

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 1389

H.P. 992

House of Representatives, April 10, 2013

An Act To Expedite the Foreclosure Process

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative CROCKETT of Bethel.

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

2 **Sec. 1. 4 MRSA §807, sub-§3, ¶P**, as amended by PL 2009, c. 480, §2 and PL
3 2011, c. 657, Pt. W, §5, is further amended to read:

4 P. A person who is not an attorney but who, as the executive director of the State
5 Harness Racing Commission, is representing the Department of Agriculture,
6 Conservation and Forestry at adjudicatory hearings before the commission in
7 accordance with Title 8, section 263-C; ~~or~~

8 **Sec. 2. 4 MRSA §807, sub-§3, ¶Q**, as enacted by PL 2009, c. 480, §3, is
9 amended to read:

10 Q. A person who is an attorney admitted to practice in another United States
11 jurisdiction to the extent permitted by rules of professional conduct adopted by the
12 Supreme Judicial Court; or

13 **Sec. 3. 4 MRSA §807, sub-§3, ¶R** is enacted to read:

14 R. An employee of a financial institution authorized to do business in this State or a
15 credit union authorized to do business in this State as defined in Title 9-B, chapter 13
16 who is not an attorney but is appearing in person for that institution or credit union in
17 a mediation pursuant to Title 14, chapter 713.

18 **Sec. 4. 14 MRSA §6321-A, sub-§3**, as enacted by PL 2009, c. 402, §18, is
19 amended to read:

20 **3. Foreclosure mediation program established.** Under the authority granted in
21 Title 4, section 18-B, the court shall adopt rules to establish a foreclosure mediation
22 program to provide mediation in actions for foreclosure of mortgages on owner-occupied
23 residential property with no more than 4 units that is the primary residence of the owner-
24 occupant. The program must address all issues of foreclosure, including but not limited
25 to reinstatement of the mortgage, modification of the loan ~~and~~ restructuring of the
26 mortgage debt and liquidation options such as deed in lieu of foreclosure and short sale.
27 Mediations conducted pursuant to the program must use the calculations, assumptions
28 and forms that are established by the Federal Deposit Insurance Corporation and
29 published in the Federal Deposit Insurance Corporation Loan Modification Program
30 Guide as set out on the Federal Deposit Insurance Corporation's publicly accessible
31 website.

32 **Sec. 5. 14 MRSA §6321-A, sub-§7**, as enacted by PL 2009, c. 402, §18, is
33 amended to read:

34 **7. Provisions of mediation services; filing and fees.** The court shall:

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

37 (1) Are trained in mediation and all relevant aspects of the law related to
38 foreclosure and foreclosure prevention;

1 (2) Have knowledge of community-based resources that are available in the
2 judicial districts in which they serve;

3 (3) Have knowledge of and experience working with mortgage assistance
4 programs; ~~and~~

5 (4) Are trained in using the relevant Federal Deposit Insurance Corporation
6 forms and worksheets-;

7 (5) Are trained in principal loss mitigation guidelines and regulations, including
8 home affordable modification program guidelines and directives developed by
9 the United States Department of the Treasury, single-family servicing guides
10 developed by the Federal National Mortgage Association or the Federal Home
11 Loan Mortgage Corporation or a successor organization and loss mitigation
12 regulations and loss mitigation guidelines developed by the United States
13 Department of Housing and Urban Development, Federal Housing
14 Administration, the United States Department of Agriculture and the United
15 States Department of Veterans Affairs; and

16 (6) Are capable of facilitating and likely to facilitate identification of and
17 compliance with principal loss mitigation guidelines and regulations set forth in
18 subparagraph (5).

19 The court may establish a training program for mediators and require that mediators
20 receive such training prior to being appointed;

21 B. Report annually to the joint standing committee of the Legislature having
22 jurisdiction over insurance and financial services matters and the joint standing
23 committee of the Legislature having jurisdiction over judiciary matters on:

24 (1) The performance of the program, including numbers of homeowners who are
25 notified of mediation, who attend mediation and who receive legal counseling or
26 legal assistance; and

27 (2) The results of the mediation process, including the number of loans
28 restructured, number of principal write-downs, interest rate reductions and
29 number of homeowners who default on mortgages within a year after
30 restructuring, to the extent the court has available information;

31 C. Notwithstanding subsection 10, establish a fee, to be paid by the plaintiff, upon a
32 foreclosure filing made on or after June 15, 2009, which may be used only to support
33 mediation services and to be paid for by the plaintiff manage the court's foreclosure
34 docket, including employing judicial officers; and

35 D. Make recommendations for any changes to the program to the Legislature.

36 **Sec. 6. 14 MRSA §6321-A, sub-§11, ¶C,** as enacted by PL 2009, c. 402, §18, is
37 amended to read:

38 C. Counsel for the plaintiff or an employee of a financial institution authorized to do
39 business in this State or a credit union authorized to do business in this State as
40 defined in Title 9-B, chapter 13; and

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

3 **13. Report.** A mediator must complete a report for each mediation conducted under
4 this section. The mediator's report must indicate in a manner as determined by the court
5 that the parties completed in full the Net Present Value Worksheet in the Federal Deposit
6 Insurance Corporation Loan Modification Program Guide. If the mediation did not result
7 in the settlement or dismissal of the action, the report must include the outcomes of the
8 Net Present Value Worksheet. As part of the report, the mediator may notify the court if,
9 in the mediator's opinion, either party failed to negotiate in good faith. The mediator's
10 report must also include:

11 A. A statement of all agreements reached at mediation, with sufficient specificity to
12 put all parties on notice of their obligations under agreements reached at mediation,
13 including but not limited to a description of all documents that must be completed
14 and provided pursuant to the agreements reached at mediation and the time frame
15 during which all actions are required to be taken by the parties, including decisions
16 and determinations of eligibility for all loss mitigation options; and

17 B. A statement as to whether each party complied with requirements set forth in
18 subsection 12, paragraphs A and B and the promises and commitments made and
19 other agreements reached at mediation. In the event of noncompliance, the
20 mediator's report must specifically set forth the manner in which the parties have
21 failed to comply.

22 **Sec. 8. 14 MRSA §6322-B** is enacted to read:

23 **§6322-B. Vacant and abandoned property**

24 **1. Vacant and abandoned property; conditions.** A mortgaged residential property
25 is considered vacant and abandoned property if a court finds by clear and convincing
26 evidence that the property is not occupied by a mortgagor or tenant under a lease
27 agreement entered into prior to the commencement of a foreclosure action under section
28 6321 and at least 2 of the following conditions exist:

29 A. Overgrown or neglected vegetation is present on the property;

30 B. Newspapers, circulars, flyers or mail has accumulated on the property;

31 C. Gas service, electric service or water or other utility services to the property have
32 been terminated;

33 D. Hazardous, noxious or unhealthy substances or materials have accumulated on the
34 property;

35 E. Junk, litter, trash or debris has accumulated on the property;

36 F. Window treatments such as blinds, curtains or shutters are absent from the
37 property;

38 G. Furnishings and personal items are absent from the property;

1 H. Neighbors, delivery persons or government employees have made statements
2 indicating that they believe the property is vacant and abandoned;

3 I. Windows or entrances to the property are boarded up or closed off, or multiple
4 windowpanes on the property are damaged, broken and unrepaired;

5 J. Doors to the property are broken through, broken off, unhinged or left
6 continuously unlocked;

7 K. Acts of vandalism to the property, loitering or criminal conduct on the property or
8 the physical destruction or deterioration of the property presents risks to the health,
9 safety or welfare of the public or any adjoining or adjacent property owners;

10 L. A violation of a municipal building, housing or similar code during the preceding
11 year or an order by municipal authorities declaring the property to be unfit for
12 occupancy remains uncorrected;

13 M. The mortgagee or other authorized party has secured or winterized the property to
14 prevent the dangers associated with a property's being vacant;

15 N. The mortgagor has issued a written statement expressing the clear intent of all of
16 the mortgagors to that property to abandon the property; and

17 O. Any other reasonable indicia of abandonment.

18 **2. Property not vacant and abandoned.** A mortgaged residential property is not
19 considered vacant and abandoned under subsection 1 if there exists on the property:

20 A. An unoccupied building undergoing construction, renovation or rehabilitation that
21 is proceeding steadily to completion and the building is in compliance with all
22 applicable ordinances, codes, rules, regulations and statutes;

23 B. A building that is occupied on a seasonal basis but is otherwise secure; or

24 C. A building that is secure but is the subject of a probate action, action to quiet title
25 or other ownership dispute.

26 **3. Motion.** A mortgagee or person claiming under a mortgagee may at any time
27 after commencement of a foreclosure action under section 6321 file with the court, in
28 accordance with the Maine Rules of Civil Procedure, a motion to determine that the
29 mortgaged residential property that is the subject of the foreclosure action is vacant and
30 abandoned. This subsection does not apply to a foreclosure of a time-share interest
31 secured by a mortgage.

32 **4. Service requirements.** In order to obtain a determination by the court pursuant to
33 this section that a mortgaged residential property is vacant and abandoned, in addition to
34 the requirements for service of motions under the Maine Rules of Civil Procedure, a
35 mortgagee must make 2 attempts to serve the mortgagor or occupant at the property. The
36 service attempts made pursuant to this subsection must be made at least 72 hours apart
37 and during different times of the day.

38 **5. Order by court.** Upon a finding by the court by clear and convincing evidence
39 that a mortgaged residential property is vacant and abandoned in accordance with this

1 section, the court shall enter an order granting the mortgagor's motion filed pursuant to
2 subsection 3.

3 **6. Construction.** This section is not intended to supersede or limit other procedures
4 applicable to residential mortgage foreclosure actions, including, but not limited to,
5 foreclosure mediation. This section may not be construed to affect the rights of a tenant to
6 possession of a leasehold interest under section 6322-A or other applicable law.

7 **7. Redemption period.** Notwithstanding section 6322-A, if the court has entered an
8 order under this section, the provisions for redemption set forth in sections 6322 and 6323
9 do not apply and the mortgagor and the mortgagor's successors and assigns have no right
10 of redemption following the entry of a judgment of foreclosure and sale.

11 **8. Application.** This section applies to:

12 A. Foreclosures that, notwithstanding Title 1, section 302, are pending on the
13 effective date of this section; and

14 B. Foreclosures that are commenced on or after the effective date of this section.

15 **Sec. 9. 32 MRSA §11002, sub-§6,** as amended by PL 2005, c. 475, §1, is further
16 amended to read:

17 **6. Debt collector.** "Debt collector" means any person conducting business in this
18 State, the principal purpose of which is the collection of any debts, or who regularly
19 collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be
20 owed or due another. "Debt collector" includes persons who furnish collection systems
21 carrying a name that simulates the name of a debt collector and who supply forms or form
22 letters to be used by the creditor even though the forms direct the debtor to make
23 payments directly to the creditor. Notwithstanding the exclusion provided by section
24 11003, subsection 7, "debt collector" includes any creditor who, in the process of
25 collecting the creditor's own debts, uses any name other than the creditor's that would
26 indicate that a 3rd person is collecting or attempting to collect these debts. "Debt
27 collector" includes any attorney-at-law whose principal activities include collecting debts
28 as an attorney on behalf of and in the name of clients, except that any such attorney
29 licensed to practice law in this State is subject exclusively to subchapter 2 and any such
30 attorney not licensed to practice law in this State is subject to this entire chapter. "Debt
31 collector" also includes any person regularly engaged in the enforcement of security
32 interests securing debts, including a repossession company and a residential real estate
33 property preservation company. "Debt collector" does not include any person who
34 retrieves collateral when a consumer has voluntarily surrendered possession. A person is
35 regularly engaged in the enforcement of security interests if that person enforced security
36 interests more than 5 times in the previous calendar year. If a person does not meet these
37 numerical standards for the previous calendar year, the numerical standards must be
38 applied to the current calendar year.

39 **Sec. 10. 32 MRSA §11017, sub-§§1 and 2,** as enacted by PL 1993, c. 126, §3,
40 are amended to read:

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

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

10 **Sec. 11. 32 MRSA §11017, sub-§4** is enacted to read:

11 **4. Residential real estate property preservation companies.** A residential real
12 estate property preservation company may enter into a dwelling only if authorized by
13 terms of a note, contract or mortgage. The company may not use force or effect a breach
14 of the peace against any person. The company shall inventory any unsecured items
15 removed from the dwelling and immediately notify the appropriate consumer that the
16 dwelling will be made available in a manner convenient to the consumer. The company
17 shall make a permanent record of all steps taken to preserve and secure the dwelling and
18 shall make that record available to the consumer upon written request. The administrator
19 shall adopt rules to implement this subsection, including a definition of "residential real
20 estate property preservation company." Rules adopted pursuant to this subsection are
21 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

22 **Sec. 12. 36 MRSA §4641-B, sub-§6,** as enacted by PL 2009, c. 402, §21, is
23 amended to read:

24 **6. Transfer of tax on deeds of foreclosure or in lieu of foreclosure.**
25 Notwithstanding subsection 4, the State Tax Assessor shall monthly pay to the
26 Department of Professional and Financial Regulation, Bureau of Consumer Credit
27 Protection the revenues derived from the tax imposed on the transfer of real property by
28 deeds that convey real property back to a lender ~~holding~~ owning a bona fide mortgage
29 that is genuinely in default, either by deeds from a mortgagor to a mortgagee or a
30 mortgagee's mortgage servicer in lieu of foreclosure or by deeds from a mortgagee or a
31 mortgagee's mortgage servicer to ~~itself~~ the owner of the mortgage debt at a public sale
32 pursuant to Title 14, section 6323.

33 **Sec. 13. 36 MRSA §4641-C, sub-§2,** as amended by PL 2009, c. 402, §22, is
34 further amended to read:

35 **2. Mortgage deeds.** Mortgage deeds, discharges of mortgage deeds and partial
36 releases of mortgage deeds. For the purposes of this subsection, only the mortgagor is
37 exempt from the tax imposed for a deed in lieu of foreclosure. In the event of a deed to a
38 3rd party at such a public sale, the tax imposed upon the grantor by section 4641-A
39 applies only to that portion of the proceeds of sale that exceeds the sums required to
40 satisfy in full the claims of the mortgagee and all junior claimants originally made parties
41 in interest in the proceedings or having subsequently intervened in the proceedings as
42 established by the judgment of foreclosure and sale. The tax must be deducted from the

1 excess proceeds. In the event of a deed from a mortgagee or a mortgagee's mortgage
2 servicer to itself the owner of the mortgage debt at a public sale held pursuant to Title 14,
3 section 6323, the mortgagee or the mortgagee's mortgage servicer if the mortgage
4 servicer is the selling entity is considered to be both the grantor and grantee for purposes
5 of section 4641-A. In the event of a deed in lieu of foreclosure and a deed from a
6 mortgagee or a mortgagee's mortgage servicer to itself the owner of the mortgage debt at
7 a public sale held pursuant to Title 14, section 6323, the tax applies to the value of the
8 property as that term is defined in section 4641, subsection 3;

9 SUMMARY

10 This bill:

- 11 1. Allows an employee of a financial institution or credit union who is not an
12 attorney to appear for that institution in connection with a foreclosure action; and
- 13 2. Clarifies the standards for foreclosure mediation and allows for an expedited
14 foreclosure of abandoned property.