The defendant  
18 may request inspection and copying only once, although a court may order otherwise for  
19 good cause shown.

20 If the plaintiff is not in possession of the note but the Uniform Commercial Code  
21 provisions on lost, stolen or destroyed instruments apply, the plaintiff's provision of a  
22 sworn affidavit pursuant to the Maine Revised Statutes, Title 11, section 3-1309 to the  
23 defendant constitutes sufficient compliance with the production requirements. This bill  
24 does not alter in any respect the elements of proof and evidentiary standards applicable in  
25 any foreclosure action.

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