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Date: (Filing No. S-)

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STATE OF MAINE
SENATE
125TH LEGISLATURE
FIRST REGULAR SESSION

SENATE AMENDMENT “ ” to COMMITTEE AMENDMENT “A” to H.P. 128, L.D. 145, Bill, “An Act To Protect Homeowners Subject to Foreclosure by Requiring the Foreclosing Entity To Provide the Court with Original Documents”

Amend the amendment by striking out the substitute title and replacing it with the following:

'An Act To Protect Homeowners Subject to Foreclosure by Requiring the Foreclosing Entity To Provide the Court with Original Documents or Their Electronic Equivalent'

Amend the amendment by striking out all of section 1 and inserting the following:

'Sec. 1. 14 MRSA §6321, as amended by PL 2009, c. 476, Pt. B, §5 and affected by §9, is further amended by adding after the 2nd paragraph 3 new paragraphs to read:

If, during the course of a foreclosure action in which the defendant has appeared and before judgment has been entered, the defendant sends to the plaintiff a written request to be allowed to inspect and copy or photograph the original mortgage note, loan agreement or other document evidencing indebtedness, or the electronic equivalent of the original mortgage note, loan agreement or other such document, the plaintiff, unless otherwise ordered by the court, shall produce the original document or its electronic equivalent together with all existing indorsements or electronic equivalents in accordance with the Maine Rules of Civil Procedure. The place for inspection must be, at the election of the plaintiff: the courthouse where the action is pending; the office of an attorney licensed in this State and located in the county in which the action is pending; an office of a banking institution or credit union within the county where the action is pending; the office of the plaintiff's attorney; or such other place upon which the plaintiff and defendant agree.

If the plaintiff claims that it is not in possession of the original documents or electronic equivalents, the plaintiff must provide a valid excuse for failing to produce those documents or their electronic equivalents.

If the plaintiff fails to produce the original documents or their electronic equivalents or to provide a valid excuse for failure to produce those documents, the court may use its discretion to fashion appropriate remedies.'

SENATE AMENDMENT

SUMMARY

This amendment changes the provisions of Committee Amendment “A” in the following ways:

1. It allows the plaintiff in a foreclosure action to produce an electronic equivalent of the mortgage note, loan agreement or other evidence of indebtedness;

2. It requires the defendant to send the written request to inspect the original mortgage note prior to judgment being entered;

3. It removes the specific time limit for the plaintiff to respond to the defendant's written request and to produce the note and instead requires the response and production to be in accordance with the Maine Rules of Civil Procedure;

4. It adds, as an acceptable place for inspection, the office of the plaintiff’s attorney;

5. It removes the requirement that the court, upon motion of the defendant, dismiss the foreclosure action and award the defendant attorney’s fees for failure of the plaintiff to produce the original note. Instead, this amendment requires the plaintiff to provide a valid excuse for failure to provide the note or an electronic equivalent and, in the event that the plaintiff fails to provide either the note or its electronic equivalent or a valid excuse, allows the court to fashion appropriate remedies; and

6. It removes the provision that allows the plaintiff to provide a sworn affidavit in lieu of the original note in the event that the provisions of the Uniform Commercial Code regarding lost, stolen or destroyed instruments apply or the note is an electronic transferable record under the Uniform Electronic Transactions Act.

SPONSORED BY: _____

(Senator WOODBURY)

COUNTY: Cumberland