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An Act To Ensure the Timely and Proper Completion of Residential Foreclosures

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

Sec. 1. 14 MRSA §6323, sub-§1, as amended by PL 2013, c. 521, Pt. C, §1, is further amended to read:

1. Procedures for all civil actions. Upon expiration of the period of redemption, if the mortgagor or the mortgagor's successors, heirs or assigns have not redeemed the mortgage, any remaining rights of the mortgagor to possession terminate, and the mortgagee shall cause notice of a public sale of the premises stating the time, place and terms of the sale to be published once in each of 3 successive weeks in a newspaper of general circulation in the county in which the premises are located, the first publication to be made not more than 90 days after the expiration of the period of redemption. Except when otherwise required under 12 Code of Federal Regulations, Section 1024.41 or any successor provision, the public sale must be held not less than 30 days nor more than 45 days after the first date of that publication. Except for sales of premises that the court has determined to be abandoned pursuant to section 6326, the mortgagee may adjourn the public sale may be adjourned, for any time a period not exceeding 730 days and from time to time until a sale is made, by as long as announcement of the new sale date is made to those present at each the adjournment. The sale may be adjourned for additional periods of time upon written agreement of the mortgagee and mortgagor, as long as notice is given to all persons present at the initial sale, or upon court order for good cause shown and upon such terms as may be specified by the court. For sales of premises that the court has determined to be abandoned pursuant to section 6326, the public sale may be adjourned once for any time not exceeding 7 days, except that the court may permit one additional adjournment for good cause shown. Adjournments may also be made in accordance with the requirements of 12 Code of Federal Regulations, Section 1024.41 or any successor provision. The mortgagee, in its sole discretion, may allow the mortgagor to redeem or reinstate the loan after the expiration of the period of redemption but before the public sale. The, and, in connection with any such redemption or reinstatement, the mortgagee may convey the property to the mortgagor or execute a waiver of foreclosure, and all other rights of all other parties remain as if no foreclosure had been commenced. The sale must be conducted, at the election of the mortgagee, at the mortgaged premises or at the state courthouse or the office of an attorney located in the county in which the mortgaged property is located. The mortgagee shall sell the premises to the highest bidder at the public sale and deliver a deed of that sale and the writ of possession, if a writ of possession was obtained during the foreclosure process following the period of redemption, to the purchaser. The deed conveys the premises free and clear of all interests of the parties in interest joined in the action. The mortgagee or any other party in interest may bid at the public sale. If the mortgagee is the highest bidder at the public sale, there is no obligation to account for any surplus upon a subsequent sale by the mortgagee. Any rights of the mortgagee to a deficiency claim against the mortgagors are limited to the amount established as of the date of the public sale. The date of the public sale is the date on which bids are received to establish the sales price, no matter when the sale is completed by the delivery of the deed to the highest bidder. If the property is conveyed by deed pursuant

to a public sale in accordance with this subsection, a copy of the judgment of foreclosure and evidence of compliance with the requirements of this subsection for the notice of public sale and the public sale itself must be attached to or included within the deed, or both, or otherwise be recorded in the registry of deeds within 30 days of the date of the conveyance.

Sec. 2. 14 MRSA §6324, as amended by PL 2003, c. 20, Pt. T, §10, is further amended to read:

§ 6324. Proceeds of sale

After first deducting the expenses incurred in making the sale, the mortgagee shall disburse the remaining proceeds in accordance with the provisions of the judgment. The mortgagee shall file a report of the sale and the disbursement of the proceeds therefrom with the court and shall mail a copy to the mortgagor at the mortgagor's last known address. The report of sale must show the amount of the foreclosure judgment determined by the court and must itemize all additions to the foreclosure judgment. In the event that the sale generates a surplus of money beyond the amount owed to the mortgagee, the mortgagee shall, no later than the time of the filing of the report of sale, pay this surplus over to the mortgagor or other party entitled to it as determined by the foreclosure judgment. This report need not be accepted or approved by the court, provided that the mortgagor or any other party in interest may contest the accounting by motion filed within 30 days of receipt of the report opposing the mortgagee's motion for a deficiency judgment in accordance with the Maine Rules of Civil Procedure, but any such challenge may be for money only and does not affect the title to the real estate purchased by the highest bidder at the public sale. AnyUpon order of the court after motion of the mortgagee filed with the report of sale and served upon the mortgagor and all other parties in interest in accordance with the Maine Rules of Civil Procedure, any deficiency must be assessed against the mortgagor and an execution must be issued by the court therefor. In the event the mortgagee has been the purchaser at the public sale, any deficiency is limited to the difference between the fair market value of the premises at the time of the public sale, as established by an independent appraisal, and the sum due the mortgagee as established by the court with interest plus the expenses incurred in making the sale. Any surplus must be paid to the mortgagor, the mortgagor's successors, heirs or assigns in the proceeding or other party entitled to the surplus as determined in the judgment of foreclosure, the payment to be made no later than the time of the filing of the report of sale. If the mortgagor has not appeared personally or by an attorney, the surplus must be paid to the clerk of courts, who shall hold the surplus in escrow for 6 months for the benefit of the mortgagor, the mortgagor's successors, heirs or assigns and, if the surplus remains unclaimed after 6 months, the clerk shall pay the surplus to the Treasurer of State to be credited to the General Fund until it becomes unclaimed under the Uniform Unclaimed Property Act, and report and pay it to the State in accordance with that Act.

The report of sale required by this section must be filed with the court within 45 days of the date of the public sale, without regard to the actual date of conveyance following the sale. In the event that the report is not filed with the court within this 45-day period, the mortgagee has no right to seek a deficiency judgment, and the mortgagor or other party claiming entitlement to any portion of any surplus proceeds from the sale may file a motion for an accounting of the sale proceeds and for the turnover of any surplus. The court shall order that the mortgagee pay to the mortgagor or party in interest that prevails on such a motion that party's attorney's fees and costs incurred in connection with such a motion. Upon a showing

of good cause by the mortgagee, made by motion filed before the expiration of the deadline stated in this section for the filing of the report of sale, the court may extend the deadline for the filing of the report of sale for an additional period of time as the court considers appropriate.

SUMMARY

This bill makes changes to the laws governing the adjournment of a public sale of foreclosed premises and where such a sale must be conducted. It clarifies several aspects of the post-foreclosure sale process regarding the filing of reports of sale and mandates that the report be filed within 45 days of the sale. If a foreclosure sale produces proceeds beyond those payable to the mortgagee, the bill requires the mortgagee to pay the surplus to the mortgagor or other party entitled to it no later than the time of the filing of the report of sale and provides a means for the party entitled to the surplus to obtain a court order for the turnover of the surplus if the mortgagee fails to do so. The bill clarifies that, after the redemption period has expired, but before a sale, a mortgagee may agree with a mortgagor to a reinstatement of the mortgage, and that the mortgagee may, in connection with the reinstatement, waive the foreclosure judgment and restore all parties to the action to the positions that they were in before any foreclosure.