

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the bill by striking out all of section 1.

Amend the bill in section 2 in §6192 by inserting before subsection 1 the following:

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.'

Amend the bill in section 2 in §6192 in subsection 1 in the last line (page 1, line 20 in L.D.) by inserting after the following: "Regulation" the following: ', except that "administrator" means the Superintendent of Financial Institutions with regard to a supervised financial organization as defined in Title 9-A, section 1-301, subsection 38-A'

Amend the bill in section 2 in §6192 by striking out all of subsection 2 (page 1, lines 21 to 32 in L.D.) and inserting the following:

‘2. Bona fide purchaser. "Bona fide purchaser" means any person acting in good faith who:

A. Purchases property from a foreclosure purchaser for consideration or makes a mortgage loan to a foreclosure purchaser or a subsequent bona fide purchaser as long as the person had no notice of:

(1) The foreclosed homeowner's continuing right to possess the property;

(2) The foreclosed homeowner's continuing legal or equitable interest in the property, including, but not limited to, the right to repurchase, or of any facts that may create an equitable mortgage;
or

(3) Any violations of this chapter;

B. Purchases property at a foreclosure sale; or

C. Accepts a deed in lieu of foreclosure.

3. Consideration. "Consideration" means any payment or thing of value provided to the foreclosed homeowner, including payment of or forgiveness of unpaid rent or contract for deed, land installment contract or bond for deed payments owed by the foreclosed homeowner prior to the date of eviction or voluntary relinquishment of the property, reasonable costs paid to 3rd parties necessary to complete the foreclosure reconveyance transaction, payment of money to satisfy a debt or legal obligation of the foreclosed homeowner or the reasonable cost of repairs for damage to the dwelling caused by the foreclosed homeowner. "Consideration" does not include amounts imputed as a down payment or fee to the foreclosure purchaser or a person acting in participation with the foreclosure purchaser incident to a

contract for deed, land installment contract, bond for deed, lease or option to purchase entered into as part of the foreclosure reconveyance, except for reasonable costs paid to 3rd parties necessary to complete the foreclosure reconveyance.'

Amend the bill in section 2 in §6192 by striking out all of subsection 4 (page 2, lines 4 to 9 in L.D.) and inserting the following:

'4. Foreclosure purchaser. "Foreclosure purchaser" means a person acting as the acquirer in a foreclosure reconveyance. "Foreclosure purchaser" also includes a person acting in a joint venture or joint enterprise with one or more acquirers in a foreclosure reconveyance. "Foreclosure purchaser" does not include:

A. A bona fide purchaser; or

B. A natural person who is not in the business of foreclosure purchasing and has a prior personal relationship with the foreclosed homeowner.'

Amend the bill in section 2 in §6192 by striking out all of subsection 5 (page 2, lines 10 to 21 in L.D.) and inserting the following:

'5. Foreclosure reconveyance. "Foreclosure reconveyance" means a transaction involving:

A. The transfer of title to a residence in foreclosure, either by transfer of interest from the foreclosed homeowner or by creation of a mortgage or other lien or encumbrance during the foreclosure process that allows the acquirer to obtain title to the property by redeeming the property as a junior lienholder; and

B. The subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the foreclosed homeowner by the acquirer or a person acting in participation with the acquirer that allows the foreclosed homeowner to possess either the residence in foreclosure or other real property. For the purposes of this paragraph, "interest" includes, but is not limited to, an interest in a contract for deed, a land installment contract, a bond for deed, a purchase agreement, an option to purchase or a lease.

"Foreclosure reconveyance" does not include a supervised loan subject to Title 9-A, Article 8 or the federal Truth in Lending Act made by a supervised lender or supervised financial organization to refinance any existing mortgage.'

Amend the bill in section 2 in §6192 in subsection 8 in the last line (page 2, line 29 in L.D.) by inserting after the following: "deed" the following: ', land installment contract or bond for deed'

Amend the bill in section 2 in §6192 by renumbering the subsections to read consecutively.

Amend the bill in section 2 by striking out all of §6193 (page 2, lines 30 to 33 in L.D.) and inserting the following:

'§ 6193. License required

A foreclosure purchaser may not engage in the business of foreclosure purchasing in this State without first obtaining a license from the administrator, except that a supervised financial organization as defined in Title 9-A, section 1-301, subsection 38-A is not required to be licensed. The requirements for obtaining a license under this chapter must be substantially similar to the requirements for a supervised lender license as provided in Title 9-A, section 2-301.'

Amend the bill in section 2 in §6194 in subsection 2 in paragraph F in the last line (page 3, line 15 in L.D.) by inserting after the following "deed" the following: ', land installment contract, bond for deed'

Amend the bill in section 2 in §6194 by inserting after subsection 3 the following:

4. Advance disclosure of contract. The contract required by this section must be given to the foreclosed homeowner at least 3 business days prior to the consummation of the foreclosure reconveyance.

5. Filing with register of deeds. The foreclosure purchaser shall file a memorandum of the contract required by this section with the register of deeds in the county in which the residence in foreclosure is located.'

Amend the bill in section 2 in §6195 in subsection 3 in the 4th line (page 4, line 26 in L.D.) by striking out the following: "12-point" and inserting the following: '14-point'

Amend the bill in section 2 in §6195 in subsection 3 in the 8th line (page 4, line 30 in L.D.) by striking out the following: "10-point" and inserting the following: '12-point'

Amend the bill in section 2 in §6197 in the indented paragraph in the last line (page 5, line 22 in L.D.) by striking out the following: "foreclosed" and inserting the following: 'foreclosed'

Amend the bill in section 2 in §6198 in subsection 1 by striking out all of paragraph E (page 6, lines 16 to 23 in L.D.) and inserting the following:

'E. The foreclosure purchaser complies with the requirements for disclosure, loan terms and conduct in Title 9-A, sections 8-206-A, 8-206-C and 8-206-D for any foreclosure reconveyance in which the foreclosed homeowner obtains a vendee interest in a contract for deed, land installment contract or bond for deed, regardless of whether the terms of the contract for deed, land installment contract or bond for deed meet the annual percentage rate or points and fees requirements for a covered loan.'

Amend the bill in section 2 in §6198 in subsection 2 in paragraph B by striking out all of the first 8 lines (page 6, lines 28 to 35 in L.D.) and inserting the following:

'B. Make a payment to the foreclosed homeowner in an amount of at least 82% of the fair market value of the property less any payments related to the discharge of an existing mortgage within 150 days of either the eviction or voluntary relinquishment of possession of the residence in foreclosure by the foreclosed homeowner. The foreclosure purchaser shall make a detailed accounting of the basis for the payment amount, including providing written documentation of expenses, within this 150-day period. Expenses may include any payments related to the discharge of an existing mortgage

made by the foreclosure purchaser to 3rd parties on behalf of the foreclosed homeowner. The accounting must be on a form prescribed by the administrator. For purposes of this paragraph:

Amend the bill in section 2 in §6198 by inserting after subsection 5 the following:

‘6. Door-to-door solicitation prohibited. A foreclosure purchaser may not solicit a foreclosure reconveyance door-to-door prior to receiving an invitation from a foreclosed homeowner.’

Amend the bill in section 2 in §6198 by renumbering the subsections to read consecutively.

Amend the bill in section 2 by striking out all of §6199 (page 8, lines 12 to 39 and page 9, lines 1 to 22 in L.D.) and inserting the following:

‘§ 6199. Enforcement

This section applies to any violation of this chapter in connection with the actions of a foreclosure purchaser.

1. Enforcement. In addition to other actions allowed pursuant to this section, the administrator may undertake any authorized actions pursuant to Title 9-A, Article 6 to ensure compliance with this chapter.

2. Private action. A private cause of action may be brought by a foreclosed homeowner on the basis of a violation of this chapter. A foreclosed homeowner may be awarded actual and consequential damages and costs, including reasonable attorney's fees, and may be granted injunctive, declaratory and other equitable relief the court determines appropriate in an action to enforce compliance with this chapter.

3. Remedies cumulative. The remedies provided in this section are cumulative and do not restrict any remedy that is otherwise available. The provisions of this chapter are not exclusive and are in addition to any other requirements, rights, remedies and penalties provided by state or federal law.

4. Improvident transfer. The remedies provided under Title 33, chapter 20 apply to any violation of this chapter in connection with actions of a foreclosure purchaser.

5. Stay of eviction action. The automatic stay of an eviction action is governed by this subsection.

A. A court hearing an eviction action against a foreclosed homeowner must issue an automatic stay without imposition of a bond if a defendant makes a prima facie showing that the defendant:

(1) Has commenced an action concerning a foreclosure reconveyance; asserts a defense under that action that the property that is the subject of the eviction action is also the subject of a foreclosure reconveyance in violation of this chapter; or asserts a claim or affirmative defense of fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice in connection with a foreclosure reconveyance;

(2) Owned the residence in foreclosure;

(3) Conveyed title to the residence in foreclosure to a 3rd party upon a promise that the defendant would be allowed to occupy the residence or other real property in which the foreclosure purchaser or a person acting in participation with the foreclosure purchaser has an interest and that the residence or other real property would be the subject of a foreclosure reconveyance; and

(4) Since the conveyance, has continuously occupied the residence in foreclosure or other real property in which the foreclosure purchaser or a person acting in participation with the foreclosure purchaser has an interest. For purposes of this subparagraph, notarized affidavits are acceptable means of proof to meet the defendant's burden. Upon good cause shown, a defendant may request and the court may grant up to an additional 2 weeks to produce evidence required to make the prima facie showing.

B. The automatic stay expires upon the later of:

(1) The failure of the foreclosed homeowner to commence an action in a court of competent jurisdiction in connection with a foreclosure reconveyance within 90 days after the issuance of the stay; and

(2) The issuance of an order lifting the stay by a court hearing claims related to the foreclosure reconveyance.

6. Unfair trade practice. The Attorney General may bring an action under Title 5, chapter 10 for any violation of this chapter.

§ 6200. Rulemaking

The administrator may adopt rules as necessary to carry out the purposes of this chapter. Rules adopted pursuant to this chapter are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.'

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Amend the bill by inserting after section 2 the following:

‘Sec. 3. Additional review by Bureau of Consumer Credit Protection. By March 1, 2009, the Superintendent of Consumer Credit Protection, in consultation with the Superintendent of Financial Institutions, shall make recommendations to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters whether statutory changes are needed in the Maine Revised Statutes, Title 32, chapter 80-B, including, but not limited to, changes to the debt-to-income ratio and definition of primary housing expenses specified in Title 32, section 6198, subsection 1

and to the 82% threshold specified in Title 32, section 6198, subsection 2 and the addition of a requirement that a foreclosure reconveyance contract include a minimum time period within which a foreclosed homeowner may repurchase the home.'

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

SUMMARY

This amendment makes the following changes to the bill.

1. It removes the requirement in the bill that foreclosure purchasers be licensed as supervised lenders. Under the amendment, foreclosure purchasers must be licensed and those licensing requirements must be substantially similar to the requirements for supervised lenders.

2. It clarifies that the Superintendent of Financial Institutions is responsible for regulating banks and credit unions to the extent that they engage in the business of foreclosure purchasing.

3. It adds a definition of "bona fide purchaser."

4. It adds references to land installment contracts and bonds for deeds in those instances where the bill refers to contracts for deeds.

5. It removes cross-references to federal law and instead cross-references state law related to mortgage lending.

6. It requires that foreclosed homeowners be provided with a copy of the foreclosure reconveyance contract at least 3 business days prior to execution and requires that a memorandum of the contract be filed with the registry of deeds in the county in which the property is located.

7. It requires that the notice of cancellation be provided in 12-point type rather than 10-point type.

8. It corrects a spelling error.

9. It prohibits door-to-door solicitation by foreclosure purchasers.

10. It makes a violation of the provisions of the Foreclosure Purchasers Act, enacted in the bill, subject to enforcement as a violation of the Maine Unfair Trade Practices Act and incorporates a cross-reference to the improvident transfer laws.

11. It clarifies that a foreclosed homeowner may be awarded actual and consequential damages and costs, including reasonable attorney's fees, in a private action brought for a violation of the Foreclosure Purchasers Act.

12. It extends rule-making authority to the Superintendent of Consumer Credit Protection and the Superintendent of Financial Institutions.

13. It also requires that the Superintendent of Consumer Credit Protection, in consultation with the Superintendent of Financial Institutions, review the laws regulating foreclosure purchasers and make recommendations by March 1, 2009 as to whether changes are needed.

FISCAL NOTE REQUIRED
(See attached)