

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 735

S.P. 265

In Senate, March 5, 2015

An Act To Establish a Voluntary Preforeclosure Mediation Program

Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator VALENTINO of York.
Cosponsored by Senators: HASKELL of Cumberland, WHITTEMORE of Somerset,
Representatives: CHENETTE of Saco, WALLACE of Dexter.

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

2 **Sec. 1. 14 MRSA §6113** is enacted to read:

3 **§6113. Voluntary preforeclosure mediation**

4 **1. Preforeclosure mediation.** A mortgagee may request that a mortgagor
5 participate in mediation before the mortgagee commences a foreclosure action under
6 section 6321 if:

7 A. The mortgage is on owner-occupied residential property of no more than 4 units
8 that is the primary residence of the mortgagor; and

9 B. The mortgage is more than 35 days delinquent.

10 **2. Request by mortgagee.** A mortgagee must provide the request for mediation
11 under subsection 1 to a mortgagor at the last known address of the mortgagor by:

12 A. Registered mail, return receipt requested. For purposes of this paragraph, the
13 request is made on the date the mortgagor signs the receipt or, if the request is
14 undeliverable, the date the post office last attempted to deliver it; or

15 B. Ordinary first-class mail, postage prepaid. For purposes of this paragraph, the
16 request is made on the date when the mortgagor receives the request. A post office
17 certificate of mailing to the mortgagor is conclusive proof of receipt on the 3rd
18 calendar day after mailing.

19 **3. Contents of request.** A request for mediation under subsection 1 must include
20 the following:

21 A. The name of the mortgagee;

22 B. A copy of the notice provided to the mortgagor under section 6111; and

23 C. A statement that participation in mediation is voluntary on the part of the
24 mortgagor, that participation in mediation as well as failure or refusal to participate
25 constitute a waiver of the mortgagor's rights under the foreclosure mediation program
26 established pursuant to section 6321-A and that no other rights of either party are
27 waived in any foreclosure action by participating in mediation.

28 **4. Failure to respond; refusal to participate.** If a mortgagor does not respond to
29 the request to participate in mediation within 35 days after the date that the request is
30 made pursuant to subsection 2, the mortgagor is deemed to have refused the request and
31 failed to participate in mediation under this section.

32 **5. Fee.** Before a mediation session is conducted under this section, a mortgagee
33 must pay to the Superior Court or District Court in the county or division in which the
34 mortgaged premises or any part of the mortgaged premises is located the fee established
35 under section 6321-A, subsection 7, paragraph C.

1 **6. Mediation program.** The following apply to mediation sessions conducted under
2 this section: section 6321-A, subsections 3 and 4; section 6321-A, subsection 7,
3 paragraph A; and section 6321-A, subsections 12 and 13.

4 **7. Completion deadline; extension.** Mediation is deemed completed under this
5 section 90 days following receipt of the request under subsection 2. The parties may
6 mutually agree to extend the deadline beyond 90 days.

7 **8. Mediator's report.** In addition to the information required or permitted to be
8 included under section 6321-A, subsection 13, the mediator's report must also include the
9 following:

10 A. The mortgagee's name;

11 B. The mortgagor's name;

12 C. The address of the mortgaged property;

13 D. Certification that the fee required under subsection 5 has been paid;

14 E. An acknowledgment by the mortgagor that participation in preforeclosure
15 mediation waives the mortgagor's right to participate in the mediation program
16 established under section 6321-A if a foreclosure action is commenced within 12
17 months of the date of the report;

18 F. The date of the report;

19 G. The mediator's signature;

20 H. The signature of a representative of the mortgagee having authority to agree to a
21 proposed settlement, loan modification or other action or forbearance on behalf of the
22 mortgagee; and

23 I. The signature of the mortgagor.

24 **Sec. 2. 14 MRSA §6321-A, sub-§2, ¶¶B and C,** as enacted by PL 2009, c. 402,
25 §18, are amended to read:

26 B. A sample answer and an explanation that the defendant may fill out the form and
27 return it to the court in the envelope provided as the answer to the complaint. If the
28 debtor returns the form to the court, the defendant does not need to file a more formal
29 answer or responsive pleading and will be scheduled for mediation in accordance
30 with this section; ~~and~~

31 C. A description of the program; and

32 **Sec. 3. 14 MRSA §6321-A, sub-§2, ¶D** is enacted to read:

33 D. If applicable, a statement that the defendant is not entitled to participate in the
34 foreclosure mediation program because mediation under section 6113 was completed
35 or the defendant failed or refused to participate in mediation under section 6113.

36 **Sec. 4. 14 MRSA §6321-A, sub-§7, ¶C,** as enacted by PL 2009, c. 402, §18, is
37 amended to read:

1 C. Notwithstanding subsection 10, establish a fee upon a foreclosure filing made on
2 or after June 15, 2009 to support mediation services to be paid for by the plaintiff,
3 except the fee is not required to be paid upon a foreclosure filing when the fee
4 required under section 6113, subsection 5 has previously been paid. A copy of the
5 mediator's report that includes the statement required under section 6113, subsection
6 8, paragraph D is conclusive evidence that the fee has previously been paid; and

7

SUMMARY

8 This bill provides Maine consumers with an opportunity to avoid home mortgage
9 foreclosure by participating in mediation at an early stage of default before foreclosure
10 has commenced. A mortgagee may request a mortgagor to participate in preforeclosure
11 mediation if the property subject to the mortgage is owner-occupied residential property
12 of 4 or fewer units, and the mortgage payment is at least 35 days late. A mortgagor who
13 participates or who fails or refuses to participate in the preforeclosure mediation program
14 is not entitled to participate in the existing foreclosure mediation program. Current law
15 provides for foreclosure mediation only after a foreclosure has been filed in court.