

MAINE STATE LEGISLATURE

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SME
POTOS

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L.D. 401

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Date: 6/2/15

(Filing No. H-257)

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JUDICIARY

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STATE OF MAINE

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HOUSE OF REPRESENTATIVES

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127TH LEGISLATURE

8

FIRST REGULAR SESSION

9

COMMITTEE AMENDMENT "A" to H.P. 267, L.D. 401, Bill, "An Act To Create
10 Transparency in the Mortgage Foreclosure Process"

11

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

13

'Sec. 1. 14 MRSA §6321, 3rd ¶, as amended by PL 2009, c. 476, Pt. B, §5 and
14 affected by §9, is further amended to read:

15

The foreclosure must be commenced in accordance with the Maine Rules of Civil
16 Procedure, and the mortgagee shall within 60 days of commencing the foreclosure also
17 record a copy of the complaint or a clerk's certificate of the filing of the complaint in each
18 registry of deeds in which the mortgage deed is or by law ought to be recorded and such a
19 recording thereafter constitutes record notice of commencement of foreclosure. The
20 mortgagee shall further certify and provide evidence that all steps mandated by law to
21 provide notice to the mortgagor pursuant to section 6111 were strictly performed. In
22 order to state a claim for foreclosure upon which relief can be granted, the complaint
23 must contain a certification of proof of ownership of the mortgage note. The mortgagee
24 shall certify proof of ownership of the mortgage note and produce evidence of the
25 mortgage note, mortgage and all assignments and endorsements of the mortgage note and
26 mortgage. The complaint must allege with specificity the plaintiff's claim by mortgage
27 on such real estate, describe the mortgaged premises intelligibly, including the street
28 address of the mortgaged premises, if any, which must be prominently stated on the first
29 page of the complaint, state the book and page number of the mortgage, if any, state the
30 existence of public utility easements, if any, that were recorded subsequent to the
31 mortgage and prior to the commencement of the foreclosure proceeding and without
32 mortgagee consent, state the amount due on the mortgage, state the condition broken and
33 by reason of such breach demand a foreclosure and sale. If a clerk's certificate of the
34 filing of the complaint is presented for recording pursuant to this section, the clerk's
35 certificate must bear the title "Clerk's Certificate of Foreclosure" and prominently state,
36 immediately after the title, the street address of the mortgaged premises, if any, and the
37 book and page number of the mortgage, if any. Service of process on all parties in
38 interest and all proceedings must be in accordance with the Maine Rules of Civil

COMMITTEE AMENDMENT

1 Procedure. "Parties in interest" includes mortgagors, holders of fee interest, mortgagees,
2 lessees pursuant to recorded leases or memoranda thereof, lienors and attaching creditors
3 all as reflected by the indices in the registry of deeds and the documents referred to
4 therein affecting the mortgaged premises, through the time of the recording of the
5 complaint or the clerk's certificate. Failure to join any party in interest does not invalidate
6 the action nor any subsequent proceedings as to those joined. Failure of the mortgagee to
7 join, as a party in interest, the holder of any public utility easement recorded subsequent
8 to the mortgage and prior to commencement of foreclosure proceedings is deemed
9 consent by the mortgagee to that easement. Any other party having a claim to the real
10 estate whose claim is not recorded in the registry of deeds as of the time of recording of
11 the copy of the complaint or the clerk's certificate need not be joined in the foreclosure
12 action, and any such party has no claim against the real estate after completion of the
13 foreclosure sale, except that any such party may move to intervene in the action for the
14 purpose of being added as a party in interest at any time prior to the entry of judgment.
15 Within 10 days of submitting the complaint for filing with the court, the mortgagee shall
16 provide a copy of the complaint or of the clerk's certificate as submitted to the court that
17 prominently states, immediately after the title, the street address of the mortgaged
18 premises, if any, and the book and page number of the mortgage, if any, to the municipal
19 tax assessor of the municipality in which the property is located and, if the mortgaged
20 premises is manufactured housing as defined in Title 10, section 9002, subsection 7, to
21 the owner of any land leased by the mortgagor. The failure to provide the notice required
22 by this section does not affect the validity of the foreclosure sale.'

23 SUMMARY

24 This amendment replaces the bill but still requires proof of the owner of the mortgage
25 note to be included in the foreclosure complaint.

26 The Maine Rules of Civil Procedure, Rule 12(b)(6) provides that a complaint must be
27 dismissed if it fails to state a claim upon which relief can be granted. This amendment
28 makes a foreclosure case subject to dismissal if it does not include a certification of proof
29 of the owner of the mortgage note. The purpose of this amendment is to remove the
30 ambiguity left by the Law Court in *Bank of America v. Cloutier*, 2013 ME 17, 61 A.3d.
31 1242, in which the Law Court held that the plaintiffs must identify the owner of a loan
32 but did not say when and how that identification must occur. This amendment requires
33 the identification at the beginning of the lawsuit when the parties most need that
34 information as they engage in mediation and loan modification efforts.

35 FISCAL NOTE REQUIRED

36 (See attached)



Approved: 05/26/15 *MAC*

127th MAINE LEGISLATURE

LD 401

LR 1469(02)

An Act To Create Transparency in the Mortgage Foreclosure Process

Fiscal Note for Bill as Amended by Committee Amendment *A(H-257)*

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - Other Special Revenue Funds

Fiscal Detail and Notes

Any additional costs to the Department of Professional and Financial Regulation from the provisions of this bill are expected to be minor and can be absorbed within existing budgeted resources.