

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

SMG
R O F S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

Date: 3/24/14

L.D. 1389
(Filing No. H-734)

JUDICIARY

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
126TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 992, L.D. 1389, Bill, "An Act To Expedite the Foreclosure Process"

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

'PART A

Sec. A-1. 36 MRSA §4641-B, sub-§6, as enacted by PL 2009, c. 402, §21, is amended to read:

6. Transfer of tax on deeds of foreclosure or in lieu of foreclosure. Notwithstanding subsection ~~4~~ **4-B**, the State Tax Assessor shall monthly pay to the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection the revenues derived from the tax imposed on the transfer of real property ~~by deeds that convey real property back to a lender holding a bona fide mortgage that is genuinely in default, either by deeds from a mortgagor to a mortgagee in lieu of foreclosure or by deeds from a mortgagee to itself at a public sale pursuant to Title 14, section 6323~~ described in section 4641-C, subsection 2, paragraphs A and C.

Sec. A-2. 36 MRSA §4641-B, sub-§7 is enacted to read:

7. Assignment of rights in or connected with foreclosed real property. A person assigning rights in or connected with title to foreclosed real property for which a deed is not given, including rights as high bidder at the public sale pursuant to Title 14, section 6323, shall report the assignment to the register of deeds in the county or counties in which the real property is located within 30 days of the assignment on a return in the form of an affidavit furnished by the State Tax Assessor. The State Tax Assessor shall provide for the collection of the tax in the same manner as in subsection 1 as if the assignment were a transfer of real property by deed. The return must be signed by both the transferor and the transferee and accompanied by payment of the tax due. When the real property is located in more than one county, the tax must be divided among the counties in the same proportion in which the real property is distributed among the

COMMITTEE AMENDMENT

ROFS

1 counties. Disputes between 2 or more counties as to the proper amount of tax due to
2 them as a result of a particular transaction must be decided by the State Tax Assessor
3 upon the written petition of an official authorized to act on behalf of any such county.
4 This subsection applies to assignments made during the time between the judgment of
5 foreclosure and the transfer of the foreclosed real property by deed.

6 **Sec. A-3. 36 MRSA §4641-C, sub-§2**, as amended by PL 2009, c. 402, §22, is
7 repealed and the following enacted in its place:

8 **2. Mortgage deeds, deeds of foreclosure and deeds in lieu of foreclosure.**
9 **Mortgage deeds, discharges of mortgage deeds and partial releases of mortgage deeds.**

10 A. For the purposes of this subsection, only the mortgagor is exempt from the tax
11 imposed for a deed in lieu of foreclosure.

12 B. In the event of a transfer, by deed, assignment or otherwise, to a 3rd party at a
13 public sale held pursuant to Title 14, section 6323, the tax imposed upon the grantor
14 by section 4641-A applies only to that portion of the proceeds of the sale that exceeds
15 the sums required to satisfy in full the claims of the mortgagee and all junior
16 claimants originally made parties in interest in the proceedings or having
17 subsequently intervened in the proceedings as established by the judgment of
18 foreclosure and sale. The tax must be deducted from the excess proceeds.

19 C. In the event of a transfer, by deed, assignment or otherwise, from a mortgagee or
20 its servicer to the mortgagee or its servicer or to the owner of the mortgage debt at a
21 public sale held pursuant to Title 14, section 6323, the mortgagee or its servicer if the
22 servicer is the selling entity is considered to be both the grantor and grantee for
23 purposes of section 4641-A.

24 D. In the event of a deed in lieu of foreclosure and a deed from a mortgagee or its
25 servicer to the mortgagee or its servicer or to the owner of the mortgage debt at a
26 public sale held pursuant to Title 14, section 6323, the tax applies to the value of the
27 property.

28 For the purposes of this subsection, "servicer" means a person or entity that acts on behalf
29 of the owner of a mortgage debt to provide services related to the mortgage debt,
30 including accepting and crediting payments from the mortgagor, issuing statements and
31 notices to the mortgagor, enforcing rights of the owner of a mortgage debt and initiating
32 and pursuing foreclosure proceedings;

33 **PART B**

34 **Sec. B-1. 14 MRSA §6326** is enacted to read:

35 **§6326. Order of abandonment for residential properties in foreclosure**

36 **1. Plaintiff request.** The plaintiff in a judicial foreclosure action may present
37 evidence of abandonment as described in subsection 2 and may request a determination
38 pursuant to subsection 3 that the mortgaged premises have been abandoned if:

39 A. More than 50% of the mortgaged premises is used for residential purposes; and

1 B. The mortgaged premises are the subject of an uncontested foreclosure action or an
2 uncontested foreclosure judgment has been issued with respect to the premises and a
3 foreclosure sale with respect to the premises is pending pursuant to this subchapter.
4 An action or judgment is uncontested if:

- 5 (1) The mortgagor has not appeared in the action to defend against foreclosure;
- 6 (2) There has been no communication from or on behalf of the mortgagor to the
7 plaintiff for at least 90 days showing any intent of the mortgagor to continue to
8 occupy the premises or there is a document of conveyance or other written
9 statement, signed by the mortgagor, that indicates a clear intent to abandon the
10 premises; and
- 11 (3) Either all mortgagees with interests that are junior to the interests of the
12 plaintiff have waived any right of redemption pursuant to section 6322 or the
13 plaintiff has obtained or has moved to obtain a default judgment against such
14 junior mortgagees.

15 **2. Evidence of abandonment.** For the purposes of this section, evidence of
16 abandonment showing that the mortgaged premises are vacant and the occupant has no
17 intent to return may include, but is not limited to, the following:

- 18 A. Doors and windows on the mortgaged premises are continuously boarded up,
19 broken or left unlocked;
- 20 B. Rubbish, trash or debris has observably accumulated on the mortgaged premises;
- 21 C. Furnishings and personal property are absent from the mortgaged premises;
- 22 D. The mortgaged premises are deteriorating so as to constitute a threat to public
23 health or safety;
- 24 E. A mortgagee has changed the locks on the mortgaged premises and neither the
25 mortgagor nor anyone on the mortgagor's behalf has requested entrance to, or taken
26 other steps to gain entrance to, the mortgaged premises;
- 27 F. Reports of trespassers, vandalism or other illegal acts being committed on the
28 mortgaged premises have been made to local law enforcement authorities;
- 29 G. A code enforcement officer or other public official has made a determination or
30 finding that the mortgaged premises are abandoned or unfit for occupancy;
- 31 H. The mortgagor is deceased and there is no evidence that an heir or personal
32 representative has taken possession of the mortgaged premises; and
- 33 I. Other reasonable indicia of abandonment.

34 **3. Court determination of abandonment; vacation of order.** The plaintiff may at
35 any time after commencement of a foreclosure action under section 6321 file with the
36 court a motion to determine that the mortgaged premises have been abandoned.

37 A. If the court finds by clear and convincing evidence, based on testimony or reliable
38 hearsay, including affidavits by public officials and other neutral nonparties, that the
39 mortgaged premises have been abandoned, the court may issue an order granting the
40 motion and determining that the premises are abandoned.

COMMITTEE AMENDMENT

ROFS

1 B. The court may not grant the motion if the mortgagor or a lawful occupant of the
2 mortgaged premises appears and objects to the motion.

3 C. The court shall vacate the order under paragraph A if the mortgagor or a lawful
4 occupant of the mortgaged premises appears in the action and objects to the order
5 prior to the entry of judgment.

6 **4. Effect of court determination of abandonment.** Upon the issuance of an order
7 of abandonment under subsection 3 determining that the mortgaged premises are
8 abandoned:

9 A. The foreclosure action may be advanced on the docket and receive priority over
10 other cases as the interests of justice require;

11 B. The period of redemption provided for in section 6322 is shortened to 45 days
12 from the later of the issuance of the judgment of foreclosure and the order of
13 abandonment;

14 C. If the mortgaged premises include dwelling units occupied by tenants as their
15 primary residence, the plaintiff shall assume the duties of landlord for the rental units
16 as required by chapter 709 upon the later of the issuance of the judgment of
17 foreclosure and the order of abandonment; and

18 D. The plaintiff shall notify the municipality in which the premises are located and
19 shall record the order of abandonment in the appropriate registry of deeds within 30
20 days from the later of the issuance of the judgment of foreclosure and the order of
21 abandonment.

22 **Sec. B-2. Application.** Notwithstanding the Maine Revised Statutes, Title 1,
23 section 302, that section of this Part that enacts Title 14, section 6326 applies to
24 foreclosure actions that are pending on the effective date of this Part.

25 **PART C**

26 **Sec. C-1. 14 MRSA §6323, sub-§1,** as amended by PL 2007, c. 103, §1, is
27 further amended to read:

28 **1. Procedures for all civil actions.** Upon expiration of the period of redemption, if
29 the mortgagor or the mortgagor's successors, heirs or assigns have not redeemed the
30 mortgage, any remaining rights of the mortgagor to possession terminate, and the
31 mortgagee shall cause notice of a public sale of the premises stating the time, place and
32 terms of the sale to be published once in each of 3 successive weeks in a newspaper of
33 general circulation in the county in which the premises are located, the first publication to
34 be made not more than 90 days after the expiration of the period of redemption. The
35 Except when otherwise required under 12 Code of Federal Regulations, Section 1024.41
36 or any successor provision, the public sale must be held not less than 30 days nor more
37 than 45 days after the first date of that publication and, Except for sales of premises that
38 the court has determined to be abandoned pursuant to section 6326, the public sale may
39 be adjourned, for any time not exceeding 7 days and from time to time until a sale is
40 made, by announcement to those present at each adjournment. For sales of premises that
41 the court has determined to be abandoned pursuant to section 6326, the public sale may

COMMITTEE AMENDMENT

1 be adjourned once for any time not exceeding 7 days, except that the court may permit
 2 one additional adjournment for good cause shown. Adjournments may also be made in
 3 accordance with the requirements of 12 Code of Federal Regulations, Section 1024.41 or
 4 any successor provision. The mortgagee, in its sole discretion, may allow the mortgagor
 5 to redeem or reinstate the loan after the expiration of the period of redemption but before
 6 the public sale. The mortgagee may convey the property to the mortgagor or execute a
 7 waiver of foreclosure, and all other rights of all other parties remain as if no foreclosure
 8 had been commenced. The mortgagee shall sell the premises to the highest bidder at the
 9 public sale and deliver a deed of that sale and the writ of possession, if a writ of
 10 possession was obtained during the foreclosure process, to the purchaser. The deed
 11 conveys the premises free and clear of all interests of the parties in interest joined in the
 12 action. The mortgagee or any other party in interest may bid at the public sale. If the
 13 mortgagee is the highest bidder at the public sale, there is no obligation to account for any
 14 surplus upon a subsequent sale by the mortgagee. Any rights of the mortgagee to a
 15 deficiency claim against the mortgagors are limited to the amount established as of the
 16 date of the public sale. The date of the public sale is the date on which bids are received
 17 to establish the sales price, no matter when the sale is completed by the delivery of the
 18 deed to the highest bidder. If the property is conveyed by deed pursuant to a public sale
 19 in accordance with this subsection, a copy of the judgment of foreclosure and evidence of
 20 compliance with the requirements of this subsection for the notice of public sale and the
 21 public sale itself must be attached to or included within the deed, or both, or otherwise be
 22 recorded in the registry of deeds.

23 **PART D**

24 **Sec. D-1. 36 MRSA §946-A**, as repealed and replaced by PL 1995, c. 20, §1, is
25 repealed.

26 **Sec. D-2. 36 MRSA §946-B** is enacted to read:

27 **§946-B. Tax-acquired property and the restriction of title action**

28 **1. Tax liens recorded after October 13, 2014.** A person may not commence an
29 action against the validity of a governmental taking of real estate for nonpayment of
30 property taxes upon the expiration of a 5-year period immediately following the
31 expiration of the period of redemption. This subsection applies to a tax lien recorded
32 after October 13, 2014.

33 **2. Tax liens recorded after October 13, 1993 and on or before October 13, 2014.**
34 A person may not commence an action against the validity of a governmental taking of
35 real estate for nonpayment of property taxes after the earlier of the expiration of a 15-year
36 period immediately following the expiration of the period of redemption and October 13,
37 2019. This subsection applies to a tax lien recorded after October 13, 1993 and on or
38 before October 13, 2014.

39 **3. Tax liens recorded on or before October 13, 1993.** For a tax lien recorded on or
40 before October 13, 1993, a person must commence an action against its validity no later
41 than 15 years after the expiration of the period of redemption or no later than July 1,
42 1997, whichever occurs later.

ROFS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

4. Disability or lack of knowledge. Disability or lack of knowledge of any kind does not suspend or extend the time limits provided in this section.

PART E

Sec. E-1. 32 MRSA §11002, sub-§6, as amended by PL 2005, c. 475, §1, is further amended to read:

6. Debt collector. "Debt collector" means any person conducting business in this State, the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. "Debt collector" includes persons who furnish collection systems carrying a name that simulates the name of a debt collector and who supply forms or form letters to be used by the creditor even though the forms direct the debtor to make payments directly to the creditor. Notwithstanding the exclusion provided by section 11003, subsection 7, "debt collector" includes any creditor who, in the process of collecting the creditor's own debts, uses any name other than the creditor's that would indicate that a 3rd person is collecting or attempting to collect these debts. "Debt collector" includes any attorney-at-law whose principal activities include collecting debts as an attorney on behalf of and in the name of clients, except that any such attorney licensed to practice law in this State is subject exclusively to subchapter 2 and any such attorney not licensed to practice law in this State is subject to this entire chapter. "Debt collector" also includes any person regularly engaged in the enforcement of security interests securing debts, including a repossession company and a residential real estate property preservation provider. "Debt collector" does not include any person who retrieves collateral when a consumer has voluntarily surrendered possession. A person is regularly engaged in the enforcement of security interests if that person enforced security interests more than 5 times in the previous calendar year. If a person does not meet these numerical standards for the previous calendar year, the numerical standards must be applied to the current calendar year.

Sec. E-2. 32 MRSA §11002, sub-§§8-A and 8-B are enacted to read:

8-A. Residential real estate property preservation provider. "Residential real estate property preservation provider" means a person who regularly provides residential real estate property preservation services. "Residential real estate property preservation provider" does not include a supervised financial organization, a supervised lender, a person licensed by the Plumbers' Examining Board, a person licensed by the Electricians' Examining Board, a person licensed by the Department of Professional and Financial Regulation under chapter 131, a person licensed by the Maine Fuel Board or a person licensed by the Real Estate Commission.

8-B. Residential real estate property preservation services. "Residential real estate property preservation services" means those services undertaken at the direction of a person holding or enforcing a mortgage on residential real estate that is in default or in which the property is presumed abandoned in entering or arranging for entry into a building to perform the services of winterizing the residence, changing the door locks or removing unsecured items from the residence.

ROFS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38

Sec. E-3. 32 MRSA §11017, sub-§§1 and 2, as enacted by PL 1993, c. 126, §3, are amended to read:

1. Right to take possession after default. A Except in the case of a residential real estate property preservation provider, a debt collector acting on behalf of a creditor may take possession of collateral only if possession can be taken without entry into a dwelling, unless that entry has been authorized after default and without the use of force or other breach of the peace.

2. Return of private property. A Except in the case of a residential real estate property preservation provider, a debt collector shall inventory any unsecured property taken with repossessed collateral and immediately notify the consumer that the property will be made available in a manner convenient to the consumer.

Sec. E-4. 32 MRSA §11017, sub-§4 is enacted to read:

4. Residential real estate property preservation. A residential real estate property preservation provider may enter into a dwelling only if authorized by the terms of a note, contract or mortgage. The provider may not use force or effect a breach of the peace against any person. The provider shall inventory any unsecured items removed from the dwelling and immediately notify the appropriate consumer that the unsecured items will be made available in a manner convenient to the consumer. The provider shall make a permanent record of all steps taken to preserve and secure the dwelling and shall make that record and the inventory of removed unsecured items available to the consumer upon written request.

PART F

Sec. F-1. 14 MRSA §6321-A, sub-§7, ¶A, as enacted by PL 2009, c. 402, §18, is amended to read:

A. Assign mediators, including active retired justices and judges pursuant to Title 4, sections 104 and 157-B, who:

- (1) Are trained in mediation and all relevant aspects of the law related to real estate, mortgage procedures, foreclosure or foreclosure prevention;
- (2) Have knowledge of community-based resources that are available in the judicial districts in which they serve;
- (3) Have knowledge of mortgage assistance programs; and
- (4) Are trained in using the relevant Federal Deposit Insurance Corporation forms and worksheets;
- (5) Are knowledgeable in principal loss mitigation and mortgage loan servicing guidelines and regulations; and
- (6) Are capable of facilitating and likely to facilitate identification of and compliance with principal loss mitigation and mortgage loan servicing guidelines and regulations.

COMMITTEE AMENDMENT

R O F S

1 The court may establish ~~a training~~ an orientation program for mediators and require
2 that mediators receive such ~~training~~ orientation prior to being appointed;

3 **Sec. F-2. 14 MRSA §6321-A, sub-§13**, as amended by PL 2009, c. 476, Pt. B,
4 §7 and affected by §9, is further amended to read:

5 **13. Report.** A mediator must complete a report for each mediation conducted under
6 this section. The mediator's report must indicate in a manner as determined by the court
7 that the parties completed in full the Net Present Value Worksheet in the Federal Deposit
8 Insurance Corporation Loan Modification Program Guide or other reasonable
9 determination of net present value. If the mediation did not result in the settlement or
10 dismissal of the action, the report must include the outcomes of the Net Present Value
11 Worksheet or other determination of net present value. As part of the report, the mediator
12 may notify the court if, in the mediator's opinion, either party failed to negotiate in good
13 faith. The mediator's report must also include a statement of all agreements reached at
14 mediation, with sufficient specificity to put all parties on notice of their obligations under
15 agreements reached at mediation, including but not limited to a description of all
16 documents that must be completed and provided pursuant to the agreements reached at
17 mediation and the time frame during which all actions are required to be taken by the
18 parties, including decisions and determinations of eligibility for all loss mitigation
19 options.'

20 **SUMMARY**

21 This amendment replaces the bill. It is based on the recommendations the Attorney
22 General developed through the Attorney General's working group on residential
23 foreclosures.

24 Part A amends the laws regarding the real estate transfer tax to ensure that the tax is
25 paid on property transferred when there is a foreclosure sale, regardless of whether the
26 transfer is done by deed, assignment or other method of transfer. Part A specifically
27 includes assignments by the plaintiff in a foreclosure action of the rights as high bidder or
28 the foreclosure judgment itself.

29 Part B establishes an expedited procedure for properties that are abandoned in
30 uncontested foreclosure cases. If a foreclosure plaintiff produces clear and convincing
31 evidence of abandonment and the case is uncontested, the court may declare the property
32 abandoned, advance the foreclosure on the docket and grant judgment for the plaintiff. In
33 such cases the redemption period is shortened from 90 days to 45 days. Part B suggests
34 indicia of abandonment, but does not direct the court to limit its findings to these factors.
35 Upon the later of the issuance of the order of abandonment or the judgment of
36 foreclosure, if the premises include dwelling units occupied by tenants as their primary
37 residence, the plaintiff must assume the duties of a landlord. In addition, the plaintiff
38 must notify the municipality in which the premises are located and record the order of
39 abandonment in the appropriate registry of deeds within 30 days from the later of the
40 order of abandonment or the foreclosure judgment.

41 Part C provides that there may be only one adjournment in a foreclosure action if the
42 court determined the property to be abandoned. The court may permit additional
43 adjournments if the bank or servicer can demonstrate good cause for the adjournment or

R O F S

1 in accordance with regulations concerning loss mitigation procedures in 12 Code of
2 Federal Regulations, Section 1024.41. Current law requires that the public sale must be
3 held no less than 30 days and no more than 45 days after the first date of publication.
4 Part C adds an exception for requirements included in 12 Code of Federal Regulations,
5 Section 1024.41.

6 Current law provides that, when property is acquired by a municipality for unpaid
7 taxes, the new owner does not obtain marketable title until 15 years has passed from the
8 time of the foreclosure. Part D shortens the challenge period from the current 15 years to
9 5 years for property subject to tax liens recorded after October 13, 2014. For property
10 subject to a tax lien recorded after October 13, 1993 and on or before October 13, 2014,
11 the challenge period ends upon the earlier of the expiration of the 15-year period
12 immediately following the expiration of the period of redemption and October 13, 2019.

13 Part E gives the Department of Professional and Financial Regulation, Bureau of
14 Consumer Credit Protection the authority to regulate residential real estate property
15 management providers that enter into presumably abandoned residences to winterize
16 those residences, change the door locks or remove items of personal property. Part E
17 further prohibits providers from breaching the peace against any person and requires
18 providers to inventory personal property removed from a residence and immediately
19 notify the appropriate consumer that the personal property will be made available in a
20 manner convenient to the consumer. The provider must make a permanent record of all
21 steps taken to preserve and secure the dwelling and must produce that record and the
22 inventory of removed unsecured items upon written request of the resident.

23 Part F adds standards to those required of mediators in the foreclosure mediation
24 program under the Maine Revised Statutes, Title 14, section 6321-A. Part F requires
25 mediators to ensure the parties appropriately determine net present value by using either
26 the Federal Deposit Insurance Corporation Loan Modification Program Guide worksheet
27 or other way of determining net present value that is as reasonable as the worksheet. Part
28 F also requires that the mediator's report contain greater detail regarding the agreements
29 made among the parties and the time frames within which the parties are required to
30 provide information and reach determinations of loss mitigation eligibility.

31 **FISCAL NOTE REQUIRED**
32 **(See attached)**

COMMITTEE AMENDMENT



126th MAINE LEGISLATURE

LD 1389

LR 1838(02)

An Act To Expedite the Foreclosure Process

Fiscal Note for Bill as Amended by Committee Amendment

Committee: Judiciary

Fiscal Note Required: Yes

A(H-734)

Fiscal Note

Minor cost increase - Other Special Revenue Funds
Minor revenue increase - Other Special Revenue Funds

Fiscal Detail and Notes

Any impact on the costs or revenues of the Bureau of Consumer Credit Protection in the Department of Professional and Financial Regulation are expected to be minor and can be absorbed within existing budget resources.