



128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1047

S.P. 350

In Senate, March 16, 2017

An Act To Protect Homeowners from Improper Foreclosure Fees

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator BELLOWS of Kennebec.
Cosponsored by Representative LAWRENCE of South Berwick and
Senators: CARSON of Cumberland, CYRWAY of Kennebec, KATZ of Kennebec,
Representatives: CARDONE of Bangor, CRAIG of Brewer, FREDETTE of Newport, FREY
of Bangor, MOONEN of Portland.

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

2 **Sec. 1. 14 MRSA §6101**, as amended by PL 2011, c. 269, §1, is further amended
3 to read:

4 **§6101. Attorney's fees**

5 For the foreclosure of a mortgage by any method authorized by this chapter, if the
6 mortgagee prevails, the mortgagee or the person claiming under the mortgagee may
7 charge a reasonable attorney's fee which is a lien on the mortgaged estate, and must be
8 included with the expense of publication, service and recording in making up the sum to
9 be tendered by the mortgagor or the person claiming under the mortgagor in order to be
10 entitled to redeem, provided the sum has actually been paid in full or partial discharge of
11 an attorney's fee. If the plaintiff that claimed to be the mortgagee in the foreclosure
12 action does not prevail, or upon evidence that the action was not brought in good faith,
13 the court may order the plaintiff that claimed to be the mortgagee to pay the mortgagor's
14 reasonable court costs and attorney's fees incurred in defending against the foreclosure or
15 any proceeding within the foreclosure action and deny in full or in part the award of
16 attorney's fees and costs to the mortgagee. For purposes of this section, "does not
17 prevail" does not mean a stipulation of dismissal entered into by the parties, an
18 agreed-upon motion to dismiss without prejudice to facilitate settlement or successful
19 mediation of the foreclosure action pursuant to section 6321-A.

20 **SUMMARY**

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