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An Act To Protect Homeowners from Equity Stripping during Foreclosure

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

Sec. 1. 9-A MRSA §2-301, as amended by PL 1987, c. 129, §33, is further amended to read:

§ 2-301. Authority to make supervised loans

Unless a person is a supervised financial organization or has first obtained a license pursuant to this Act from the administrator authorizing ~~him~~the person to make supervised loans, ~~he shall~~the person may not engage in the business of:

1. Making supervised loans; ~~or~~
2. Taking assignments of and undertaking direct collection of payments from or enforcement of rights from an office in this State against debtors arising from supervised loans; ~~or~~
3. Acting as a foreclosure purchaser as set forth in Title 32, chapter 80-B.

Sec. 2. 32 MRSA c. 80-B is enacted to read:

CHAPTER 80-B

foreclosure purchasers

§ 6191. Short title

This chapter may be known and cited as "the Foreclosure Purchasers Act."

§ 6192. Definitions

1. Administrator. "Administrator" means the Superintendent of Consumer Credit Protection within the Department of Professional and Financial Regulation.

2. 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 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, 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.

3. Foreclosed homeowner. "Foreclosed homeowner" means an owner of residential real property, including a condominium, that is the primary residence of the owner and whose mortgage on the real property is or was in foreclosure.

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 natural person who is not in the business of foreclosure purchasing and has a prior personal relationship with the foreclosed homeowner, or a federally chartered or state-chartered financial institution.

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 a deed, a purchase agreement, an option to purchase or a lease.

6. Resale. "Resale" means a bona fide market sale of a property subject to a foreclosure reconveyance by a foreclosure purchaser to an unaffiliated 3rd party.

7. Resale price. "Resale price" means the gross sale price of a property upon resale.

8. Residence in foreclosure. "Residence in foreclosure" means residential real property consisting of one- to 4-family dwelling units, one of which the owner occupies as the owner's principal place of residence, when there is a delinquency or default on any loan payment or debt secured by or attached to the residential real property, including, but not limited to, a contract for deed payments.

§ 6193. License required

A foreclosure purchaser may not engage in the business of foreclosure purchasing in this State without first obtaining a license as a supervised lender in accordance with Title 9-A, section 2-301.

§ 6194. Contract requirements

1. Written contract required. A foreclosure purchaser shall enter into a foreclosure reconveyance in the form of a written contract. The contract must be written in at least 12-point boldface type in the same language principally used by the foreclosure purchaser and foreclosed homeowner to

negotiate the sale of the residence in foreclosure and must be fully completed and signed and dated by the foreclosed homeowner and foreclosure purchaser before the execution of any instrument of conveyance of the residence in foreclosure.

2. Contract terms. A contract required by this section must contain the entire agreement of the parties and must include:

- A. The name, business address and telephone number of the foreclosure purchaser;
- B. The address of the residence in foreclosure;
- C. The total consideration to be given by the foreclosure purchaser in connection with or incident to the sale;
- D. A complete description of the terms of payment or other consideration, including, but not limited to, any services of any nature that the foreclosure purchaser will perform for the foreclosed homeowner before or after the sale;
- E. The time at which possession is to be transferred to the foreclosure purchaser;
- F. A complete description of the terms of any related agreement designed to allow the foreclosed homeowner to remain in the home, such as a rental agreement, repurchase agreement, contract for deed or lease with option to buy;
- G. A notice of cancellation as provided in section 6195, subsection 3;
- H. The following notice in at least 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed:

"NOTICE REQUIRED BY MAINE LAW

YOU ARE TRANSFERRING TITLE TO YOUR HOUSE. IF YOU DO NOT FULFILL ALL OF THE TERMS OF THIS CONTRACT, YOU WILL LOSE OWNERSHIP AND POSSESSION OF YOUR HOUSE."; and

- I. The following notice in at least 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, and completed with the name of the foreclosure purchaser, immediately above the statement required by section 6195, subsection 2:

"NOTICE REQUIRED BY MAINE LAW

Until your right to cancel this contract has ended, (Name) or anyone working for (Name) CANNOT ask you to sign or have you sign any deed or any other document."

3. Effect of contract. The contract required by this section survives delivery of any instrument of conveyance of the residence in foreclosure and has no effect on persons other than the parties to the contract.

§ 6195. Cancellation

1. Cancellation. In addition to any other right of rescission, a foreclosed homeowner has the right to cancel a contract with a foreclosure purchaser until midnight of the 5th business day following the day on which the foreclosed homeowner signs a contract that complies with this chapter or until 8:00 a.m. on the last day of the period during which the foreclosed homeowner has a right of redemption, whichever occurs first. Cancellation occurs when the foreclosed homeowner delivers, by any means, written notice of cancellation to the address provided in subsection 3. If cancellation is mailed, delivery is effective upon mailing. If sent via e-mail, delivery is effective upon transmission. A notice of cancellation given by the foreclosed homeowner need not take the particular form as specified in the contract. Within 10 days following receipt of a notice of cancellation given in accordance with this section, the foreclosure purchaser shall return without condition any original contract and any other documents signed by the foreclosed homeowner.

2. Notice of cancellation in contract. A contract must contain in the space reserved for the foreclosed homeowner's signature a conspicuous statement in at least 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, as follows:

"NOTICE REQUIRED BY MAINE LAW

"You may cancel this contract for the sale of your house without any penalty or obligation at any time before (Date and time of day)

See the attached notice of cancellation form for an explanation of this right."

The foreclosure purchaser shall accurately enter the date and time of day on which the cancellation right ends.

3. Separate notice of cancellation. The foreclosure purchaser shall provide the foreclosed homeowner with a copy of the contract and the attached notice of cancellation at the time the contract is executed by all parties. The contract must be accompanied by a completed form in duplicate, captioned "notice of cancellation" in 12-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, followed by a space in which the foreclosure purchaser shall enter the date on which the

foreclosed homeowner executes the contract. This form must be attached to the contract, must be easily detachable and must contain in at least 10-point type, if the contract is printed, or in capital letters, if the contract is typed, the following statement written in the same language as used in the contract:

"NOTICE OF CANCELLATION..... (Enter date contract signed)

You may cancel this contract for the sale of your house, without any penalty or obligation, at any time before..... (Enter date)

To cancel this transaction, you may use any of the following methods: (1) mail or otherwise deliver a signed and dated copy of this cancellation notice; or (2) send via e-mail a notice of cancellation to..... (Name of purchaser) at (Physical address of purchaser's place of business)..... (E-mail address of foreclosure consultant's place of business) NOT LATER THAN (Enter date).

I hereby cancel this transaction (Date)

..... (Seller's signature)"

At a minimum, the contract and the notice of cancellation must contain a physical address to which notice of cancellation may be mailed or otherwise delivered. A post office box does not constitute a physical address. A post office box may be designated for delivery by mail only if it is accompanied by a physical address at which the notice could be delivered by a method other than mail. An e-mail address may be provided in addition to the physical address.

4. Determination of cancellation period. The 5 business days during which the foreclosed homeowner may cancel the contract pursuant to subsection 1 does not begin to run until all parties to the contract have executed the contract and the foreclosure purchaser has complied with this section.

§ 6196. Waiver

Any waiver of the provisions of this chapter is void and unenforceable as contrary to public policy, except that a foreclosed homeowner may waive the 5-day right to cancel provided in section 6195 if the property is subject to a foreclosure sale within the 5 business days and the foreclosed homeowner agrees to waive the right to cancel in a handwritten statement signed by all parties holding title to the foreclosed property.

§ 6197. Liability

Any provision in a contract entered into on or after the effective date of this chapter that attempts or purports to require arbitration of any dispute arising under this chapter is void at the option of the foreclosed homeowner.

§ 6198. Prohibited practices

1. Permitted foreclosure reconveyance. A foreclosure purchaser may not enter into or attempt to enter into a foreclosure reconveyance with a foreclosed homeowner unless:

A. The foreclosure purchaser verifies and can demonstrate that the foreclosed homeowner has a reasonable ability to pay for the subsequent conveyance of an interest back to the foreclosed homeowner. In the case of a lease with an option to purchase, payment ability also includes the reasonable ability to make the lease payments and purchase the property within the term of the option to purchase. There is a rebuttable presumption that a homeowner is reasonably able to pay for the subsequent conveyance if the owner's payments on a monthly basis for primary housing expenses and regular principal and interest payments on other personal debt do not exceed 60% of the owner's monthly gross income. For the purposes of this section, "primary housing expenses" means the sum of payments for regular principal, interest, rent, utilities, hazard insurance, real estate taxes and association dues. There is a rebuttable presumption that the foreclosure purchaser has not verified reasonable payment ability if the foreclosure purchaser has not obtained documents other than a statement by the foreclosed homeowner of assets, liabilities and income;

B. The foreclosure purchaser and the foreclosed homeowner complete a closing for any foreclosure reconveyance in which the foreclosure purchaser obtains a deed or mortgage from a foreclosed homeowner. For purposes of this section, "closing" means an in-person meeting to complete final documents incident to the sale of the real property or creation of a mortgage on the real property conducted by a closing agent who is not employed by or an affiliate of the foreclosure purchaser or employed by such an affiliate and who does not have a business or personal relationship with the foreclosure purchaser other than the provision of real estate settlement services;

C. The foreclosure purchaser obtains the written consent of the foreclosed homeowner to a grant by the foreclosure purchaser of any interest in the property during such times as the foreclosed homeowner maintains any interest in the property;

D. The foreclosure purchaser obtains certification from a counselor with a 3rd-party, nonprofit organization approved by the administrator that the foreclosed homeowner has received counseling on the advisability of the foreclosure reconveyance; and

E. The foreclosure purchaser complies with the requirements for disclosure, loan terms and conduct in the federal Home Ownership and Equity Protection Act, 15 United States Code, Section 1639 or its implementing regulation, 12 Code of Federal Regulations, Sections 226.31, 226.32 and 226.34, for any foreclosure reconveyance in which the foreclosed homeowner obtains a vendee interest in a contract for deed, regardless of whether the terms of the contract for deed meet the annual percentage rate or points and fees requirements for a covered loan in 12 Code of Federal Regulations, Sections 226.32 (a) and (b).

2. Failure to ensure reconveyance or to pay consideration. A foreclosure purchaser may not fail to either:

A. Ensure that title to the residence in foreclosure has been reconveyed to the foreclosed homeowner;
or

B. Make a payment to the foreclosed homeowner in an amount of at least 82% of the fair market value of the property 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 or a detailed accounting of the reasons for failure to make a payment, including providing written documentation of expenses, within this 150-day period. The accounting must be on a form prescribed by the administrator. For purposes of this paragraph:

(1) There is a rebuttable presumption that an appraisal by a person licensed or certified by an agency of the Federal Government or this State to appraise real estate constitutes the fair market value of the property; and

(2) The time for determining the fair market value amount in the foreclosure reconveyance contract must be either at the time of the execution of the foreclosure reconveyance contract or at resale. If the contract states that the fair market value must be determined at the time of resale, the fair market value must be the resale price if it is sold within 120 days of the eviction or voluntary relinquishment of the property by the foreclosed homeowner. If the contract states that the fair market value is determined at the time of resale, and the resale is not completed within 120 days of the eviction or voluntary relinquishment of the property by the foreclosed homeowner, the fair market value must be determined by an appraisal conducted during this 120-day period and payment, if required, must be made to the homeowner, but the fair market value must be recalculated as the resale price on resale and an additional payment amount, if appropriate based on the resale price, must be made to the foreclosed homeowner within 15 days of resale and a detailed accounting of the basis for the payment amount or a detailed accounting of the reasons for failure to make additional payment must be made within 15 days of resale, including providing written documentation of expenses. The accounting must be on a form prescribed by the administrator.

3. Unfair or commercially unreasonable terms. A foreclosure purchaser may not enter into repurchase or lease terms as part of the subsequent foreclosure reconveyance that are unfair or commercially unreasonable or engage in any other unfair conduct.

4. Misrepresentation. A foreclosure purchaser may not represent, directly or indirectly, that:

A. The foreclosure purchaser is acting as an advisor or a consultant, or in any other manner represent that the foreclosure purchaser is acting on behalf of the foreclosed homeowner;

B. The foreclosure purchaser has certification or licensure that the foreclosure purchaser does not have, or that the foreclosure purchaser is not a member of a licensed profession if that is untrue;

C. The foreclosure purchaser is assisting the foreclosed homeowner in retaining ownership to the residence in foreclosure; or

D. The foreclosure purchaser is assisting the foreclosed homeowner in preventing a completed foreclosure if the result of the transaction is that the foreclosed homeowner will not complete a redemption of the property.

5. False, deceptive or misleading statements. A foreclosure purchaser may not make any statements, directly or by implication, or engage in any other conduct that is false, deceptive or misleading or that has the likelihood to cause confusion or misunderstanding, including, but not limited to, statements regarding the value of the residence in foreclosure, the amount of proceeds the foreclosed homeowner may receive after a foreclosure sale, any contract term or the foreclosed homeowner's rights or obligations incident to or arising out of the foreclosure reconveyance.

6. Other actions. Until the time during which the foreclosed homeowner may cancel the transaction has fully elapsed, a foreclosure purchaser may not:

A. Accept from any foreclosed homeowner an execution of or induce any foreclosed homeowner to execute any instrument of conveyance of any interest in the residence in foreclosure;

B. Record or file with the county register of deeds any document, including, but not limited to, any instrument of conveyance, signed by the foreclosed homeowner;

C. Transfer or encumber or purport to transfer or encumber any interest in the residence in foreclosure to any 3rd party, except that this paragraph may not defeat or affect a grant of interest or encumbrance against a bona fide purchaser or encumbrance for value and without notice of a violation of this chapter. Knowledge on the part of any such person or entity that the property was a residence in foreclosure does not constitute notice of a violation of this chapter. This paragraph does not abrogate any duty of inquiry that exists as to rights or interests of persons in possession of the residence in foreclosure; or

D. Pay the foreclosed homeowner any consideration.

§ 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 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 law.

4. Criminal penalty. Any foreclosure purchaser who knowingly engages in any practice that operates as a fraud or deceit upon a foreclosed homeowner is guilty of a Class E crime.

5. Failure of transaction. Failure of the parties to complete a foreclosure reconveyance, in the absence of additional misconduct, may not subject a foreclosure purchaser to the criminal penalties under subsection 4.

6. 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.

SUMMARY

This bill enacts measures designed to protect homeowners from equity stripping during foreclosures. Equity stripping, also known as equity skimming or foreclosure rescue, is often considered a predatory lending practice because the transactions involve companies that take title to or other mortgage interest in foreclosed properties in exchange for allowing the homeowners to remain in the properties as tenants as long as payments are made. If payments are not made, foreclosed homeowners can lose their homes and are also stripped of any equity held in the home prior to the foreclosure. This bill requires a business that engages in these transactions as a foreclosure purchaser to be licensed as a supervised lender before conducting business in this State and to meet other statutory requirements.

The bill requires that a foreclosure purchaser must ensure that title is transferred back to the homeowner or that the foreclosure purchaser make a payment to the homeowner of at least 82% of the fair market value of the property within 150 days of when the homeowner is evicted or voluntarily gives back possession of the home. The bill requires that foreclosure purchasers verify that a foreclosed homeowner has a reasonable ability to make the payments needed to take back title to the home. The bill provides that there is a rebuttable presumption of a reasonable ability to pay if a homeowner's monthly payments for housing expenses and principal and interest payments do not exceed 60% of the owner's monthly gross income. The bill requires that the foreclosed homeowner receive counseling on the advisability of the transaction.

The bill also requires that the foreclosure purchaser provide a written contract and certain notices and disclosures to the homeowner. The bill gives a homeowner the right to cancel the transaction within 5 business days.

The bill prohibits a foreclosure purchaser from making false, deceptive or misleading statements to homeowners and from using unfair or commercially unreasonable terms as part of foreclosure purchase transactions. The bill gives administrative enforcement authority to the Bureau of Consumer Credit Protection within the Department of Professional and Financial Regulation and imposes civil and criminal penalties for violations of the bill's provisions. The bill also gives a foreclosed homeowner the right to bring a private cause of action against a foreclosure purchaser for violations.