



129th MAINE LEGISLATURE

SECOND REGULAR SESSION-2020

Legislative Document

No. 1963

H.P. 1407

House of Representatives, January 8, 2020

**An Act To Preserve the Value of Abandoned Properties by Allowing
Entry by Mortgagees**

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative MARTIN of Eagle Lake.
Cosponsored by President JACKSON of Aroostook and
Representatives: FECTION of Biddeford, HUBBELL of Bar Harbor, JORGENSEN of
Portland.

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

2 **Sec. 1. 14 MRSA §6326**, as enacted by PL 2013, c. 521, Pt. B, §1 and affected by
3 §2, is amended to read:

4 **§6326. Order of abandonment for residential properties in foreclosure**

5 **1. Plaintiff request.** The plaintiff in a judicial foreclosure action may present
6 evidence of abandonment as described in subsection ~~2~~ 2-A and may request a
7 determination pursuant to subsection 3 that the mortgaged premises have been abandoned
8 if:

- 9 A. More than 50% of the mortgaged premises is used for residential purposes; and
10 B. The mortgaged premises are the subject of an uncontested foreclosure action or an
11 uncontested foreclosure judgment has been issued with respect to the premises and a
12 foreclosure sale with respect to the premises is pending pursuant to this subchapter.
13 An action or judgment is uncontested if:
- 14 (1) The mortgagor has not appeared in the action to defend against foreclosure;
 - 15 (2) There has been no communication from or on behalf of the mortgagor to the
16 plaintiff for at least 90 days showing any intent of the mortgagor to continue to
17 occupy the premises or there is a document of conveyance or other written
18 statement, signed by the mortgagor, that indicates a clear intent to abandon the
19 premises; and
 - 20 (3) Either all mortgagees with interests that are junior to the interests of the
21 plaintiff have waived any right of redemption pursuant to section 6322 or the
22 plaintiff has obtained or has moved to obtain a default judgment against such
23 junior mortgagees.

24 ~~**2. Evidence of abandonment.** For the purposes of this section, evidence of~~
25 ~~abandonment showing that the mortgaged premises are vacant and the occupant has no~~
26 ~~intent to return may include, but is not limited to, the following:~~

- 27 ~~A. Doors and windows on the mortgaged premises are continuously boarded up,~~
28 ~~broken or left unlocked;~~
- 29 ~~B. Rubbish, trash or debris has observably accumulated on the mortgaged premises;~~
- 30 ~~C. Furnishings and personal property are absent from the mortgaged premises;~~
- 31 ~~D. The mortgaged premises are deteriorating so as to constitute a threat to public~~
32 ~~health or safety;~~
- 33 ~~E. A mortgagee has changed the locks on the mortgaged premises and neither the~~
34 ~~mortgagor nor anyone on the mortgagor's behalf has requested entrance to, or taken~~
35 ~~other steps to gain entrance to, the mortgaged premises;~~
- 36 ~~F. Reports of trespassers, vandalism or other illegal acts being committed on the~~
37 ~~mortgaged premises have been made to local law enforcement authorities;~~

1 ~~G. A code enforcement officer or other public official has made a determination or~~
2 ~~finding that the mortgaged premises are abandoned or unfit for occupancy;~~

3 ~~H. The mortgagor is deceased and there is no evidence that an heir or personal~~
4 ~~representative has taken possession of the mortgaged premises; and~~

5 ~~I. Other reasonable indicia of abandonment.~~

6 **2-A. Presumption of abandonment.** Mortgaged premises are presumed to be
7 abandoned property if:

8 A. A code enforcement officer or other public official determines that the mortgaged
9 premises are abandoned; or

10 B. Three or more of the following subparagraphs apply to the mortgaged premises:

11 (1) There are:

12 (a) One or more doors on the mortgaged premises that are boarded up,
13 broken off or continuously unlocked;

14 (b) Multiple windows that are boarded up or closed off; or

15 (c) Multiple windowpanes that are broken;

16 (2) Gas, electric or water service to the mortgaged premises has been terminated
17 or utility consumption is so low that it indicates the mortgaged premises are not
18 regularly occupied;

19 (3) Rubbish, trash or debris has accumulated on the mortgaged premises;

20 (4) Newspapers, flyers or mail has accumulated on the mortgaged premises;

21 (5) Furnishings and personal property are absent from the mortgaged premises;

22 (6) A mortgagee has changed the locks on the mortgaged premises and neither
23 the mortgagor nor anyone on the mortgagor's behalf has requested entrance to, or
24 taken other steps to gain entrance to, the mortgaged premises;

25 (7) One or more of the written statements signed by the homeowner indicate a
26 clear intent to abandon the mortgaged premises;

27 (8) A law enforcement agency has received reports of at least 2 separate
28 incidents of trespass, vandalism or other illegal acts being committed on the
29 mortgaged premises in the 180 days before determination of abandonment is
30 sought;

31 (9) The mortgagor is deceased and there is no evidence that an heir or personal
32 representative has taken possession of the mortgaged premises; and

33 (10) There are other reasonable indicia of abandonment.

34 **2-B. Affidavit based on personal knowledge.** An affidavit attesting to the
35 conditions described in subsection 2-A and any other facts evidencing abandonment must
36 be signed by and based on personal knowledge of the affiant and state the basis for that
37 personal knowledge. A person may submit one or more affidavits as evidence of
38 abandonment.

1 **3. Court determination of abandonment; vacation of order.** The plaintiff may at
2 any time after commencement of a foreclosure action under section 6321 file with the
3 court a motion to determine that the mortgaged premises have been abandoned.

4 A. If the court finds by clear and convincing evidence, based on testimony or reliable
5 hearsay, including affidavits by public officials and other neutral nonparties, that the
6 mortgaged premises have been abandoned, the court may issue an order granting the
7 motion and determining that the premises are abandoned.

8 B. The court may not grant the motion if the mortgagor or a lawful occupant of the
9 mortgaged premises appears and objects to the motion.

10 C. The court shall vacate the order under paragraph A if the mortgagor or a lawful
11 occupant of the mortgaged premises appears in the action and objects to the order
12 prior to the entry of judgment.

13 **4. Effect of court determination of abandonment.** Upon the issuance of an order
14 of abandonment under subsection 3 determining that the mortgaged premises are
15 abandoned:

16 A. The foreclosure action may be advanced on the docket and receive priority over
17 other cases as the interests of justice require;

18 B. The period of redemption provided for in section 6322 is shortened to 45 days
19 from the later of the issuance of the judgment of foreclosure and the order of
20 abandonment;

21 C. If the mortgaged premises include dwelling units occupied by tenants as their
22 primary residence, the plaintiff shall assume the duties of landlord for the rental units
23 as required by chapter 709 upon the later of the issuance of the judgment of
24 foreclosure and the order of abandonment; and

25 D. The plaintiff shall notify the municipality in which the premises are located and
26 shall record the order of abandonment in the appropriate registry of deeds within 30
27 days from the later of the issuance of the judgment of foreclosure and the order of
28 abandonment.

29 **5. Entry by mortgagee.** Upon the issuance of an order of abandonment under
30 subsection 3, the mortgagee or its mortgage servicer or designee may peaceably enter
31 mortgaged premises or cause others to peaceably enter for the limited purpose of
32 inspections, repairs and maintenance as required by this subsection or as otherwise
33 ordered by the court. If the mortgaged premises are occupied by a tenant lawfully in
34 possession, at least 7 days' notice must be given to the tenant, unless emergency repairs
35 are required, in which case reasonable notice must be provided to the tenant.

36 A. It is unlawful for a mortgagee, its mortgage servicer or a 3rd-party agent or other
37 person acting on behalf of a mortgagee to enter residential property that is not
38 abandoned for the purpose of forcing, intimidating, harassing or coercing a lawful
39 occupant of the residential property to vacate that property in order to render the
40 property vacant and abandoned or to otherwise force, intimidate, harass or coerce a
41 lawful occupant of the residential property to vacate that property so that it may be
42 considered abandoned.

1 B. Liability for the unlawful conduct described in paragraph A extends to any
2 mortgagee for whose benefit the actions were initiated, in addition to any agent,
3 employee or subcontractor of the mortgagee who retained, hired or otherwise enlisted
4 the perpetrator.

5 **Sec. 2. 14 MRSA §6327** is enacted to read:

6 **§6327. Abatement of nuisance by mortgage servicer**

7 **1. Actions to abate nuisance.** Upon receipt of an affidavit or declaration under
8 penalty for false swearing that property is abandoned in midforeclosure and a nuisance, a
9 mortgage servicer or its designee may enter the property for the purpose of abating the
10 identified nuisance, preserving property or preventing waste and may take steps to secure
11 the property, including but not limited to:

12 A. Installing missing locks on exterior doors. If any locks are changed, the mortgage
13 servicer shall provide a lockbox. Working locks may not be removed or replaced
14 unless all doors are secured and there is no means of entry, in which case only one
15 working lock may be removed and replaced;

16 B. Replacing or boarding up broken or missing windows;

17 C. Winterizing, including draining pipes and disconnecting or turning on utilities;

18 D. Eliminating building code or other violations;

19 E. Securing exterior pools and spas;

20 F. Performing routine yard maintenance on the exterior of the residence; and

21 G. Performing pest and insect control services.

22 **2. Record of entry.** The mortgage servicer or its designee shall make a record of
23 entry pursuant to this section by means of dated and time-stamped photographs showing
24 the manner of entry and personal items visible within the residence upon entry.

25 **3. Removal of personal items.** Neither the mortgage servicer nor its designee may
26 remove personal items from the property unless the items are hazardous or perishable.
27 The mortgage servicer or its designee shall create a written inventory of items removed.

28 **4. Notice before entry.** Prior to each entry pursuant to this section, a mortgage
29 servicer or its designee shall ensure that a notice is posted on the front door of each
30 property that includes the following:

31 A. A statement that until foreclosure and sale is complete, the property owner or
32 occupant authorized by the owner has the right to possession;

33 B. A statement that the property owner or occupant authorized by the owner has the
34 right to request any locks installed by the mortgage servicer or its designee be
35 removed within 24 hours and replaced with new locks accessible by only the property
36 owner or the occupant authorized by the owner;

1 C. A toll-free, 24-hour telephone number that the property owner or occupant
2 authorized by the owner may call in order to gain timely entry. Timely entry must be
3 provided no later than the next business day; and

4 D. The telephone number of the Department of Professional and Financial
5 Regulation, Bureau of Consumer Credit Protection's foreclosure hotline with a
6 statement that the property owner may have the right to participate in foreclosure
7 mediation.

8 **5. Maintenance of records.** The mortgage servicer or its designee shall maintain
9 records of entry onto the property pursuant to this section for at least 4 years from the
10 date of entry.

11 **6. Occupied property.** If, upon entry pursuant to this section, the property is found
12 to be occupied, the mortgage servicer or its designee shall leave the property immediately
13 and notify the county or municipality. Neither the mortgage servicer nor its designee
14 may enter the occupied property regardless of whether the property constitutes a nuisance
15 or complies with local code enforcement standards.

16 **7. Notice that property not abandoned.** If a mortgage servicer is contacted by the
17 mortgagor and notified that the property is not abandoned, the mortgage servicer shall
18 notify the county or municipality and thereafter neither the mortgage servicer nor its
19 designee may enter the property regardless of whether the property constitutes a nuisance
20 or complies with local code enforcement standards.

21 **8. County and municipality liability.** A county or municipality is not liable for any
22 damages caused by an act or omission of the mortgage servicer or its designee pursuant to
23 this section.

24 **Sec. 3. 30-A MRSA §3106-A, sub-§4,** as enacted by PL 2015, c. 244, §1, is
25 amended to read:

26 **4. Determination of abandonment.** Before a municipality may initiate corrective
27 measures to address property defects pursuant to this section, either a court or the
28 municipal officers must have determined that the mobile home has been abandoned
29 according to the evidence of abandonment described in Title 14, section 6326, subsection
30 2 2-A, paragraph A, C, D, E, F, G or H or paragraph B, subparagraph (1), (5), (6), (8) or
31 (9).

32 A. The municipal officers shall provide notice to the responsible party and hold a
33 hearing before making a determination that a mobile home has been abandoned. The
34 notice of hearing must:

35 (1) State the scheduled date, time and location of the hearing; and

36 (2) Inform the responsible party that, upon a finding of abandonment, the
37 municipality may require the responsible party to correct any property defects
38 within 60 days of issuing a notice to correct.

39 B. A hearing under paragraph A must be held not less than 7 days after receipt or
40 publication of the notice.

1 C. An order issued by the municipality determining that a mobile home is abandoned
2 may be combined with the notice to correct set forth in subsection 5.

3 **Sec. 4. 30-A MRS §3106-B, sub-§4**, as reallocated by RR 2015, c. 1, §35, is
4 amended to read:

5 **4. Determination of abandonment.** Before a municipality may initiate corrective
6 action measures to address property defects pursuant to this section, either a court or the
7 municipal officers must have determined that the property has been abandoned according
8 to the evidence of abandonment described in Title 14, section 6326, subsection ~~2~~ 2-A,
9 paragraph ~~A, C, D, E, F, G or H~~ paragraph B, subparagraph (1), (5), (6), (8) or (9).

10 A. The municipal officers shall provide notice to the responsible parties and hold a
11 hearing before making a determination that a property has been abandoned. The
12 notice of hearing must:

- 13 (1) State the scheduled date, time and location of the hearing; and
14 (2) Inform the responsible parties that, upon a finding of abandonment, the
15 municipality may require the responsible parties to correct any property defects
16 within 30 days of the issuance of a notice to correct or, if a permit is required to
17 correct property defects, the municipality may require the responsible parties to
18 promptly seek a permit and to correct the defects within 30 days of the issuance
19 of the permit.

20 B. A hearing under paragraph A may be held no less than 7 days after receipt or
21 publication of the notice.

22 C. An order issued by the municipality determining that a property is abandoned may
23 be combined with the notice to correct set forth in subsection 5.

24 **SUMMARY**

25 The purpose of this bill is to assist communities and financial institutions when a
26 home becomes abandoned by the property owner. This bill allows, under specific
27 circumstances, a mortgagee or mortgage servicer to enter the property, secure the
28 property and prevent further deterioration. This bill enhances the existing abandoned
29 property laws and provides specific procedures for mortgage servicers and their designees
30 to enter abandoned property for the purpose of abating an identified nuisance, preserving
31 property or preventing waste. Mortgage servicers and their designees must post notices
32 on properties prior to entering them, and the notices must contain information about the
33 rights of the property owners and authorized occupants. Mortgage servicers and their
34 designees may not enter property that is occupied.