

# MAINE STATE LEGISLATURE

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# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 1116

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H.P. 788

House of Representatives, March 21, 2013

### **An Act To Amend the Attorney's Fees Provision in Foreclosure Actions**

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Reference to the Committee on Judiciary suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative CROCKETT of Bethel.  
Cosponsored by Senator THOMAS of Somerset and  
Representatives: BEAVERS of South Berwick, CRAFTS of Lisbon, DAVIS of Sangerville,  
HARLOW of Portland, LONG of Sherman, TREAT of Hallowell, Senator: HILL of York.

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

2 **Sec. 1. 14 MRSA §6101**, as amended by PL 2011, c. 269, §1, is repealed and the  
3 following enacted in its place:

4 **§6101. Attorney's fees**

5 This section applies to a foreclosure of a mortgage by any method authorized by this  
6 chapter.

7 **1. Attorney's fee to mortgagee.** If the mortgagee prevails, the mortgagee or the  
8 person claiming under the mortgagee may charge a reasonable attorney's fee, which is a  
9 lien on the mortgaged estate and must be included with the expense of publication,  
10 service and recording in making up the sum to be tendered by the mortgagor or the person  
11 claiming under the mortgagor in order to be entitled to redeem. The amount of the  
12 attorney's fee that may be charged is limited to the amount that has actually been paid in  
13 full or partial discharge of an attorney's fee.

14 **2. Attorney's fee and costs to mortgagor.** Unless the court finds that there are  
15 circumstances that would make an award of the mortgagor's fees and costs unjust, the  
16 court shall order the mortgagee to pay the mortgagor's reasonable court costs and  
17 attorney's fees incurred in defending against the foreclosure or dispositive proceeding  
18 within the foreclosure action, including but not limited to a motion for summary  
19 judgment, and deny in full or in part the award of attorney's fees and costs to the  
20 mortgagee:

21 **A. If the mortgagee does not prevail in the action or the dispositive proceeding; or**

22 **B. Upon evidence that the action was not brought in good faith.**

23 If the court determines that it is unjust to order the mortgagee to pay the reasonable court  
24 costs and attorney's fees of the mortgagor, the court shall make specific findings of the  
25 circumstances that make an award of the mortgagor's fees and costs unjust.

26 **3. Does not prevail.** For purposes of this section, "does not prevail" does not mean a  
27 stipulation of dismissal entered into by the parties, an agreed-upon motion to dismiss  
28 without prejudice to facilitate settlement or successful mediation of the foreclosure action  
29 pursuant to section 6321-A.

30 **SUMMARY**

31 This bill provides that if the mortgagee does not prevail in a foreclosure action or if  
32 the court finds the action was not brought in good faith, then the court must order the  
33 mortgagee to pay reasonable attorney's fees and court costs to the mortgagor, unless the  
34 court determines that making such an order would be unjust. If the court determines that  
35 the order would be unjust, the court must provide an explanation of that determination.