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Public Law
123rd Legislature
First Regular Session

Chapter 391
S.P. 561 - L.D. 1617

An Act To Repeal Strict Foreclosure

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

Sec. 1. 14 MRSA §6201, as amended by PL 1987, c. 736, §16, is repealed.

Sec. 2. 14 MRSA §6202 is repealed.

Sec. 3. 14 MRSA §6203, as amended by PL 1987, c. 667, §13, is repealed.

Sec. 4. 14 MRSA §6204, as amended by PL 1993, c. 321, §1, is repealed.

Sec. 5. 14 MRSA §6204-B, as enacted by PL 1989, c. 829, §2, is repealed.

Sec. 6. 14 MRSA §6251 is amended to read:

§ 6251. Form of complaint

The mortgagee or person claiming under ~~him~~the mortgagee in an action for possession may declare on ~~his~~the mortgagee's own seizin, in a real action, without naming the mortgage or assignment. If it appears that the plaintiff is entitled to possession and that the condition had been broken when the action was commenced, the court shall, on motion of either party, award the conditional judgment, unless it appears that the tenant is not the mortgagor or a person claiming under ~~him~~the mortgagor, ~~or that the owner of the mortgage proceeded for foreclosure conformably to sections 6203 and 6204 before the action was commenced;~~ the plaintiff not consenting to such judgment. Unless such judgment is awarded, judgment shall be ~~is~~entered as at common law.

Sec. 7. 14 MRSA §6301 is amended to read:

§ 6301. Accounting required

Any mortgagor or other person having a right to redeem lands mortgaged may demand of the mortgagee or person claiming under ~~him~~the mortgagee a true account of the sum due on the mortgage, and of the rents and profits, and money expended in repairs and improvements, if any. If ~~he~~the mortgagee unreasonably refuses or neglects to render such an account in writing, or in any other way by his default prevents the plaintiff from performing or tendering performance of the condition of the mortgage, ~~he~~the mortgagor may bring a civil action for the redemption of the mortgaged premises within the time limited in former section 6204, and therein offer to pay the sum found to be equitably due, or to perform any

other condition, as the case may require. Such an offer has the same force as a tender of payment or performance before the commencement of the action. The action shall be sustained without such a tender, and thereupon ~~he shall be~~ the mortgagor is entitled to judgment for redemption and costs.

Sec. 8. 14 MRSA §6306 is amended to read:

§ 6306. -- payment to clerk of court

When a mortgagee or person claiming under ~~him~~ a mortgagee residing out of the State, or whose residence is unknown to the party entitled to redeem, has commenced proceedings ~~under section 6203~~ in accordance with this chapter, or when such a mortgagee or claimant having no tenant, agent or attorney in possession on whom service can be made has commenced proceedings ~~under section 6204~~ in accordance with this chapter, in either case the party entitled to redeem may bring the civil action, as prescribed in section 6301, and pay at the same time to the clerk of the court and sum due, which payment ~~shall have~~ has the same effect as a tender before the action. The court shall order such a notice to be given of the pendency of the action, as it judges proper.

Sec. 9. 14 MRSA §6321, as amended by PL 1991, c. 744, §§1 and 2, is further amended to read:

§ 6321. Commencement of foreclosure by civil action

After breach of condition in a mortgage of first priority, the mortgagee or any person claiming under ~~him~~ the mortgagee may proceed for the purpose of foreclosure by a civil action against all parties in interest in either the Superior Court or the District Court in the division ~~wherein~~ in which the mortgaged premises or any part thereof ~~of the mortgaged premises~~ is located, regardless of the amount of the mortgage claim. ~~The method of foreclosure of real estate mortgages provided by this section is an alternative method to those provided in sections 6201 and 6203 and is specifically subject to the order of priorities set out in section 6205.~~

After breach of condition of any mortgage other than one of the first priority, the mortgagee or any person claiming under ~~him~~ the mortgagee may proceed for the purpose of foreclosure by a civil action against all parties in interest, except for parties in interest having a superior priority to the foreclosing mortgagee, in either the Superior Court or the District Court in the division ~~wherein~~ in which the mortgaged premises or any part thereof ~~of the mortgaged premises~~ is located. Parties in interest having a superior priority ~~shall~~ may not be joined nor will their interests be affected by the proceedings, but the resulting sale under section 6323 ~~shall be~~ is of the defendant or mortgagor's equity of redemption only. The plaintiff shall notify the priority parties in interest of the action by sending a copy of the complaint to the parties in interest by certified mail.

The foreclosure must be commenced in accordance with the Maine Rules of Civil Procedure, and the mortgagee shall also record a copy of the complaint or a clerk's certificate of the filing of the complaint in each registry of deeds in which the mortgage deed is or by law ought to be recorded and such a recording thereafter constitutes record notice of commencement of foreclosure. The complaint must allege with specificity the plaintiff's claim by mortgage on such real estate, describe the mortgaged premises intelligibly, state the existence of public utility easements, if any, that were recorded subsequent to the mortgage and prior to the commencement of the foreclosure proceeding and without mortgagee consent, state the amount due on the mortgage, state the condition broken and by reason of such breach demand a foreclosure and sale. Service of process on all parties in interest and all proceedings must be in accordance with the Maine Rules of Civil Procedure. "Parties in interest" ~~include~~ includes mortgagors, holders of fee interest, mortgagees, lessees pursuant to recorded leases or memoranda thereof, lienors

and attaching creditors all as reflected by the indices in the registry of deeds and the documents referred to therein affecting the mortgaged premises, through the time of the recording of the complaint or the clerk's certificate. Failure to join any party in interest does not invalidate the action nor any subsequent proceedings as to those joined. Failure of the mortgagee to join, as a party in interest, the holder of any public utility easement recorded subsequent to the mortgage and prior to commencement of foreclosure proceedings is deemed consent by the mortgagee to ~~such~~that easement. Any other party having a claim to the real estate whose claim is not recorded in the registry of deeds as of the time of recording of the copy of the complaint or the clerk's certificate need not be joined in the foreclosure action, and any such party has no claim against the real estate after completion of the foreclosure sale; ~~provided, except that~~ any such party may move to intervene in the action for the purpose of being added as a party in interest at any time prior to the entry of judgment.

For purposes of this section, "public utility easements" means any easements held by: public utilities, as defined in Title 35-A, section 102; sewer districts, as defined in Title 38, section 1251; or sanitary districts, as formed under Title 38, chapter 11.

The acceptance, before the expiration of the right of redemption and after the commencement of foreclosure proceedings of any mortgage of real property, of anything of value to be applied on or to the mortgage indebtedness by the mortgagee or any person holding under the mortgagee constitutes a waiver of the foreclosure unless an agreement to the contrary in writing is signed by the person from whom the payment is accepted or unless the bank returns the payment to the mortgagor within 10 days of receipt. The receipt of income from the mortgaged premises by the mortgagee or the mortgagee's assigns while in possession of the premises does not constitute a waiver of the foreclosure proceedings of the mortgage on the premises.

The mortgagee and the mortgagor may enter into an agreement to allow the mortgagor to bring the mortgage payments up to date with the foreclosure process being stayed as long as the mortgagor makes payments according to the agreement. If the mortgagor does not make payments according to the agreement, the mortgagee may, after notice to the mortgagor, resume the foreclosure process at the point at which it was stayed.

Effective September 20, 2007