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An Act To Require Residential Mortgage Loan Servicers To Act in Good Faith in Dealings with Homeowners

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

Sec. 1. 14 MRSA §6113 is enacted to read:

§ 6113. Mortgage servicer duty of good faith

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

B. "Mortgage servicer" means a person that is responsible for:

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

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

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

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

D. "Obligor" means a person that:

(1) Owes payment or performance of an obligation;

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

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

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

E. "Servicer" means a person responsible for servicing an obligation, including a person that holds or owns an obligation or originates a mortgage loan if the person also services the obligation.

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

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

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

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

(4) Evaluating the obligor for loss mitigation or communicating with the obligor with respect to loss mitigation;

(5) Collecting funds from a homeowner for deposit into an escrow account and making payments out of an escrow account; and

(6) Taking any other action with respect to an obligation that affects the obligor's payment or performance of the obligation or that relates to the enforcement of the obligation.

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

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

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

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

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

(1) The frequency and persistence of violations by the servicer;

(2) The nature of the violations;

(3) The extent to which the violations were intentional; and

(4) The extent to which the actions that constitute violations are prohibited by state or federal laws, rules or regulations, and the extent to which such actions constitute violations by the servicer of any consent judgments to which it is a party.

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

(1) The servicer may not charge the loan owner for, or add to the amount of the obligation, any attorney's fees or costs incurred as a result of the violation or any other attorney's fees or costs incurred before the servicer cures the violation; and

(2) The court shall order the servicer to pay to the obligor the obligor's costs incurred in the action and reasonable attorney's fees as determined by the court.

Sec. 2. 14 MRSA §6321-A, sub-§11, as amended by PL 2009, c. 476, Pt. B, §6 and affected by §9, is further amended to read:

11. Parties to mediation. A mediator shall include in the mediation process under this section any person the mediator determines is necessary for effective mediation. Mediation and appearance in person is mandatory for:

A. The mortgagee, who has the authority to agree to a proposed settlement, loan modification or dismissal of the action, except that the mortgagee may participate by telephone or electronic means as long as that mortgagee is represented with authority to agree to a proposed settlement;

B. The defendant;

C. Counsel for the plaintiff; and

D. Counsel for the defendant, if represented.

A mortgage servicer as defined in section 6113, subsection 1, paragraph B participating in the mediation process submits to the jurisdiction of the court with respect to the power of the court to sanction parties who fail to participate in the mediation process in good faith as required by section 6113, subsection 2.

Sec. 3. 14 MRSA §6321-A, sub-§12, as enacted by PL 2009, c. 402, §18, is amended to read:

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

Sec. 4. 14 MRSA §6321-A, sub-§13, as amended by PL 2013, c. 521, Pt. F, §2, is further amended to read:

13. Report. A mediator must complete a report for each mediation conducted under this section. The mediator's report must indicate in a manner as determined by the court that the parties completed in full the Net Present Value Worksheet in the Federal Deposit Insurance Corporation Loan Modification Program Guide or other reasonable determination of net present value. If the mediation did not result in the settlement or dismissal of the action, the report must include the outcomes of the Net Present Value Worksheet or other determination of net present value. As part of the report, the mediator may notify the court if, in the mediator's opinion, either party failed to negotiate in good faith. The mediator's report must also include a statement of all agreements reached at mediation, with sufficient specificity to put all parties on notice of their obligations under agreements reached at mediation, including but not limited to a description of all documents that must be completed and provided pursuant to the agreements reached at mediation and the time frame during which all actions are required to be taken by the parties, including decisions and determinations of eligibility for all loss mitigation options. The mediator's report must identify the name of any mortgage servicer as defined in section 6113, subsection 1, paragraph B that participates in the mediation process, and any order of sanctions must likewise identify the name of the mortgage servicer.

SUMMARY

This bill requires servicers of residential mortgage loans to act in good faith when dealing with homeowners who are the borrowers under those loans. The bill changes the foreclosure mediation program to allow the courts to directly sanction a mortgage servicer when the servicer's conduct evidences a failure to mediate in good faith. The bill requires an order of sanctions to identify the name of the mortgage servicer so that, when a servicer is found to have failed to act in good faith, the court may take into account previous misconduct in fashioning a sanction sufficient to deter continuation of the misconduct in the same case or in future cases.