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Legislative Document

No. 1355

S.P. 463

In Senate, April 6, 2017

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, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator CARPENTER of Aroostook.

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 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. Adjournments may also be made in
24 accordance with the requirements of 12 Code of Federal Regulations, Section 1024.41 or
25 any successor provision. The mortgagee, in its sole discretion, may allow the mortgagor
26 to redeem or reinstate the loan after the expiration of the period of redemption but before
27 the public sale. ~~The, and, in connection with any such redemption or reinstatement, the~~
28 mortgagee may convey the property to the mortgagor or execute a waiver of foreclosure,
29 and all other rights of all other parties remain as if no foreclosure had been commenced.
30 The sale must be conducted, at the election of the mortgagee, at the mortgaged premises
31 or at the state courthouse or the office of an attorney located in the county in which the
32 mortgaged property is located. The mortgagee shall sell the premises to the highest
33 bidder at the public sale and deliver a deed of that sale and the writ of possession, if a writ
34 of possession was obtained ~~during the foreclosure process following the period of~~
35 redemption, to the purchaser. The deed conveys the premises free and clear of all
36 interests of the parties in interest joined in the action. The mortgagee or any other party
37 in interest may bid at the public sale. If the mortgagee is the highest bidder at the public
38 sale, there is no obligation to account for any surplus upon a subsequent sale by the
39 mortgagee. Any rights of the mortgagee to a deficiency claim against the mortgagors are
40 limited to the amount established as of the date of the public sale. The date of the public
41 sale is the date on which bids are received to establish the sales price, no matter when the
42 sale is completed by the delivery of the deed to the highest bidder. If the property is
43 conveyed by deed pursuant to a public sale in accordance with this subsection, a copy of
44 the judgment of foreclosure and evidence of compliance with the requirements of this
45 subsection for the notice of public sale and the public sale itself must be attached to or

1 included within the deed, or both, or otherwise be recorded in the registry of deeds within
2 30 days of the date of the conveyance.

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

5 **§6324. Proceeds of sale**

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

37 The report of sale required by this section must be filed with the court within 45 days
38 of the date of the public sale, without regard to the actual date of conveyance following
39 the sale. In the event that the report is not filed with the court within this 45-day period,
40 the mortgagee has no right to seek a deficiency judgment, and the mortgagor or other
41 party claiming entitlement to any portion of any surplus proceeds from the sale may file a
42 motion for an accounting of the sale proceeds and for the turnover of any surplus. The
43 court shall order that the mortgagee pay to the mortgagor or party in interest that prevails
44 on such a motion that party's attorney's fees and costs incurred in connection with such a

1 motion. Upon a showing of good cause by the mortgagee, made by motion filed before
2 the expiration of the deadline stated in this section for the filing of the report of sale, the
3 court may extend the deadline for the filing of the report of sale for an additional period
4 of time as the court considers appropriate.

5 SUMMARY

6 This bill makes changes to the laws governing the adjournment of a public sale of
7 foreclosed premises and where such a sale must be conducted. It clarifies several aspects
8 of the post-foreclosure sale process regarding the filing of reports of sale and mandates
9 that the report be filed within 45 days of the sale. If a foreclosure sale produces proceeds
10 beyond those payable to the mortgagee, the bill requires the mortgagee to pay the surplus
11 to the mortgagor or other party entitled to it no later than the time of the filing of the
12 report of sale and provides a means for the party entitled to the surplus to obtain a court
13 order for the turnover of the surplus if the mortgagee fails to do so. The bill clarifies that,
14 after the redemption period has expired, but before a sale, a mortgagee may agree with a
15 mortgagor to a reinstatement of the mortgage, and that the mortgagee may, in connection
16 with the reinstatement, waive the foreclosure judgment and restore all parties to the action
17 to the positions that they were in before any foreclosure.