

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 Protect Homeowners from Improper Foreclosure Fees**

**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 further amended to read:

### **§ 6101. Attorney's fees**

For the foreclosure of a mortgage by any method authorized by this chapter, 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, provided the sum has actually been paid in full or partial discharge of an attorney's fee. If the plaintiff that claimed to be the mortgagee in the foreclosure action does not prevail, or upon evidence that the action was not brought in good faith, the court may order the plaintiff that claimed to be the mortgagee to pay the mortgagor's reasonable court costs and attorney's fees incurred in defending against the foreclosure or any proceeding within the foreclosure action and deny in full or in part the award of attorney's fees and costs to the mortgagee. 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**

Current law provides that attorney's fees must be paid to mortgagors when the mortgagee does not prevail in a foreclosure action, which creates a loophole that allows the mortgagee to escape the attorney's fees provisions when the plaintiff does not prevail because it is determined that the plaintiff is not the true mortgagee. This bill rectifies that loophole by clarifying that a plaintiff who claims to be a mortgagee who does not prevail in a foreclosure action must still pay attorney's fees to the prevailing mortgagor.