

MAINE STATE LEGISLATURE

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L.D. 1963

Date: 3/13/20

(Filing No. H-757)

JUDICIARY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1407, L.D. 1963, Bill, "An Act To Preserve the Value of Abandoned Properties by Allowing Entry by Mortgagees"

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

Sec. 1. 14 MRSA §6327 is enacted to read:

§6327. Abatement of nuisance and preservation of property by mortgage loan servicer

1. Actions to abate nuisance and preserve property. After the commencement of an action for foreclosure, a mortgage loan servicer, as defined in Title 9-A, section 1-301, subsection 24-C, may file an affidavit attesting to the conditions described in subsection 2 and any other facts evidencing abandonment with the court and served on the parties to the foreclosure action pursuant to the Maine Rules of Civil Procedure, Rule 5. The affidavit must be based on the personal knowledge of the affiant, must state the basis for that personal knowledge and must include a statement that a municipal, county or state official, code enforcement officer or law enforcement official was present on the date when any conditions of abandonment described in subsection 2, paragraph B and included in the affidavit were observed by the affiant. Once the affidavit is filed with the court, the mortgage loan servicer or its designee may enter the property for the purpose of abating any identified nuisance, preserving property or preventing waste and may take steps to secure the property, including but not limited to:

- A. Installing missing locks on exterior doors.** If any locks are changed, the mortgage loan servicer shall provide a lockbox. Working locks may not be removed or replaced unless all doors are secured and there is no means of entry, in which case only one working lock may be removed and replaced;
- B. Replacing or boarding up broken or missing windows;**
- C. Winterizing, including draining pipes and disconnecting or turning on utilities;**
- D. Eliminating building code or other violations;**

COMMITTEE AMENDMENT

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E. Securing exterior pools and spas;

F. Performing routine yard maintenance on the exterior of the residence; and

G. Performing pest and insect control services.

2. Presumption of abandonment. Mortgaged premises are presumed to be abandoned property, for purposes of this section only, if:

A. A code enforcement officer or other public official determines that the mortgaged premises are abandoned;

B. Three or more of the following subparagraphs apply to the mortgaged premises:

(1) There are:

(a) One or more doors on the mortgaged premises that are boarded up, broken off or continuously unlocked;

(b) Multiple windows that are boarded up or closed off; or

(c) Multiple windowpanes that are broken;

(2) Gas, electric or water service to the mortgaged premises has been terminated or utility consumption is so low that it indicates the mortgaged premises are not regularly occupied;

(3) Rubbish, trash or debris has accumulated on the mortgaged premises;

(4) Newspapers, flyers or mail has accumulated on the mortgaged premises;

(5) Furnishings and personal property are absent from the mortgaged premises;

(6) A mortgagee has changed the locks on the mortgaged premises and neither the mortgagor nor anyone on the mortgagor's behalf has requested entrance to, or taken other steps to gain entrance to, the mortgaged premises;

(7) A law enforcement agency has received reports of at least 2 separate incidents of trespass, vandalism or other illegal acts being committed on the mortgaged premises in the 180 days before determination of abandonment is sought;

(8) The mortgagor is deceased and there is no evidence that an heir or personal representative has taken possession of the mortgaged premises; and

(9) There are other reasonable indicia of abandonment; or

C. One or more written statements signed by the homeowner indicate a clear intent to abandon the mortgaged premises.

3. Record of entry. The mortgage loan servicer or its designee shall make a record of entry pursuant to this section by means of dated and time-stamped photographs showing the manner of entry and personal items visible within the residence upon entry.

4. Removal of personal items. Neither the mortgage loan servicer nor its designee may remove personal items from the property unless the items are hazardous or

1 perishable. The mortgage loan servicer or its designee shall create a written inventory of
2 items removed.

3 **5. Notice before entry.** Prior to each entry pursuant to this section, a mortgage loan
4 servicer or its designee shall ensure that a notice is posted on the front door of each
5 property that includes the following:

6 A. A statement that until foreclosure and sale is complete the property owner or
7 occupant authorized by the owner has the right to possession;

8 B. A statement that the property owner or occupant authorized by the owner has the
9 right to request any locks installed by the mortgage loan servicer or its designee be
10 removed within 24 hours and replaced with new locks accessible by only the property
11 owner or the occupant authorized by the owner;

12 C. A toll-free, 24-hour telephone number that the property owner or occupant
13 authorized by the owner may call in order to gain timely entry. Timely entry must be
14 provided no later than the next business day; and

15 D. The telephone number of the Department of Professional and Financial
16 Regulation, Bureau of Consumer Credit Protection's foreclosure hotline with a
17 statement that the property owner may have the right to participate in foreclosure
18 mediation.

19 **6. Maintenance of records.** The mortgage loan servicer or its designee shall
20 maintain records of entry onto the property pursuant to this section for at least 4 years
21 from the date of entry.

22 **7. Occupied property.** If, upon entry pursuant to this section, the property is found
23 to be occupied or there exist other reasonable indicia of occupancy, the mortgage loan
24 servicer or its designee shall leave the property immediately and notify the county or
25 municipality. Neither the mortgage loan servicer nor its designee may enter the occupied
26 property regardless of whether the property constitutes a nuisance or complies with local
27 code enforcement standards. Upon determination that the property is occupied, the
28 mortgage loan servicer shall post a notice advising that entry occurred, take all steps
29 necessary to remedy any damage caused by the entry and secure the property for the
30 occupants.

31 **8. Notice that property not abandoned.** If a mortgage loan servicer is contacted by
32 the mortgagor and notified that the property is not abandoned, the mortgage loan servicer
33 shall notify the county or municipality and thereafter neither the mortgage loan servicer
34 nor its designee may enter the property regardless of whether the property constitutes a
35 nuisance or complies with local code enforcement standards.

36 **9. County and municipality liability.** A county or municipality is not liable for any
37 damages caused by an act or omission of the mortgage loan servicer or its designee
38 pursuant to this section.

39 **10. Prohibition on harassment.** Regardless of any contractual rights granted to a
40 mortgagee, it is unlawful for a mortgagee, its mortgage loan servicer or a 3rd-party agent
41 or other person acting on behalf of a mortgagee to enter residential property that is not
42 abandoned for the purpose of forcing, intimidating, harassing or coercing a lawful
43 occupant of the residential property to vacate that property in order to render the property

1 vacant and abandoned or to otherwise force, intimidate, harass or coerce a lawful
2 occupant of the residential property to vacate that property so that it may be considered
3 abandoned.

4 11. Penalties. A violation of this section is deemed to be a violation of section 6113
5 for entities not exempt from the provisions of section 6113. The remedies provided in
6 this section are in addition to any other rights and remedies conferred by law.

7 12. Contractual rights. The provisions of this section do not preempt, supersede or
8 otherwise render inapplicable any rights granted to a mortgagee under the mortgage.'

9 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
10 section number to read consecutively.

11 **SUMMARY**

12 This amendment replaces the bill. It allows a mortgage loan servicer to take certain
13 actions to preserve the value of residential property that is the subject of a foreclosure
14 action if the mortgaged premises are presumed abandoned. The mortgage loan servicer
15 may file an affidavit attesting the abandonment factors found, and the affidavit must
16 include a statement that a municipal, county or state official, code enforcement officer or
17 law enforcement official was present when the abandonment factors were observed. The
18 affidavit must be filed with the court, with copies mailed to the parties as required by the
19 Maine Rules of Civil Procedure. Once the affidavit is filed, the mortgage loan servicer
20 may take steps to secure the property.

21 A county or municipality is not liable for any damages caused by an act or omission
22 of the mortgage loan servicer or its designee.

23 The mortgage loan servicer or its designee must make a record of every entry of the
24 premises and may not remove personal items from the premises unless they are hazardous
25 or perishable. Before entering the premises, the mortgage loan servicer or its designee
26 must post a notice on the front door that explains the rights of the property owner or
27 occupant authorized by the owner, including how to contact the mortgage loan servicer or
28 its designee and how to contact the Department of Professional and Financial Regulation,
29 Bureau of Consumer Credit Protection's foreclosure hotline.

30 A mortgage loan servicer or its designee may not enter occupied property. A
31 mortgagee, its mortgage loan servicer, its designee or a 3rd-party agent or other person
32 acting on behalf of the mortgagee may not force, intimidate, harass or coerce a lawful
33 occupant of residential property to vacate the property so that it may be considered
34 abandoned. A violation of these provisions is deemed a violation of the Maine Revised
35 Statutes, Title 14, section 6113, which imposes a duty of good faith on mortgage loan
36 servicers.

37 **FISCAL NOTE REQUIRED**

38 (See attached)



129th MAINE LEGISLATURE

LD 1963

LR 2799(02)

An Act To Preserve the Value of Abandoned Properties by Allowing Entry by Mortgagees

Fiscal Note for Bill as Amended by Committee Amendment

A(H-759)

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Minor revenue increase - General Fund

Minor revenue increase - Other Special Revenue Funds

Correctional and Judicial Impact Statements

This bill may increase the number of civil suits filed in the court system.

The additional workload associated with the minimal number of new cases filed in the court system does not require additional funding at this time.

The collection of additional filing fees may increase General Fund and other dedicated revenue by minor amounts.