

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1175

S.P. 361

In Senate, March 12, 2019

**An Act To Ensure the Timely and Proper Completion of Residential
Foreclosures**

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator FOLEY of York. (BY REQUEST)

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

2 **Sec. 1. 14 MRSA §6323, sub-§1**, as amended by PL 2013, c. 521, Pt. C, §1, is
3 further amended to read:

4 **1. Procedures for all civil actions.** Upon expiration of the period of redemption, if
5 the mortgagor or the mortgagor's successors, heirs or assigns have not redeemed the
6 mortgage, any remaining rights of the mortgagor to possession terminate, and the
7 mortgagee shall cause notice of a public sale of the premises stating the time, place and
8 terms of the sale to be published once in each of 3 successive weeks in a newspaper of
9 general circulation in the county in which the premises are located, the first publication to
10 be made not more than 90 days after the expiration of the period of redemption. Except
11 when otherwise required under 12 Code of Federal Regulations, Section 1024.41 or any
12 successor provision, the public sale must be held not less than 30 days nor more than 45
13 days after the first date of that publication. Except for sales of premises that the court has
14 determined to be abandoned pursuant to section 6326, the mortgagee may adjourn the
15 public sale may be adjourned, for any time a period not exceeding 7 30 days and from
16 time to time until a sale is made, by as long as announcement of the new sale date is made
17 to those present at each the adjournment. The public sale may be adjourned for additional
18 periods of time upon written agreement of the mortgagee and mortgagor, as long as
19 notice is given to all persons present at the initial sale, or upon court order for good cause
20 shown and upon such terms as may be specified by the court. For sales of premises that
21 the court has determined to be abandoned pursuant to section 6326, the public sale may
22 be adjourned once for any time not exceeding 7 days, except that the court may permit
23 one additional adjournment for good cause shown. For any period of adjournment under
24 this subsection for the public sale of a mortgaged condominium unit, the mortgagee shall
25 pay the condominium association the regular monthly condominium assessment assessed
26 against the unit for the period between the original sale date and the date of the final sale.
27 Adjournments may also be made in accordance with the requirements of 12 Code of
28 Federal Regulations, Section 1024.41 or any successor provision. The mortgagee, in its
29 sole discretion, may allow the mortgagor to redeem or reinstate the loan after the
30 expiration of the period of redemption but before the public sale. ~~The, and, in connection~~
31 with any such redemption or reinstatement, the mortgagee may convey the property to the
32 mortgagor or execute a waiver of foreclosure, and all other rights of all other parties
33 remain as if no foreclosure had been commenced. The public sale must be conducted, at
34 the election of the mortgagee, at the mortgaged premises or at the state courthouse or the
35 office of an attorney located in the county in which the mortgaged property is located.
36 The mortgagee shall sell the premises to the highest bidder at the public sale and deliver a
37 deed of that sale and the writ of possession, if a writ of possession was obtained ~~during~~
38 the foreclosure process following the period of redemption, to the purchaser. The deed
39 conveys the premises free and clear of all interests of the parties in interest joined in the
40 action. The mortgagee or any other party in interest may bid at the public sale. If the
41 mortgagee is the highest bidder at the public sale, there is no obligation to account for any
42 surplus upon a subsequent sale by the mortgagee. Any rights of the mortgagee to a
43 deficiency claim against the mortgagors are limited to the amount established as of the
44 date of the public sale. The date of the public sale is the date on which bids are received
45 to establish the sales price, no matter when the sale is completed by the delivery of the

1 deed to the highest bidder. If the property is conveyed by deed pursuant to a public sale
2 in accordance with this subsection, a copy of the judgment of foreclosure and evidence of
3 compliance with the requirements of this subsection for the notice of public sale and the
4 public sale itself must be attached to or included within the deed, or both, or otherwise be
5 recorded in the registry of deeds within 30 days of the date of the conveyance.

6 **Sec. 2. 14 MRSA §6324**, as amended by PL 2003, c. 20, Pt. T, §10, is further
7 amended to read:

8 **§6324. Proceeds of sale**

9 After first deducting the expenses incurred in making the sale, the mortgagee shall
10 disburse the remaining proceeds in accordance with the provisions of the judgment. The
11 mortgagee shall file a report of the sale and the disbursement of the proceeds therefrom
12 with the court and shall mail a copy to the mortgagor at the mortgagor's last known
13 address. The report of sale must show the amount of the foreclosure judgment determined
14 by the court and must itemize all additions to the foreclosure judgment. In the event that
15 the sale generates a surplus of money beyond the amount owed to the mortgagee, the
16 mortgagee shall, no later than the time of the filing of the report of sale, pay this surplus
17 over to the mortgagor or other party entitled to it as determined by the foreclosure
18 judgment. This report need not be accepted or approved by the court, ~~provided that as~~
19 ~~long as~~ the mortgagor or any other party in interest may contest the accounting by ~~motion~~
20 ~~filed within 30 days of receipt of the report opposing the mortgagee's motion for a~~
21 ~~deficiency judgment in accordance with the Maine Rules of Civil Procedure,~~ but any such
22 challenge may be for money only and does not affect the title to the real estate purchased
23 by the highest bidder at the public sale. ~~Any~~ Upon order of the court after motion of the
24 mortgagee filed with the report of sale and served upon the mortgagor and all other
25 parties in interest in accordance with the Maine Rules of Civil Procedure, any deficiency
26 must be assessed against the mortgagor and an execution must be issued by the court
27 therefor. In the event the mortgagee has been the purchaser at the public sale, any
28 deficiency is limited to the difference between the fair market value of the premises at the
29 time of the public sale, as established by an independent appraisal, and the sum due the
30 mortgagee as established by the court with interest plus the expenses incurred in making
31 the sale. Any surplus must be paid to the mortgagor, the mortgagor's successors, heirs or
32 assigns in the proceeding or to a party entitled to the surplus as determined in the
33 judgment of foreclosure, and the payment must be made no later than the time of the
34 filing of the report of sale. If the mortgagor has not appeared personally or by an
35 attorney, the surplus must be paid to the clerk of courts, who shall hold the surplus in
36 escrow for 6 months for the benefit of the mortgagor, the mortgagor's successors, heirs or
37 assigns and, if the surplus remains unclaimed after 6 months, the clerk shall pay the
38 surplus to the Treasurer of State to be credited to the General Fund until it becomes
39 unclaimed under the Uniform Unclaimed Property Act, and report and pay it to the State
40 in accordance with that Act.

41 The report of sale required by this section must be filed with the court within 45 days
42 of the date of the public sale, without regard to the actual date of conveyance following
43 the sale. In the event that the report is not filed with the court within this 45-day period,
44 the mortgagee has no right to seek a deficiency judgment, and the mortgagor or other

1 party claiming entitlement to any portion of any surplus proceeds from the sale may file a
2 motion for an accounting of the sale proceeds and for the turnover of any surplus. The
3 court shall order that the mortgagee pay to the mortgagor or party in interest that prevails
4 on such a motion that party's attorney's fees and costs incurred in connection with such a
5 motion. Upon a showing of good cause by the mortgagee, made by motion filed before
6 the expiration of the deadline stated in this section for the filing of the report of sale, the
7 court may extend the deadline for the filing of the report of sale for an additional period
8 of time as the court considers appropriate.

9 **SUMMARY**

10 This bill makes changes to the laws governing the adjournment of a public sale of
11 foreclosed premises and where such a sale must be conducted. It provides that for any
12 period of adjournment for the sale of a mortgaged condominium unit, the mortgagee is
13 required to pay the condominium association the regular monthly condominium
14 assessment assessed against the unit for the period between the original sale date and the
15 date of the final sale. It clarifies several aspects of the post-foreclosure sale process
16 regarding the filing of reports of sale and mandates that the report be filed within 45 days
17 of the sale. If a foreclosure sale produces proceeds beyond those payable to the
18 mortgagee, the bill requires the mortgagee to pay the surplus to the mortgagor or other
19 party entitled to it no later than the time of the filing of the report of sale and provides a
20 means for the party entitled to the surplus to obtain a court order for the turnover of the
21 surplus if the mortgagee fails to do so. The bill clarifies that, after the redemption period
22 has expired, but before a sale, a mortgagee may agree with a mortgagor to a reinstatement
23 of the mortgage, and that the mortgagee may, in connection with the reinstatement, waive
24 the foreclosure judgment and restore all parties to the action to the positions that they
25 were in before any foreclosure.