

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act To Amend the Attorney's Fees Provision in Foreclosure Actions**

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

**Sec. 1. 14 MRSA §6101**, as amended by PL 2011, c. 269, §1, is repealed and the following enacted in its place:

### **§ 6101. Attorney's fees**

This section applies to a foreclosure of a mortgage by any method authorized by this chapter.

**1. Attorney's fee to mortgagee.** If the mortgagee prevails, the mortgagee or the person claiming under the mortgagee may charge a reasonable attorney's fee, which is a lien on the mortgaged estate and must be included with the expense of publication, service and recording in making up the sum to be tendered by the mortgagor or the person claiming under the mortgagor in order to be entitled to redeem. The amount of the attorney's fee that may be charged is limited to the amount that has actually been paid in full or partial discharge of an attorney's fee.

**2. Attorney's fee and costs to mortgagor.** Unless the court finds that there are circumstances that would make an award of the mortgagor's fees and costs unjust, the court shall order the mortgagee to pay the mortgagor's reasonable court costs and attorney's fees incurred in defending against the foreclosure or dispositive proceeding within the foreclosure action, including but not limited to a motion for summary judgment, and deny in full or in part the award of attorney's fees and costs to the mortgagee:

- A. If the mortgagee does not prevail in the action or the dispositive proceeding; or
- B. Upon evidence that the action was not brought in good faith.

If the court determines that it is unjust to order the mortgagee to pay the reasonable court costs and attorney's fees of the mortgagor, the court shall make specific findings of the circumstances that make an award of the mortgagor's fees and costs unjust.

**3. Does not prevail.** For purposes of this section, "does not prevail" does not mean a stipulation of dismissal entered into by the parties, an agreed-upon motion to dismiss without prejudice to facilitate settlement or successful mediation of the foreclosure action pursuant to section 6321-A.

## **SUMMARY**

This bill provides that if the mortgagee does not prevail in a foreclosure action or if the court finds the action was not brought in good faith, then the court must order the mortgagee to pay reasonable attorney's fees and court costs to the mortgagor, unless the court determines that making such an order would be

unjust. If the court determines that the order would be unjust, the court must provide an explanation of that determination.