

### §6113. Mortgage servicer duty of good faith

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

A. "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing. [PL 2019, c. 363, §1 (NEW).]

B. [PL 2021, c. 203, §1 (RP).]

B-1. Except as provided in subsection 5, "mortgage servicer" means a person responsible for servicing an obligation, including a person that holds or owns an obligation or originates a mortgage loan if the person also services the obligation. [PL 2021, c. 203, §1 (NEW).]

C. "Obligation" means a debt or other duty or liability of an obligor secured by a mortgage of the type described in section 6111, subsection 1 and includes a mortgage deed even if the debt secured by the mortgage deed has been discharged in bankruptcy. [PL 2021, c. 203, §1 (AMD).]

D. "Obligor" means a person that:

- (1) Owes payment or performance of an obligation;
- (2) Has provided property other than the mortgaged property to secure payment of the obligation;
- (3) Has granted a mortgage interest with respect to the mortgaged property; or
- (4) Is otherwise accountable in whole or in part for payment of the obligation. [PL 2019, c. 363, §1 (NEW).]

E. [PL 2021, c. 203, §1 (RP).]

F. "Servicing" means any one or more of the following:

- (1) Receiving a periodic payment from an obligor under the terms of an obligation, including an amount received for an escrow account;
- (2) Making or advancing payments to the owner of an obligation on account of an amount due from the obligor under a mortgage servicing loan document or a servicing contract;
- (3) Making a payment to the obligor under a home equity conversion mortgage or reverse mortgage;
- (4) Evaluating the obligor for loss mitigation or communicating with the obligor with respect to loss mitigation;
- (5) Collecting funds from a homeowner for deposit into an escrow account and making payments out of an escrow account; and
- (6) Taking any other action with respect to an obligation that affects the obligor's payment or performance of the obligation or that relates to the enforcement of the rights of the loan owner arising under the obligation. [PL 2021, c. 203, §1 (AMD).]

[PL 2021, c. 203, §1 (AMD).]

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

[PL 2019, c. 363, §1 (NEW).]

**3. Effect of violation during foreclosure.** If during a foreclosure action a mortgage servicer controlling or managing the action on its own behalf or on behalf of the owner of the obligation subject to foreclosure is shown to have committed a violation of its duty of good faith under subsection 2, the

court may dismiss the action, stay the action on appropriate terms and conditions or impose other appropriate sanctions until the violation is cured.

[PL 2021, c. 203, §1 (AMD).]

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

A. A homeowner or obligor injured by a violation of the duty of good faith may bring an action against the mortgage servicer for all actual damages sustained by the homeowner or obligor. [PL 2021, c. 203, §1 (AMD).]

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

- (1) The frequency and persistence of violations by the mortgage servicer;
- (2) The nature of the violations;
- (3) The extent to which the violations were intentional; and
- (4) The extent to which the actions that constitute violations are prohibited by state or federal laws, rules or regulations, and the extent to which such actions constitute violations by the mortgage servicer of any consent judgments to which it is a party. [PL 2021, c. 203, §1 (AMD).]

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

- (1) The mortgage servicer may not charge the loan owner for, or add to the amount of the obligation, any attorney's fees or costs incurred as a result of the violation or any other attorney's fees or costs incurred before the mortgage servicer cures the violation; and
- (2) The court shall order the mortgage servicer to pay to the obligor the obligor's costs incurred in the action and reasonable attorney's fees as determined by the court. [PL 2021, c. 203, §1 (AMD).]

[PL 2021, c. 203, §1 (AMD).]

**5. Exclusion.** The term "mortgage servicer" defined in subsection 1 does not include a supervised financial organization as defined in Title 9-A, section 1-301, subsection 38-A; a financial institution holding company as defined in Title 9-B, section 1011, subsection 1; a mutual holding company as defined in Title 9-B, section 1052, subsection 2; a credit union service organization as defined in 12 Code of Federal Regulations, Section 712.1; a subsidiary of a supervised financial organization, financial institution holding company, mutual holding company or credit union service organization; or the Maine State Housing Authority.

[PL 2021, c. 203, §1 (AMD).]

#### SECTION HISTORY

PL 2019, c. 363, §1 (NEW). PL 2021, c. 203, §1 (AMD).

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