

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE
AS PASSED BY THE
One Hundred and Sixth Legislature
1ST SPECIAL SESSION
JANUARY 2, 1974 TO MARCH 29, 1974
AND BY THE
One Hundred and Seventh Legislature
REGULAR SESSION
JANUARY 1, 1975 TO JULY 2, 1975

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SECTION 164, SUBSECTION 6.

THE KNOWLTON AND MCLEARY COMPANY
FARMINGTON, MAINE
1975

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
One Hundred and Seventh Legislature

1975

CHAPTER 551

AN ACT Relating to Teacher Certification.

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

Sec. 1. 20 MRSA § 59, as last amended by PL 1973, c. 571, § 10, is repealed and the following enacted in place thereof:

§ 59. Certification of teachers

The State Board of Education shall, in accordance with such rules and regulations as it may prescribe, authorize the Commissioner of Educational and Cultural Services to certify and revoke the certification of teachers and other professional personnel for service in any public school in the State, or in any nonpublic school which accepts public funds for tuition or is approved for attendance purposes under section 911. The State Board of Education may, in accordance with such rules and regulations as it prescribes, authorize the Commissioner of Educational and Cultural Services to certify adult education teachers and other teaching and professional personnel in publicly supported education programs other than those in the public schools, post-high school institutions, colleges and universities. The State Board of Education shall, in accordance with such rules and regulations as it prescribes, authorize the Commissioner of Educational and Cultural Services to approve the employment of teacher aides, teacher assistants or other semiprofessional personnel for service in the kinds of schools described in this section. The State Board of Education shall have the advice in matters of certification of a body of qualified practitioners, teacher-educators and representatives of the public to be selected and to function in accordance with rules established by the State Board of Education. At least 50% of such advisory body shall be made up of persons who are currently employed in teaching positions as defined in section 3452. This advisory body shall review proposed changes in rules and regulations which relate to certification and revocation of certification of school personnel.

Sec. 2. 20 MRSA § 1751, last ¶, as last repealed and replaced by PL 1967, c. 79, § 2, is repealed.

Effective October 1, 1975

CHAPTER 552

AN ACT Insuring Due Process of Law to Consumers in the Foreclosure of Real Estate Mortgages and to Require Accounting for Surplus Therefrom.

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

Sec. 1. 4 MRSA § 152, first sentence, as last amended by PL 1971, c. 544, § 6, is further amended to read:

The District Court shall possess the civil and criminal jurisdiction exercised by all trial justices and municipal courts in the State on September 16, 1961, and in addition, original jurisdiction, concurrent with that of the Superior Court of all civil actions in which neither damages in excess of \$20,000 nor,

except as herein provided, equitable relief is demanded; ~~of proceedings under Title 14, sections 6651 to 6658 and of actions for divorce or annulment of marriage and of proceedings under Title 19; and~~ original jurisdiction, concurrent with that of the probate court, of actions for separation; original jurisdiction, concurrent with that of the Superior Court, of actions to quiet title to real estate under Title 14, sections 6651 to 6658, and in such actions the District Court may grant equitable relief; and original jurisdiction, concurrent with that of the Superior Court, of actions to foreclose mortgages under Title 14, chapter 713, subchapter VI.

Sec. 2. 14 MRSA § 1901, first sentence, is amended to read:

Any appeal shall be taken from the District Court to the Superior Court for the county embracing the division in which the judgment was rendered within 10 days after judgment; except that any party shall appeal from a District Court judgment in an action of foreclosure and sale directly to the Supreme Judicial Court within 30 days.

Sec. 3. 14 MRSA § 6151, first ¶, last sentence, is amended to read:

After breach of the condition, he may, in person or by his agent, make use of the like means for the purpose of foreclosure, which an individual mortgagee might, as prescribed in ~~sections section 6321 6201 and 6203.~~

Sec. 4. 14 MRSA § 6204-A is enacted to read:

§ 6204-A. Disposition of proceeds of foreclosure sale

The holder of a mortgage of real estate, or his representative, out of the money arising from a completed sale after the period of redemption has expired pursuant to a foreclosure under this subchapter, shall be entitled to retain all sums which were secured by the mortgage, whether then or thereafter payable, including all costs, charges or expenses incurred or sustained by him or them by reason of any default in the performance or observance of the condition of the mortgage or of any prior or subsequent mortgage, rendering the surplus, if any, to the mortgagor or his heirs, successors or assignes. The mortgagee shall also be entitled to deduct from the proceeds of the sale all costs incurred and interest at the rate provided in the note which was secured by the mortgage from the expiration of the redemption period to the date of sale. No person other than the holder of the mortgage shall be bound to see to the application of the money arising from such sale nor submit an account relating to same and in the absence of fraud the consideration received by the mortgagee or his representative shall be deemed to be adequate consideration and the mortgagor shall have no claim that the sale price was inadequate.

Sec. 5. 14 MRSA c. 713, sub-c. VI is enacted to read:

SUBCHAPTER VI

FORECLOSURE PROCEEDINGS BY CIVIL ACTION

§ 6321. Commencement of foreclosure by civil action

After breach of condition in the mortgage, the mortgagee or any person claiming under him may proceed for the purpose of foreclosure by a civil action against all parties in interest in either the Superior Court or the Dis-

trict Court in the division wherein the mortgaged premises or any part thereof is located. The method of foreclosure of real estate mortgages provided by this section is an alternative method to those provided in sections 6201 and 6203 of this chapter.

The foreclosure shall be commenced by filing a complaint with the court and recording a copy of the complaint or a clerk's certificate of the filing thereof in each registry of deeds in which the mortgage deed is or by law ought to be recorded and such recording shall thereafter constitute record notice of commencement of foreclosure. The complaint shall allege with specificity the plaintiff's claim by mortgage on such real estate, describe the mortgaged premises intelligibly, state the amount due on the mortgage, state the condition broken and by reason of such breach demand a foreclosure and sale. Service of process on all parties in interest and all proceedings shall be in accordance with the Maine Rules of Civil Procedure. "Parties in interest" shall include mortgagors, holders of fee interest, mortgagees, lessees pursuant to recorded leases or memoranda thereof, lienors and attaching creditors all as reflected by the indices in said registry of deeds and the documents referred to therein affecting the mortgaged premises. Failure to join any party in interest shall not invalidate the action nor any subsequent proceedings as to those joined.

§ 6322. Hearing and judgment

After hearing, the court shall determine whether there has been a breach of condition in the plaintiff's mortgage, the amount due thereon including reasonable attorney's fees and court costs, and the order of priority and such amounts, if any, as may be due to such other parties as may appear. If the court determines that such a breach exists, a judgment of foreclosure and sale shall issue providing that if the mortgagor, his successors, heirs and assigns, do not pay the sum that the court adjudges to be due and payable, with interest, within 90 days of the date of the judgment, the mortgagee shall proceed with a sale as provided. If the mortgagor, his successors, heirs and assigns pay to the mortgagee the sum that the court adjudges to be due and payable to the mortgagee with interest within 90 days of the date of the judgment, then the mortgagee shall forthwith discharge the mortgage and file a dismissal of the action for foreclosure with the clerk of the court.

§ 6323. Sale following expiration of period of redemption

Upon expiration of the period of redemption, if the mortgagor, his successors, heirs or assigns have not redeemed the mortgage, the mortgagee shall cause notice of a public sale of the premises stating the time, place and terms thereof to be published once in each of 3 successive weeks in a newspaper of general circulation in the county in which the premises are located; the first such publication to be made not more than 90 days after the expiration of the period of redemption. The public sale shall be held not less than 30 days nor more than 45 days after the first date of such publication. The mortgagee shall sell the premises to the highest bidder at the public sale and deliver a deed of such sale to the purchaser, which deed shall convey the premises free and clear of all interests of the parties in interest joined in the action. The mortgagee or any other party in interest may bid at the public sale.

§ 6324. Proceeds of sale

After first deducting the expenses incurred in making the sale, the mortgagee shall disburse the remaining proceeds in accordance with the provisions of the judgment. The mortgagee shall file a report of the sale and the disbursement of the proceeds therefrom with the court. Any deficiency shall be assessed against the mortgagor and an execution shall be issued by the court therefor. In the event the mortgagee has been the purchaser at the public sale, any deficiency shall be limited to the difference between the fair market value of the premises at the time of the sale, as established by an independent appraisal, and the sum due the mortgagee as established by the court with interest plus the expenses incurred in making the sale. Any surplus shall be paid to the mortgagor, his successors, heirs or assigns in the proceeding. If the mortgagor has not appeared personally or by an attorney, the surplus shall be paid to the clerk of courts, who shall hold the surplus in escrow for 6 months for the benefit of the mortgagor, his successors, heirs or assigns and, if the surplus remains unclaimed after 6 months, the clerk shall pay the surplus to the Treasurer of State to be credited to the General Fund.

§ 6325. Exceptions

The method of foreclosure set forth in sections 6321 to 6324 may be used for the foreclosure of all real property mortgages except for railroad mortgages, so called, or for indentures or deeds of trust securing bond issues of corporations wherein the method of foreclosure or sale is provided in the indenture or deed of trust or any similar instrument; provided that any such railroad mortgage, corporate indenture, deed of trust or similar instrument executed subsequent to January 1, 1976 shall be subject to this subchapter unless the applicability of this chapter is expressly negated in such instrument. The method of foreclosure set forth in sections 6321 to 6324 shall not apply to tax lien mortgages created under Title 36.

Effective October 1, 1975

CHAPTER 553

AN ACT to Provide Minimum Standards for the Protection of the Rights of Residents of Public Institutions.

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

Sec. 1. 15 MRSA § 2720 is enacted to read:

§ 2720. Use of seclusion

A child may be placed in seclusion whenever the child has demonstrated that anything less restrictive would be ineffectual in the control of his behavior, such behavior presenting a high likelihood of harm to himself or to others, or a substantial and imminent threat of destruction of property or a demonstrated proclivity to absent himself from the center without leave. The use of seclusion shall not exceed the period of time necessary to alleviate any such behavior so that the child may be safely removed therefrom. The use of seclusion must first be approved by the superintendent.

The use of seclusion shall be subject to the following conditions: