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S.P. 485

In Senate, April 15, 2021

An Act To Prevent Homelessness by Establishing an Eviction Mediation Program

Received by the Secretary of the Senate on April 13, 2021. Referred to the Committee on Judiciary pursuant to Joint Rule 308.2 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 CARNEY of Cumberland.
Cosponsored by Speaker FECTEAU of Biddeford and
Senators: BALDACCI of Penobscot, HICKMAN of Kennebec, President JACKSON of
Aroostook, STEWART of Aroostook, Representatives: HARNETT of Gardiner, MORALES of
South Portland, TALBOT ROSS of Portland.

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

2 **Sec. 1. 14 MRSA §6004-A**, as enacted by PL 2007, c. 246, §2 and affected by §6,
3 is repealed.

4 **Sec. 2. 14 MRSA §6004-B** is enacted to read:

5 **§6004-B. Mediation**

6 **1. Eviction mediation program established.** An eviction mediation program,
7 referred to in this section as "the program" and administered by the Supreme Judicial Court,
8 is established to provide mediation services in actions brought under this chapter. The
9 program provides mediation services in an action brought under this chapter to support
10 housing stability and prevent homelessness by achieving resolution of the action prior to
11 entry of judgment against the tenant. The Supreme Judicial Court may establish an
12 orientation process for mediators and require a mediator to complete the orientation process
13 prior to providing mediation services to the program.

14 **2. Mediation mandatory.** Participation in the program by the parties is mandatory if
15 ordered by a court or requested by either party prior to or during the initial status conference
16 under section 6004-C, subsection 2, paragraph B. The mediator shall schedule the
17 mediation on or before the initial return date of the answer to the complaint. If an
18 immediate hearing is required to prevent irreparable damage to the dwelling or serious
19 physical harm to a person, mediation is not required.

20 **3. Parties to mediation.** If mediation for an action is required under subsection 2, the
21 following parties shall attend the mediation in any manner determined sufficient by the
22 mediator:

23 A. The landlord or a property manager who has authority to agree to a proposed
24 settlement;

25 B. The defendant;

26 C. The attorney for each party who is represented by counsel; and

27 D. Any other person the mediator determines necessary for effective mediation,
28 including a housing counselor.

29 **4. Good faith effort.** Each party and the attorney for each party represented by counsel
30 shall make a good faith effort to negotiate a settlement in the case. If a party or attorney
31 fails to attend mediation or make a good faith effort in the mediation, the court may impose
32 an appropriate sanction on that party or attorney.

33 **5. Referral to legal assistance or housing counseling or rental assistance**
34 **programs.** At any time during the mediation process, the mediator may refer the defendant
35 to legal assistance or housing counseling or assistance programs.

36 **6. Mediated agreement.** Mediation may address all issues needed to resolve the case,
37 including the continuation of tenancy, modification of the terms of a tenancy or
38 restructuring of past rent owed by the tenant. An agreement reached by the parties through
39 mediation must be in writing, signed by the parties and presented by the mediator in a report
40 to the court for approval as a court order.

1 **7. Mediator's report.** Upon the conclusion of a mediation, the mediator shall submit
2 a report to the court that includes:

3 A. The agreement of the parties presented for approval as a court order under
4 subsection 6;

5 B. A detailed summary of all agreements among the parties, indicating each party's
6 respective obligations agreed to; and

7 C. Notification to the court if, in the mediator's opinion, a party did not negotiate in
8 good faith.

9 **8. No waiver of rights.** Participation in the program does not result in the waiver of
10 any right of a party afforded to a party who does not participate in the program.

11 **9. Mediation services.** To provide mediation services under this section, a mediator
12 must:

13 A. Be trained in mediation and relevant aspects of the law related to real estate, forcible
14 entry and detainer procedures or eviction prevention;

15 B. Have knowledge of community-based resources that are available in the judicial
16 district of the court in which the mediator is providing services;

17 C. Have reasonable knowledge of rental assistance programs in the judicial district of
18 the court in which the mediator is providing services; and

19 D. Be capable of facilitating a resolution of the case that results or is likely to result in
20 a mutually beneficial settlement to the parties.

21 **10. Program evaluation.** The Supreme Judicial Court shall report annually to the
22 joint standing committee of the Legislature having jurisdiction over housing matters and
23 the joint standing committee of the Legislature having jurisdiction over judiciary matters
24 on:

25 A. The performance of the program, including the number of mediations requested,
26 the number of mediations that occur and the number of cases in which an agreement
27 was reached; and

28 B. Recommendations for any changes to the program.

29 **11. Rules.** The Supreme Judicial Court shall adopt rules to carry out the purposes of
30 this section.

31 **Sec. 3. 14 MRSA §6004-C** is enacted to read:

32 **§6004-C. Action procedures**

33 **1. Attachments to summons and complaint.** Upon commencement of an action under
34 this chapter, the plaintiff shall attach to the summons and complaint to be delivered to the
35 defendant:

36 A. A copy of the lease or any other agreement between the parties; and

37 B. A one-page form notice provided by the Maine State Housing Authority, written in
38 language that is plain and readily understandable by the general public, that contains at
39 a minimum the following:

1 (1) A description of the court procedure to be followed in the case, including a
2 clear explanation of the process that must be followed before a tenant is required
3 to vacate a rental unit;

4 (2) A statement that failure to appear at any scheduled status conference or hearing
5 may result in the entry of judgment in favor of the landlord that would require the
6 tenant to leave the rental unit;

7 (3) A list of rental assistance programs available to residential tenants in the
8 jurisdiction of the court in which the action is brought;

9 (4) A list of resources that provide legal information and representation available
10 to residential tenants in the jurisdiction of the court in which the action is brought;

11 (5) A list of resources that provide housing counseling available to residential
12 tenants in the jurisdiction of the court in which the action is brought;

13 (6) A statement that the defendant has a right to request mediation prior to or during
14 the initial telephonic status conference under subsection 2; and

15 (7) A court-approved form to request mediation.

16 **2. Procedures.** An action brought under this chapter must follow the following
17 procedures:

18 A. The court shall schedule an initial telephonic status conference, unless otherwise
19 ordered by the court, at which either party may request mediation, receive information
20 about legal assistance, housing counseling or rental assistance programs and inform the
21 court if a mediation agreement has been reached;

22 B. At the initial telephonic status conference, the court shall:

23 (1) If both parties appear, schedule a final hearing and, if ordered by the court or
24 requested by a party, mediation under section 6004-B;

25 (2) If the plaintiff fails to appear, dismiss the action without prejudice;

26 (3) If the defendant fails to appear, schedule a final hearing; or

27 (4) If both parties fail to appear, dismiss the action without prejudice; and

28 C. At the final hearing, the court shall:

29 (1) Approve a mediation order under section 6004-B, subsection 6; or

30 (2) If there is no mediation order under section 6004-B:

31 (a) If both parties appear, commence the final hearing;

32 (b) If the plaintiff fails to appear, dismiss the action without prejudice;

33 (c) If the defendant fails to appear, order judgment in favor of the plaintiff upon
34 affirmative proof by the plaintiff of the elements of the complaint; or

35 (d) If both parties fail to appear, dismiss the action without prejudice.

36 **Sec. 4. 30-A MRSA §4852, sub-§1-A** is enacted to read:

37 **1-A. Eviction mediation program.** Beginning July 1, 2022, the Maine State Housing
38 Authority shall allocate \$1,350,000 from the Housing Opportunities for Maine Fund each

1 fiscal year to support the eviction mediation program under Title 14, section 6004-B,
2 including:

3 A. To one or more legal services providers \$1,000,000 to provide legal representation
4 to tenants subject to forcible entry and detainer actions under Title 14, chapter 709; and

5 B. To the Maine Supreme Judicial Court \$350,000 to offset the costs to the court system
6 of implementing the eviction mediation program.

7 **Sec. 5. 30-A MRSA §4852, sub-§2**, as repealed and replaced by PL 1989, c. 48,
8 §§5 and 31 and amended by c. 581, §11, is further amended to read:

9 **2. Use Other uses of money.** Money remaining in the fund after the purposes of
10 subsection 1-A have been carried out may be used as provided in this subsection.

11 A. Money in the Housing Opportunities for Maine Fund may be applied to:

12 (1) Reduce the rate of interest on or the principal amount of such mortgage loans
13 as the Maine State Housing Authority determines;

14 (2) Reduce payments by persons of low-income for the rental of single-family or
15 multi-unit residential housing;

16 (3) Make mortgage loans and such other types of loans or grants as the Maine
17 State Housing Authority determines;

18 (4) Fund reserve funds for, pay capitalized interest on, pay costs of issuance of or
19 otherwise secure and facilitate the sale of the Maine State Housing Authority's
20 bonds issued under this subchapter;

21 (5) Pay the administrative costs of state public bodies or other public
22 instrumentalities and private, nonprofit corporations directly associated with
23 housing projects; and

24 (6) Otherwise make the costs of single-family or multi-unit residential housing
25 affordable by persons of low-income.

26 A-1. In addition to the uses provided in paragraph A, the following may be used to
27 pay the administrative costs of the authority's programs:

28 (1) No more than 3% of the money in the fund, other than amounts derived from
29 the dedication of the tax on real estate transfers established in Title 36, chapter
30 711-A;

31 (2) Any earnings from the fund; and

32 (3) Any recoveries to the fund, including, but not limited to, repayments,
33 recaptures of principal and recaptures of interest owed.

34 B. Notwithstanding the requirements of section 4702, subsection 10, mortgage loans
35 made or assisted with money from the fund may be secured by a mortgage which does
36 not constitute a first lien.

37 C. If any money in the Housing Opportunities for Maine Fund is used in conjunction
38 with or as part of the issuance of any mortgage purchase bonds and the proceeds of the
39 bonds are allocated by the Maine State Housing Authority to assist in the acquisition
40 of housing, the Maine State Housing Authority may require that the purchaser of the
41 housing make a minimum down payment in an amount determined by the Maine State

1 Housing Authority; except that any such requirement shall not apply to mortgage loans
2 insured or guaranteed by the United States Veterans Administration, the Federal
3 Housing Administration or any other agency of the Federal Government that allows
4 for a lesser down payment than that required by the Maine State Housing Authority.
5 The Maine State Housing Authority may not limit the maximum down payment that
6 may be required.

7 D. Money in the fund may be provided to 3rd parties to provide reasonable
8 administrative support and planning funds for the development or specific creation of
9 new housing units or the rehabilitation of dilapidated or substandard existing housing
10 units.

11 **Sec. 6. Form attachment to be included with forcible entry and detainer**
12 **summons and complaint.** The Maine State Housing Authority shall develop a form
13 attachment to be included with forcible entry and detainer complaints pursuant to the Maine
14 Revised Statutes, Title 14, section 6004-C, subsection 1, paragraph B.

15 **SUMMARY**

16 This bill establishes an eviction mediation program to provide mediation services to
17 the parties in forcible entry and detainer actions. The court may order and either party may
18 request mediation, which is then mandatory for the parties. The program also provides
19 information on rental, housing and legal counseling and assistance to tenants. This bill
20 establishes court procedures for forcible entry actions and directs the Maine State Housing
21 Authority to develop a form landlords must include with the summons and complaint
22 detailing the tenant's rights and providing information on rental, housing and legal
23 assistance. The bill also directs the Maine State Housing Authority to expend \$1,350,000
24 each fiscal year from the Housing Opportunities for Maine Fund to hire legal services for
25 tenants subject to eviction proceedings and to the Maine Supreme Judicial Court to offset
26 costs to the court system for implementing the eviction mediation process.