



126th MAINE LEGISLATURE

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Legislative Document

No. 392

H.P. 267

House of Representatives, February 12, 2013

An Act To Protect Homeowners and Reduce Foreclosure Fraud

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative BEAVERS of South Berwick.
Cosponsored by Senator GRATWICK of Penobscot and
Representatives: COOPER of Yarmouth, MITCHELL of the Penobscot Nation,
NEWENDYKE of Litchfield, PRIEST of Brunswick, RUSSELL of Portland, TREAT of
Hallowell, Senators: HILL of York, YOUNGBLOOD of Penobscot.

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

2 **Sec. 1. 14 MRSA §6321**, as amended by PL 2009, c. 476, Pt. B, §5 and affected
3 by §9, is further amended by adding after the 2nd paragraph 2 new paragraphs to read:

4 If, within 90 days of service of the foreclosure summons and complaint on the
5 defendant, the defendant sends to the plaintiff and the plaintiff's attorney of record a
6 written request to be allowed to inspect and copy or photograph the original mortgage
7 note, the plaintiff shall produce the original note together with all existing endorsements
8 of the note in accordance with the following provisions. Within 30 days of the
9 defendant's making such a written request, the plaintiff shall send to the defendant a
10 written response stating the date, time and place for the production of the original note.
11 The date for production must be not less than 7 days from the date the written response
12 was sent and not more than 45 days after the written request for inspection was made,
13 unless an extension is granted for good cause shown, or must be at such other time as the
14 plaintiff and defendant may agree upon. The place for inspection must be, at the election
15 of the plaintiff, the courthouse where the action is pending, the office of an attorney
16 within the county in which the action is pending, an office of a banking institution or
17 credit union within the county where the action is pending or such other place upon
18 which the plaintiff and defendant agree. If the plaintiff fails to produce the original note
19 in accordance with this section, the court shall, upon motion of the defendant supported
20 by a proper affidavit, dismiss the foreclosure action without prejudice. The right of the
21 defendant to request inspection of the note as provided for in this section and any
22 corresponding obligation of the plaintiff to produce the note for inspection under this
23 section terminate upon the entry of a judgment of foreclosure or other termination of the
24 foreclosure action. The defendant has the right to request inspection and copying of the
25 original note under this section only once during the pendency of the foreclosure action
26 unless the court in which the action is pending for good cause shown otherwise orders.
27 Nothing in this paragraph alters in any respect the elements of proof and evidentiary
28 standards applicable in any foreclosure action.

29 If the plaintiff claims that it is not in possession of the note but is entitled to enforce
30 the note pursuant to Title 11, section 3-1309 or for some other reason, the furnishing to
31 the defendant of a sworn affidavit setting forth the proof required by Title 11, section
32 3-1309 or setting forth the reason why the plaintiff asserts that it may enforce the note
33 even though the plaintiff is not in possession of the original note at the time and place
34 specified for production pursuant to this section or by mail in advance of the date for
35 production constitutes sufficient compliance with the requirements concerning the
36 production of the original note established in this section. If the plaintiff claims the note
37 is an electronic transferable record as defined in Title 10, section 9416, subsection 1, the
38 furnishing to the defendant of a sworn affidavit setting forth the proof required by Title
39 10, section 9416, subsection 6 at the time and place specified for production pursuant to
40 this section or by mail in advance of the date for production constitutes sufficient
41 compliance with the requirements concerning the production of the original note
42 established in this section. Nothing in this paragraph alters in any respect the elements of
43 proof and evidentiary standards applicable in any foreclosure action.

1 **SUMMARY**

2 This bill requires that a plaintiff seeking to foreclose on a mortgage is required, upon
3 request of the defendant within 90 days of service of the foreclosure summons and
4 complaint, to produce the original mortgage note, evidencing that the plaintiff has the
5 right to foreclose.

6 This bill requires that the plaintiff respond within 30 days to a written request for
7 production of the original note to allow the defendant to inspect and copy or photograph
8 the original mortgage note. The plaintiff must specify the date, time and place for
9 production of the note. The place may be at the courthouse, in an attorney's office or in a
10 financial institution or any other place to which the plaintiff and defendant agree. The
11 date of production must be at least 7 days after the plaintiff's written response and within
12 45 days of the request for production, which may be extended for good cause shown.

13 If the plaintiff fails to produce the original note, the defendant may ask the court to
14 dismiss the action without prejudice.

15 The right of the defendant to request inspection of the note and any corresponding
16 obligation of the plaintiff to produce the note for inspection terminate upon the entry of a
17 judgment of foreclosure or other termination of the foreclosure action. The defendant
18 may request inspection and copying only once, although a court may order otherwise for
19 good cause shown.

20 If the plaintiff is not in possession of the note but the Uniform Commercial Code
21 provisions on lost, stolen or destroyed instruments apply, the plaintiff's provision of a
22 sworn affidavit pursuant to the Maine Revised Statutes, Title 11, section 3-1309 to the
23 defendant constitutes sufficient compliance with the production requirements. This bill
24 does not alter in any respect the elements of proof and evidentiary standards applicable in
25 any foreclosure action.

26 If the plaintiff claims the note is an electronic transferable record, as defined in the
27 Uniform Electronic Transactions Act, the plaintiff's furnishing of a sworn affidavit setting
28 forth the proof required pursuant to Title 10, section 9416, subsection 6 constitutes
29 sufficient compliance with the production requirements. If the plaintiff claims it is not in
30 possession of the original note in circumstances other than those to which Title 11,
31 section 3-1309 applies, the plaintiff may satisfy the production requirements by providing
32 a sworn affidavit setting forth the basis for the assertion that it is nonetheless entitled to
33 enforce the note.