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No. 731

S.P. 243

In Senate, February 28, 2017

An Act To Require Mortgage Servicers To Act in Good Faith in Dealings with Homeowners

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator CARPENTER of Aroostook.
Cosponsored by Representative TUCKER of Brunswick.

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

2 **Sec. 1. 14 MRSA §6113** is enacted to read:

3 **§6113. Mortgage servicer duty of good faith**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
5 following terms have the following meanings.

6 A. "Good faith" means honesty in fact and the observance of reasonable commercial
7 standards of fair dealing.

8 B. "Mortgage servicer" means a servicer who is responsible for:

9 (1) Receiving any scheduled periodic payments from a borrower pursuant to the
10 terms of any mortgage described in section 6111, subsection 1, including
11 amounts for escrow accounts;

12 (2) Making or advancing payments to the owner of a mortgage loan or other 3rd
13 parties with respect to the amounts received from the borrower pursuant to a loan
14 servicing contract; and

15 (3) Evaluating borrowers for loss mitigation or loan modification options.

16 C. "Obligation" means a debt or other duty or liability of an obligor secured by a
17 mortgage of the type described in section 6111, subsection 1.

18 D. "Obligor" means a person that:

19 (1) Owes payment or performance of an obligation;

20 (2) Has provided property other than the mortgaged property to secure payment
21 of an obligation;

22 (3) Has granted a mortgage interest with respect to the mortgaged property; or

23 (4) Is otherwise accountable in whole or in part for payment of an obligation.

24 E. "Servicer" means a person responsible for servicing an obligation, including a
25 person that holds or owns an obligation or originates a mortgage loan if the person
26 also services the obligation.

27 F. "Servicing" means any combination of the following:

28 (1) Receiving a scheduled periodic payment from an obligor under the terms of
29 an obligation, including an amount received for an escrow account;

30 (2) Making or advancing a payment to the owner of an obligation on account of
31 an amount due from the obligor under a mortgage servicing loan document or a
32 servicing contract;

33 (3) Making a payment to an obligor under a home equity conversion mortgage or
34 reverse mortgage;

35 (4) Evaluating an obligor for loss mitigation options or communicating with an
36 obligor with respect to loss mitigation options;

1 (5) Collecting funds from a homeowner for deposit into an escrow account and
2 making payments out of an escrow account; and

3 (6) Taking any other action with respect to an obligation that affects the obligor's
4 payment or performance of the obligation or that relates to enforcement of the
5 obligation.

6 **2. Duty of good faith.** A mortgage servicer shall act in good faith toward a
7 borrower in the servicing of an obligation secured by a mortgage and in any foreclosure
8 action relating to that obligation.

9 **3. Effect of violation during foreclosure.** If, during a foreclosure action, a
10 mortgage servicer controlling or managing the action on its own behalf or on behalf of
11 the owner of the obligation subject to foreclosure is shown to have committed a material
12 violation of its duty of good faith under this section, the court may dismiss the foreclosure
13 action, stay the action on appropriate terms and conditions or impose other appropriate
14 sanctions until the violation is cured.

15 **4. Remedies for violation.** The following remedies may apply to a violation of this
16 section.

17 A. A homeowner or obligor injured by a violation of this section may bring an action
18 against the mortgage servicer for actual damages sustained by the homeowner or
19 obligor.

20 B. In addition to actual damages, the court may award a homeowner or obligor
21 statutory damages not to exceed \$15,000 for a pattern or practice of violating the duty
22 of good faith. In determining whether to award statutory damages and the amount of
23 those damages, the court shall consider all relevant factors, including:

24 (1) The frequency and persistence of violations by the mortgage servicer;

25 (2) The nature of the violations;

26 (3) The extent to which the violations were intentional;

27 (4) The extent to which the actions that constitute violations are prohibited by
28 federal regulations or state rules; and

29 (5) The extent to which such actions constitute violations by the mortgage
30 servicer of any consent judgments to which it is a party.

31 C. If a court determines during a foreclosure or an attendant action for damages that
32 there has been a material violation of the duty of good faith, the mortgage servicer
33 may not charge the owner of the mortgage loan for or add to the amount of the
34 obligation any attorney's fees or costs incurred as a result of the violation or any
35 attorney's fees or costs incurred before the owner of the mortgage loan cures the
36 violation.

37 **Sec. 2. 14 MRSA §6321-A, sub-§11**, as amended by PL 2009, c. 476, Pt. B, §6
38 and affected by §9, is further amended to read:

1 **11. Parties to mediation.** A mediator shall include in the mediation process under
2 this section any person the mediator determines is necessary for effective mediation.
3 Mediation and appearance in person is mandatory for:

- 4 A. The mortgagee, who has the authority to agree to a proposed settlement, loan
5 modification or dismissal of the action, except that the mortgagee may participate by
6 telephone or electronic means as long as that mortgagee is represented with authority
7 to agree to a proposed settlement;
- 8 B. The defendant;
- 9 C. Counsel for the plaintiff; and
- 10 D. Counsel for the defendant, if represented.

11 A mortgage servicer as defined in section 6113, subsection 1, paragraph B participating
12 in the mediation process submits to the jurisdiction of the court with respect to the power
13 of the court to sanction parties who fail to participate in the mediation process in good
14 faith as required by section 6113, subsection 2.

15 **Sec. 3. 14 MRSA §6321-A, sub-§12,** as enacted by PL 2009, c. 402, §18, is
16 amended to read:

17 **12. Good faith effort.** Each party and each party's attorney, if any, must be present
18 at mediation as required by this section and shall make a good faith effort to mediate all
19 issues. If any party or attorney fails to attend or to make a good faith effort to mediate,
20 the court may impose appropriate sanctions. A mortgage servicer as defined in section
21 6113, subsection 1, paragraph B participating in the mediation process is obligated to
22 participate in good faith as required by section 6113, subsection 2. In determining the
23 nature and extent of appropriate sanctions, the court shall consider the need for deterrence
24 of similar future conduct by the party being sanctioned and by others and is permitted to
25 take into account prior orders imposing sanctions upon the sanctioned party, whether in
26 the same case or in other previous cases. The imposition of any sanction does not bar any
27 independent action by a defendant to seek recovery with respect to the actions giving rise
28 to the order of sanctions.

29 **Sec. 4. 14 MRSA §6321-A, sub-§13,** as amended by PL 2013, c. 521, Pt. F, §2,
30 is further amended to read:

31 **13. Report.** A mediator must complete a report for each mediation conducted under
32 this section. The mediator's report must indicate in a manner as determined by the court
33 that the parties completed in full the Net Present Value Worksheet in the Federal Deposit
34 Insurance Corporation Loan Modification Program Guide or other reasonable
35 determination of net present value. If the mediation did not result in the settlement or
36 dismissal of the action, the report must include the outcomes of the Net Present Value
37 Worksheet or other determination of net present value. As part of the report, the mediator
38 may notify the court if, in the mediator's opinion, either party failed to negotiate in good
39 faith. The mediator's report must also include a statement of all agreements reached at
40 mediation, with sufficient specificity to put all parties on notice of their obligations under
41 agreements reached at mediation, including but not limited to a description of all
42 documents that must be completed and provided pursuant to the agreements reached at

1 mediation and the time frame during which all actions are required to be taken by the
2 parties, including decisions and determinations of eligibility for all loss mitigation
3 options. The mediator's report must state the identity of any mortgage servicer as defined
4 in section 6113, subsection 1, paragraph B who participates in the mediation process, and
5 any order of sanctions made by the court must also state the identity of the mortgage
6 servicer.

7 **Sec. 5. 14 MRSA §6321-A, sub-§14**, as enacted by PL 2009, c. 402, §18, is
8 amended to read:

9 **14. Records.** The court shall maintain records or other information relating to the
10 program as necessary to meet the reporting requirements in subsection 7, paragraph B.
11 The court shall collect and maintain a record of all sanction orders imposed on all
12 mortgage servicers as defined in section 6113, subsection 1, paragraph B as a result of a
13 failure to comply with the requirements for mediation or as a result of the filings of
14 motions for sanctions. The record must include summaries of the nature of the acts
15 resulting in the imposition of sanctions, the nature of the sanctions imposed and the
16 identity of the mortgage servicers whose conduct resulted in sanctions. The record of
17 sanction orders must be appropriately published so that the record is available to judges
18 and parties in the mediation process.

19 SUMMARY

20 This bill requires servicers of residential mortgage loans to act in good faith when
21 dealing with homeowners who are borrowers under those loans. The bill also makes
22 changes in the foreclosure mediation process providing that, if courts have previously
23 sanctioned the conduct of a mortgage servicer in a foreclosure process, the courts are
24 authorized to directly sanction the mortgage servicer if the mortgage servicer's conduct
25 evidences a failure to mediate in good faith. The bill requires the collection of data on
26 sanctions imposed to provide that, when a mortgage servicer is found to have failed to act
27 in good faith, the court may take into account previous conduct in determining a sanction
28 sufficient to deter such conduct in the same case or future cases.