126th MAINE LEGISLATURE

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Legislative Document **No. 851**

H.P. 602 House of Representatives, March 5, 2013

An Act To Require the Return of Excess Funds by a Municipality That Forecloses on Real Estate

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland

MILLICENT M. MacFARLAND
Clerk

Presented by Representative DICKERSON of Rockland.
Cosponsored by Senator MAZUREK of Knox and
Representatives: CASAVANT of Biddeford, CHIPMAN of Portland, GOODE of Bangor, KUMIEGA of Deer Isle, MASTRACCIO of Sanford, VILLA of Harrison.

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

Sec. 1. 36 MRSA §949 is enacted to read:

§949. Disbursement of excess funds

A municipality that obtains title to real estate under the operation of this article shall disburse to the former owner the excess of any funds as provided in this section.

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

A. "Excess of any funds" means the amount obtained for the disposition of real estate less:

(1) All tax liens imposed on the real estate by the municipality, including interest;

(2) Fees for recording and discharge of the lien, as established by Title 33, section 751, plus $13;

(3) The fee established in section 943 for sending a notice if the notice is actually sent, including fees for certified mail, return receipt requested;

(4) Any court costs;

(5) Any property taxes that would have been due on the real estate but for it being in foreclosure, including interest; and

(6) All expenses incurred in disposing of the real estate.

B. "Former owner" means a party named on the tax lien mortgage at the time of the levy of the tax lien or that party's representative or a successor, heir or assign or a representative of that successor, heir or assign.

C. "Municipality" means, for real estate located in the unorganized territory, the State Tax Assessor.

2. Time and form of return; notice. Within 30 days of the disposition of real estate or 180 days of foreclosure, whichever is earlier, a municipality shall mail by certified mail, return receipt requested, to the former owner's last known address notice of the excess of any funds. The notice must include an itemized statement showing the amount for which the real estate was sold or appraised and all deductions made from that amount. The notice also must include directions for the redemption of the excess of any funds, including requiring the personal appearance of the former owner to claim the excess funds and the location and hours of operation of the clerk of the municipality or, for real estate located in the unorganized territory, the bureau.

3. Escrow; negotiation; failure to redeem. A municipality shall hold the excess of any funds for the benefit of the former owner in escrow in a segregated account for 90 days or until the completion of negotiation, as required by this subsection, or arbitration, as required by subsection 4, whichever is later. Upon the request of the former owner and within 90 days of the notice provided pursuant to subsection 2, the municipality shall enter into negotiations for the return of the excess of any funds. If the former owner is dissatisfied with the result of the negotiations, the former owner, within 30 days of negotiation, may seek arbitration as provided in subsection 4. If the former owner fails to appear personally within 90 days of the notice provided pursuant to subsection 2, the excess of any funds may be retained by the municipality.

4. Arbitration. The former owner, within 90 days of the notice provided pursuant to subsection 2 or 30 days of the negotiation with the municipality pursuant to subsection 3, may request that the controversy regarding the return of the excess of any funds be submitted to binding arbitration. The arbitration may be by one arbitrator, mutually agreed upon by the municipality and the former owner. If agreement on one arbitrator is not reached, the arbitration must be submitted to a panel of 3 arbitrators, one of whom is selected by the former owner; one of whom is selected by the municipality; and one of whom is a neutral arbitrator who is selected jointly by the other 2 arbitrators. Each party shall pay its chosen arbitrator and half of the cost of the neutral arbitrator. Determination of disputed matters by the panel of arbitrators is final and binding on the parties. The arbitration must be administered under the auspices of the American Arbitration Association or a successor organization and, except for the selection of arbitrators, is governed by the commercial rules and procedures of the American Arbitration Association. The concept of "last best offer" must be used.

5. Failure to dispose of real estate. If a municipality does not dispose of real estate within 180 days of foreclosure, the excess of any funds is determined by subtracting from the fair market value of the real estate at the time of foreclosure, as determined by an independent appraisal, the costs specified in subsection 1, paragraph A and the cost of the appraisal performed pursuant to this subsection.

Sec. 2. Application. This Act applies to real estate foreclosed on by a municipality or, for real estate located in the unorganized territory, the State Tax Assessor, on or after the effective date of this Act.

SUMMARY

Under current law, if a municipality, or the State Tax Assessor for real estate located in the unorganized territory, forecloses on a parcel of real estate for failure to pay taxes owed on that real estate, the municipality is under no obligation to return any funds that exceed the amount owed in taxes after the sale of the real estate.

This bill requires the municipality, which includes the State Tax Assessor for real estate located in the unorganized territory, to provide notice of the availability of the excess funds, after subtracting the tax lien, interest, fees for recording the lien, costs of mailing notice, court costs and any other expenses incurred in disposing of the real estate, to the former owner within 30 days of sale of the real estate or 180 days of the foreclosure, whichever is sooner. The municipality is required to keep the excess funds in a segregated escrow account. If the former owner fails to claim the excess funds in person within 90 days of the notice, the municipality is allowed to retain the excess funds. If the former owner or the former owner's representative notifies the municipality within 90 days of the notice, the municipality must negotiate with the former owner over the

return of the excess funds. If the former owner is dissatisfied with the municipality's offer, the former owner may seek binding arbitration for resolution of the matter.