

PROPOSED COMMITTEE AMENDMENT to LD 1389
Based on recommendations of Attorney General Janet T. Mills

COMMITTEE AMENDMENT "" To LD 1389, An Act to Expedite the Foreclosure Process

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

PART A

Sec. A-1. 36 MRSA §4641-B, sub-§6 is amended to read:

6. Transfer of tax on deeds of foreclosure or in lieu of foreclosure. Notwithstanding subsection 4-B, the State Tax Assessor shall monthly pay to the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection the revenues derived from the tax imposed on the transfer of real property by section 4641-C, subsection 2, paragraphs A and C. [by deeds that convey real property back to a lender holding a bona fide mortgage that is genuinely in default, either by deeds from a mortgagor to a mortgagee in lieu of foreclosure or by deeds from a mortgagee to itself at a public sale pursuant to Title 14, section 6323] [needs to be crossed out].

Sec. A-2. 36 MRSA §4641-C, sub-§2 is repealed and the following enacted in its place:

2. Mortgage deeds; deeds of foreclosure and in lieu of foreclosure; Mortgage deeds, discharges of mortgage deeds and partial releases of mortgage deeds.

A. For the purposes of this subsection, only the mortgagor is exempt from the tax imposed for a deed in lieu of foreclosure.

B. In the event of a deed to a 3rd party at a public sale held pursuant to Title 14, section 6323, the tax imposed upon the grantor by section 4641-A applies only to that portion of the proceeds of sale that exceeds the sums required to satisfy in full the claims of the mortgagee and all junior claimants originally made parties in interest in the proceedings or having subsequently intervened in the proceedings as established by the judgment of foreclosure and sale. The tax must be deducted from the excess proceeds.

C. In the event of a transfer, by deed, assignment or otherwise, from a mortgagee or its servicer to the mortgagee or its servicer or to the owner of the mortgage debt at a public sale held pursuant to Title 14, section 6323, the mortgagee or its servicer if the servicer is the selling entity is considered to be both the grantor and grantee for purposes of section 4641-A.

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D. In the event of a deed in lieu of foreclosure and a deed from a mortgagee or its servicer to the mortgagee or its servicer or to the owner of the mortgage debt at a public sale held pursuant to Title 14, section 6323, the tax applies to the value of the property as that term is defined in section 4641, subsection 3.

For the purposes of this subsection, "servicer" means a person or entity that acts on behalf of the owner of a mortgage debt to provide services related to the mortgage debt, including accepting and crediting payments from the mortgagor, issuing statements and notices to the mortgagor, enforcing rights of the owner of a mortgage debt and initiating and pursuing foreclosure proceedings:

PART B

Sec. B-1. 14 MRSA §6326 is enacted to read:

§6326. Order of abandonment for residential properties in foreclosure

1. Plaintiff request. The plaintiff in a residential foreclosure by civil action may present evidence of abandonment as described in subsection 2 (and may request a determination pursuant to subsection 3) that the mortgaged premises have been abandoned if the premises are:

A. A residential property as described in section 6321 A, subsection 2; and

B. The subject of an uncontested foreclosure action, or an uncontested foreclosure judgment has been issued with respect to the premises and a foreclosure sale with respect to the premises is pending pursuant to this subchapter. An action or judgment is uncontested if:

(1) The mortgagor has not appeared in the action to defend against foreclosure;

(2) the mortgagor has not appeared in the action and there has been no communication from or on behalf of the mortgagor to the plaintiff for at least 90 days showing any intent of the mortgagor to continue to occupy the premises or there is a document of conveyance or other written statement, signed by the mortgagor, that indicates a clear intent to abandon the premises; and except that mortgaged premises shall not be considered abandoned under this section if there is located on the premises:

A. An unoccupied building undergoing construction, renovation or rehabilitation that is proceeding steadily to completion and the building is in compliance with all applicable ordinances, codes, rules, regulations and statutes; or

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B. A building that is occupied on a seasonal basis and is otherwise secure; or

C. A building that is secure but is the subject of a probate action, action to quiet title or other action involving issues of ownership of the premises; or

D. A building which includes any unit occupied by a tenant paying rent under an active and bona fide rental agreement.

~~(3) Either all mortgagees with interests that are junior to the interests of the plaintiff have waived any right of redemption pursuant to section 6322 or the plaintiff has obtained or has moved to obtain a default judgment against such junior mortgagees.~~

2. Evidence of abandonment. For the purposes of this section, evidence of abandonment showing that the mortgaged premises are vacant and the occupant has no intent to return may include, but is not limited to, one or more of the following:

A. Doors and windows are continuously boarded up, broken or left unlocked;

B. Rubbish, trash or debris has observably accumulated on the mortgaged premises;

C. Furnishings and personal property are absent from the premises;

D. The mortgaged premises are deteriorating so as to constitute a threat to public health or safety;

E. 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;

F. Reports of trespassers, vandalism or other illegal acts being committed on the mortgaged premises have been made to local law enforcement authorities;

G. A code enforcement officer or other public official has made a determination or finding that the mortgaged premises are abandoned or unfit for occupancy;

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

I. Other reasonable indicia of abandonment.

3. Court determination of abandonment; vacation of order. The plaintiff may at any time after commencement of a foreclosure action under section 6321 file with the court a motion to determine that the mortgaged premises have been abandoned.

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A. If the court finds by clear and convincing evidence, based on testimony or reliable hearsay, including affidavits by public officials and other neutral nonparties, that the mortgaged premises have been abandoned, the court may issue an order granting the motion and determining that the premises are abandoned.

B. The court may not grant the motion if the mortgagor or a lawful occupant of the mortgaged premises appears and objects to the motion.

C. The court shall vacate the order under paragraph A if the mortgagor or a lawful occupant of the mortgaged premises appears in the action and objects to the order prior to the public sale provided for in section 6323entry of judgment.

4. Effect of court determination of abandonment. Upon the issuance of an order of abandonment under subsection 3 determining that the mortgaged premises are abandoned:

A. The foreclosure action may be advanced on the docket and receive priority over other cases as the interests of justice require;

B. The period of redemption provided for in section 6322 is shortened to 45 days from the later of the judgment of foreclosure or the order of abandonment~~eliminated~~; except that if a party-in-interest has appeared in the action, the period of redemption shall be thirty days from the entry of judgment for that party-in-interest.

C. If the mortgaged premises include dwelling units occupied by tenants as their primary residence, the plaintiff shall assume the duties of landlord for the rental units as required by Chapter 709 upon the later of the issuance of the judgment of foreclosure or the order of abandonment; and

DC. The plaintiff shall notify the municipality in which the premises are located and shall record the order of abandonment in the appropriate registry of deeds within 30 days from the later of the issuance of the judgment of foreclosure or the order of abandonment.

5. Application. This section applies to:

A. Foreclosure actions that, notwithstanding Title 1, section 302, are pending on the effective date of this section; and

B. Foreclosure actions that are commenced on or after the effective date of this section.

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PART C

Sec. C-1. 14 MRSA §6323, sub-§1 is amended to read:

1. Procedures for all civil actions. Upon expiration of the period of redemption, if the mortgagor or the mortgagor's successors, heirs or assigns have not redeemed the mortgage, any remaining rights of the mortgagor to possession terminate, and the mortgagee shall cause notice of a public sale of the premises stating the time, place and terms of the sale 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 publication to be made not more than 90 days after the expiration of the period of redemption. Except where otherwise required under 12 CFR Part 1024.41 or any successor provision. The public sale must be held not less than 30 days nor more than 45 days after the first date of that publication and, Except for sales of premises that the court has determined to be abandoned pursuant to section 6326, the public sale may be adjourned for any time not exceeding 7 days and from time to time until a sale is made, by announcement to those present at each adjournment. For sales of premises that the court has determined to be abandoned pursuant to section 6326, the public sale may be adjourned for any time not exceeding 7 days once, except that the court may permit one additional adjournment for good cause shown. Adjournments may also be made under this Section in accordance with the requirements of 12 CFR Part 1024.41 or any successor provision. The mortgagee, in its sole discretion, may allow the mortgagor to redeem or reinstate the loan after the expiration of the period of redemption but before the public sale. The mortgagee may convey the property to the mortgagor or execute a waiver of foreclosure, and all other rights of all other parties remain as if no foreclosure had been commenced. The mortgagee shall sell the premises to the highest bidder at the public sale and deliver a deed of that sale and the writ of possession, if a writ of possession was obtained during the foreclosure process, to the purchaser. The deed conveys 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. If the mortgagee is the highest bidder at the public sale, there is no obligation to account for any surplus upon a subsequent sale by the mortgagee. Any rights of the mortgagee to a deficiency claim against the mortgagors are limited to the amount established as of the date of the public sale. The date of the public sale is the date on which bids are received to establish the sales price, no matter when the sale is completed by the delivery of the deed to the highest bidder. If the property is conveyed by deed pursuant to a public sale in accordance with this subsection, a copy of the judgment of foreclosure and evidence of compliance with the requirements of this subsection for the notice of public sale and the public sale itself must be attached to or included within the deed, or both, or otherwise be recorded in the registry of deeds.

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PART D

Sec. D-1. 36 MRSA §946-A is repealed.

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Sec. D-2. 36 MRS §946-B is enacted to read:

§946-B. Tax-acquired property and the restriction of title action

1. Tax liens recorded after October 13, 2014. A person may not commence an action against the validity of a governmental taking of real estate for nonpayment of property taxes upon the expiration of a 5-year period immediately following the expiration of the period of redemption. This subsection applies to a tax lien recorded after October 13, 2014.

2. Tax liens recorded after October 13, 1993 and on or before October 13, 2014. A person may not commence an action against the validity of a governmental taking of real estate for nonpayment of property taxes after the earlier of the expiration of a 15-year period immediately following the expiration of the period of redemption or October 13, 2019. This subsection applies to a tax lien recorded after October 13, 1993 and on or before October 13, 2014.

3. Tax liens recorded on or before October 13, 1993. For a tax lien recorded on or before October 13, 1993, a person must commence an action against its validity no later than 15 years after the expiration of the period of redemption or no later than July 1, 1997, whichever occurs later.

4. Disability or lack of knowledge. Disability or lack of knowledge of any kind does not suspend or extend the time limits provided in this section.

PARTE

Sec. E-1. 36 MRS §943 is amended by adding at the end:

A municipality may adopt an ordinance that requires the return of certain proceeds associated with the sale and final disposition of tax-acquired property to previous lienholders and only then to the immediately former owner if the former owner applies to the municipality for return of the proceeds not later than 90 days from the date of recording the deed from the sale in the registry of deeds. Returned proceeds must be 1/2 of the net proceeds received by the municipality from the sale and final disposition of the tax-acquired property. Proceeds must first be used to cover all back taxes, interest, costs and other unpaid municipal expenses either associated with the disposition of the tax-acquired property or assessed or charged against the property prior to its disposition. The ordinance must provide for the standards governing the return of those proceeds and the procedures necessary to ensure that the interests of the taxpayers of the municipality are protected. The minimum standards for notice of the availability of such proceeds must require a writing signed by the municipal treasurer or bearing the treasurer's facsimile signature and left at the last and usual place of abode of the immediately former owner or sent by certified mail, return receipt requested, to the former owner's last known address. If the 1/2 share of the

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net proceeds is not returned to the immediately former owner, the municipality shall remit the funds as soon as reasonably practicable to the Treasurer of State, who shall credit the funds to the account established pursuant to Title 14, section 6112, subsection 4. For real estate located in the unorganized territory, the State Tax Assessor shall distribute the net proceeds in the same manner as does a municipality that adopts an ordinance pursuant to this paragraph. This paragraph is repealed January 1, 2019, except that an ordinance adopted pursuant to this paragraph remains in effect for the disposition of proceeds from the sale of tax-acquired property occurring before that date.

Sec. E-2. Application. That section of this Part that amends the Maine Revised Statutes, Title 36, section 943 applies to real estate foreclosed on by a municipality or, for real estate located in the unorganized territory, the State Tax Assessor, on or after the effective date of this Act.

PART F

Sec. F-1. 32 MRSA §11002, sub-§6 is amended to read:

6. Debt collector. "Debt collector" means any person conducting business in this State, the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. "Debt collector" includes persons who furnish collection systems carrying a name that simulates the name of a debt collector and who supply forms or form letters to be used by the creditor even though the forms direct the debtor to make payments directly to the creditor. Notwithstanding the exclusion provided by section 11003, subsection 7, "debt collector" includes any creditor who, in the process of collecting the creditor's own debts, uses any name other than the creditor's that would indicate that a 3rd person is collecting or attempting to collect these debts. "Debt collector" includes any attorney-at-law whose principal activities include collecting debts as an attorney on behalf of and in the name of clients, except that any such attorney licensed to practice law in this State is subject exclusively to subchapter 2 and any such attorney not licensed to practice law in this State is subject to this entire chapter. "Debt collector" also includes any person regularly engaged in the enforcement of security interests securing debts, including a repossession company and a residential real estate property preservation company. "Debt collector" does not include any person who retrieves collateral when a consumer has voluntarily surrendered possession. A person is regularly engaged in the enforcement of security interests if that person enforced security interests more than 5 times in the previous calendar year. If a person does not meet these numerical standards for the previous calendar year, the numerical standards must be applied to the current calendar year.

Sec. F-2. 32 MRSA §11017, sub-§§1 and 2 are amended to read:

1. Right to take possession after default. Except in the case of a residential real estate property preservation company, a debt collector acting on behalf of a creditor

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may take possession of collateral only if possession can be taken without entry into a dwelling, unless that entry has been authorized after default and without the use of force or other breach of the peace.

2. Return of private property. Except in the case of a residential real estate property preservation company, a debt collector shall inventory any unsecured property taken with repossessed collateral and immediately notify the consumer that the property will be made available in a manner convenient to the consumer.

Sec. F-3. 32 MRSA §11017, sub-§4 is enacted to read:

4. Residential real estate ~~property~~ preservation. A residential real estate property preservation company may enter into a dwelling only if authorized by the terms of a note, contract or mortgage. The company may not use force or effect a breach of the peace against any person. The company shall inventory any unsecured items removed from the dwelling and immediately notify the appropriate consumer that the dwelling will be made available in a manner convenient to the consumer. The company shall make a permanent record of all steps taken to preserve and secure the dwelling and shall make that record available to the consumer upon written request. The administrator shall adopt rules to implement this subsection, including a definition of "residential real estate property preservation company." Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

PART G

Sec. G-1. 14 MRSA §6321-A, sub-§7,A is amended to read:

A. Assign mediators, including active retired justices and judges pursuant to Title 4, sections 104 and 157-B, who:

- (1) Are trained in mediation and all relevant aspects of the law related to real estate, mortgage procedures, foreclosure or foreclosure prevention;
- (2) Have knowledge of community-based resources that are available in the judicial districts in which they serve;
- (3) Have knowledge of mortgage assistance programs; ~~and~~
- ~~(4) Are trained in using the relevant Federal Deposit Insurance Corporation forms and worksheets;~~
- (5) Are trained in principal loss mitigation guidelines and regulations, including the federal Home Affordable Modification Program guidelines and directives developed by the United States Department of the Treasury, single-family servicing guides developed by

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the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation or a successor organization, loss mitigation regulations and loss mitigation guidelines developed by the United States Department of Housing and Urban Development, the Federal Housing Administration, the United States Department of Agriculture and the United States Department of Veterans Affairs and the requirements of court-ordered settlements related to mortgage servicing, including but not limited to the National Mortgage Settlement in the matter of United States of America et al v. Bank of America Corp. et al, case 1:12-cv-00361 in the United States District Court for the District of Columbia; and

(65) Are capable of facilitating and likely to facilitate identification of and compliance with principal loss mitigation guidelines and regulations set forth in subparagraph (54).

The court may establish a training program for mediators and require that mediators receive such training prior to being appointed;

Sec. G-2. 14 MRSA §6321-B is enacted to read:

Mediators assigned pursuant to 14 MRSA §6321-A, sub-§7(A) must provide services for any voluntary preforeclosure mediation requested by a mortgagee at the fee established under 14 MRSA §6321-A, sub-§7(C).

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Sec. G-23. 14 MRSA §6321-A, sub-§13, as amended by PL 2009, c. 476, Pt. B, §7 and affected by §9, is further amended to read:

13. Report. A mediator must complete a report for each mediation conducted under this section. The mediator's report must indicate in a manner as determined by the court that the parties completed in full the Net Present Value Worksheet in the Federal Deposit Insurance Corporation Loan Modification Program Guide or other reasonable determination of Net Present Value. If the mediation did not result in the settlement or dismissal of the action, the report must include the outcomes of the Net Present Value Worksheet. As part of the report, the mediator may notify the court if, in the mediator's opinion, either party failed to negotiate in good faith. The mediator's report must also include:

A. A statement of all agreements reached at mediation, with sufficient specificity to put all parties on notice of their obligations under agreements reached at mediation, including but not limited to a description of all documents that must be completed and provided pursuant to the agreements reached at mediation and the time frame during which all actions are required to be taken by the parties, including decisions and determinations of eligibility for all loss mitigation options; and

B. A statement as to whether each party complied with requirements set forth in subsection 12 and the promises and commitments made and other agreements reached at mediation. In the event of noncompliance, the

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mediator's report must specifically set forth the manner in which the parties have failed to comply; and

C. The report must be signed by all parties including the mediator.

Sec. H. 14 MRSA §6111, sub-§3-A is amended to read:

3-A. Information: Bureau of Consumer Credit Protection. If the notice required by subsections 1 and 1-A expires without being cured, the mortgagee shall, with 3 days of such expiration, file with the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection, in electronic format as designated by the Bureau of Consumer Credit Protection, information including:

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Sec. I. 14 MRSA §6112 is amended to read:

6. Assigned Mediator List. The Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall maintain a current and complete list of assigned mediators, as referenced at 14 MRSA §6321-A(7), on its website.

SUMMARY

Part A addresses concerns about the avoidance of the real estate transfer tax in certain foreclosure transfers.

Part B establishes a process for a court determination of abandonment and the resulting effects of the order finding abandonment.

Part C limits continuances in foreclosure proceedings when the mortgaged premises have been determined by the court to be abandoned.

Part D shortens the time period for actions challenging tax liens and foreclosures of tax-acquired property.

Part E authorizes municipalities to adopt ordinances that provide for the return of a portion of proceeds from the sale of tax-acquired property. When the immediately former owner does not apply to the municipality for the proceeds, that portion will be used to fund the housing counselor program administered by the Bureau of Consumer Credit Protection for foreclosure prevention.

Part F includes provisions based on the original bill (LD 1389) regulating certain activities of property preservation companies.

Part G expands the training requirements for mediators within the foreclosure diversion program. It also establishes required contents to be included in a mediator's report; and requires authorized mediators to be available for any voluntary preforeclosure mediation arranged by the mortgagee.

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Part H increases funds available for consumer credit counseling by reducing administrative cost within the Bureau of Consumer Credit Protection (BCCP). This change should reduce the BCCP mailings by at least 85% based on statistical data provided by BCCP. The new RESPA 120-day rule provides ample opportunity for consumer outreach.

Part I requires the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection to maintain an updated list of assigned mediators. The list will enable a mortgagee to select a mediator for voluntary preforeclosure mediation.