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Legislative Document

No. 1629

H.P. 1124

House of Representatives, June 5, 2017

An Act To Protect the Elderly from Tax Lien Foreclosures

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in black ink, reading "R(t) B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative ESPLING of New Gloucester. (GOVERNOR'S BILL)

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

2 **Sec. 1. 36 MRSA §943**, as amended by PL 2011, c. 104, §1, is repealed and the
3 following enacted in its place:

4 **§943. Tax lien mortgage; redemption; discharge; foreclosure**

5 **1. Tax lien mortgage.** The filing of the tax lien certificate in the registry of deeds
6 creates a tax lien mortgage on that real estate to the municipality in which the real estate
7 is situated having priority over all other mortgages, liens, attachments and encumbrances
8 of any nature and gives to that municipality all the rights usually incident to a mortgagee,
9 except that the municipality does not have any right of possession of that real estate until
10 the right of redemption has expired.

11 The filing of the tax lien certificate in the registry of deeds is sufficient notice of the
12 existence of the tax lien mortgage.

13 In the event that the tax, interest and costs underlying the tax lien are paid within the
14 period of redemption, the municipal treasurer or assignee of record shall prepare and
15 record a discharge of the tax lien mortgage in the same manner as is provided for the
16 discharge of real estate mortgages, except that a facsimile signature of the treasurer or
17 treasurer's assignee may be used.

18 If the tax lien mortgage, together with interest and costs, is not paid within 18 months
19 after the date of the filing of the tax lien certificate in the registry of deeds, the tax lien
20 mortgage is deemed to have been foreclosed and the right of redemption to have expired.

21 **2. Additional notice prior to foreclosure.** The municipal treasurer shall notify the
22 party named on the tax lien mortgage and each record holder of a mortgage on the real
23 estate not more than 45 days nor less than 30 days before the foreclosing date of the tax
24 lien mortgage, in a writing signed by the treasurer or bearing the treasurer's facsimile
25 signature and left at the holder's last and usual place of abode or sent by certified mail,
26 return receipt requested, to the holder's last known address of the impending automatic
27 foreclosure and indicating the exact date of foreclosure. For sending this notice, the
28 municipality is entitled to receive \$3 plus all certified mail, return receipt requested, fees.
29 These costs must be added to and become a part of the tax. If notice is not given in the
30 time period specified in this subsection to the party named on the tax lien mortgage or to
31 any record holder of a mortgage, the person not receiving timely notice may redeem the
32 tax lien mortgage until 30 days after the treasurer does provide notice in the manner
33 specified in this section.

34 The notice of impending automatic foreclosure must be substantially in the following
35 form:

36 STATE OF MAINE

37 NOTICE OF IMPENDING AUTOMATIC FORECLOSURE

38 Title 36, M.R.S.A. Section 943

39 IMPORTANT: DO NOT DISREGARD

THIS NOTICE. YOU WILL LOSE
YOUR PROPERTY UNLESS YOU PAY
YOUR 20 PROPERTY TAXES,
INTEREST AND COSTS.

TO:

You are the party named on a tax lien certificate filed on _____, 20____, and recorded in Book _____, Page _____ in the County Registry of Deeds. This filing has created a tax lien mortgage on the real estate described therein.

On _____, 20____, the tax lien mortgage will be foreclosed and your right to recover your property by paying the taxes, interest and costs that are owed will expire.

IF THE TAX LIEN FORECLOSES,
THE MUNICIPALITY WILL OWN
YOUR PROPERTY.

If you cannot pay the property taxes you owe please contact me to discuss this notice.

Municipal Treasurer

After the expiration of the 18-month period for redemption, the mortgagee of record of the real estate or the mortgagee's assignee and the owner of record if the real estate has not been assessed to the owner of record or the person claiming under the owner of record, in the event the notice provided for the mortgagee and owner has not been given as provided in section 942, have the right to redeem the real estate within 3 months after receiving actual knowledge of the recording of the tax lien certificate by payment or tender of the amount of the tax lien mortgage, together with interest and costs, and the tax lien mortgage is then discharged by the municipality in the manner provided.

The tax lien mortgage is prima facie evidence in all courts in all proceedings by and against the municipality and its successors and assigns, of the truth of the statements in the tax lien mortgage and, after the period of redemption has expired, of the title of the municipality to the real estate described in the tax lien mortgage and of the regularity and validity of all proceedings with reference to the acquisition of title by the tax lien mortgage and the foreclosure.

Whenever the person against whom the tax is assessed has died after the tax has been committed and prior to the expiration of the 18-month period of foreclosure and that person has left a will offered for probate, the probate judge of the county in which that will is offered upon petition of any devisee of the real estate on which the tax is unpaid may grant a period of redemption not to exceed 60 days following the final allowance or disallowance of that will. Notice of the petition must be given to the tax collector of the municipality in which the property is located, and a certified copy of the court order must be filed in the registry of deeds of the county in which the property is located.

3. Preforeclosure process. Notwithstanding any provision of subsection 1 or 2 to the contrary, the preforeclosure process described in this subsection applies only to

1 owners 65 years of age or older. After filing the tax lien mortgage and at least 90 days
2 before the right of redemption expires, the municipality shall proceed as follows.

3 A. The municipality shall contact the owner and, with the owner's consent, assist the
4 owner in applying for a tax abatement pursuant to section 841. The municipality shall
5 make a good faith evaluation of the owner's eligibility for a tax abatement. If the
6 owner is found eligible for a full abatement of the tax, the municipality shall
7 discharge its lien. The municipality shall inform the owner of the option of seeking a
8 reverse mortgage.

9 B. If pursuant to paragraph A a partial abatement is granted or if the owner is found
10 not eligible for an abatement, the municipality must offer the owner a reasonable
11 repayment schedule. If the owner does not agree to the repayment schedule, the
12 municipality must offer to engage in mediation with the goal of producing a mutually
13 acceptable schedule. The municipality shall select the mediator and pay the
14 mediator's fee, and one-half of the cost must be added to the amount owed by the
15 owner. The mediator must be impartial and listed with the judicial branch. If
16 mediation is successful, the right of redemption does not expire as long as the owner
17 makes payments according to the mediation schedule.

18 If a scheduled payment becomes delinquent more than 18 months after the tax
19 commitment date and remains delinquent for more than 30 days, the municipality
20 shall send a notice of delinquency to the owner by certified mail, return receipt
21 requested, that includes a statement that payment of the full balance owed must be
22 made within 14 days of receiving the notice of delinquency or the right of redemption
23 will expire. If payment is not made by the 15th day, the right of redemption expires.
24 The municipality shall confirm the date of expiration by filing a notice of the
25 expiration date in the registry of deeds where the lien was filed. A copy of the notice
26 must be given to the owner in hand or by certified mail, return receipt requested.

27 C. If at any time a municipal official or employee has a reasonable suspicion that the
28 owner has a physical or mental condition that interferes with the owner's ability to
29 have business dealings with the municipality or that the owner is a victim of abuse,
30 neglect, including self-neglect and neglect by another, or exploitation, the
31 municipality shall notify the Department of Health and Human Services, office of
32 elder and adult services, adult protective services program. The department shall
33 determine whether the owner is in need of protective services or refer the owner to
34 other community services that can assist the owner with the process described in this
35 section.

36 **4. Foreclosure and sale.** After the foreclosure process is completed and the right of
37 redemption has expired, any sale of the property by the municipality must proceed as
38 follows.

39 A. If an owner is 65 years of age or older and is living in the property and the
40 property is the owner's sole residence, the municipality may not take any action to
41 sell the property to a 3rd party until the value of the municipal lien for nonpayment of
42 taxes established by this chapter exceeds 50% of the municipal assessed value of the
43 property.

B. The owner may purchase the property at any time before the property is sold or may purchase it after the sale from the 3rd party if allowed by municipal ordinance or other law for the amount of taxes owed plus interest, fees or other charges allowed by law. If a municipality conveys the premises back to the former record titleholder or to a successor of that holder who obtained title before the foreclosure for a consideration of the taxes and costs due, the rights of the other parties claiming an interest of record in the premises at the time of foreclosure, including mortgagees, lien creditors or other secured parties, are revived as if the tax lien mortgage had not been foreclosed.

C. The sale of the property by the municipality, other than to the owner whose property has been the subject of foreclosure pursuant to this section, must be conducted in a commercially reasonable manner. The property must be listed for sale and sold by an independent licensed broker. The property may not be sold for less than its municipal assessed value absent an appraisal conducted by a licensed appraiser that demonstrates that the fair market value of the property has deteriorated since the most recent tax assessment by the municipality, after which the property may be sold for the newly appraised value.

D. The municipality or any purchaser of the property from the municipality may not take any action to remove the former owner from the property until after a sale contemplated by this section is completed and any right that the former owner may have to repurchase the property by municipal ordinance or other law has expired.

E. Any proceeds received from the sale of the property in excess of the tax owed, interest and allowable fees, including any real estate broker fee or fees paid for mediation services, must be refunded to the former owner.

5. Discharge of lien. A discharge of a municipal tax lien mortgage given after the right of redemption has expired, if the discharge has been recorded in the registry of deeds for more than one year, terminates all title of the municipality derived from that tax lien mortgage or any other recorded tax lien mortgage for which the right of redemption expired 10 years or more prior to the foreclosure date of this discharged lien, unless the municipality has conveyed any interest based upon the title acquired from any of the affected liens. This subsection applies to discharges of municipal tax lien mortgages given after October 1, 1935.

SUMMARY

This bill creates a preforeclosure process that municipalities must follow in order to successfully foreclose a tax lien on property of a homeowner 65 years of age or older. The preforeclosure process includes active municipal assistance with an abatement application and mediation if necessary to create a reasonable tax payment plan. This bill also creates additional provisions concerning the sale of foreclosed property for all homeowners including allowing a homeowner to pay the tax lien with interest and costs before a tax sale; allowing a homeowner to remain in the home until the sale is completed; requiring the use of a real estate broker when the property is sold; and requiring the return to the homeowner of any net proceeds from the sale after adjustment for taxes owed, interest, fees and other allowable costs.