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## **An Act To Preserve Home Ownership and Stabilize the Economy by Preventing Unnecessary Foreclosures**

**Emergency preamble.** Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** the State's rate of mortgages in foreclosure is rising to unprecedented levels, both for prime and subprime mortgages; and

**Whereas,** foreclosures are expected to continue in the State because homeowners will not be able to afford payments due to rising adjustable mortgage payments, rising unemployment and job loss; and

**Whereas,** homeowners are expected to have continued problems selling their properties at the value of their mortgages due to falling housing prices; and

**Whereas,** foreclosures contribute to the decline in the State's housing market, loss of property values and loss of tax revenues; and

**Whereas,** the number of foreclosure actions in the courts is rapidly increasing and the current system for resolving foreclosure actions is creating a burden on the court system; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1. 4 MRSA §18-B, sub-§12** is enacted to read:

**12. Mediation involving mortgage foreclosures on owner-occupied residential property.** The foreclosure mediation program is a program within the Supreme Judicial Court to provide mediation in the courts throughout the State pursuant to Title 14, section 6321-A.

A. The Supreme Judicial Court, or a person or organization designated by the court, shall administer the foreclosure mediation program.

B. A foreclosure mediation program fund is established as a nonlapsing, dedicated fund within the Administrative Office of the Courts. Fees collected to support mediation services pursuant to Title 14, section 6321-A, subsection 3 must be deposited in the fund. The Administrative Office of the Courts shall use the resources in the fund to cover the costs of providing mediation services as required under Title 14, section 6321-A.

**Sec. 2. 4 MRSA §104,** as amended by PL 2009, c. 136, §1, is further amended to read:

**§ 104. Active retired justices**

Any Justice of the Superior Court who has retired from the court under this chapter in effect prior to December 1, 1984, or any Justice of the Superior Court who retires or terminates that justice's service on the court in accordance with chapter 27, except for a disability retirement, is eligible for appointment as an Active Retired Justice of the Superior Court. The Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary matters and to confirmation by the Legislature, may appoint any eligible justice as an Active Retired Justice of the Superior Court for a term of 7 years, unless sooner removed. That justice may be reappointed for a like term. Any justice so appointed and designated thereupon constitutes a part of the court from which that justice has retired and has the same jurisdiction and is subject to the same restrictions therein as before retirement. An Active Retired Justice of the Superior Court may serve as an arbitrator and conduct arbitration in accordance with rules that may be adopted by the Supreme Judicial Court, except that nothing in this section requires the Supreme Judicial Court to adopt those rules. An Active Retired Justice of the Superior Court may chair screening panels in accordance with Title 24, chapter 21, subchapter 4-A. An Active Retired Justice of the Superior Court may act only in the cases and matters and hold court only at the terms and times as that justice is directed and assigned by the Chief Justice of the Superior Court. Any Active Retired Justice of the Superior Court may be directed by the Chief Justice to hold any term of the Superior Court in any county and when so directed has authority and jurisdiction therein the same as if that justice were the regular justice of that court. Whenever the Chief Justice of the Superior Court so orders, that justice may hear all matters and issue all orders, notices, decrees and judgments in vacation that any justice of that Superior Court is authorized to hear and issue. An Active Retired Justice of the Superior Court may be assigned by the Chief Justice of the Superior Court to act as a mediator for the foreclosure mediation program in accordance with Title 14, section 6321-A, subsection 7. An Active Retired Justice of the Superior Court receives reimbursement for expenses actually and reasonably incurred in the performance of that justice's duties.

**Sec. 3. 4 MRSA §157-B**, as amended by PL 2009, c. 136, §2, is further amended to read:

### **§ 157-B.Active retired judges; appointment**

Any Judge of the District Court who has retired from the court under this chapter prior to December 1, 1984, or any Judge of the District Court who retires or terminates that judge's service on the court in accordance with chapter 27, except for a disability retirement, is eligible for appointment as an Active Retired Judge of the District Court as provided. The Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary matters and to confirmation by the Legislature, may appoint any eligible judge to be an Active Retired Judge of the District Court for a term of 7 years, unless sooner removed. That judge may be reappointed for a like term. Any judge so appointed and designated thereupon constitutes a part of the court from which that judge has retired and has the same jurisdiction and is subject to the same restrictions therein as before retirement. An Active Retired Judge of the District Court may serve as an arbitrator and conduct arbitration in accordance with rules that may be adopted by the Supreme Judicial Court, except that nothing in this section requires the Supreme Judicial Court to adopt those rules. An Active Retired Judge of the District Court may chair screening panels in accordance with Title 24, chapter 21, subchapter 4-A. An Active Retired Judge of the District Court may act only in those cases and matters and hold court only at those sessions and times as that judge is directed and assigned by the Chief Judge of the District Court. Any Active Retired Judge of the District Court may be directed by the Chief Judge to hold any session of the District Court in

any district and when so directed has authority and jurisdiction therein the same as if that judge were the regular judge of that court and, whenever the Chief Judge of the District Court so orders, may hear all matters and issue all orders, notices, decrees and judgments that any Judge of that District Court is authorized to hear and issue. An Active Retired Judge of the District Court receives reimbursement for expenses actually and reasonably incurred in the performance of that judge's duties. An Active Retired Judge of the District Court may be assigned by the Chief Judge of the District Court to act as a mediator for the foreclosure mediation program in accordance with Title 14, section 6321-A, subsection 7.

**Sec. 4. 9-A MRSA §6-116, sub-§2**, as amended by PL 1995, c. 397, §1, is further amended to read:

2. Financial information not normally available to the public that is submitted in confidence by an individual or organization to comply with the licensing, registration or other regulatory functions of the administrator; and

**Sec. 5. 9-A MRSA §6-116, sub-§3**, as enacted by PL 1985, c. 763, Pt. A, §51, is amended to read:

3. Proposed loan documents and other commercial paper submitted to be approved for use and not yet available to the general public or customers of the submitting institution or firm; and

**Sec. 6. 9-A MRSA §6-116, sub-§4** is enacted to read:

4. Any contact information or financial information relating to a mortgagor submitted pursuant to Title 14, section 6111, subsection 3-A and any written notice sent to a mortgagor pursuant to Title 14, section 6111, subsection 4-A that includes a mortgagor's contact information.

**Sec. 7. 9-A MRSA §9-408** is enacted to read:

### **§ 9-408. Violation of the Maine Unfair Trade Practices Act**

Any violation of this article constitutes a violation of the Maine Unfair Trade Practices Act.

**Sec. 8. 9-B MRSA §162, sub-§7** is enacted to read:

7. **Disclosure of notice of mortgagor's right to cure.** The financial records pertain to a notice of mortgagor's right to cure and are disclosed to the Bureau of Consumer Credit Protection pursuant to Title 14, section 6111, subsection 3-A.

**Sec. 9. 14 MRSA §2401, sub-§3**, as amended by PL 1993, c. 114, §2 and affected by §4, is further amended to read:

**3. Judgment required; recording and contents.** The judgment in the proceeding must be signed by the judge and contain the following provisions:

- A. The names and addresses, if known, of all parties to the action, including the counsel of record;
- B. The docket number;

C. A finding that all parties have received notice of the proceedings in accordance with the applicable provisions of the Maine Rules of Civil Procedure and, if the notice was served or given pursuant to an order of a court, including service by publication, that the notice was served or given pursuant to the order;

D. An adequate description of real estate involved; ~~and~~

F. A certification to be signed by the clerk after the appeal period has expired, certifying that the applicable period has expired without action or the final judgment has been entered after remand following appeal; and

G. With regard to mortgage foreclosure actions, the title "judgment of foreclosure and sale," the street address of the real estate involved, if any, and the book and page number of the mortgage.

Unless a proposed judgment with the provisions required in this subsection is presented to the court at the time of the court's decision, the court shall name the party responsible for preparing a judgment with the required provisions. An attested copy of the judgment with the signed clerk's certification must be recorded in the registry of deeds for the county or counties where the subject property is located within one year of the entry of the final judgment unless otherwise ordered by the court. For the purposes of this section, a judgment is not final until all applicable appeal periods have expired and any appellate proceedings and subsequent actions on remand, if any, have been concluded. The court shall name the party responsible for recording the attested copy of the judgment and for paying the appropriate recording fees. The judgment has no effect as to any person not a party to the proceeding who has no actual knowledge of the judgment unless an attested copy of the judgment is recorded in accordance with this section. A judgment of foreclosure and sale for recording may not be recorded in the registry of deeds unless it is in compliance with the requirements of this section. Failure to comply with this section does not affect the validity of the underlying judgment.

**Sec. 10. 14 MRSA §6111, sub-§1**, as amended by PL 1997, c. 579, §1, is further amended to read:

**1. Notice; payment.** With respect to mortgages upon residential property located in this State when the mortgagor is occupying all or a portion of the property as the mortgagor's primary residence and the mortgage secures a loan for personal, family or household use, the mortgagee may not accelerate maturity of the unpaid balance of the obligation or otherwise enforce the mortgage because of a default consisting of the mortgagor's failure to make any required payment, tax payment or insurance premium payment, by any method authorized by this chapter until at least ~~30~~35 days after the date that written notice pursuant to subsection 1-A is given by the mortgagee to the mortgagor and any cosigner against whom the mortgagee is enforcing the obligation secured by the mortgage at the last known addresses of the mortgagor and any cosigner that the mortgagor has the right to cure the default by full payment of all amounts that are due without acceleration, including reasonable interest and late charges specified in the mortgage or note as well as reasonable attorney's fees. If the mortgagor tenders payment of the amounts before the date specified in the notice, the mortgagor is restored to all rights under the mortgage deed as though the default had not occurred.

**Sec. 11. 14 MRSA §6111, sub-§1-A** is enacted to read:

**1-A. Contents of notice.** A mortgagee shall include in the written notice under subsection 1 the following:

- A. The mortgagor's right to cure the default as provided in subsection 1;
- B. An itemization of all past due amounts causing the loan to be in default;
- C. An itemization of any other charges that must be paid in order to satisfy the full obligations of the loan;
- D. A statement that the mortgagor may have options available other than foreclosure, that the mortgagor may discuss available options with the mortgagee, the mortgage servicer or a counselor approved by the United States Department of Housing and Urban Development and that the mortgagor is encouraged to explore available options prior to the end of the right-to-cure period;
- E. The address, telephone number and other contact information for persons having authority to modify a mortgage loan with the mortgagor to avoid foreclosure, including, but not limited to, the mortgagee, the mortgage servicer and an agent of the mortgagee;
- F. The name, address, telephone number and other contact information for all counseling agencies approved by the United States Department of Housing and Urban Development operating to assist mortgagors in the State to avoid foreclosure; and
- G. Where mediation is available as set forth in section 6321-A, a statement that a mortgagor may request mediation to explore options for avoiding foreclosure judgment.

**Sec. 12. 14 MRSA §6111, sub-§3-A** is enacted to read:

**3-A. Information; Bureau of Consumer Credit Protection.** Within 3 days of providing written notice to the mortgagor as required by subsections 1 and 1-A, the mortgagee shall file with the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection, in electronic format as designated by the Bureau of Consumer Credit Protection, information including:

- A. The name and address of the mortgagor and the date the written notice required by subsections 1 and 1-A was mailed to the mortgagor and the address to which the notice was sent;
- B. The address, telephone number and other contact information for persons having authority to modify a mortgage loan with the mortgagor to avoid foreclosure, including, but not limited to, the mortgagee, the mortgage servicer and an agent of the mortgagee; and
- C. Other information, as permitted by state and federal law, requested of the mortgagor by the Bureau of Consumer Credit Protection.

**Sec. 13. 14 MRSA §6111, sub-§3-B** is enacted to read:

**3-B. Report.** On a quarterly basis, the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall report to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters on the number of notices received pursuant to subsection 3-A. To the extent information is available, the report must also include information on the number of foreclosure filings based on data collected from the court and the Department of Professional and Financial Regulation, Bureau of Financial Institutions and on the types of lenders that are filing foreclosures.

**Sec. 14. 14 MRSA §6111, sub-§4-A** is enacted to read:

**4-A. Letter to mortgagor.** Within 3 days of receiving electronic information from the mortgagee as set forth in subsection 3-A, the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall send a written notice to the mortgagor that includes a summary of the mortgagor's rights and available resources, including information concerning the foreclosure mediation program as established in section 6321-A.

**Sec. 15. 14 MRSA §6112** is enacted to read:

### **§ 6112. Statewide outreach**

To the extent resources are available pursuant to subsection 4, the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall engage in the following activities.

**1. Hotline.** The Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall establish a statewide hotline to facilitate a mortgagor's communication with housing counselors approved by the United States Department of Housing and Urban Development for the purposes of discussing options to avoid foreclosure.

**2. Outreach; housing counseling services.** The Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection, in consultation with the Maine State Housing Authority, shall coordinate an outreach program to help families with their housing needs with the intent of expanding the outreach program statewide. The bureau shall use a portion of the funds received pursuant to subsection 4 for contracts with nonprofit organizations that provide housing counseling services and mortgage assistance.

**3. Form.** The Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection, after consultation with interested parties, shall develop for use by the Supreme Judicial Court a one-page form notice for making a request for mediation and making an answer to a foreclosure complaint as described in section 6321-A, subsection 2.

**4. Funding.** The Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall establish a nonlapsing, dedicated account for the deposit of revenues transferred from the Department of Administrative and Financial Services, Maine Revenue Services pursuant to Title 36, section 4641-B, subsection 6 and for any funds received from any public or private source. The

Bureau of Consumer Credit Protection shall use the account to cover the costs of carrying out the duties in this section and section 6111, subsections 3-A, 3-B and 4-A, and the funds in the account may not be used for any other purpose.

**5. Report.** Beginning January 1, 2010, the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall report every 6 months on the revenues received pursuant to subsection 4, the expenditures made to carry out the purposes of this section, any financial orders submitted by the bureau and any updated assumptions related to the bureau's revenues and expenditures in accordance with this section. The report must be submitted to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters.

**Sec. 16. 14 MRSA §6203-A, first ¶**, as amended by PL 1995, c. 106, §1, is further amended to read:

Any holder of a mortgage on real estate that is granted by a corporation, partnership, including a limited partnership, limited liability company or trustee of a trust and that contains a power of sale, or a person authorized by the power of sale, or an attorney duly authorized by a writing under seal, or a person acting in the name of the holder of such mortgage or any such authorized person, may, upon breach of condition and without action, do all the acts authorized or required by the power; except that a sale under the power is not effectual to foreclose a mortgage unless, previous to the sale, notice has been published once in each of 3 successive weeks, the first publication to be not less than 21 days before the day of the sale in a newspaper of general circulation in the town where the land lies and which notice must prominently state the street address of the real estate encumbered by the mortgage deed, if any, and the book and page number of the mortgage. This provision is implied in every power of sale mortgage in which it is not expressly set forth. For mortgage deeds executed on or after October 1, 1993, the power of sale may be used only if the mortgage deed states that it is given primarily for a business, commercial or agricultural purpose. A copy of the notice must, at least 21 days before the date of the sale under the power in the mortgage, be recorded in each registry of deeds in which the mortgage deed is or by law ought to be recorded and must be served on the mortgagor or its representative in interest, or may be sent by registered mail addressed to itthe mortgagor or the mortgagor's representative at itsthe mortgagor's last known address, or to the person and to the address as may be agreed upon in the mortgage, at least 21 days before the date of the sale under the power in the mortgage. The mortgagee shall provide a copy of the notice to a tenant if the mortgagee knows or should know by exercise of due diligence that the property is occupied as a rental unit. Upon request from a mortgagee, the mortgagor or its representative in interest shall provide the name, address and other contact information for any tenant. Notice to a tenant may be served on the tenant by sheriff or may be sent by first class mail and registered mail at the tenant's last known address. No less than 21 days after service of the notice required by this section, the mortgagee may institute an action pursuant to section 6001. This paragraph may not be construed to prohibit an action for forcible entry and detainer in accordance with section 6001 for a reason that is not related to a foreclosure sale. Any power of sale incorporated into a mortgage is not affected by the subsequent transfer of the mortgaged premises from the corporation, partnership, including a limited partnership, limited liability company or trustee of the trust to any other type of organization or to an individual or individuals. The power of sale may not be used to foreclose a mortgage deed granted by a trustee of a trust if at the time the mortgage deed is given the real estate is used exclusively for residential

purposes, the real estate has 4 or fewer residential units and one of the units is the principal residence of the owner of at least 1/2 of the beneficial interest in the trust. If the mortgage deed contains a statement that at the time the mortgage deed is given the real estate encumbered by the mortgage deed is not used exclusively for residential purposes, that the real estate has more than 4 residential units or that none of the residential units is the principal residence of the owner of at least 1/2 of the beneficial interest in the trust, the statement conclusively establishes these facts and the mortgage deed may be foreclosed by the power of sale. The method of foreclosure of real estate mortgages provided by this section is specifically subject to the order of priorities set out in section 6205.

**Sec. 17. 14 MRSA §6321, 3rd ¶**, as amended by PL 2007, c. 391, §9, is further amended to read:

The foreclosure must be commenced in accordance with the Maine Rules of Civil Procedure, and the mortgagee shall within 10 days of commencing the foreclosure also record a copy of the complaint or a clerk's certificate of the filing of the complaint in each registry of deeds in which the mortgage deed is or by law ought to be recorded and such a recording thereafter constitutes record notice of commencement of foreclosure. The mortgagee shall further certify and provide evidence that all steps mandated by law to provide notice to the mortgagor pursuant to section 6111 were strictly performed. The mortgagee shall certify proof of ownership of the mortgage note and produce evidence of the mortgage note, mortgage and all assignments and endorsements of the mortgage note and mortgage. The complaint must allege with specificity the plaintiff's claim by mortgage on such real estate, describe the mortgaged premises intelligibly, including the street address of the mortgaged premises, if any, which must be prominently stated on the first page of the complaint, state the book and page number of the mortgage, state the existence of public utility easements, if any, that were recorded subsequent to the mortgage and prior to the commencement of the foreclosure proceeding and without mortgagee consent, state the amount due on the mortgage, state the condition broken and by reason of such breach demand a foreclosure and sale. If a clerk's certificate of the filing of the complaint is presented for recording pursuant to this section, the clerk's certificate must bear the title "Clerk's Certificate of Foreclosure" and prominently state, immediately after the title, the street address of the mortgaged premises, if any, and the book and page number of the mortgage. Service of process on all parties in interest and all proceedings must be in accordance with the Maine Rules of Civil Procedure. "Parties in interest" includes mortgagors, holders of fee interest, mortgagees, lessees pursuant to recorded leases or memoranda thereof, lienors and attaching creditors all as reflected by the indices in the registry of deeds and the documents referred to therein affecting the mortgaged premises, through the time of the recording of the complaint or the clerk's certificate. Failure to join any party in interest does not invalidate the action nor any subsequent proceedings as to those joined. Failure of the mortgagee to join, as a party in interest, the holder of any public utility easement recorded subsequent to the mortgage and prior to commencement of foreclosure proceedings is deemed consent by the mortgagee to that easement. Any other party having a claim to the real estate whose claim is not recorded in the registry of deeds as of the time of recording of the copy of the complaint or the clerk's certificate need not be joined in the foreclosure action, and any such party has no claim against the real estate after completion of the foreclosure sale, except that any such party may move to intervene in the action for the purpose of being added as a party in interest at any time prior to the entry of judgment. Within 3 days of recording a copy of the complaint or a clerk's certificate of the filing in the registry of deeds, the mortgagee shall provide a copy of the complaint or of the clerk's certificate that prominently states, immediately after the title, the street address of the mortgaged premises, if any,



and the book and page number of the mortgage to the municipal assessor of the municipality in which the property is located and, if the mortgaged premises is manufactured housing as defined in Title 10, section 9002, subsection 7, to the owner of any land leased by the mortgagor.

**Sec. 18. 14 MRSA §6321-A** is enacted to read:

**§ 6321-A. Foreclosure mediation program**

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

A. "Court" means the Supreme Judicial Court.

B. "Program" means the foreclosure mediation program established pursuant to subsection 3.

**2. Notice; summons and complaint; foreclosure proceedings.** When a plaintiff commences an action for the foreclosure of a mortgage on an owner-occupied residential real property of no more than 4 units that is the primary residence of the owner-occupant, the plaintiff shall attach to the front of the foreclosure complaint a one-page form notice to the defendant as developed by the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection in accordance with this subsection and section 6112, subsection 3. The form notice must be written in language that is plain and readily understandable by the general public.

At a minimum, the form notice must contain the following:

A. A statement that failure to answer the complaint will result in foreclosure of the property subject to the mortgage;

B. A sample answer and an explanation that the defendant may fill out the form and return it to the court in the envelope provided as the answer to the complaint. If the debtor returns the form to the court, the defendant does not need to file a more formal answer or responsive pleading and will be scheduled for mediation in accordance with this section; and

C. A description of the program.

**3. Foreclosure mediation program established.** Under the authority granted in Title 4, section 18-B, the court shall adopt rules to establish a foreclosure mediation program to provide mediation in actions for foreclosure of mortgages on owner-occupied residential property with no more than 4 units that is the primary residence of the owner-occupant. The program must address all issues of foreclosure, including but not limited to reinstatement of the mortgage, modification of the loan and restructuring of the mortgage debt. Mediations conducted pursuant to the program must use the calculations, assumptions and forms that are established by the Federal Deposit Insurance Corporation and published in the Federal Deposit Insurance Corporation Loan Modification Program Guide as set out on the Federal Deposit Insurance Corporation's publicly accessible website.

**4. Financial information confidential.** Except for financial information included as part of a foreclosure complaint or any answer filed with the court, any financial statement or information provided to the court or to the parties during the course of mediation in accordance with this section is confidential and is not available for public inspection. Any financial statement or information must be made available as necessary, to the court, the attorneys whose appearances are entered in the case and the parties to the mediation. Any financial statement or information designated as confidential under this subsection must be kept separate from other papers in the case and may not be used for purposes other than mediation.

**5. No waiver of rights.** The plaintiff's or defendant's rights in the foreclosure action are not waived by participating in the program.

**6. Commencement of mediation.** When a defendant returns the notice required under subsection 2 or otherwise requests mediation or makes an appearance in a foreclosure action, the court shall refer the plaintiff and defendant to mediation pursuant to this section.

**7. Provisions of mediation services; filing and fees.** The court shall:

A. Assign mediators, including active retired justices and judges pursuant to Title 4, sections 104 and 157-B, who:

(1) Are trained in mediation and all relevant aspects of the law;

(2) Have knowledge of community-based resources that are available in the judicial districts in which they serve;

(3) Have knowledge of mortgage assistance programs; and

(4) Are trained in using the relevant Federal Deposit Insurance Corporation forms and worksheets.

The court may establish a training program for mediators and require that mediators receive such training prior to being appointed;

B. Report annually to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters and the joint standing committee of the Legislature having jurisdiction over judiciary matters on:

(1) The performance of the program, including numbers of homeowners who are notified of mediation, who attend mediation and who receive legal counseling or legal assistance; and

(2) The results of the mediation process, including the number of loans restructured, number of principal write-downs, interest rate reductions and number of homeowners who default on mortgages within a year after restructuring, to the extent the court has available information;

C. Notwithstanding subsection 10, establish a fee upon a foreclosure filing made on or after June 15, 2009 to support mediation services to be paid for by the plaintiff; and

D. Make recommendations for any changes to the program to the Legislature.

**8. Referral to mortgage assistance programs.** At any time during the mediation process, the mediator may refer the defendant to housing counseling or mortgage assistance programs.

**9. No entry of judgment.** For any foreclosure complaint filed after January 1, 2010 that is scheduled for mediation in accordance with this section, a final judgment may not issue until a mediator's report has been completed pursuant to subsection 13.

**10. Application of mediation provisions to ongoing foreclosure proceedings.** The requirements of this section apply to foreclosures filed after January 1, 2010. The court may in its discretion require mediation for an owner-occupied residential property that is the primary residence of the owner-occupant and that is in the foreclosure process but not scheduled for sale before January 1, 2010 and an owner-occupied residential property with no more than 4 units that is the primary residence of the owner-occupant and that is scheduled for sale before that date.

**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 loan, 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.

**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.

**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. If the report is not the result of a settlement or dismissal of the case, the report must include the outcomes of the Net Present Value Worksheet. 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.

**14. Records.** The court shall maintain records or other information relating to the program as necessary to meet the reporting requirements in subsection 7, paragraph B.

**Sec. 19. 14 MRSA §6322-A** is enacted to read:

**§ 6322-A. Notice to tenants of foreclosure judgment**

The mortgagee shall, after entry of final judgment in favor of the mortgagee, provide a copy of the foreclosure judgment to any residential tenant of the premises. Upon request from a mortgagee, the mortgagor shall provide the name, address and other contact information for any tenant. A tenant who receives written notice under this section is not required to file any responsive pleadings and must receive written notice of all subsequent proceedings including all matters through and including sale of the property. The mortgagee shall provide written notice to the tenant if the mortgagee knows or should know by exercise of due diligence that the property is occupied as a residential rental unit. Notice may be provided to a tenant by first class mail and registered mail at the tenant's last known address only after the mortgagee has made 2 good faith efforts to provide written notice to the tenant in person. After providing the notice required by this section, and upon expiration of the redemption period, the mortgagee may institute an action for forcible entry and detainer pursuant to section 6001. This section may not be construed to prohibit an action for forcible entry and detainer in accordance with section 6001 for a reason that is not related to a judicial foreclosure action.

**Sec. 20. 14 MRSA §6323, sub-§3** is enacted to read:

**3. Extension of deadline.** Upon a showing of good cause, the court may extend a deadline established by this section for the publication of the notice of sale or conducting the public sale.

**Sec. 21. 36 MRSA §4641-B, sub-§6** is enacted to read:

**6. Transfer of tax on deeds of foreclosure or in lieu of foreclosure.** Notwithstanding subsection 4, the State Tax Assessor shall monthly pay to the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection the revenues derived from the tax imposed on the transfer of real property by deeds that convey real property back to a lender holding a bona fide mortgage that is genuinely in default, either by deeds from a mortgagor to a mortgagee in lieu of foreclosure or by deeds from a mortgagee to itself at a public sale pursuant to Title 14, section 6323.

**Sec. 22. 36 MRSA §4641-C, sub-§2**, as repealed and replaced by PL 1993, c. 680, Pt. A, §31, is amended to read:

**2. Mortgage deeds.** Mortgage deeds, discharges of mortgage deeds and partial releases of mortgage deeds, deeds from a mortgagor to a mortgagee in lieu of foreclosure and deeds from a mortgagee to itself at a public sale held pursuant to Title 14, section 6323. For the purposes of this subsection, only the mortgagor is exempt from the tax imposed for a deed in lieu of foreclosure. In the event of a deed to a 3rd party at such a public sale, the tax imposed upon the grantor by section 4641-A applies only to that

portion of the proceeds of sale that exceeds the sums required to satisfy in full the claims of the mortgagee and all junior claimants originally made parties in interest in the proceedings or having subsequently intervened in the proceedings as established by the judgment of foreclosure and sale. The tax must be deducted from the excess proceeds. In the event of a deed from a mortgagee to itself at a public sale held pursuant to Title 14, section 6323, the mortgagee is considered to be both the grantor and grantee for purposes of section 4641-A. In the event of a deed in lieu of foreclosure and a deed from a mortgagee to itself at a public sale held pursuant to Title 14, section 6323, the tax applies to the value of the property as that term is defined in section 4641, subsection 3;

**Sec. 23. 36 MRSA §4641-C, sub-§13**, as enacted by PL 1993, c. 398, §4, is repealed.

**Sec. 24. Phase-in of foreclosure mediation program.** Notwithstanding the Maine Revised Statutes, Title 14, section 6321-A, subsection 10, beginning July 1, 2009, the Supreme Judicial Court may, in its discretion, implement the foreclosure mediation program established pursuant to Title 14, section 6321-A in those judicial districts that the court determines that the mediation program is most needed as long as the mediation program is available in all judicial districts by January 1, 2010. In any judicial district in which the foreclosure mediation program is implemented before January 1, 2010, the Supreme Judicial Court shall schedule mediation for those foreclosures filed on or after July 1, 2009 in which mediation is required in accordance with Title 14, section 6321-A, subsection 6 and may not issue a foreclosure judgment on those foreclosures until a mediator's report is received pursuant to Title 14, section 6321-A, subsection 13. Before February 15, 2010, the court shall report to the Joint Standing Committee on Insurance and Financial Services on the mediation program and recommend whether changes are needed. The Joint Standing Committee on Insurance and Financial Services may report out a bill to the Second Regular Session of the 124th Legislature based on the recommendations.

**Sec. 25. Report on foreclosure mediation program.** Before February 15, 2013, the Supreme Judicial Court shall report to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters on the foreclosure mediation program established pursuant to the Maine Revised Statutes, Title 14, section 6321-A. The court shall report on the performance of the program, including the number of foreclosure filings and foreclosure judgments and the number of foreclosure mediations and the results of the mediation process to the extent the court has available information. The court may consult with the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection in gathering information for the report required by this section. The court shall also recommend changes to the foreclosure mediation program, including whether the program should be modified, continued or repealed. The joint standing committee of the Legislature having jurisdiction over insurance and financial services matters may report out a bill to the First Regular Session of the 126th Legislature based on the court's report and recommendations.

**Sec. 26. Appropriations and allocations.** The following appropriations and allocations are made.

## JUDICIAL DEPARTMENT

### Courts - Supreme, Superior and District 0063

Initiative: Provides funds for the foreclosure mediation program, including funds for one Director, foreclosure mediation program position, 3 Assistant Clerk positions and one Administrative Assistant position.

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2009-10</b>	<b>2010-11</b>
POSITIONS - LEGISLATIVE COUNT	5.000	5.000
Personal Services	\$297,231	\$319,602
All Other	\$451,870	\$425,050
<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<b>\$749,101</b>	<b>\$744,652</b>

<b>JUDICIAL DEPARTMENT</b>	<b>2009-10</b>	<b>2010-11</b>
<b>DEPARTMENT TOTALS</b>	<b>2009-10</b>	<b>2010-11</b>
<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>\$749,101</b>	<b>\$744,652</b>
<b>DEPARTMENT TOTAL - ALL FUNDS</b>	<b>\$749,101</b>	<b>\$744,652</b>

**PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF**

**Bureau of Consumer Credit Protection 0091**

Initiative: Allocates funds for one Office Specialist II position and related costs to establish a statewide hotline to facilitate a mortgagor's communication with housing counselors and an outreach program in coordination with the Maine State Housing Authority including contracting with nonprofit organizations that provide housing counseling services and mortgage assistance and to collect and disseminate foreclosure information.

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2009-10</b>	<b>2010-11</b>
POSITIONS - LEGISLATIVE COUNT	1.000	1.000
Personal Services	\$65,473	\$69,405
All Other	\$159,534	\$136,631
<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<b>\$225,007</b>	<b>\$206,036</b>

<b>PROFESSIONAL AND FINANCIAL REGULATION,</b>	<b>2009-10</b>	<b>2010-11</b>
<b>DEPARTMENT OF</b>		
<b>DEPARTMENT TOTALS</b>	<b>2009-10</b>	<b>2010-11</b>
<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>\$225,007</b>	<b>\$206,036</b>
<b>DEPARTMENT TOTAL - ALL FUNDS</b>	<b>\$225,007</b>	<b>\$206,036</b>

PUBLIC Law, Chapter 402 LD 1418, item 1, 124th Maine State Legislature  
An Act To Preserve Home Ownership and Stabilize the Economy by Preventing Unnecessary Foreclosures

SECTION TOTALS	2009-10	2010-11
OTHER SPECIAL REVENUE FUNDS	\$974,108	\$950,688
SECTION TOTAL - ALL FUNDS	\$974,108	\$950,688

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective June 15, 2009.