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Legislative Document

No. 1327

S.P. 415

In Senate, March 19, 2019

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

Reference to the Committee on Health Coverage, Insurance and Financial Services
suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator CLAXTON of Androscoggin.
Cosponsored by Senators: DESCHAMBAULT of York, MOORE of Washington.

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

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

3 **§6113. Mortgage servicer duty of good faith**

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

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

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

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

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

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

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

18 D. "Obligor" means a person that:

19 (1) Owes payment or performance of an obligation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (2) The nature of the violations;

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

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

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

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

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

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

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

- 4 A. The mortgagee, who has the authority to agree to a proposed settlement, loan
5 modification or dismissal of the action, except that the mortgagee may participate by
6 telephone or electronic means as long as that mortgagee is represented with authority
7 to agree to a proposed settlement;
- 8 B. The defendant;
- 9 C. Counsel for the plaintiff; and
- 10 D. Counsel for the defendant, if represented.

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

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

17 **12. Good faith effort.** Each party and each party's attorney, if any, must be present
18 at mediation as required by this section and shall make a good faith effort to mediate all
19 issues. If any party or attorney fails to attend or to make a good faith effort to mediate,
20 the court may impose appropriate sanctions. A mortgage servicer as defined in section
21 6113, subsection 1, paragraph B participating in the mediation process shall participate in
22 good faith as required by section 6113, subsection 2. In determining the nature and
23 extent of appropriate sanctions, the court shall consider the need for deterrence of similar
24 future conduct by the entity being sanctioned and by others and may take into account
25 prior orders imposing sanctions upon the sanctioned party, whether in the same case or in
26 other previous cases. The imposition of any sanction does not bar any independent action
27 by a defendant to seek recovery with respect to the actions giving rise to the order of
28 sanctions.

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

31 **13. Report.** A mediator must complete a report for each mediation conducted under
32 this section. The mediator's report must indicate in a manner as determined by the court
33 that the parties completed in full the Net Present Value Worksheet in the Federal Deposit
34 Insurance Corporation Loan Modification Program Guide or other reasonable
35 determination of net present value. If the mediation did not result in the settlement or
36 dismissal of the action, the report must include the outcomes of the Net Present Value
37 Worksheet or other determination of net present value. As part of the report, the mediator
38 may notify the court if, in the mediator's opinion, either party failed to negotiate in good
39 faith. The mediator's report must also include a statement of all agreements reached at
40 mediation, with sufficient specificity to put all parties on notice of their obligations under
41 agreements reached at mediation, including but not limited to a description of all
42 documents that must be completed and provided pursuant to the agreements reached at

1 mediation and the time frame during which all actions are required to be taken by the
2 parties, including decisions and determinations of eligibility for all loss mitigation
3 options. The mediator's report must identify the name of any mortgage servicer as
4 defined in section 6113, subsection 1, paragraph B that participates in the mediation
5 process, and any order of sanctions must likewise identify the name of the mortgage
6 servicer.

7

SUMMARY

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