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Legislative Document

No. 1066

S.P. 334

In Senate, March 11, 2021

**An Act To Clarify the Definition of "Mortgage Servicer" in the
Laws Governing Mortgage Foreclosures**

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator BAILEY of York.

Cosponsored by Senator: CARNEY of Cumberland, Representative: HARNETT of Gardiner.

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

2 **Sec. 1. 14 MRSA §6113**, as enacted by PL 2019, c. 363, §1, is amended 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. Except as provided in subsection 5, "mortgage servicer" means a person that is~~
9 ~~responsible for:~~

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

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

16 ~~(3) Evaluating obligors for loss mitigation or loan modification options.~~

17 B-1. Except as provided in subsection 5, "mortgage servicer" means a person
18 responsible for servicing an obligation, including a person that holds or owns an
19 obligation or originates a mortgage loan if the person also services the obligation.

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

22 D. "Obligor" means a person that:

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

24 (2) Has provided property other than the mortgaged property to secure payment
25 of the obligation;

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

27 (4) Is otherwise accountable in whole or in part for payment of the obligation.

28 ~~E. Except as provided in subsection 5, "servicer" means a person responsible for~~
29 ~~servicing an obligation, including a person that holds or owns an obligation or~~
30 ~~originates a mortgage loan if the person also services the obligation.~~

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

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

34 (2) Making or advancing payments to the owner of an obligation on account of an
35 amount due from the obligor under a mortgage servicing loan document or a
36 servicing contract;

37 (3) Making a payment to the obligor under a home equity conversion mortgage or
38 reverse mortgage;

- 1 (4) Evaluating the obligor for loss mitigation or communicating with the obligor
2 with respect to loss mitigation;
- 3 (5) Collecting funds from a homeowner for deposit into an escrow account and
4 making payments out of an escrow account; and
- 5 (6) Taking any other action with respect to an obligation that affects the obligor's
6 payment or performance of the obligation or that relates to the enforcement of the
7 obligation.

8 **2. Duty of good faith.** A mortgage servicer shall act in good faith toward an obligor
9 in the servicing of an obligation secured by a mortgage and in any foreclosure action
10 relating to such an obligation.

11 **3. Effect of violation during foreclosure.** If during a foreclosure action a mortgage
12 servicer controlling or managing the action on its own behalf or on behalf of the owner of
13 the obligation subject to foreclosure is shown to have committed a violation of its duty of
14 good faith under subsection 2, the court may dismiss the action, stay the action on
15 appropriate terms and conditions or impose other appropriate sanctions until the violation
16 is cured.

17 **4. Remedies for violation.** The following are remedies for a violation of the duty of
18 good faith under subsection 2.

19 A. A homeowner or obligor injured by a violation of the duty of good faith may bring
20 an action against the mortgage servicer for all actual damages sustained by the
21 homeowner or obligor.

22 B. In addition to the damages recoverable under this subsection, the court may award
23 a homeowner or obligor statutory damages not exceeding \$15,000 for a pattern or
24 practice of the mortgage servicer's violating the duty of good faith. In determining
25 whether to award statutory damages and the amount of statutory damages, the court
26 shall consider all relevant factors, including:

- 27 (1) The frequency and persistence of violations by the mortgage servicer;
- 28 (2) The nature of the violations;
- 29 (3) The extent to which the violations were intentional; and
- 30 (4) The extent to which the actions that constitute violations are prohibited by state
31 or federal laws, rules or regulations, and the extent to which such actions constitute
32 violations by the mortgage servicer of any consent judgments to which it is a party.

33 C. If the court determines during a foreclosure action or an independent action for
34 damages that there has been a violation of the duty of good faith:

- 35 (1) The mortgage servicer may not charge the loan owner for, or add to the amount
36 of the obligation, any attorney's fees or costs incurred as a result of the violation or
37 any other attorney's fees or costs incurred before the mortgage servicer cures the
38 violation; and
- 39 (2) The court shall order the mortgage servicer to pay to the obligor the obligor's
40 costs incurred in the action and reasonable attorney's fees as determined by the
41 court.

1 **5. Exclusion.** The terms term "mortgage servicer" and "~~servicer~~" defined in subsection
2 1 ~~do~~ does not include a supervised financial organization as defined in Title 9-A, section
3 1-301, subsection 38-A; a financial institution holding company as defined in Title 9-B,
4 section 1011, subsection 1; a mutual holding company as defined in Title 9-B, section 1052,
5 subsection 2; a credit union service organization as defined in 12 Code of Federal
6 Regulations, Section 712.1; a subsidiary of a supervised financial organization, financial
7 institution holding company, mutual holding company or credit union service organization;
8 or the Maine State Housing Authority.

9 **Sec. 2. 14 MRSA §6321-A, sub-§11**, as corrected by RR 2019, c. 1, Pt. A, §14, is
10 amended by amending the first blocked paragraph to read:

11 A mortgage servicer as defined in section 6113, subsection 1, paragraph ~~B~~ B-1 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 faith
14 as required by section 6113, subsection 2.

15 **Sec. 3. 14 MRSA §6321-A, sub-§12**, as amended by PL 2019, c. 363, §3, is further
16 amended to read:

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

28 **Sec. 4. 14 MRSA §6321-A, sub-§13**, as amended by PL 2019, c. 363, §4, is further
29 amended to read:

30 **13. Report.** A mediator must complete a report for each mediation conducted under
31 this section. The mediator's report must indicate in a manner as determined by the court
32 that the parties completed in full the Net Present Value Worksheet in the Federal Deposit
33 Insurance Corporation Loan Modification Program Guide or other reasonable
34 determination of net present value. If the mediation did not result in the settlement or
35 dismissal of the action, the report must include the outcomes of the Net Present Value
36 Worksheet or other determination of net present value. As part of the report, the mediator
37 may notify the court if, in the mediator's opinion, either party failed to negotiate in good
38 faith. The mediator's report must also include a statement of all agreements reached at
39 mediation, with sufficient specificity to put all parties on notice of their obligations under
40 agreements reached at mediation, including but not limited to a description of all documents
41 that must be completed and provided pursuant to the agreements reached at mediation and
42 the time frame during which all actions are required to be taken by the parties, including
43 decisions and determinations of eligibility for all loss mitigation options. The mediator's
44 report must identify the name of any mortgage servicer as defined in section 6113,

1 subsection 1, paragraph ~~B~~ B-1 that participates in the mediation process, and any order of
2 sanctions must likewise identify the name of the mortgage servicer.

3 **SUMMARY**

4 This bill amends the law governing a mortgage servicer's duty to act in good faith by
5 repealing the current definition of "mortgage servicer" and replacing it with the current
6 definition of "servicer."