



127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 1147

H.P. 785

House of Representatives, March 31, 2015

An Act To Clarify the Mortgage Foreclosure Sale Process

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative COOPER of Yarmouth.
Cosponsored by Senator GRATWICK of Penobscot and
Representative: BEAVERS of South Berwick, Senator: JOHNSON of Lincoln.

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

2 **Sec. 1. 14 MRSA §6323**, as amended by PL 2013, c. 521, Pt. C, §1, is further
3 amended to read:

4 **§6323. Sale following expiration of period of redemption**

5 **1. Procedures for all civil actions.** Upon expiration of the period of redemption, if
6 the mortgagor or the mortgagor's successors, heirs or assigns have not redeemed the
7 mortgage, any remaining rights of the mortgagor to possession terminate, and the
8 mortgagee shall cause notice of a public sale of the premises stating the time, place and
9 terms of the sale to be published once in each of 3 successive weeks in a newspaper of
10 general circulation in the county in which the premises are located, the first publication to
11 be made not more than 90 days after the expiration of the period of redemption. Except
12 when otherwise required under 12 Code of Federal Regulations, Section 1024.41 or any
13 successor provision, the public sale must be held not less than 30 days nor more than 45
14 days after the first date of that publication. Except for sales of premises that the court has
15 determined to be abandoned pursuant to section 6326, the public sale may be adjourned,
16 for any time not exceeding 7 days and from time to time until a sale is made, by
17 announcement to those present at each adjournment and served upon the mortgagor. For
18 sales of premises that the court has determined to be abandoned pursuant to section 6326,
19 the public sale may be adjourned once for any time not exceeding 7 days, except that the
20 court may permit one additional adjournment for good cause shown. Adjournments may
21 also be made in accordance with the requirements of 12 Code of Federal Regulations,
22 Section 1024.41 or any successor provision. The mortgagee, in its sole discretion, may
23 allow the mortgagor to redeem or reinstate the loan after the expiration of the period of
24 redemption but before the public sale. The mortgagee may convey the property to the
25 mortgagor or execute a waiver of foreclosure, and all other rights of all other parties
26 remain as if no foreclosure had been commenced. The mortgagee shall sell the premises
27 to the highest bidder at the public sale and deliver a deed of that sale and the writ of
28 possession, if a writ of possession was obtained during the foreclosure process, to the
29 purchaser. The deed conveys the premises free and clear of all interests of the parties in
30 interest joined in the action. The mortgagee or any other party in interest may bid at the
31 public sale. If the mortgagee is the highest bidder at the public sale, there is no obligation
32 to account for any surplus upon a subsequent sale by the mortgagee. Any rights of the
33 mortgagee to a deficiency claim against the mortgagors are limited to the amount
34 established as of the date of the public sale. The date of the public sale is the date on
35 which bids are received to establish the sales price, no matter when the sale is completed
36 by the delivery of the deed to the highest bidder. If the property is conveyed by deed
37 pursuant to a public sale in accordance with this subsection, a copy of the judgment of
38 foreclosure and evidence of compliance with the requirements of this subsection for the
39 notice of public sale and the public sale itself must be attached to or included within the
40 deed, or both, or otherwise be recorded in the registry of deeds within 30 days of the date
41 of such conveyance.

42 **2. Additional notice requirements for civil actions commenced on or after**
43 **January 1, 1995.** In foreclosures by civil action commenced on or after January 1, 1995,
44 the mortgagee shall cause notice of the public sale to be mailed by ordinary mail to all

1 parties who appeared in the foreclosure action or to their attorneys of record. The notice
2 must be mailed no less than 30 calendar days before the date of sale. Failure to provide
3 notice of the public sale to any party who appeared does not affect the validity of the sale.

4 **3. Extension of deadline.** Upon a showing of good cause made by a mortgagee's
5 motion prior to the expiration of the sale deadline established by this section, the court
6 may extend a the sale period for a period not to exceed, in the aggregate, 60 days beyond
7 the deadline established by this section for the publication of the notice of sale or
8 conducting the public sale. The court may grant further extensions only upon a motion
9 supported by evidence of a signed agreement of the parties to the foreclosure action
10 setting forth facts establishing that the parties are engaging in loss mitigation efforts in an
11 attempt to avoid foreclosure.

12 **4. Mortgagee's duty to maintain property.** Except as otherwise provided in this
13 subsection, in connection with the foreclosure of any residential rental property not
14 occupied by the mortgagor, upon the expiration of the period of redemption provided for
15 in section 6322, the mortgagee is, for the purposes of chapter 710, deemed to be the
16 landlord of the property. With respect to the foreclosure of property described in section
17 6321-A, subsection 2 in which the mortgagee fails to conduct a public sale of the
18 mortgaged property as required by subsections 2 and 3, the mortgagee is deemed to be the
19 owner of the property, with respect to the responsibility for its maintenance under any
20 municipal ordinances or state statutes, upon the expiration of such sale deadline or any
21 extensions thereof authorized by subsection 3.

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

24 **§6324. Proceeds of sale**

25 After first deducting the expenses incurred in making the sale, the mortgagee shall
26 disburse the remaining proceeds in accordance with the provisions of the judgment. The
27 mortgagee shall file a report of the sale and the disbursement of the proceeds ~~therefrom~~ of
28 the sale with the court and shall mail a copy to the mortgagor at the mortgagor's last
29 known address. The report of the sale must show the amount of the foreclosure judgment
30 determined by the court and must itemize all additions to the judgment. This report need
31 not be accepted or approved by the court, ~~provided that~~ as long as the mortgagor or any
32 other party in interest may contest the accounting by motion filed within 30 days of
33 receipt of the report, but any such challenge may be for money only and does not affect
34 the title to the real estate purchased by the highest bidder at the public sale. ~~Any~~ Upon
35 motion of the mortgagee, served upon the mortgagor and filed with the court with the
36 report of sale, any deficiency must be assessed against the mortgagor and an execution
37 must be issued by the court therefor. In the event the mortgagee has been the purchaser at
38 the public sale, any deficiency is limited to the difference between the fair market value
39 of the premises at the time of the public sale, as established by an independent appraisal,
40 and the sum due the mortgagee as established by the court with interest plus the expenses
41 incurred in making the sale. Any surplus must be paid to the mortgagor; or the
42 mortgagor's successors, heirs or assigns in the proceeding. If the mortgagor has not
43 appeared personally or by an attorney, the surplus must be paid to the clerk of courts, who
44 shall hold the surplus in escrow for 6 months for the benefit of the mortgagor; or the

1 mortgagor's successors, heirs or assigns and, if the surplus remains unclaimed after 6
2 months, the clerk shall pay the surplus to the Treasurer of State to be credited to the
3 General Fund until it becomes unclaimed under the Uniform Unclaimed Property Act,
4 and report and pay it to the State in accordance with that Act. The report of sale required
5 by this section must be filed with the court within 45 days of the date of the public sale,
6 without regard to the actual date of conveyance following the sale. If the report is not
7 filed with the court within 45 days, the mortgagee has no right to seek a deficiency
8 judgment.

9 SUMMARY

10 This bill clarifies certain aspects of the post-foreclosure sale process.

11 The bill imposes upon the mortgage holder who starts the foreclosure the burden of
12 being treated as the owner of the property, and thus the party with the burden of
13 maintaining it. With this responsibility, foreclosing parties may be more likely to
14 complete the foreclosure process and proceed to foreclosure sales.

15 The bill imposes a deadline of 45 days after the completion of the foreclosure sale for
16 the filing of the report of sale, so that, in those instances where a deficiency judgment is
17 being sought, the homeowner will be put on notice of that fact shortly after the sale
18 process is completed.