

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 321

H.P. 215

House of Representatives, February 10, 2015

An Act To Protect Consumers against Residential Real Estate Title Defects

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script, reading "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative POULIOT of Augusta.
Cosponsored by Senator HASKELL of Cumberland and
Representatives: BECK of Waterville, FREDETTE of Newport, HOBBS of Saco,
MOONEN of Portland, WARREN of Hallowell, WINSOR of Norway, Senators: BURNS of
Washington, WHITTEMORE of Somerset.

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

2 **Sec. 1. 33 MRSA §508** is enacted to read:

3 **§508. Nominee mortgagees**

4 **1. Authority presumed.** A person or entity that is appointed the nominee
5 mortgagee by the person or entity that holds legal title to a mortgage is presumed to have
6 the authority to execute an assignment, partial release, discharge or other instrument that
7 affects the title to the mortgaged property unless the person or entity making the
8 appointment:

9 A. Explicitly negates such authority within the instrument in which the appointment
10 is made; or

11 B. Executes a separate instrument that explicitly negates such authority and that is
12 recorded in the registry of deeds within the county or district in which the mortgaged
13 property is located.

14 **2. Instrument valid.** An assignment, partial release, discharge or other instrument
15 affecting the title to mortgaged property or any interest in the property that is otherwise
16 valid and that is executed by a nominee mortgagee with authority as provided in
17 subsection 1 is valid even if the assignment, partial release, discharge or other instrument
18 does not state the authority of the nominee mortgagee to take the action.

19 **3. Statement not a limitation of authority.** A statement in an instrument described
20 in this section to the effect that, for purposes of recording, the nominee mortgagee is the
21 mortgagee of record, or any statement of similar meaning, may not be considered to be a
22 limitation upon the authority of the nominee mortgagee.

23 **SUMMARY**

24 The purpose of this bill is to protect consumers against defects in titles to real estate
25 in which Mortgage Electronic Registration Systems, Inc., appears in the chain of title.
26 Under current Maine law, according to Bank of America v. Greenleaf, 2014 ME 89, 102
27 A.3d 774, any action by Mortgage Electronic Registration Systems, Inc., other than the
28 recording of a mortgage, is invalid and of no force or effect. A large proportion of Maine
29 residential real estate transactions include Mortgage Electronic Registration Systems,
30 Inc., in the chain of title, putting consumers at risk of a defect in the title to their property.

31 This bill amends Maine law to eliminate that risk by establishing the presumption that
32 a nominee mortgagee has the authority to assign or otherwise affect the mortgage even if
33 the instrument assigning authority to the nominee mortgagee does not specifically so
34 state. The authority is not presumed if the instrument explicitly negates the authority or if
35 a separate written instrument negates the authority and that instrument is recorded in the
36 appropriate registry of deeds.