

MAINE STATE LEGISLATURE

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E I G H T Y - E I G H T H L E G I S L A T U R E

Legislative Document

No. 430

H. P. 1164

House of Representatives, February 10, 1937.

Referred to Committee on Judiciary. Sent up for concurrence and 500 copies ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Wilkes of Portland.

S T A T E O F M A I N E

I N T H E Y E A R O F O U R L O R D N I N E T E E N H U N D R E D
T H I R T Y - S E V E N

AN ACT Authorizing the Relief of Persons and Corporations by Suspending Attachment on Execution Sale and Mortgage Foreclosure Proceedings which May Work Unjust Hardship.

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

Sec. 1. Definition. As used hereinafter the word "person" shall mean individuals, associations, and corporations.

Sec. 2. Sale. In proceeding for the foreclosure of mortgages or any liens on real property acquired by attachment, or otherwise, the mortgagor or owner of said real estate may petition the superior court in either the county where said property is located, or where the mortgagee or holder of such lien may reside, to order the officer who has any process for the purpose of sale or taking possession of such real estate, or said mortgagee, or any agent of said mortgagee, from proceeding with such foreclosure, advertising for sale or selling such property, or any other proceeding in the enforcement of the rights of said mortgagee or of the person holding such lien, if such proceedings would work an unjust hardship upon the petitioner.

Sec. 3. Petition. The petition shall be sworn to under oath, shall set forth the manner in which such taking of possession, advertising for sale,

or the sale of such property would work an unjust hardship upon the petitioner, and the length of time it would be necessary to suspend such proceedings in order to avoid unjust hardship upon the petitioner, and shall include an affidavit under oath containing a schedule of all the debts of the petitioner, secured or unsecured, the names and addresses of his creditors, any securities held by such creditors, a full statement of his assets, their present value, and their value under normal economic conditions, and a brief statement of his past conduct in meeting his legal obligations and liabilities.

Sec. 4. Notice. The petitioner shall cause a notice of such petition to be given to all parties to the foreclosure proceedings or such lien proceeding by mailing by registered mail to the last known address of such parties a copy of the petition.

Sec. 5. Hearing. Upon a sworn affidavit of the petitioner that such notice has been given the court shall forthwith fix a time and place for a hearing thereon.

Sec. 6. Orders. If after due hearing the court shall determine that the taking of possession, advertising for sale, or sale of such property under foreclosure proceedings or such lien proceedings would work an unjust hardship on the petitioner, and that there is reasonable probability that such hardship would be avoided by suspending for a reasonable period said taking of possession, advertising for sale, or sale of said property, he may, upon such terms and conditions as justice requires, order said taking of possession, advertising for sale or sale suspended for such reasonable period.

Sec. 7. Additional orders. A party may apply at any time to the court having jurisdiction thereof for such additional orders in the premises as may be proper under the foregoing sections, and such court shall have jurisdiction and authority to revoke, revise, alter or modify any previous orders therein made by him or by any justice of such court.

Sec. 8. Redemption. In proceedings to foreclose a mortgage or lien upon real property upon petition by the mortgagor or lienor, the court, in its discretion, and upon such terms and conditions as shall be equitable under the then existing conditions, may extend the time within which the premises may be redeemed, for such period as would not work an unjust hardship upon the parties interested, and at any time thereafter upon the petition of the mortgagor, lienor or those holding under him, on notice to the mortgagee and after hearing thereon, may reopen such decree and make such further orders relating thereto as justice may require. The

provisions of this section, so far as pertinent thereto, shall apply to decrees heretofore entered where the time therein fixed for redemption has not expired on the date of such petition.

Sec. 9. Additional orders. Any party in interest may apply to the court at any time upon the grounds of a change in conditions and the court, upon due notice and hearing, may, if justice requires, revoke, revise, alter or modify any order previously made.

Sec. 10. Powers, authority and miscellaneous. A court having jurisdiction in any proceedings hereunder shall have full power and authority to make all necessary orders incident to the exercise of the jurisdiction conferred by the provisions herein, including such orders as relate to the custody, preservation and conservation of the property of the debtor and the rights of the creditors therein as may be deemed necessary and proper for the protection of all parties in interest.

Sec. 11. Limitation. Nothing herein shall affect or change any lawful security held by any creditor, nor its order of priority, and such rights of security or priority shall be considered by the court in any orders made hereunder relating to the subject matter of such security.

Sec. 12. Statute of limitation. When the provisions of this act are invoked any statute of limitation applicable to the matters embraced in such proceedings shall be tolled during the pendency thereof.

Sec. 13. Attendance of witnesses. A party to any proceeding hereunder may have free process from the court to compel the attendance of witnesses if the court shall be of the opinion that he is poor and unable to defray the expense and that injustice may be done if provision is not made therefor at public expense.

Sec. 14. Order of trial. All hearings in proceedings hereunder shall be held as soon as practicable and in the order of trial shall have precedence over all other matters except criminal proceedings.

Sec. 15. Suspension of prior legislation. All laws, or parts thereof, inconsistent herewith shall be deemed to be suspended.

Sec. 16. Separability. If any portion of this act is held unconstitutional or invalid, such holding shall not affect the validity of the act as a whole, or any other portion thereof.

Sec. 17. False statements. If any person shall make a false statement in any affidavit or schedule required under the provisions hereof he shall be punished by a fine of not more than \$100 and by imprisonment for not more than 6 months or by both such fine and imprisonment.