

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Improve the Process for Recovering Personal Property

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

Sec. 1. 14 MRSA §6012, as amended by PL 2001, c. 133, §§1 and 2, is repealed.

Sec. 2. 14 MRSA §6051-A is enacted to read:

§ 6051-A. Suits to recover personal property

1. Suit to resolve dispute. If 2 or more persons claim rights in, title to or possession of personal property, any claimant may bring a civil suit in District Court to resolve a dispute among the claimants. The plaintiff has the option of bringing the action by way of summary proceeding or plenary proceeding.

2. Summary proceeding. If the suit is brought as a summary proceeding, the summons must state the day when the action is returnable, which may not be less than 7 days from the date of service of the summons, and must notify the defendant that, in case of the defendant's failure to appear and state a defense on the return day, judgment by default will be rendered against the defendant. The defendant may appear and defend without filing a responsive pleading. The suit may not be joined with any other action or claim, nor may a defendant in such a suit file any counterclaim. There may be no removal to the Superior Court. At the hearing, the plaintiff shall produce the best available evidence under which the plaintiff claims an interest in the personal property. The defendant shall then show why possession of the property should not be delivered immediately to the plaintiff.

3. Discovery. No later than 24 hours before the hearing in a summary proceeding, a defendant may file a motion for leave to conduct discovery. The motion must state with reasonable specificity the information to be sought and the reasons therefor. At the hearing, prior to taking any evidence, the court shall hear argument on the motion and determine whether to permit discovery, whether to allow both sides to conduct discovery, whether to condition discovery on the furnishing of adequate security, the scope of discovery and the timetable for discovery and subsequent trial. If the court requires security, the defendant has 7 days to comply with the order and so advise the court. If the court does not receive certification concerning security within 7 days, the court shall schedule trial for the next time and day on which the court hears such suits.

4. Venue. Suit may be brought either in the division where any plaintiff or defendant resides or where all of the personal property is located. Subsequent relocation of the personal property is not a basis for a change of venue.

5. Court authority. The court has equitable power to make all appropriate orders, including but not limited to turnover orders, in relationship to the personal property and the parties to the action and to compel obedience to its judgment and orders. The remedy provided in this section is a remedy in equity and is in addition to and not in lieu of other remedies.

6. Appeal. Appeals are governed by Title 4, section 57 and the Maine Rules of Appellate Procedure. Any request to the District Court for a stay pending appeal is governed by the Maine Rules of Civil Procedure, Rule 62(d).

7. Rules. If the suit is brought as a plenary proceeding, the Maine Rules of Civil Procedure apply, except as otherwise provided by statute. If the suit is brought as a summary proceeding, the suit is governed by rules, consistent with this section, adopted by the Supreme Judicial Court.

SUMMARY

This bill creates a new equitable cause of action to resolve disputes over rights in title to or possession of personal property and eliminates the "personal property forcible entry and detainer" action. Like the existing action of forcible entry and detainer, this cause of action retains summary process, prompt relief and streamlined procedural requirements. This bill specifies that the new remedy is equitable in nature and therefore does not entail a right to trial by jury. This bill gives to the District Court broad discretion in fashioning appropriate equitable relief. Finally, the bill makes provisions with respect to venue, discovery and appeals that differ from the practice in forcible entry and detainer actions.