TITLE 14

COURT PROCEDURE -- CIVIL

PART 1

GENERAL PROVISIONS

CHAPTER 1

PARTIES AND TITLE OF ACTIONS

SUBCHAPTER 1

PARTIES

§1. Treasurers may bring action in own name

Treasurers of state, counties, towns and corporations may maintain civil actions in their own names as treasurers on contracts given to them or their predecessors and prosecute civil actions pending in the names of their predecessors.

§2. Actions by unincorporated societies

Any organized unincorporated society or association may sue in the name of its trustees for the time being and may maintain an action, though the defendant or defendants or some of them are members of the same society or association.

§3. Guardian of incompetent party; compensation

A guardian appointed to prosecute or defend an action for an incompetent party is entitled to a reasonable compensation and is not liable for costs.

§4. Action on real covenants of first grantor by assignee of grantee

The assignee of a grantee or his executor or administrator after eviction by an older and better title may maintain an action on a covenant of seizin or freedom from encumbrance contained in absolute deeds of the premises between the parties, and recover such damages as the first grantee might have recovered on eviction, upon filing, with his complaint or at such later time as the court permits, for the use of his grantor, a release of the covenants of his deed and of all causes of action thereon. The prior grantee cannot, in such case, release the covenants of the first grantor to the prejudice of his grantee.

§5. Grantee may defend action

Grantees may appear and defend in civil actions against their grantors in which the real estate conveyed is attached.

§6. Property of deceased debtor on joint contract liable

(REPEALED)

SECTION HISTORY

PL 1965, c. 351, §3 (RP).

SUBCHAPTER 2

MODEL JOINT OBLIGATIONS ACT

§11. Definitions

In this subchapter, unless otherwise expressly stated, obligation does not include a liability in tort; obligor does not include a person liable for a tort; obligee does not include a person having a right based on a tort. Several obligors means severally bound for the same performance. [PL 1965, c. 351, §1 (NEW).]

SECTION HISTORY

PL 1965, c. 351, §1 (NEW).

§12. Discharge of co-obligor by judgment

A judgment against one or more of several obligors, or against one or more of joint, or of joint and several obligors shall not discharge a co-obligor who was not a party to the proceeding wherein the judgment was rendered. [PL 1965, c. 351, §1 (NEW).]

SECTION HISTORY

PL 1965, c. 351, §1 (NEW).

§13. Payments credited to co-obligors

The amount or value of any consideration received by the obligee from one or more of several obligors, or from one or more of joint, or of joint and several obligors, in whole or in partial satisfaction of their obligations, shall be credited to the extent of the amount received on the obligations of all co-obligors to whom the obligor or obligors giving the consideration did not stand in the relation of a surety. [PL 1965, c. 351, §1 (NEW).]

SECTION HISTORY

PL 1965, c. 351, §1 (NEW).

§14. Release with reservation of rights

Subject to section 13, the obligee's release or discharge of one or more of several obligors, or of one or more of joint, or of joint and several obligors shall not discharge co-obligors, against whom the obligee in writing and as part of the same transaction as the release or discharge, expressly reserves his rights; and in the absence of such a reservation of rights shall discharge co-obligors only to the extent provided in section 15. [PL 1965, c. 351, §1 (NEW).]

SECTION HISTORY

PL 1965, c. 351, §1 (NEW).

§15. Release without reservation of rights

If an obligee releasing or discharging an obligor without express reservation of rights against a co-obligor, then knows or has reason to know that the obligor released or discharged did not pay so much of the claim as he was bound by his contract or relation with the co-obligor to pay, the obligee's claim against that co-obligor shall be satisfied to the amount which the obligee knew or had reason to know that the released or discharged obligor was bound to such co-obligor to pay. [PL 1965, c. 351, §1 (NEW).]

If an obligee so releasing or discharging, an obligor has not then such knowledge or reason to know, the obligee's claim against the co-obligor shall be satisfied to the extent of the lesser of 2 amounts, namely; the amount of the fractional share of the obligor released or discharged, or the amount that such obligor was bound by his contract or relation with the co-obligor to pay. [PL 1965, c. 351, §1 (NEW).]

SECTION HISTORY

PL 1965, c. 351, §1 (NEW).

§16. Death of joint obligor

On the death of a joint obligor in contract, his estate shall be bound as such, jointly and severally with the surviving obligor or obligors. [PL 1965, c. 351, §1 (NEW).]

SECTION HISTORY

PL 1965, c. 351, §1 (NEW).

§17. Uniformity of interpretation; title

This subchapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it, and may be cited as the Model Joint Obligations Act [PL 1965, c. 351, §1 (NEW).]

SECTION HISTORY

PL 1965, c. 351, §1 (NEW).

CHAPTER 3

PLEADINGS

§51. Actions on insurance policies

In all actions on insurance policies, a complaint on an account annexed, with an allegation that the plaintiff has complied with all conditions of the policy of insurance mentioned in the account annexed, shall be deemed sufficient. The account annexed shall state the number of the policy and the amount claimed as due, both as principal sum and interest, if any. The fact that the amount claimed in the account annexed varies from the amount found to be due the plaintiff shall not defeat the action unless there be a fraudulent claim of an excessive amount. If the defendant relies upon the breach of any condition of the policy by the plaintiff as a defense, it shall set the same up by answer, and all conditions, the breach of which is known to the defendant and not so pleaded, shall be deemed to have been complied with by the plaintiff. The plaintiff by a reply to the answer may set up any matter waiving or legally excusing his noncompliance with conditions as alleged by the defendant. Nothing in this section shall be construed as changing in any way the common law burden of proof as to such matters as are so put in issue under the pleadings. [PL 1979, c. 541, Pt. A, §137 (AMD).]

SECTION HISTORY

PL 1979, c. 541, §A137 (AMD).

§52. Ad damnum clause

No dollar amount or figure may be included in the demand in any civil case, but the prayer must be for such damages as are reasonable in the premises. This section does not apply to a demand for liquidated damages. [PL 2001, c. 17, §1 (AMD).]

SECTION HISTORY

PL 1987, c. 646, §1 (NEW). PL 2001, c. 17, §1 (AMD).

CHAPTER 5

TENDER AND OFFER OF JUDGMENT

§101. Trespass on land; tender

In actions for trespass on lands, the defendant may by answer disclaim all title to the land described, and allege that the trespass was involuntary, or by negligence or mistake, or in the prosecution of a legal right, and that before action brought the defendant tendered sufficient amends therefor or that the defendant brings money into court to satisfy the damages with costs to that time. If on trial the defendant establishes the truth of the defendant's allegations, the defendant recovers costs. [RR 2009, c. 2, §29 (COR).]

SECTION HISTORY

RR 2009, c. 2, §29 (COR).

§102. Town may make an offer of judgment

In actions against towns for injury to the person or damage to property from defect in ways, a town may make an offer of judgment in the same manner and with the same effect as defendants in other civil actions.

CHAPTER 7

DEFENSES GENERALLY

§151. Partial failure of consideration of note

In any civil action in which the amount due on a promissory note given for the price of land conveyed is in question and a total failure of consideration would be a defense, partial failure of consideration may be shown in reduction of damages.

§152. Truth justifies libel unless malice

(REPEALED)

SECTION HISTORY

PL 1985, c. 290, §1 (RP).

§153. Mitigation of damages in action for libel

The defendant in an action for libel may prove in mitigation of damages that the charge was made by mistake or through error or by inadvertence and that the defendant has in writing, within a reasonable time after the publication of the charge, retracted the charge and denied its truth as publicly and as fully as the defendant made the charge. The defendant may prove in mitigation of damages that the plaintiff failed to notify the defendant of the libel in a timely fashion and that the defendant was therefore unable to lessen damage to the plaintiff's reputation. The defendant may prove in mitigation of damages that the plaintiff has already recovered or has brought action for damages for, or has received or has agreed to receive compensation for, substantially the same libel. [RR 2009, c. 2, §30 (COR).]

SECTION HISTORY

PL 1979, c. 663, §74 (AMD). PL 1985, c. 290, §2 (AMD). RR 2009, c. 2, §30 (COR).

§153-A. Defense in action based on misuse of legal identification

It is a defense to a civil action for monetary damages that the damages arose from the misuse of a form of legal identification and the use of that identification has resulted in the conviction of a person other than the defendant under Title 17-A, sections 354 and 905-A. The defense may be raised only by the person whose identification was misused. [PL 1999, c. 190, §1 (NEW).]

SECTION HISTORY

PL 1999, c. 190, §1 (NEW).

§154. Unproved allegations

(REPEALED)

SECTION HISTORY

PL 1985, c. 290, §3 (RP).

§155. No action on demands discharged by partial payment

No action shall be maintained on a demand settled by a creditor or his attorney entrusted to collect it, in full discharge thereof, by the receipt of money or other valuable consideration, however small.

§156. Comparative negligence

When any person suffers death or damage as a result partly of that person's own fault and partly of the fault of any other person or persons, a claim in respect of that death or damage may not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof must be reduced to such extent as the jury thinks just and equitable having regard to the claimant's share in the responsibility for the damage. [PL 1999, c. 633, §1 (AMD); PL 1999, c. 633, §3 (AFF).]

When damages are recoverable by any person by virtue of this section, subject to such reduction as is mentioned, the court shall instruct the jury to find and record the total damages that would have been recoverable if the claimant had not been at fault, and further instruct the jury to reduce the total damages by dollars and cents, and not by percentage, to the extent considered just and equitable, having regard to the claimant's share in the responsibility for the damages, and instruct the jury to return both amounts with the knowledge that the lesser figure is the final verdict in the case. [PL 1999, c. 633, §1 (AMD); PL 1999, c. 633, §3 (AFF).]

Fault means negligence, breach of statutory duty or other act or omission that gives rise to a liability in tort or would, apart from this section, give rise to the defense of contributory negligence. [PL 1999, c. 633, §1 (AMD); PL 1999, c. 633, §3 (AFF).]

If such claimant is found by the jury to be equally at fault, the claimant may not recover. [PL 1999, c. 633, §1 (AMD); PL 1999, c. 633, §3 (AFF).]

In a case involving multiparty defendants, each defendant is jointly and severally liable to the plaintiff for the full amount of the plaintiff's damages. However, any defendant has the right through the use of special interrogatories to request of the jury the percentage of fault contributed by each defendant. If a defendant is released by the plaintiff under an agreement that precludes the plaintiff from collecting against remaining parties that portion of any damages attributable to the released defendant's share of responsibility, then the following rules apply. [PL 1999, c. 633, §1 (AMD); PL 1999, c. 633, §3 (AFF).]

1. General rule. The released defendant is entitled to be dismissed with prejudice from the case. The dismissal bars all related claims for contribution assertable by remaining parties against the released defendant.
[PL 1999, c. 633, §1 (NEW); PL 1999, c. 633, §3 (AFF).]

2. Post-dismissal procedures. The trial court must preserve for the remaining parties a fair opportunity to adjudicate the liability of the released and dismissed defendant. Remaining parties may conduct discovery against a released and dismissed defendant and invoke evidentiary rules at trial as if the released and dismissed defendant were still a party.
[PL 1999, c. 633, §1 (NEW); PL 1999, c. 633, §3 (AFF).]

3. Binding effect. To apportion responsibility in the pending action for claims that were included in the settlement and presented at trial, a finding on the issue of the released and dismissed defendant's

liability binds all parties to the suit, but such a finding has no binding effect in other actions relating to other damage claims.
[PL 1999, c. 633, §1 (NEW); PL 1999, c. 633, §3 (AFF).]

SECTION HISTORY

PL 1965, c. 383 (NEW). PL 1965, c. 424 (NEW). PL 1965, c. 513, §27 (RP). PL 1969, c. 399, §§1,2 (AMD). PL 1971, c. 8 (AMD). PL 1999, c. 633, §1 (AMD). PL 1999, c. 633, §3 (AFF).

§157. Government agencies

(REPEALED)

SECTION HISTORY

PL 1965, c. 425, §§8-A (NEW). PL 1969, c. 428 (RPR). PL 1977, c. 2, §1 (RP). PL 1977, c. 78, §§111,111-A (REEN).

§158. Damages for tortious conduct of charitable corporations

A charitable organization shall be considered to have waived its immunity from liability for negligence or any other tort during the period a policy of insurance is effective covering the liability of the charitable organization for negligence or any other tort. Each policy issued to a charitable organization shall contain a provision to the effect that the insurer shall be estopped from asserting, as a defense to any claim covered by said policy, that such organization is immune from liability on the ground that it is a charitable organization. The amount of damages in any such case shall not exceed the limits of coverage specified in the policy, and the courts shall abate any verdict in any such action to the extent that it exceeds such policy limit. [PL 1965, c. 513, §28 (NEW).]

SECTION HISTORY

PL 1965, c. 513, §28 (NEW).

§158-A. Immunity for charitable directors, officers and volunteers

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

A. "Charitable organization" means any nonprofit organization organized or incorporated in this State or having a principal place of business in this State:

(1) That is exempt from federal income taxation under the United States Internal Revenue Code, Section 501(a), because it is described in Section 501(c)(3), (4), (6) as it pertains to chambers of commerce only, (10), (13), (14)(A) or (19), including all subsequent amendments to those paragraphs. An organization is included in this subparagraph if it would be exempt from taxation under Section 501(c)(3) but for its engaging in attempting to influence legislation to the extent that it is disqualified from tax exemption under Section 501(c)(3); or

(2) That is:

(a) Organized under the Maine Nonprofit Corporation Act for any of the purposes listed in Title 13-B, section 201, subsection 1, paragraph A;

(b) Organized under the provisions set forth in Title 13-B, section 201, subsection 2, paragraph A;

(c) Organized under the provisions of Title 13-B, section 201, subsection 3, paragraph D or E;

(d) Organized in Maine as a nonprofit corporation before January 1, 1978, for any of the purposes listed in Title 13-B, section 201, subsection 1, paragraph A, and to which the Maine Nonprofit Corporation Act applies; or

(e) Organized as a rural electrification cooperative under the provisions of Title 35-A, chapter 37.

This subparagraph applies to all subsequent amendments to the statutes covered by divisions (a), (b), (c), (d) and (e). [PL 2007, c. 366, §1 (AMD).]

B. "Director" means a person who serves without compensation, except that the person may be paid for expenses, on the board of trustees or board of directors of a charitable organization. [PL 1987, c. 646, §2 (NEW).]

C. "Officer" means a person who serves without compensation, except that the person may be paid for expenses, as an officer of a charitable organization. [PL 1987, c. 646, §2 (NEW).]

D. "Volunteer" means a person who provides services without compensation, except that the person may be paid for expenses, to a charitable organization. [PL 1987, c. 646, §2 (NEW).]
[PL 2007, c. 366, §1 (AMD).]

2. Immunity. A director, officer or volunteer is immune from civil liability for personal injury, death or property damage, including any monetary loss:

A. When the cause of action sounds in negligence and arises from an act or omission by the director, officer or volunteer which occurs within the course and scope of the activities of the charitable organization in which the director, officer or volunteer serves; or [PL 1987, c. 646, §2 (NEW).]

B. Arising from any act or omission, not personal to the director, officer or volunteer, which occurs within the course and scope of the activities of the charitable organization in which the director, officer or volunteer serves. [PL 1987, c. 646, §2 (NEW).]
[PL 1987, c. 646, §2 (NEW).]

3. Limited waiver of immunity while operating vehicles, vessels or aircraft. Notwithstanding any immunity granted in subsection 2, a director, officer or volunteer is considered to have waived immunity from liability when the cause of action arises out of the director's, officer's or volunteer's operation of a motor vehicle, vessel, aircraft or other vehicle for which the operator or the owner of the vehicle, vessel or craft is required to possess an operator's license or maintain insurance. The amount of damages in an action authorized by this section may not exceed the combined limits of coverage of any applicable insurance policies other than umbrella insurance coverage and the courts shall abate a verdict in an action to the extent that it exceeds such limits. A provision in a policy of insurance that attempts to exclude coverage for claims that are authorized by this section is void as contrary to public policy.
[PL 1999, c. 572, §1 (NEW); PL 1999, c. 572, §2 (AFF).]

SECTION HISTORY

PL 1987, c. 646, §2 (NEW). PL 1989, c. 389 (AMD). PL 1991, c. 795, §1 (AMD). PL 1999, c. 572, §1 (AMD). PL 1999, c. 572, §2 (AFF). PL 2007, c. 366, §1 (AMD).

§158-B. Limited liability of charitable organizations

1. Liability limited. A charitable organization or other entity approved pursuant to Title 15, section 3301 or 3314 or pursuant to Title 17-A, section 2031 is not liable for a claim arising from death or injury to a person or damage to property caused by a juvenile or adult participating in a supervised work or service program, performing community service or providing restitution under Title 15, section 3301 or 3314 or under Title 17-A, section 2031, including a claim arising from death or injury to the juvenile or adult or damage to the adult's or juvenile's property.
[PL 2019, c. 113, Pt. C, §26 (AMD).]

2. No effect on other liability or immunity. Nothing in this section creates liability for any claim or waives any immunity otherwise available.

[PL 1997, c. 619, §1 (NEW).]

3. Charitable organization defined. For the purposes of this section, "charitable organization" means any nonprofit institution or organization organized or incorporated in this State or having a principal place of business in this State that is exempt from federal income taxation under the United States Internal Revenue Code, Section 501(a) because the nonprofit organization is described in the United States Internal Revenue Code, Section 501(c)(3).
[PL 2007, c. 275, §1 (AMD).]

SECTION HISTORY

PL 1997, c. 619, §1 (NEW). PL 2007, c. 275, §1 (AMD). PL 2019, c. 113, Pt. C, §26 (AMD).

§159. Social and business invitees, standards of care

The standards of care for a social invitee shall be the same as that of a business invitee. [PL 1967, c. 366 (NEW).]

SECTION HISTORY

PL 1967, c. 366 (NEW).

§159-A. Limited liability for recreational or harvesting activities

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

A. "Premises" means improved and unimproved lands, private ways, roads, any buildings or structures on those lands and waters standing on, flowing through or adjacent to those lands. "Premises" includes railroad property, railroad rights-of-way and utility corridors to which public access is permitted. [PL 2005, c. 375, §1 (AMD).]

B. "Recreational or harvesting activities" means recreational activities conducted out-of-doors, including, but not limited to, hunting, fishing, trapping, camping, environmental education and research, hiking, rock climbing, ice climbing, bouldering, rappelling, recreational caving, sight-seeing, operating snow-traveling and all-terrain vehicles, skiing, hang-gliding, noncommercial aviation activities, dog sledding, equine activities, boating, sailing, canoeing, rafting, biking, picnicking, swimming or activities involving the harvesting or gathering of forest, field or marine products. It includes entry of, volunteer maintenance and improvement of, use of and passage over premises in order to pursue these activities. "Recreational or harvesting activities" does not include commercial agricultural or timber harvesting. [PL 2015, c. 20, §1 (AMD).]

C. "Occupant" includes, but is not limited to, an individual, corporation, partnership, association or other legal entity that constructs or maintains trails or other improvements for public recreational use. [PL 2003, c. 509, §1 (NEW).]
[PL 2015, c. 20, §1 (AMD).]

2. Limited duty. An owner, lessee, manager, holder of an easement or occupant of premises does not have a duty of care to keep the premises safe for entry or use by others for recreational or harvesting activities or to give warning of any hazardous condition, use, structure or activity on these premises to persons entering for those purposes. This subsection applies regardless of whether the owner, lessee, manager, holder of an easement or occupant has given permission to another to pursue recreational or harvesting activities on the premises.
[PL 1995, c. 566, §1 (AMD).]

3. Permissive use. An owner, lessee, manager, holder of an easement or occupant who gives permission to another to pursue recreational or harvesting activities on the premises does not thereby:

A. Extend any assurance that the premises are safe for those purposes; [PL 1979, c. 253, §2 (NEW).]

B. Make the person to whom permission is granted an invitee or licensee to whom a duty of care is owed; or [PL 1979, c. 253, §2 (NEW).]

C. Assume responsibility or incur liability for any injury to person or property caused by any act of persons to whom the permission is granted even if that injury occurs on property of another person. [PL 2007, c. 260, §1 (AMD).]

[PL 2007, c. 260, §1 (AMD).]

4. Limitations on section. This section does not limit the liability that would otherwise exist:

A. For a willful or malicious failure to guard or to warn against a dangerous condition, use, structure or activity; [PL 1979, c. 253, §2 (NEW).]

B. For an injury suffered in any case where permission to pursue any recreational or harvesting activities was granted for a consideration other than the consideration, if any, paid to the following:

(1) The landowner or the landowner's agent by the State; or

(2) The landowner or the landowner's agent for use of the premises on which the injury was suffered, as long as the premises are not used primarily for commercial recreational purposes and as long as the user has not been granted the exclusive right to make use of the premises for recreational activities; or [PL 1995, c. 566, §1 (AMD).]

C. For an injury caused, by acts of persons to whom permission to pursue any recreational or harvesting activities was granted, to other persons to whom the person granting permission, or the owner, lessee, manager, holder of an easement or occupant of the premises, owed a duty to keep the premises safe or to warn of danger. [PL 1995, c. 566, §1 (AMD).]

[PL 1995, c. 566, §1 (AMD).]

5. No duty created. Nothing in this section creates a duty of care or ground of liability for injury to a person or property.

[PL 1993, c. 622, §1 (AMD).]

6. Costs and fees. The court shall award any direct legal costs, including reasonable attorneys' fees, to an owner, lessee, manager, holder of an easement or occupant who is found not to be liable for injury to a person or property pursuant to this section.

[PL 1995, c. 566, §1 (AMD).]

SECTION HISTORY

PL 1979, c. 253, §2 (NEW). PL 1979, c. 514, §1 (AMD). PL 1979, c. 663, §75 (AMD). PL 1983, c. 297, §2 (AMD). PL 1985, c. 762, §25 (AMD). PL 1993, c. 622, §1 (AMD). PL 1995, c. 566, §1 (AMD). PL 2001, c. 113, §2 (AMD). PL 2003, c. 509, §1 (AMD). PL 2005, c. 375, §1 (AMD). PL 2007, c. 260, §1 (AMD). PL 2009, c. 156, §1 (AMD). PL 2015, c. 20, §1 (AMD).

§159-B. Limited liability for recycling activities by municipalities and regional associations

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

A. "Premises" means improved and unimproved lands upon which recycling activities are conducted. [PL 1991, c. 487, §1 (NEW).]

B. "Recycling activities" means collection or separation or both of materials in containers:

(1) Owned by a municipality or regional association as defined in Title 38, section 1303-C, subsection 24; and

(2) Located on the premises of the owner, lessee or occupant under an agreement between the municipality or regional association and the owner, lessee or occupant of the premises. [PL 1991, c. 487, §1 (NEW).]

[PL 1991, c. 487, §1 (NEW).]

2. No remuneration. The owner, lessee or occupant of the premises may not receive any remuneration from the municipality or regional association for allowing recycling activities to be conducted on the premises.
[PL 1991, c. 487, §1 (NEW).]

3. Limited liability. An owner, lessee or occupant of the premises is not liable for personal injury, property damage or death caused by recycling activities within 20 feet of the containers used in recycling activities. The containers used in recycling activities are considered other machinery or equipment, whether mobile or stationary, under Title 14, section 8104-A, subsection 1, paragraph G for which the municipality or regional association is liable as provided by the Maine Tort Claims Act.
[PL 1991, c. 487, §1 (NEW).]

4. Limitations. This section does not limit any liability that may otherwise exist for a willful or malicious failure to guard or warn against a dangerous condition on the premises related to the recycling activities.
[PL 1991, c. 487, §1 (NEW).]

5. No duty created. Nothing in this section creates a duty of care or ground of liability for injury to a person or property.
[PL 1991, c. 487, §1 (NEW).]

6. Costs and fees. The court may award any direct legal costs, including reasonable attorney's fees, to an owner, lessee or occupant who is found not to be liable for injury to a person or property pursuant to this section.
[PL 1991, c. 487, §1 (NEW).]

7. Repeal.

[PL 1993, c. 598, §1 (RP).]

SECTION HISTORY

PL 1991, c. 487, §1 (NEW). PL 1993, c. 598, §1 (AMD).

§159-C. Liability related to placement of navigational aids in great ponds

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

A. "Great pond" has the meaning given in Title 38, section 480-B, subsection 5. [PL 1997, c. 739, §10 (NEW).]

B. "Lake association" means a nonprofit organization incorporated under state law whose corporate purpose includes maintenance or improvement of water quality or public safety on a great pond, management of water levels or other social, educational, stewardship or advocacy efforts to benefit users of or the natural environment of a great pond. [PL 1997, c. 739, §10 (NEW).]

C. "Navigational aid markers" means navigational aids that conform to rules governing the State's marking of waterways. [PL 1997, c. 739, §10 (NEW).]
[PL 1997, c. 739, §10 (NEW).]

2. Limited liability. A lake association that has obtained a permit from the former Department of Conservation or the Department of Agriculture, Conservation and Forestry to place navigational aid markers in great ponds is not liable for personal injury, property damage or death caused by placement or maintenance of those navigational aid markers as long as the lake association has placed or maintained the markers in conformance with the terms and conditions of the permit.
[PL 2013, c. 405, Pt. D, §12 (AMD).]

3. No remuneration. In order to qualify for the immunity granted in subsection 2, a lake association may not receive any remuneration from the State or otherwise for placing navigational aid markers in great ponds.
[PL 1997, c. 739, §10 (NEW).]

4. Limitations. This section does not limit any liability that may otherwise exist for willful or malicious actions or failures to guard or warn against a known dangerous condition related to the navigational aid markers.
[PL 1997, c. 739, §10 (NEW).]

5. No duty created. Nothing in this section creates a duty of care or ground for liability.
[PL 1997, c. 739, §10 (NEW).]

6. Costs and fees. The court may award any direct legal costs, including reasonable attorney's fees, to a lake association against which a tort or related action is brought when the lake association is found not liable pursuant to this section.
[PL 1997, c. 739, §10 (NEW).]

SECTION HISTORY

PL 1997, c. 739, §10 (NEW). PL 2013, c. 405, Pt. D, §12 (AMD).

§159-D. Liability related to a bicyclist using a drive-up window

1. Limited liability. An establishment that has a drive-up window is not liable for personal injury, property damage or death caused to a bicyclist who uses that establishment's drive-up window.
[PL 2007, c. 400, §1 (NEW).]

2. Limitations. This section does not limit any liability that may otherwise exist for willful or malicious actions or failures to guard or warn against a known dangerous condition related to the use of the drive-up window.
[PL 2007, c. 400, §1 (NEW).]

3. No duty created. This section does not create a duty of care or ground for liability.
[PL 2007, c. 400, §1 (NEW).]

4. Costs and fees. The court may award any direct legal costs, including reasonable attorney's fees, to an establishment that is found not to be liable for injury to a bicyclist pursuant to this section.
[PL 2007, c. 400, §1 (NEW).]

SECTION HISTORY

PL 2007, c. 400, §1 (NEW).

§160. Certain cases of negligence

In actions to recover damages for negligently causing the death of a person or for injury to a person who is deceased at the time of trial of such action, the person for whose death or injury the action is brought shall be presumed to have been in the exercise of due care at the time of all acts in any way related to his death or injury, and if negligence of the deceased is to be relied on as a defense, it shall be pleaded and proved by the defendant. [PL 1967, c. 494, §15-A (NEW).]

SECTION HISTORY

PL 1967, c. 494, §§15-A (NEW).

§161. When lack of privity no defense in action against manufacturer, seller or supplier of goods

Lack of privity between plaintiff and defendant shall be no defense in any action brought against the manufacturer, seller or supplier of goods under Title 14, section 221 or for negligence, although the plaintiff did not purchase the goods from the defendant, if the plaintiff was a person whom the

manufacturer, seller or supplier might reasonably have expected to use, consume or be affected by the goods. [PL 1973, c. 788, §57 (AMD).]

SECTION HISTORY

PL 1969, c. 327, §2 (NEW). PL 1973, c. 441, §2 (RPR). PL 1973, c. 788, §57 (AMD).

§162. Settlement or release of claims

Whenever a person seeks to recover against another person for both personal injury and property damage, settlement or release of either the personal injury or property damage claim shall not be a bar to a subsequent action upon the other claim. [PL 1969, c. 230 (NEW).]

SECTION HISTORY

PL 1969, c. 230 (NEW).

§163. Release of joint tortfeasors

Whenever a person seeks recovery for a personal injury or property damage caused by 2 or more persons, the settlement with or release of one or more of the persons causing the injury is not a bar to a subsequent action against the other person or persons also causing the injury. [PL 1999, c. 633, §2 (AMD); PL 1999, c. 633, §3 (AFF).]

Evidence of settlement with a release of one or more persons causing the injury is not admissible at a subsequent trial against the other person or persons also causing the injury. After the jury has returned its verdict, the trial judge shall inquire of the attorneys for the parties whether such a settlement or release has occurred. If such settlement or release has occurred, the trial judge shall reduce the verdict by an amount equal to the settlement with or the consideration for the release of the other persons. With regard to a settlement in which the plaintiff has entered into an agreement that precludes the plaintiff from collecting against remaining parties that portion of any damages attributable to the settling defendant's share of responsibility, the judge shall reduce the plaintiff's judgment by either the amount determined at trial to be attributable to the settling defendant's share of responsibility, if any was found, or, if no such finding is made, by the value of the consideration given to the plaintiff for the settlement. [PL 1999, c. 633, §2 (AMD); PL 1999, c. 633, §3 (AFF).]

SECTION HISTORY

PL 1969, c. 19 (NEW). PL 1999, c. 633, §2 (AMD). PL 1999, c. 633, §3 (AFF).

§164. Immunity from civil liability

Notwithstanding any inconsistent provisions of any public or private and special law, any person who voluntarily, without the expectation of monetary or other compensation from the person aided or treated, renders first aid, emergency treatment or rescue assistance to a person who is unconscious, ill, injured or in need of rescue assistance, shall not be liable for damages for injuries alleged to have been sustained by such person nor for damages for the death of such person alleged to have occurred by reason of an act or omission in the rendering of such first aid, emergency treatment or rescue assistance, unless it is established that such injuries or such death were caused willfully, wantonly or recklessly or by gross negligence on the part of such person. This section shall apply to members or employees of nonprofit volunteer or governmental ambulance, rescue or emergency units, whether or not a user or service fee may be charged by the nonprofit unit or the governmental entity and whether or not the members or employees receive salaries or other compensation from the nonprofit unit or the governmental entity. This section shall not be construed to require a person who is ill or injured to be administered first aid or emergency treatment if such person objects thereto on religious grounds. This section shall not apply if such first aid or emergency treatment or assistance is rendered on the premises of a hospital or clinic. [PL 1977, c. 69 (AMD).]

SECTION HISTORY

PL 1969, c. 565 (NEW). PL 1975, c. 452, §1 (RPR). PL 1975, c. 679, §1 (AMD). PL 1977, c. 69 (AMD).

§164-A. Maine Assistance Program for Lawyers; immunity

1. Definition. As used in this section, unless the context otherwise indicates, the following term has the following meaning.

A. "Program" means the Maine Assistance Program for Lawyers established by court order pursuant to Title 4, section 421 to provide help to lawyers and judges who suffer from the effects of chemical dependency or mental conditions that result from disease, disorder, trauma or other infirmity and that impair a lawyer's or judge's ability to practice law or serve in a judicial capacity. [PL 2003, c. 148, §1 (NEW).]

[PL 2003, c. 148, §1 (NEW).]

2. Receive or report information; take or not take action. A person or an organization receiving information, reporting information, taking action or taking no action on behalf of or in connection with the activities of the program is immune from all civil liability. The immunity provided by this subsection must be liberally construed to accomplish the purposes of the program. The immunity provided by this subsection is in addition to any other immunity provided by law.

[PL 2003, c. 148, §1 (NEW).]

3. Information confidential. All proceedings, communications and records, including the identity and treatment of a person seeking or being furnished assistance, connected in any way with the program are confidential and are not subject to compulsory legal process or otherwise discoverable or admissible in evidence in any civil action unless the confidentiality is waived by the affected person. Statistical data not identifying a person involved in the program may be made available for statistical evaluation as a professional aid in furtherance of the goals of the program.

[PL 2003, c. 148, §1 (NEW).]

SECTION HISTORY

PL 2003, c. 148, §1 (NEW).

§164-B. Immunity from civil liability for assistance given to law enforcement dogs, search and rescue dogs and service dogs

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

A. "Emergency medical services person" has the same meaning as "emergency medical services' person" in Title 32, section 83, subsection 12. [PL 2017, c. 338, §1 (NEW).]

B. "Law enforcement dog" means a dog trained for law enforcement use that is actively certified pursuant to federal, national, regional or state standards and that is owned or maintained by a law enforcement agency or other governmentally funded agency for law enforcement or security services. [PL 2017, c. 338, §1 (NEW).]

C. "Law enforcement officer" means a person who by virtue of public employment is vested by law with a duty to maintain public order, to prosecute offenders and to make arrests for crimes. [PL 2017, c. 338, §1 (NEW).]

D. "Search and rescue dog" means a dog that is certified as a search and rescue dog by the Department of Inland Fisheries and Wildlife, Bureau of Warden Service or that is in training to become a search and rescue dog with an organization recognized by the Bureau of Warden Service to provide such training. [PL 2017, c. 338, §1 (NEW).]

E. "Security services dog handler" means a security professional who is trained to partner with a law enforcement dog in the performance of the security professional's duties, who is actively

certified pursuant to federal, national, regional or state standards and who is qualified to train, care for and work with a law enforcement dog. [PL 2017, c. 338, §1 (NEW).]

F. "Service dog" has the same meaning as "service animal" in Title 5, section 4553, subsection 9-E. [PL 2017, c. 338, §1 (NEW).]

[PL 2017, c. 338, §1 (NEW).]

2. Immunity. Notwithstanding any provision of any public or private and special law to the contrary, an emergency medical services person, a security services dog handler or a law enforcement officer who voluntarily, without the expectation of monetary or other compensation, renders first aid, emergency treatment or rescue assistance to a law enforcement dog, search and rescue dog or service dog that is unconscious, ill, injured or in need of rescue assistance is not liable for damages for an injury alleged to have been sustained by the dog nor for damages for the death of the dog alleged to have occurred by reason of an act or omission in the rendering of the first aid, emergency treatment or rescue assistance unless it is established that the injury or the death was caused willfully, wantonly or recklessly or by gross negligence on the part of the emergency medical services person, security services dog handler or law enforcement officer.

[PL 2017, c. 338, §1 (NEW).]

3. Application. This section applies to a member or employee of a nonprofit volunteer or governmental ambulance, rescue or emergency unit, whether or not a user or service fee may be charged by the nonprofit unit or the governmental entity and whether or not the member or employee receives a salary or other compensation from the nonprofit unit or the governmental entity.

This section applies to a law enforcement officer, security services dog handler or emergency medical services person who voluntarily renders first aid, emergency treatment or rescue assistance to a law enforcement dog, search and rescue dog or service dog, to the extent the officer, handler or person has received training in the medical stabilization of dogs.

This section does not apply if the first aid, emergency treatment or rescue assistance is rendered on the premises of a veterinary hospital or clinic.

[PL 2017, c. 338, §1 (NEW).]

SECTION HISTORY

PL 2017, c. 338, §1 (NEW).

§165. Liability of those who store or distribute natural gas

1. Liability without proof of negligence. A natural gas company or an intrastate or interstate natural gas pipeline company that stores, transports or distributes natural gas is liable for all acts and omissions of its servants and agents that cause death or injury to persons or damage to property resulting from explosions or fire caused by natural gas escaping from the natural gas storage, transportation or distribution system under its control or from explosions or fire caused by defects in the natural gas storage, transportation and distribution systems under its control.

[PL 1997, c. 222, §1 (AMD).]

2. Rebuttable presumption. When there is death or injury to persons or damage to property resulting from explosions or fire caused by escaping natural gas, there is a rebuttable presumption that the gas escaped because of a defect in a portion of the storage, transportation or distribution system under the company's control.

[PL 1997, c. 222, §1 (AMD).]

3. Exceptions. The company is not liable for death or injury to persons or damage to property caused by:

A. An act of God or war; [PL 1995, c. 299, §1 (NEW).]

B. Fault of the plaintiff to the extent that the plaintiff's fault bars or reduces the plaintiff's recovery under section 156; or [PL 1995, c. 299, §1 (NEW).]

C. Intervening fault of a 3rd party for whose actions the company is not legally liable. If death or injury to persons or damage to property is caused by the combined fault of the company and other parties, the liability of the company is joint and several with those other parties. [PL 1995, c. 299, §1 (NEW).]

[PL 1995, c. 299, §1 (NEW).]

4. Indemnity. In the event that the company is exposed to liability under this section because of the negligence of a 3rd party, the 3rd party shall indemnify the company for the company's losses, including any damages awarded or negotiated through settlement to any party, and costs and attorney's fees.

[PL 1995, c. 299, §1 (NEW).]

SECTION HISTORY

PL 1975, c. 186 (NEW). PL 1995, c. 299, §1 (RPR). PL 1997, c. 222, §1 (AMD).

§166. Immunity for certain food donations

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

A. "Canned food" means any food commercially processed and prepared for human consumption. [PL 1981, c. 300 (NEW).]

B. "Perishable food" means any food which may spoil or otherwise become unfit for human consumption because of its nature, type or physical condition. It includes, but is not limited to, fresh and processed meats, poultry, seafood, dairy products, bakery products, eggs in the shells, fresh fruits and vegetables and foods which have been packaged, refrigerated or frozen. [PL 1981, c. 300 (NEW).]

[PL 1981, c. 300 (NEW).]

2. Immunity for donor. Notwithstanding any other provision of law, a good faith donor of canned or perishable food, which is apparently fit for human consumption at the time it is donated, to a bona fide charitable or not-for-profit organization for free distribution, is immune from civil liability arising from injury or death due to the condition of the food, unless the injury or death is a direct result of the gross negligence, recklessness or intentional misconduct of the donor.

[PL 1981, c. 300 (NEW).]

3. Immunity of distributor. Notwithstanding any other provision of law, a bona fide charitable or not-for-profit organization and any employee or volunteer of that organization who in good faith receive and distribute food, which is apparently fit for human consumption at the time it is distributed, without charge, are immune from civil liability arising from an injury or death due to the condition of the food, unless the injury or death is a direct result of the gross negligence, recklessness or intentional misconduct of the organization.

[PL 1981, c. 300 (NEW).]

4. Application. This section applies to all good faith donations of perishable food that is not readily marketable due to appearance, freshness, grade, surplus or other conditions, including food that is beyond the date by which the manufacturer recommends that the food be sold, but nothing in this section restricts the authority of any appropriate agency to regulate or bar the use of that food for human consumption.

[PL 2009, c. 168, §1 (AMD).]

5. Immunity of facilities and establishments. Notwithstanding any other provision of law, a hospital or other health care facility licensed by the Department of Health and Human Services, or an

eating establishment licensed under Title 22, chapter 562 that, in good faith and in accordance with guidelines established by the recipient organization, donates food that is apparently fit for human consumption at the time it is donated to a bona fide charitable or nonprofit organization for free distribution is immune from civil liability arising from injury, illness or death due to the condition or content of the food, unless the injury, illness or death is a direct result of intentional misconduct of the donor. Nothing in this subsection prevents a licensed hospital, health care facility or eating establishment from receiving the immunity provided in subsection 2 if the donor qualifies for immunity under the terms of that subsection.
[PL 1991, c. 739, §1 (NEW); PL 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY

PL 1981, c. 300 (NEW). PL 1991, c. 739, §1 (AMD). PL 2003, c. 689, §B6 (REV). PL 2009, c. 168, §1 (AMD).

§167. Insurance inspections

1. Exemption. Subject to subsection 2, the furnishing of, or failure to furnish, insurance inspection services related to, in connection with or incidental to the issuance or renewal of a policy of property or casualty insurance shall not subject the insurer, its agents, employees or service contractors to liability for damages from injury, death or loss occurring as a result of any act or omission by any person in the course of such services.
[PL 1981, c. 698, §86 (AMD).]

2. Notice required. Subsection 1 shall not apply or be effective unless the insurer notifies the insured in writing of the provisions of this section whenever the policy is issued or renewed. The Superintendent of Insurance shall adopt a regulation specifying the contents of the notice required by this subsection and the manner in which it shall be given.
[PL 1981, c. 380, §1 (NEW).]

3. Exceptions. This section shall not apply:

A. If the injury, loss or death occurred during the actual performance of inspection services and was proximately caused by the negligence of the insurer, its agent, employees or service contractors; [PL 1981, c. 380, §1 (NEW).]

B. To any inspection services required to be performed under the provisions of a written service contract or defined loss prevention program; and [PL 1981, c. 380, §1 (NEW).]

C. In any action against an insurer, its agents, employees or service contractors for damages proximately caused by the act or omission of the insurer, its agents, employees or service contractors in which it is determined that such act or omission constituted a crime, actual malice or gross negligence. [PL 1981, c. 380, §1 (NEW).]

[PL 1981, c. 380, §1 (NEW).]

SECTION HISTORY

PL 1981, c. 380, §1 (NEW). PL 1981, c. 698, §86 (AMD).

§168. Day care facility immunity for certain personnel action

(REPEALED)

SECTION HISTORY

PL 1985, c. 380, §2 (NEW).

§169. Restriction of attorney's representation prohibited

A settlement of litigation may not include a condition that an attorney representing a party in that litigation is not permitted to represent other persons who are similarly situated in a related action

involving a party that the attorney opposed in the settled litigation. A condition not in compliance with this section is void and unenforceable as against public policy. [PL 2001, c. 108, §1 (NEW).]

SECTION HISTORY

PL 2001, c. 108, §1 (NEW).

§170. Consumption of food

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

A. "Food product" means any product that is grown, prepared, manufactured, provided, served or sold and that is primarily intended for human consumption and nourishment. [PL 2005, c. 355, §1 (NEW).]

B. "Long-term" means consisting of multiple instances over a period of time and not a single or isolated instance. [PL 2005, c. 355, §1 (NEW).]

[PL 2005, c. 355, §1 (NEW).]

2. Liability limited. Except as provided in subsection 3, a manufacturer, distributor or seller of a food product, or an association of one or more such entities, is not liable for personal injury or death to the extent the liability is based upon a person's weight gain or obesity resulting from the person's long-term consumption of the food product.

[PL 2005, c. 355, §1 (NEW).]

3. Exception. Subsection 2 does not bar a claim for damages if otherwise available under any other provision of law against a manufacturer or distributor of food products if the manufacturer or distributor has failed to provide nutritional content information as required by any applicable state or federal statute, rule or regulation or has provided materially false or misleading information to the public.

[PL 2005, c. 355, §1 (NEW).]

SECTION HISTORY

PL 2005, c. 355, §1 (NEW).

§171. Defense of premises

It is a defense to a civil claim resulting from the use of force that the person was or would have been justified in using such force under Title 17-A, section 104. [PL 2007, c. 315, §1 (NEW).]

SECTION HISTORY

PL 2007, c. 315, §1 (NEW).

§172. Liability related to professional services for natural disaster or catastrophe

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

A. "Architect" means a person licensed as an architect under Title 32, chapter 3-A. [PL 2019, c. 49, §1 (NEW).]

B. "Building inspection official" means a public official with executive responsibility to coordinate building inspection in the jurisdiction in which a natural disaster or catastrophe has occurred. [PL 2019, c. 49, §1 (NEW).]

C. "Contractor" means a person engaged in the business of designing, developing, constructing, altering, adding to or repairing new or existing structures, buildings, facilities, project utilities, equipment, machines, processes, piping or other engineered systems or infrastructure or their appurtenances. [PL 2019, c. 49, §1 (NEW).]

D. "Engineer" means a person licensed as a professional engineer under Title 32, chapter 19. [PL 2019, c. 49, §1 (NEW).]

E. "Environmental official" means a public official with executive responsibility for coordinating an environmental response in the jurisdiction in which a natural disaster or catastrophe has occurred. [PL 2019, c. 49, §1 (NEW).]

F. "Environmental professional" means a person engaged in the business of providing hazardous waste site clean-up services. "Environmental professional" includes a hazardous waste transporter licensed according to Title 38, section 1319-O. [PL 2019, c. 49, §1 (NEW).]

G. "Land surveyor" means a person licensed as a professional land surveyor according to Title 32, chapter 141. [PL 2019, c. 49, §1 (NEW).]

H. "Landscape architect" means a person licensed as a landscape architect under Title 32, chapter 3-A. [PL 2019, c. 49, §1 (NEW).]

I. "Law enforcement official" means a public official with executive responsibility to coordinate law enforcement in the jurisdiction in which a natural disaster or catastrophe has occurred. [PL 2019, c. 49, §1 (NEW).]

J. "Natural disaster or catastrophe" means an event, whether natural or human-made, that is declared an emergency by the President of the United States or by the Governor and that results in the deployment of emergency response personnel or the displacement of persons from the area of the event. [PL 2019, c. 49, §1 (NEW).]

K. "Planner" means a person certified by the American Institute of Certified Planners, or successor organization, as a certified planner. [PL 2019, c. 49, §1 (NEW).]

L. "Public official" means a federal, state or local appointed or elected official with executive responsibility in the jurisdiction in which a natural disaster or catastrophe has occurred. [PL 2019, c. 49, §1 (NEW).]

M. "Public safety official" means a public official with executive responsibility to coordinate public safety in the jurisdiction in which a natural disaster or catastrophe has occurred. [PL 2019, c. 49, §1 (NEW).]

[PL 2019, c. 49, §1 (NEW).]

2. Immunity. An architect, contractor, environmental professional, land surveyor, landscape architect, planner or engineer who voluntarily, without compensation other than expense reimbursement, and acting in good faith provides, under the applicable license or certification, architectural, structural, electrical, mechanical or other engineering, planning, land surveying, hazardous waste site clean-up, contracting or other professional design services related to a natural disaster or catastrophe at the request of or with the approval of a public official, law enforcement official, public safety official, building inspection official or environmental official believed by the architect, contractor, environmental professional, land surveyor, landscape architect, planner or engineer to be acting in an official capacity is not liable for any personal injury, wrongful death, property damage or other loss of any nature related to the architect's, contractor's, environmental professional's, land surveyor's, landscape architect's, planner's or engineer's acts, errors or omissions in the performance of engineering, architectural, planning, land surveying, hazardous waste site clean-up or contracting services for a site, a structure, a building, a facility, a project utility, equipment, a machine, a process, piping or some other engineered system, either publicly or privately owned.
[PL 2019, c. 49, §1 (NEW).]

3. Voluntary services. The immunity provided in this section applies to only voluntary architectural, structural, electrical, mechanical or other engineering, planning, land surveying, hazardous waste site clean-up, contracting or other professional design services related to a natural

disaster or catastrophe that are provided during the natural disaster or catastrophe, unless the period of emergency is extended by an executive order issued by the President of the United States or the Governor under the President's or Governor's emergency executive powers.
[PL 2019, c. 49, §1 (NEW).]

4. Reckless or intentional misconduct. Nothing in this section provides immunity for reckless or intentional misconduct.
[PL 2019, c. 49, §1 (NEW).]

5. Liability of governmental entities and employees not affected; existing immunity. When an architect, contractor, environmental professional, land surveyor, landscape architect, planner or engineer voluntarily renders services at the request of or with the approval of a state or local official and when such services fall within the immunity of this section, the liability, if any, of governmental entities and their employees under chapter 741 is not affected by this section. The immunity provided in this section is in addition to immunity provided in Title 37-B, section 784-A.
[PL 2019, c. 49, §1 (NEW).]

SECTION HISTORY

PL 2019, c. 49, §1 (NEW).

CHAPTER 9

DEFENSE BY SUBSEQUENT ATTACHING CREDITORS

§201. Motion to defend prior actions by subsequent attaching creditor

When property has been attached, a plaintiff who has caused it to be attached in a subsequent action may, by himself or attorney, move the court for leave to defend the prior action and set forth therein the facts as he believes them to be, under oath. The court may grant or refuse such leave.

§202. Bond if motion granted

If leave is granted, the plaintiff in the subsequent action shall give bond or enter into recognizance with sufficient surety in such sum as the court orders, to pay the plaintiff in the prior action all damages and costs occasioned by such defense. An entry of record shall be made that he is admitted to defend such action.

§203. Judgment when defense fails

When the plaintiff in the subsequent action enters into recognizance and fails in his defense, execution on his recognizance shall be issued against him for the damages found by the court, and costs. Judgment shall be rendered between the original parties as if no such defense had been made.

§204. Judgment when defense prevails

When the plaintiff in the subsequent action prevails, judgment shall be rendered against the plaintiff in the prior action and in favor of the plaintiff in the subsequent action, and execution issued thereon for his costs. Costs may or may not be awarded to the original defendant.

§205. Judgment in prior action rendered; motion for relief

When judgment in such prior action has been rendered, the plaintiff in such subsequent action may move for leave to seek relief from the judgment, first giving bond to each party as provided in section 202 and such leave may or may not be granted.

§206. Prior attachment to delay or defraud creditors void

When it appears by the verdict or otherwise that such prior attachment was made with intent to delay or defraud creditors or that there was collusion between the plaintiff and defendant for that purpose, such attachment is void.

CHAPTER 10

LIABILITY

§221. Defective or unreasonably dangerous goods

One who sells any goods or products in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to a person whom the manufacturer, seller or supplier might reasonably have expected to use, consume or be affected by the goods, or to his property, if the seller is engaged in the business of selling such a product and it is expected to and does reach the user or consumer without significant change in the condition in which it is sold. This section applies although the seller has exercised all possible care in the preparation and sale of his product and the user or consumer has not bought the product from or entered into any contractual relation with the seller. [PL 1973, c. 466, §1 (NEW).]

SECTION HISTORY

PL 1973, c. 466, §1 (NEW).

CHAPTER 11

CONTEMPT

§251. Rights of those judged in contempt

In all cases where a person shall be charged with contempt for violation of a restraining order or injunction issued by a court or judge or judges thereof, in any case involving or growing out of a labor dispute, the accused shall enjoy:

1. Bail. The rights as to admission to bail that are accorded to persons accused of crime;

2. Accusation and defense. The right to be notified of the accusation and a reasonable time to make a defense, provided the alleged contempt is not committed in the immediate view or presence of the court;

3. Trial by jury. Upon demand, the right to a speedy and public trial by an impartial jury of the county wherein the contempt was allegedly committed. This requirement may not be construed to apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct or disobedience of any officer of the court in respect to the writs, orders or process of the court.
[PL 2005, c. 683, Pt. B, §8 (AMD).]

SECTION HISTORY

PL 1979, c. 663, §76 (AMD). PL 2005, c. 683, §B8 (AMD).

§252. Summary process where decree disobeyed; contempt

Whenever a party or the Department of Health and Human Services, if it is subrogated to a party under Title 19-A, chapter 65, subchapter II, article 3, complains in writing and under oath that the process, decree or order of court, which is not, except as provided in Title 19-A, section 2101, for the payment of money only, has been disregarded or disobeyed by any person, summary process shall issue

by order of any justice, requiring that person to appear on a day certain and show cause why that person should not be adjudged guilty of contempt. Such a process must fix a time for answer to the complaint and may fix a time for hearing on oral testimony, depositions or affidavits, or may fix successive times for proof, counterproof and proof in rebuttal, or the time for hearing and manner of proof may be subsequently ordered upon the return day or thereafter. The court may for good cause enlarge the time for the hearing. If the person summoned does not appear as directed or does not attend the hearing at the time appointed as enlarged, or if, upon hearing, the person is found guilty of such disregard or disobedience, the person must be adjudged in contempt and the court may issue a capias to bring the person before it to receive sentence and may punish the person by any reasonable fine or imprisonment the case requires. The court may allow the offender to give bail to appear at a time certain, when the punishment may be imposed if the person continues in contempt; but when a second time found guilty of contempt in disregarding or disobeying the same order or decree, no bail may be allowed. When the person purges that contempt, the justice may remit the fine or imprisonment or any portion thereof. Appeal from any order or decree or judgment under this section must be governed by the Maine Rules of Civil Procedure. Such an appeal may not suspend the enforcement of any such order or decree unless the court so directs. [PL 1995, c. 694, Pt. D, §13 (AMD); PL 1995, c. 694, Pt. E, §2 (AFF); PL 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY

PL 1979, c. 668, §1 (AMD). PL 1989, c. 121 (AMD). PL 1995, c. 694, §D13 (AMD). PL 1995, c. 694, §E2 (AFF). PL 2003, c. 689, §B6 (REV).

§253. Debtor's refusal to appear

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§254. Debtor's refusal to testify

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

CHAPTER 13

PARENTS, CHILDREN, SPOUSES

§301. Action for alienation of affections prohibited

A person is not liable to any other person in a civil action for the cause of alienation of affections. [PL 1995, c. 694, Pt. C, §1 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

PL 1995, c. 694, §C1 (NEW). PL 1995, c. 694, §E2 (AFF).

§302. Action for loss of consortium

A married person may bring a civil action in that person's own name for loss of consortium of that person's spouse. [PL 1995, c. 694, Pt. C, §1 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

PL 1995, c. 694, §C1 (NEW). PL 1995, c. 694, §E2 (AFF).

§303. Action for loss of services

The parents of a minor child jointly may maintain an action for loss of the services or earnings of that child when that loss is caused by the negligent or wrongful act of another. If one parent refuses to sue, the other may sue alone. This section does not limit, amend, supersede or affect former Title 39, the Workers' Compensation Act or Title 39-A, Part 1, the Maine Workers' Compensation Act of 1992. [PL 1995, c. 694, Pt. C, §1 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

PL 1995, c. 694, §C1 (NEW). PL 1995, c. 694, §E2 (AFF).

§304. Liability of parents or legal guardians for damage by children

If a minor who is between 7 and 17 years of age willfully or maliciously causes damage to property or injury to a person and the minor would have been liable for the damage or injury if the minor were an adult and the minor lives with that minor's parents or legal guardians, the parents or legal guardians are jointly and severally liable with the minor for that damage or injury in an amount not exceeding $800. This section does not relieve the minor from personal liability for that damage or injury. [PL 1995, c. 694, Pt. C, §1 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

PL 1995, c. 694, §C1 (NEW). PL 1995, c. 694, §E2 (AFF).

CHAPTER 15

UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT

§401. Short title

This chapter may be known and cited as "the Uniform Interstate Depositions and Discovery Act." [PL 2019, c. 109, §1 (NEW).]

SECTION HISTORY

PL 2019, c. 109, §1 (NEW).

§402. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2019, c. 109, §1 (NEW).]

1. Foreign jurisdiction. "Foreign jurisdiction" means a state other than this State.
[PL 2019, c. 109, §1 (NEW).]

2. Foreign subpoena. "Foreign subpoena" means a subpoena issued under authority of a court of record of a foreign jurisdiction.
[PL 2019, c. 109, §1 (NEW).]

3. Person. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality or any other legal or commercial entity.
[PL 2019, c. 109, §1 (NEW).]

4. State. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe or any territory or insular possession subject to the jurisdiction of the United States.
[PL 2019, c. 109, §1 (NEW).]

5. Subpoena. "Subpoena" means a document, however denominated, issued under authority of a court of record requiring a person to:

A. Attend and give testimony at a deposition; [PL 2019, c. 109, §1 (NEW).]

B. Produce and permit inspection and copying of designated books, documents, records, electronically stored information or tangible things in the possession, custody or control of the person; or [PL 2019, c. 109, §1 (NEW).]

C. Permit inspection of premises under the control of the person. [PL 2019, c. 109, §1 (NEW).]
[PL 2019, c. 109, §1 (NEW).]

SECTION HISTORY

PL 2019, c. 109, §1 (NEW).

§403. Issuance of subpoena

The issuance of a subpoena is governed by this section. [PL 2019, c. 109, §1 (NEW).]

1. Request issuance. To request issuance of a subpoena under this section, a party must submit a foreign subpoena to the clerk of a District Court in the district or to the clerk of the Superior Court of the county in which the discovery is to be conducted. A request for the issuance of a subpoena under this Act does not constitute an appearance in the courts of the State.
[PL 2019, c. 109, §1 (NEW).]

2. Submission of foreign subpoena. When a party submits a foreign subpoena to a clerk of court in the State, the clerk, in accordance with that court's procedure, shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.
[PL 2019, c. 109, §1 (NEW).]

3. Requirements. A foreign subpoena submitted under subsection 2 must:

A. Incorporate the terms used in the foreign subpoena; and [PL 2019, c. 109, §1 (NEW).]

B. Contain or be accompanied by the names, addresses and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel. [PL 2019, c. 109, §1 (NEW).]
[PL 2019, c. 109, §1 (NEW).]

SECTION HISTORY

PL 2019, c. 109, §1 (NEW).

§404. Service of subpoena

A subpoena issued by a clerk of court under section 403 must be served in compliance with the Maine Rules of Civil Procedure, Rule 45. [PL 2019, c. 109, §1 (NEW).]

SECTION HISTORY

PL 2019, c. 109, §1 (NEW).

§405. Deposition, production and inspection

The Maine Rules of Civil Procedure and the provisions of Title 16, sections 101, 102 and 251 apply to depositions and discovery carried out under this Act and subpoenas issued under section 403. [PL 2019, c. 109, §1 (NEW).]

SECTION HISTORY

PL 2019, c. 109, §1 (NEW).

§406. Application to court

An application to the court for a protective order or to enforce, quash or modify a subpoena issued by a clerk of court under section 403 must comply with the Maine Rules of Civil Procedure and be submitted to the District Court in the district or to the Superior Court of the county in which the discovery is to be or is being conducted. [PL 2019, c. 109, §1 (NEW).]

SECTION HISTORY

PL 2019, c. 109, §1 (NEW).

§407. Uniformity of application and construction

In applying and construing this Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [PL 2019, c. 109, §1 (NEW).]

SECTION HISTORY

PL 2019, c. 109, §1 (NEW).

§408. Application to pending actions

Notwithstanding Title 1, section 302, this Act applies to requests for discovery in cases pending on the effective date of this Act. [PL 2019, c. 109, §1 (NEW).]

SECTION HISTORY

PL 2019, c. 109, §1 (NEW).

PART 2

PROCEEDINGS BEFORE TRIAL

CHAPTER 201

VENUE

§501. Personal and transitory actions; inter-county transfers

Personal and transitory actions, except process of foreign attachment and except as provided in this chapter, shall be brought, when the parties live in the State, in the county where any plaintiff or defendant lives; and when no plaintiff lives in the State, in the county where any defendant lives; or in either case any such action may be brought in the county where the cause of action took place. Improper venue may be raised by the defendant by motion or by answer, and if it is established that the action was brought in the wrong county, it shall be dismissed and the defendant allowed double costs. When the plaintiff and defendant live in different counties at the commencement of any such action, except process of foreign attachment, and during its pendency one party moves into the same county with the other, it may, on motion of either, be transferred to the county where both then live if the court thinks that justice will thereby be promoted; and be tried as if originally commenced and entered therein. Actions by the assignee of a nonnegotiable chose in action, when brought in the Superior Court or in the District Court, shall be commenced in the county or division when brought in the District Court, in which the original creditor might have maintained his action. [PL 1973, c. 378 (AMD).]

SECTION HISTORY

PL 1973, c. 378 (AMD).

§502. Sheriff's bond

Actions on bonds given by sheriffs to the Treasurer of State shall be brought in the county for which such sheriff is commissioned.

§503. Civil actions on judgment

Civil actions founded on judgment rendered by any court of record in the State may be brought in the county where it was rendered or in the county in which either party thereto or his executor or administrator resides at the time of bringing the action.

§504. Jurisdiction by attachment

In all actions commenced in any court proper to try them jurisdiction shall be sustained if goods, estate, effects or credits of any defendant are found within the State and attached.

§505. Local and transitory actions where counties, towns and other corporations are parties

Local and transitory actions shall be commenced and tried as follows: When both parties are counties, in any county adjoining either; when a county is plaintiff, if the defendant lives therein, in an adjoining county; if he does not live therein, in the county in which he does live; when a county is defendant, if the plaintiff lives therein, in that county or in an adjoining county; if he does not live therein, in that county or in that in which he does live; when a corporation is one party and a county the other, in any adjoining county; when both parties are towns, parishes or school districts, in the county in which either is situated; when one party is a town, parish or school district and the other some corporation or natural person, in the county in which either of the parties is situated or lives; but all actions against towns for damages by reason of defects in highways shall be brought and tried in the county in which the town is situated. All other corporations may sue and be sued in the county in which they have an established place of business or in which the plaintiff or defendant, if a natural person, lives.

§506. Actions for forfeitures

When a forfeiture is recoverable in a civil action, such action shall be brought in the county in which the offense was committed unless a different provision is made by statute. If on trial it does not appear that such offense was committed in the county where the action was brought, the verdict shall be in favor of the defendant.

§507. State action to recover funds or property

An action in behalf of the State to enforce the collection of state taxes upon any corporation or to recover of any person or corporation moneys due the State, public funds or property belonging to the State, or the value thereof, may be brought in any county. On motion of the defendant, any Justice of the Superior Court may, for sufficient reasons shown, remove the same to the docket of said court in any other county for trial and may, upon such removal, award costs to the defendant for one term, to be paid by the Treasurer of State on presentation of the certificate of the amount thereof from the clerk of courts of the county from which said action is transferred.

§508. Transfer of venue

A presiding Justice of the Superior Court may, in the interests of justice and to secure the speedy trial of an action, or for other good cause, transfer any civil action or proceeding from the Superior Court in one county to another county. The Chief Justice of the Superior Court may, in the interests of justice and to secure the speedy trial of actions and the efficient scheduling of trials, or for other good cause, transfer any number of civil actions or proceedings from the Superior Court in one county to another county. Transfer may also be by consent of all parties to any civil action or proceeding, provided that the prior approval of the Chief Justice of the Superior Court is obtained. [PL 1991, c. 634 (AMD).]

SECTION HISTORY

PL 1965, c. 356, §9 (AMD). PL 1975, c. 337, §1 (RPR). PL 1981, c. 558 (AMD). PL 1983, c. 688, §5 (RPR). PL 1991, c. 634 (AMD).

§509. Consumer transactions

Notwithstanding any other provision of this chapter, an action brought against a consumer arising from a consumer credit transaction or a rental-purchase agreement must be brought in accordance with Title 9-A, section 5-113, except that an action brought pursuant to Title 32, section 11013, subsection 3, paragraph N must be brought where provided for in that paragraph. [PL 2009, c. 245, §3 (NEW).]

SECTION HISTORY

PL 2009, c. 245, §3 (NEW).

§510. Replevin

Except as otherwise provided in section 509, an action for replevin must be brought either in the division or county where a plaintiff or defendant resides, where the underlying transaction involving the personal property was made or where any of the personal property is located. [PL 2009, c. 245, §4 (NEW).]

SECTION HISTORY

PL 2009, c. 245, §4 (NEW).

CHAPTER 203

PROCESS

SUBCHAPTER 1

GENERAL PROVISIONS

§551. Writs or precepts sold only to attorneys; indorsement

Clerks of judicial courts, judges and registers of the probate courts, judges and clerks of the District Court shall not sell or deliver any blank writs or precepts bearing the seal of said courts and the signature of said judges and registers to any person, except one who has been admitted as an attorney in accordance with the laws of this State. Said judges and registers of said probate courts shall not receive any paper, petition or other instrument pertaining to the practice of law before said probate courts unless it bears the indorsement of an attorney or counselor at law duly authorized to practice before said courts. The above provisions shall not apply to a party in interest in the subject matter in said courts. [PL 1979, c. 663, §77 (AMD).]

SECTION HISTORY

PL 1979, c. 663, §77 (AMD).

§552. Writs of seizin or execution

Writs of seizin or execution and all other processes appropriate to civil actions in which equitable relief is sought may be issued by the court to enforce its decrees.

§553. Action commenced when complaint filed

An action is commenced when the summons and complaint are served or when the complaint is filed with the court, whichever occurs first. [PL 1971, c. 544, §43 (RPR).]

SECTION HISTORY

PL 1971, c. 544, §43 (RPR).

§554. New process after loss or destruction

When in an action pending, the loss or destruction of a writ, complaint or other process after service is proved by affidavit or otherwise, the court may allow a new one to be filed, corresponding thereto as nearly as may be, with the same effect as the one lost or destroyed.

§555. Copy of writ for defendant on request; neglect

Every officer, plaintiff or his attorney, having in his possession a writ on which an attachment has been made, shall make and deliver to the debtor or his attorney, if requested and the legal fee tendered, an attested copy thereof, and if he unreasonably refuses or neglects to do so for 24 hours, he forfeits $5 and $5 additional for every subsequent 24 hours that he so refuses or neglects. Such forfeit shall be recovered by the debtor to his own use, in a civil action.

§556. Special motion to dismiss

When a moving party asserts that the civil claims, counterclaims or cross claims against the moving party are based on the moving party's exercise of the moving party's right of petition under the Constitution of the United States or the Constitution of Maine, the moving party may bring a special motion to dismiss. The special motion may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require. The court shall grant the special motion, unless the party against whom the special motion is made shows that the moving party's exercise of its right of petition was devoid of any reasonable factual support or any arguable basis in law and that the moving party's acts caused actual injury to the responding party. In making its determination, the court shall consider the pleading and supporting and opposing affidavits stating the facts upon which the liability or defense is based. [PL 2011, c. 559, Pt. A, §13 (AMD).]

The Attorney General on the Attorney General's behalf or on behalf of any government agency or subdivision to which the moving party's acts were directed may intervene to defend or otherwise support the moving party on the special motion. [PL 1995, c. 413, §1 (NEW).]

All discovery proceedings are stayed upon the filing of the special motion under this section, except that the court, on motion and after a hearing and for good cause shown, may order that specified discovery be conducted. The stay of discovery remains in effect until notice of entry of the order ruling on the special motion. [PL 1995, c. 413, §1 (NEW).]

The special motion to dismiss may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms the court determines proper. [PL 1995, c. 413, §1 (NEW).]

If the court grants a special motion to dismiss, the court may award the moving party costs and reasonable attorney's fees, including those incurred for the special motion and any related discovery matters. This section does not affect or preclude the right of the moving party to any remedy otherwise authorized by law. [PL 1995, c. 413, §1 (NEW).]

As used in this section, "a party's exercise of its right of petition" means any written or oral statement made before or submitted to a legislative, executive or judicial body, or any other governmental proceeding; any written or oral statement made in connection with an issue under consideration or review by a legislative, executive or judicial body, or any other governmental proceeding; any statement reasonably likely to encourage consideration or review of an issue by a legislative, executive or judicial body, or any other governmental proceeding; any statement reasonably likely to enlist public participation in an effort to effect such consideration; or any other statement falling within constitutional protection of the right to petition government. [PL 1995, c. 413, §1 (NEW).]

SECTION HISTORY

PL 1995, c. 413, §1 (NEW). PL 2011, c. 559, Pt. A, §13 (AMD).

SUBCHAPTER 2

INDORSEMENT

§601. Necessity for

When the plaintiff, petitioner or complainant in any judicial proceeding is not an inhabitant of the State, every original summons, writ, petition or complaint shall, upon motion of an adverse party made within 20 days of service upon him, be indorsed by a sufficient inhabitant of the State, or security for costs furnished by deposit in court in such amount as the court shall direct. If pending such action, the plaintiff, petitioner or complainant removes from the State, such an indorser shall be procured or security for costs furnished on motion, but if one of such plaintiffs, petitioners or complainants is an inhabitant of the State, no indorser or security shall be required except by special order of the court. The name of an attorney of this State upon such summons, writ, petition or complaint will be deemed to have been placed there to meet the requirements of this section in the absence of any words used in connection therewith showing a different purpose.

§602. Liability of indorser

In case of avoidance or inability of the plaintiff or petitioner, the indorser is liable, in a civil action brought within one year after the original judgment in the court in which it was rendered, to pay all costs recovered against the plaintiff. A return upon the execution by an officer of the county where the indorser lives, that he has demanded of the indorser payment thereof, and that he has neglected to pay or to show the officer personal property of the plaintiff sufficient to satisfy the execution, or that he cannot find the indorser within his precinct, is conclusive evidence of his liability in the action.

§603. New indorser or additional deposit required

If, pending such action, petition or process, any such indorser or deposit becomes insufficient or such indorser removes from the State, the court may require a new and sufficient indorser or additional deposit, and by consent of the defendant the name of the original indorser may be struck out. Such new indorser shall be liable or such deposit holden for all costs from the beginning of the action. If such new indorser is not provided or security furnished within the time fixed by the court, the action shall be dismissed and the defendant shall recover his costs.

SUBCHAPTER 3

FORM AND CONTENT

§651. Unknown defendant sued by assumed name

When the name of a defendant is not known to the plaintiff, the summons may issue against him by an assumed name. If duly served, it shall not be dismissed for that reason but may be amended on such terms as the court orders.

§652. Verification of complaint

Verification by the oath of a party for whose benefit the complaint sets forth that it is prosecuted is equivalent to such verification by the plaintiff.

§653. Simulating legal papers forbidden

No person shall send, deliver, mail or in any manner cause to be sent, delivered or mailed to any person, firm or corporation any paper or document simulating or intended to simulate a summons, complaint, writ or court process of any kind. Whoever violates this section commits a civil violation for which a forfeiture not to exceed $100 may be adjudged. [PL 1979, c. 663, §78 (AMD).]

SECTION HISTORY

PL 1979, c. 663, §78 (AMD).

SUBCHAPTER 4

SERVICE

§701. Rules for service

Service of process shall be as prescribed by rule of court.

§702. Duty of sheriffs, deputies and civil deputies; fees

Every sheriff and each of the sheriff's deputies and civil deputies, as defined in Title 30-A, section 351, subsection 5, shall serve and execute, within the sheriff's county, all writs and precepts issued by lawful authority directed and committed to the sheriff, including those in which a town, plantation or parish of which the sheriff is a resident, or religious society or school district, of which the sheriff is at the time a member, is a party or interested, but the sheriff's legal fees for service must first be paid or secured to the sheriff. If the fees are not paid or secured to the sheriff when the process is delivered to the sheriff, the sheriff shall immediately return it to the plaintiff or attorney offering it; or if sent to the sheriff by mail or otherwise, the sheriff shall put it into a post office within 24 hours, directed to the person sending it; otherwise the sheriff waives the sheriff's right to the sheriff's fees before service. [PL 2017, c. 332, §1 (AMD).]

SECTION HISTORY

PL 1987, c. 223, §1 (AMD). PL 2017, c. 332, §1 (AMD).

§703. Service to precepts by constables

A constable may serve, execute and return upon any person in his town or in an adjoining plantation any writ of forcible entry and detainer, or any precept in a personal action, including those in which a town, plantation, parish, religious society or school district of which he is a member is a party or interested, but before he serves any process, he shall give bond to the inhabitants of his town in the sum of $500, with 2 sureties approved by the municipal officers thereof, who shall indorse their approval on said bond in their own hands, for the faithful performance of the duties of his office as to all processes by him served or executed. For every process that he serves before giving such bond, he forfeits not less than $20 nor more than $50 to the prosecutor. [PL 1977, c. 650, §1 (AMD).]

SECTION HISTORY

PL 1977, c. 650, §1 (AMD).

§704. Persons subject to jurisdiction

(REPEALED)

SECTION HISTORY

PL 1967, c. 544, §34 (AMD). PL 1975, c. 280, §§1,2 (AMD). PL 1975, c. 770, §79 (RP).

§704-A. Persons subject to jurisdiction

1. Declaration of purpose. It is declared, as a matter of legislative determination, that the public interest demands that the State provide its citizens with an effective means of redress against nonresident persons who, through certain significant minimal contacts with this State, incur obligations to citizens entitled to the state's protection. This legislative action is deemed necessary because of technological progress which has substantially increased the flow of commerce between the several states resulting in increased interaction between persons of this State and persons of other states.

This section, to insure maximum protection to citizens of this State, shall be applied so as to assert jurisdiction over nonresident defendants to the fullest extent permitted by the due process clause of the United States Constitution, 14th amendment.
[PL 1975, c. 770, §80 (NEW).]

2. Causes of action. Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the acts hereinafter enumerated in this section, thereby submits such person, and, if an individual, his personal representative, to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of such acts:

A. The transaction of any business within this State; [PL 1975, c. 770, §80 (NEW).]

B. Doing or causing a tortious act to be done, or causing the consequences of a tortious act to occur within this State; [PL 1977, c. 696, §162 (AMD).]

C. The ownership, use or possession of any real estate situated in this State; [PL 1975, c. 770, §80 (NEW).]

D. Contracting to insure any person, property or risk located within this State at the time of contracting; [PL 1975, c. 770, §80 (NEW).]

E. Conception resulting in parentage within the meaning of Title 19-A, chapter 61; [PL 2015, c. 296, Pt. C, §2 (AMD); PL 2015, c. 296, Pt. D, §1 (AFF).]

F. Contracting to supply services or things within this State; [PL 1975, c. 770, §80 (NEW).]

G. Maintaining a domicile in this State while subject to a marital or family relationship out of which arises a claim for divorce, alimony, separate maintenance, property settlement, child support or child custody; or the commission in this State of any act giving rise to such a claim; or [PL 1975, c. 770, §80 (NEW).]

H. Acting as a director, manager, trustee or other officer of a corporation incorporated under the laws of, or having its principal place of business within, this State. [PL 1975, c. 770, §80 (NEW).]

I. Maintain any other relation to the State or to persons or property which affords a basis for the exercise of jurisdiction by the courts of this State consistent with the Constitution of the United States. [PL 1977, c. 696, §163 (AMD).]
[PL 2015, c. 296, Pt. C, §2 (AMD); PL 2015, c. 296, Pt. D, §1 (AFF).]

3. Personal service. Service of process upon any person who is subject to the jurisdiction of the courts of this State, as provided in this section, may be made by personally serving the summons upon the defendant outside this State, with the same force and effect as though summons had been personally served within this State.
[PL 1975, c. 770, §80 (NEW).]

4. Jurisdiction based upon this section. Only causes of action arising from acts enumerated herein may be asserted against a defendant in an action in which jurisdiction over him is based upon this section.
[PL 1975, c. 770, §80 (NEW).]

5. Other service not affected. Nothing contained in this section limits or affects the right to serve any process in any other manner now or hereafter provided by law.
[PL 1975, c. 770, §80 (NEW).]

SECTION HISTORY

PL 1975, c. 770, §80 (NEW). PL 1977, c. 696, §§162,163 (AMD). PL 1995, c. 694, §D14 (AMD). PL 1995, c. 694, §E2 (AFF). PL 2015, c. 296, Pt. C, §2 (AMD). PL 2015, c. 296, Pt. D, §1 (AFF).

§705. Civil process served on Sunday void; officer liable

(REPEALED)

SECTION HISTORY

PL 1993, c. 101, §1 (AMD). PL 1995, c. 694, §D15 (AMD). PL 1995, c. 694, §E2 (AFF). PL 2011, c. 32, §1 (RP).

§706. Execution of precepts when officer disqualified

If any officer who has commenced the service or execution of a precept becomes disqualified, it may be completed by any other qualified officer with the same legal effect. If any officer aforesaid has made, in fact, any service, attachment or levy by virtue of any process placed in his hands for service and for any cause has not made his return thereon, such return shall be made by a sheriff, any deputy or other proper officer under direction of a Justice of the Superior Court held in the county where said writ is returnable, the facts to be set forth by said officer in said return to be proved to the satisfaction of said justice. If a deputy sheriff dies after he has served and returned a precept, the sheriff if alive, and if not, any deputy in commission at the time of such service may be allowed by the court to amend such return as the officer who made it might, but the rights of third parties shall not be affected thereby.

§707. Service of process on vacating office of sheriff

Sheriffs and their deputies have the same authority and their deputies are under the same obligation to serve, execute and return all processes in their hands, when for any cause they cease to hold such office, as before. Official neglects or misdoings of a deputy after his principal is out of office are a breach of such sheriff's bond.

§708. Sheriff a party

All writs and precepts in which the sheriff of any county is a party may, unless served or executed by a constable, be served or executed by the sheriff of any county adjoining that of which he is sheriff.

§709. Service on deputy sheriff or civil deputy sheriff

Any writ or precept in which the deputy or civil deputy, as defined in Title 30-A, section 351, subsection 5, of a sheriff is a party may be served by any other deputy or civil deputy of the same sheriff. [PL 2017, c. 332, §2 (AMD).]

SECTION HISTORY

PL 2017, c. 332, §2 (AMD).

§710. Service of precepts for work-jails in one or more counties

An officer of any county qualified to serve precepts in criminal cases in the county where he resides may serve any precept required by the laws providing for work-jails, whether such service is performed in whole or in part in one or more counties, and processes shall be issued and directed accordingly.

§711. Action under bastardy laws; service of precept by constable or sheriff

(REPEALED)

SECTION HISTORY

PL 2001, c. 217, §1 (RP).

§712. Service in actions for breach of duty of officer where principal out of State

In actions against sheriffs, deputy sheriffs and constables for breach of official duty where the principal defendant is out of the State, service may be made on such defendant by delivering a copy of the summons and of the complaint to each of the sureties on his official bond 14 days before the return day thereof, and the Superior Court may order further notice to the defendant by publication of an

abstract of the complaint and order thereon in a newspaper of general circulation in the county where the complaint is returnable or in the state paper or in such other manner as the court directs. If the order is complied with and proved, the defendant shall answer to the action and judgment in such case has the same effect as if personal service was made upon the principal defendant. [PL 1987, c. 667, §8 (AMD).]

SECTION HISTORY

PL 1987, c. 667, §8 (AMD).

§713. Constables of Bristol may serve on islands

The constables of the Town of Bristol may serve all precepts on Muscongus and Harbor Islands, in the County of Lincoln, the same as in their own town, until and unless said islands can legally elect constables.

CHAPTER 205

LIMITATION OF ACTIONS

SUBCHAPTER 1

GENERAL PROVISIONS

§751. Twenty years

Except as provided in Title 11, sections 2-725 and 3-1118, subsection (1), personal actions on contracts or liabilities under seal, promissory notes signed in the presence of an attesting witness, or on the bills, notes or other evidences of debt issued by a bank must be commenced within 20 years after the cause of action accrues. [PL 2017, c. 251, §1 (AMD).]

SECTION HISTORY

PL 1965, c. 306, §30 (AMD). PL 2017, c. 251, §1 (AMD).

§752. Six years

All civil actions shall be commenced within 6 years after the cause of action accrues and not afterwards, except actions on a judgment or decree of any court of record of the United States, or of any state, or of a justice of the peace in this State, and except as otherwise specially provided.

§752-A. Design professionals

All civil actions for malpractice or professional negligence against architects or engineers duly licensed or registered under Title 32 shall be commenced within 4 years after such malpractice or negligence is discovered, but in no event shall any such action be commenced more than 10 years after the substantial completion of the construction contract or the substantial completion of the services provided, if a construction contract is not involved. The limitation periods provided by this section shall not apply if the parties have entered into a valid contract which by its terms provides for limitation periods other than those set forth in this section. [PL 1975, c. 434 (NEW).]

SECTION HISTORY

PL 1975, c. 434 (NEW).

§752-B. Ski areas

All civil actions for property damage, bodily injury or death against a ski area owner or operator or tramway owner or operator or its employees, as defined under Title 32, chapter 133, whether based on

tort or breach of contract or otherwise, arising out of participation in skiing or hang gliding or the use of a tramway associated with skiing or hang gliding must be commenced within 2 years after the cause of action accrues. [PL 1995, c. 560, Pt. H, §5 (AMD); PL 1995, c. 560, Pt. H, §17 (AFF).]

SECTION HISTORY

PL 1977, c. 608, §1 (NEW). PL 1979, c. 514, §2 (AMD). PL 1995, c. 560, §H5 (AMD). PL 1995, c. 560, §H17 (AFF).

§752-C. Sexual acts towards minors

1. No limitation. Actions based upon sexual acts toward minors may be commenced at any time. [PL 1999, c. 639, §1 (NEW); PL 1999, c. 639, §2 (AFF).]

2. Sexual acts toward minors defined. As used in this section, "sexual acts toward minors" means the following acts that are committed against or engaged in with a person under the age of majority:

A. Sexual act, as defined in Title 17-A, section 251, subsection 1, paragraph C; or [PL 1999, c. 639, §1 (NEW); PL 1999, c. 639, §2 (AFF).]

B. Sexual contact, as defined in Title 17-A, section 251, subsection 1, paragraph D. [PL 1999, c. 639, §1 (NEW); PL 1999, c. 639, §2 (AFF).]

[PL 1999, c. 639, §1 (NEW); PL 1999, c. 639, §2 (AFF).]

SECTION HISTORY

PL 1985, c. 343, §1 (NEW). PL 1989, c. 292 (AMD). PL 1991, c. 551, §1 (AMD). PL 1991, c. 551, §2 (AFF). PL 1993, c. 176, §1 (AMD). PL 1999, c. 639, §1 (RPR). PL 1999, c. 639, §2 (AFF).

§752-D. Land surveyors

All civil actions for professional negligence against a professional land surveyor duly licensed or registered under Title 32 must be commenced within 4 years after the negligence is discovered, but an action may not be commenced more than 10 years after the completion of the contract for services or the completion of the services provided if a contract for services is not involved. [PL 2007, c. 345, §1 (AMD).]

SECTION HISTORY

PL 1993, c. 161, §1 (NEW). PL 2007, c. 345, §1 (AMD).

§752-E. Crime victims; profits from crime

1. Limitation period. Actions based upon a criminal offense in which, as that offense is defined, there is a victim, as defined in Title 17-A, section 2101, subsection 2, brought by or on behalf of a victim against the offender must be commenced within the limitation period otherwise provided or within 3 years of the time the victim discovers or reasonably should have discovered any profits from the crime, whichever occurs later.

[PL 2019, c. 113, Pt. C, §27 (AMD).]

2. Notice to victims. A person or organization that knowingly pays or agrees to pay any profits from a criminal offense in which, as that offense is defined, there is a victim to a person charged with or convicted of that crime shall make reasonable efforts to notify every victim, as defined in Title 17-A, section 2101, subsection 2, of the payment or agreement to pay as soon as practicable after discovering that the payment or intended payment constitutes profits from the crime. Reasonable efforts must include, but are not limited to, seeking information about victims from court records and the prosecuting attorney and mailing notice by certified mail to victims whose address is known and

publishing, at least once every 6 months for 3 years, in newspapers of general circulation in the area where the crime occurred a legal notice to unknown victims or victims whose address is unknown.
[PL 2019, c. 113, Pt. C, §27 (AMD).]

3. Definition. As used in this section, "profits from the crime" means any property obtained through or income generated from the commission of a crime; any property obtained by or income generated from the sale, conversion or exchange of proceeds of a crime, including any gain realized by such a sale, conversion or exchange; and any property that the offender obtained by committing the crime or income generated as a result of having committed the crime, including any assets obtained through the use of unique knowledge obtained during the commission of, or in preparation for the commission of, the crime, as well as any property obtained by or income generated from the sale, conversion or exchange of the property and any gain realized by such a sale, conversion or exchange.
[PL 1997, c. 320, §1 (NEW).]

4. Construction. Nothing in this section may be construed to expand civil liability or to restrict any defense to civil liability except as specified in subsection 1 with respect to the limitation period.
[PL 1997, c. 320, §1 (NEW).]

SECTION HISTORY

PL 1997, c. 320, §1 (NEW). PL 2019, c. 113, Pt. C, §27 (AMD).

§753. Two years

Actions for assault and battery, and for false imprisonment, slander and libel shall be commenced within 2 years after the cause of action accrues. [PL 1985, c. 804, §§ 1, 22 (AMD).]

SECTION HISTORY

PL 1985, c. 804, §§1,22 (AMD).

§753-A. Actions against attorneys

(REPEALED)

SECTION HISTORY

PL 1985, c. 804, §§2,22 (NEW). PL 2001, c. 115, §1 (RP). PL 2001, c. 115, §3 (AFF).

§753-B. Actions against attorneys

1. Time when statute starts to run, generally. In actions alleging professional negligence, malpractice or breach of contract for legal service by a licensed attorney, the statute of limitations starts to run from the date of the act or omission giving rise to the injury, not from the discovery of the malpractice, negligence or breach of contract, except as provided in this section or as the statute of limitations may be suspended by other laws.
[PL 2001, c. 115, §2 (NEW); PL 2001, c. 115, §3 (AFF).]

2. Rendering of title opinion. In an action alleging professional negligence in the rendering of a real estate title opinion, the statute of limitations starts to run on the date the negligence is discovered, but in no event may an action be commenced more than 20 years after the act or omission giving rise to the injury.
[PL 2001, c. 115, §2 (NEW); PL 2001, c. 115, §3 (AFF).]

3. Drafting of last will and testament. In an action alleging professional negligence in the drafting of a last will and testament that has been offered for probate, the statute of limitations starts to run on the date the negligence is discovered.
[PL 2001, c. 115, §2 (NEW); PL 2001, c. 115, §3 (AFF).]

SECTION HISTORY

PL 2001, c. 115, §2 (NEW). PL 2001, c. 115, §3 (AFF).

§754. One year

No action shall be commenced against bail unless within one year after judgment was rendered against the principal; nor against sureties on bonds in criminal cases unless within one year after default of the principal; nor against any person adjudged trustee, unless within one year from the expiration of the first execution against the principal and his goods, effects and credits in the hands of the trustee. No action in behalf of the State against sureties in criminal cases shall be brought unless within one year after default of the principal. [PL 1965, c. 356, §10 (AMD).]

SECTION HISTORY

PL 1965, c. 356, §10 (AMD).

SUBCHAPTER 2

REAL ACTIONS

§801. Rights of entry and action barred in 20 years

No person shall commence any real or mixed action for the recovery of lands, or make an entry thereon, unless within 20 years after the right to do so first accrued, or unless within 20 years after he or those under whom he claims were seized or possessed of the premises, except as provided in this subchapter.

§802. Right begins to run

If such right or title first accrued to an ancestor, predecessor or other person under whom the plaintiff claims, said 20 years shall be computed from the time when the right or title first accrued to such ancestor, predecessor or other person.

§803. Right deemed to accrue

The right of entry or of action to recover land, as used in this subchapter, first accrues at the following times:

1. When disseized. When a person is disseized, at the time of such disseizin;

2. Heir or devisee. When he claims as heir or devisee of one who died seized, at the time of such death, unless there is a tenancy by the curtesy or other estate intervening after the death of the ancestor or devisor; in that case, his right accrues when such intermediate estate expires, or would expire by its own limitation;

3. Intermediate estate. When there is such an intermediate estate, and in all cases, when the party claims by force of any remainder or reversion, his right accrues when the intermediate estate would expire by its own limitation, notwithstanding any forfeiture thereof for which he might enter at an earlier time.

§804. Entry for condition broken

Section 803 shall not prevent any person from entering, when so entitled by reason of any forfeiture or breach of condition; but if he claims under such a title, his right accrues when the forfeiture was incurred or the condition broken.

§805. Accrual of right of entry

In all cases not otherwise provided for, the right of entry accrues when the claimant, or the person under whom he claims, first became entitled to the possession of the premises under the title on which the entry or action is founded.

§806. Action by minister or sole corporation

If a minister or other sole corporation is disseized, any of his successors may enter upon the premises or bring an action for their recovery at any time within 5 years after the death, resignation or removal of the person disseized, notwithstanding 20 years after disseizin have expired.

§807. Minors and other disabled persons

When such right of entry or action first accrues, if the person thereto entitled is a minor, mentally ill, imprisoned or absent from the United States, he, or anyone claiming under him, may make the entry or bring the action at any time within 10 years after such disability is removed, notwithstanding 20 years have expired.

§808. Death during period of disability

If the person first entitled to make the entry or bring the action dies during the continuance of the disability and no determination or judgment has been had on his title or right of action, the entry may be made or action brought by his heirs, or other person claiming under him, at any time within 10 years after his death, notwithstanding the 20 years have elapsed; but no such further time for bringing the action or making the entry, beyond that hereinbefore prescribed, shall be allowed by reason of the disability of any other person.

§809. Death of tenant in tail or remainderman before end of limitation

When a tenant in tail or a remainderman in tail dies before the expiration of the period limited for making an entry or bringing an action for lands, no person claiming any estate which such tenant in tail or remainderman might have barred shall make an entry or bring an action to recover such land, except within the period during which the tenant in tail or remainderman, if he had so long lived, might have done it.

§810. Type of possession; need for enclosure

To constitute a disseizin, or such exclusive and adverse possession of lands as to bar or limit the right of the true owner thereof to recover them, such lands need not be surrounded with fences or rendered inaccessible by water; but it is sufficient, if the possession, occupation and improvement are open, notorious and comporting with the ordinary management of a farm; although that part of the same, which composes the woodland belonging to such farm and used therewith as a woodlot, is not so enclosed.

§810-A. Mistake of boundary line

If a person takes possession of land by mistake as to the location of the true boundary line, the possessor's mistaken belief does not defeat a claim of adverse possession. [PL 2009, c. 255, §1 (AMD).]

SECTION HISTORY

PL 1993, c. 244, §1 (NEW). PL 2009, c. 255, §1 (AMD).

§811. Failure of first action; effect on limitations

If the summons and complaint in a real or mixed action fails of sufficient service or return by unavoidable cause, or if by the default or negligence of any officer to whom it was delivered or directed for service, the action is dismissed; or if the action is defeated for any matter of form or by the death or other disability of either party, or if the plaintiff's judgment is reversed on appeal, the plaintiff may commence a new action at any time within 6 months after the determination of the first action or the reversal of the judgment.

§812. Acquisition of rights-of-way and easements by adverse possession; notice to prevent

No person, class of persons or the public shall acquire a right-of-way or other easement through, in, upon or over the land of another by the adverse use and enjoyment thereof, unless it is continued

uninterruptedly for 20 years. If a person apprehends that a right-of-way or other easement in or over his land may be acquired by custom, use or otherwise by any person, class of persons or the public, he may give public notice of his intention to prevent the acquisition of such easement by causing a copy of such notice to be posted in some conspicuous place upon the premises for 6 successive days, or in the case of land in the unorganized territory, by causing a copy of such notice to be recorded in the registry of deeds for the county where his land lies, and such posting or recording shall prevent the acquiring of such easement by use for any length of time thereafter; or he may prevent a particular person or persons from acquiring such easement by causing an attested copy of such notice to be served by an officer qualified to serve civil process upon him or them in hand or by leaving it at his or their dwelling house, or, if the person to whom such notice is to be given is not in the State such copy may be left with the tenant or occupant of the estate, if any. If there is no such tenant or occupant, a copy of such notice shall be posted for 6 successive days in some conspicuous place upon such estate. Such notice from the agent, guardian or conservator of the owner of land shall have the same effect as a notice from the owner himself. A certificate by an officer qualified to serve civil process that such copy has been served or posted by him as provided, if made upon original notice and recorded with it, within 3 months after the service or posting in the registry of deeds for the county or district in which the land lies, shall be conclusive evidence of such service or posting. [PL 1971, c. 450, §1 (AMD).]

SECTION HISTORY

PL 1971, c. 450, §1 (AMD).

§812-A. Dedication of land in the unorganized territory to public use; notice to prevent

If a person apprehends that his land in the unorganized territory or any interest therein may be dedicated to public use by custom, use or by any act or acts of that person or any persons acting on his behalf, he may give public notice that he has no intent to dedicate his land or any interest therein to public use, by causing a copy of such notice to be recorded in the registry of deeds for the county where the land lies, and such recording shall prevent such dedication. The failure to do so shall not create any implication of dedication. [PL 1971, c. 450, §2 (NEW).]

SECTION HISTORY

PL 1971, c. 450, §2 (NEW).

§812-B. Recording requirements

To satisfy the recording provisions of sections 812 and 812-A, with respect to land in the unorganized territory, the notice shall describe the land specifically or by reference to source of title, so as to identify it, and shall not be in the form of a reference to whatever land the person may own in the respective county or township. Such notice shall expire after 10 years but new notices, each effective for a 10-year period, may be so recorded at any time. [PL 1979, c. 541, Pt. A, §138 (AMD).]

SECTION HISTORY

PL 1971, c. 450, §3 (NEW). PL 1979, c. 541, §A138 (AMD).

§813. Adverse obstruction on rights-of-way; interruption by notice

No right-of-way or other easement existing in, upon, over or through the land of another shall be extinguished by the adverse obstruction thereof, unless such adverse obstruction has been continued uninterruptedly for 20 years. A notice in writing given by the owner of such right-of-way or other easement to the person whose land is subject thereto, setting forth said owner's intention to contest the extinguishment of such right-of-way or other easement, and duly served and recorded as provided in section 812, shall be deemed an interruption of such obstruction and prevent the extinguishment of such right-of-way or other easement.

§814. Trespass on wild lands; notice to quit; record; private roads in unorganized territory

If any person without right dwells upon or in any manner occupies any lands which on the first day of April, 1883 were wild lands, any owner of such wild lands or of any legal or equitable interest therein may cause a notice to quit such lands to be served upon such person by any sheriff or deputy sheriff, by giving the same to such person in hand. Such officer shall make his return upon a copy of such notice certified by him to be a true copy, and within 60 days thereafter such owner may cause such copy and return to be recorded in the registry of deeds in the county or district where said land is located. Proceedings had and taken as specified shall bar such person who has so entered or dwells upon such wild land from obtaining any rights by adverse possession to the land upon which he has so entered. Such person shall be entitled to the benefits of all the provisions of law relating to betterments.

In roads privately owned in unorganized territory notwithstanding the other provisions of this subchapter, no title or interest shall be acquired against the owners thereof by adverse possession, prescription or acquiescence, however exclusive or long continued.

§815. Forty years' possession bars action for recovery of land

No real or mixed action for the recovery of lands shall be commenced or maintained against any person in possession thereof, when such person or those under whom he claims have been in actual possession for more than 40 years, claiming to hold them by adverse, open, peaceable, notorious and exclusive possession, in their own right.

§816. Limitations of actions for uncultivated lands in incorporated places

No real or mixed action for the recovery of uncultivated lands or of any undivided fractional part thereof, situated in any place incorporated for any purpose, shall be commenced or maintained against any person, or entry made thereon, when such person or those under whom he claims have, continuously for the 20 years next prior to the commencement of such action or the making of such entry, claimed said lands or said undivided fractional part thereof under recorded deeds; and have, during said 20 years, paid all taxes assessed on said lands or on such undivided fractional part thereof, however said tax may have been assessed whether on an undivided fractional part of said lands or on a certain number of acres thereof equal approximately to the acreage of said lands or of said fractional part thereof; and have, during said 20 years, held such exclusive, peaceable, continuous and adverse possession thereof as comports with the ordinary management of such lands or of undivided fractional parts of such lands in this State.

§817. Limitation of actions for breach of covenants; vested interest in 6-year limitations period

1. Twenty years. An action on a breach of covenants in any deed or other instrument for the conveyance of real property in this State or any interest therein must be commenced within 20 years after the cause of action accrues. This subsection applies to all deeds and other instruments for the conveyance of real property executed on or after October 7, 1967.
[PL 2011, c. 124, §1 (NEW).]

2. Vested interest in 6-year statute of limitations; notice, right of action; trial. A person who is a party to an instrument conveying real property that was not executed under seal and for which the 6-year statute of limitations on causes of action for breach of covenants expired before the effective date of this section and who claims the benefit of the 6-year statute of limitations may record within 12 months of the effective date of this section in the registry of deeds where the instrument is recorded or the property is located a conformed copy of the notice set forth in this subsection.

A. The notice must include the names of the current record owner of the real property that was the subject of the instrument and the mortgagees of record. Within 20 days of recording the notice, the person shall give a copy of the notice to the current record owners and the mortgagees by mailing by the United States Postal Service, postage prepaid. The notice must be substantially as follows.

"NOTICE

By virtue of the Maine Revised Statutes, Title 14, section 817, subsection 2, the following instrument that was not executed under seal is deemed to be subject to a 20-year limitations period for breach of covenants if no claim of a vested right to assert the 6-year statute of limitations for breach of covenants is timely made:

(list here the instrument by grantor name, grantee name, date of execution and recording information, if any)

This instrument affects real estate located at (identify here street location, municipality and county where the real estate is located).

Pursuant to the Maine Revised Statutes, Title 14, section 817, the undersigned hereby claims a vested right to assert the defense of statute of limitations for any cause of action asserting a breach of covenants in the above described instrument that is not commenced within 6 years of the date the cause of action accrued." [PL 2011, c. 124, §1 (NEW).]

B. A person receiving a notice under paragraph A is barred from maintaining an action for breach of covenants under the identified instrument by the 6-year limitations period unless within one year from the date of the recording of the notice the person files in the registry of deeds where the notice was recorded a statement under oath claiming application of the 20-year statute of limitations. The claim to applicability of the 20-year statute of limitations is barred unless, within 180 days of the recording of the statement, the claimant or a person on behalf of the claimant commences a declaratory judgment action under Title 14, chapter 707. [PL 2011, c. 124, §1 (NEW).]

C. Upon trial of an action initiated under paragraph B, the court shall declare the 20-year limitations period applicable if the court finds that:

(1) The grantee of the instrument did not, at the time of delivery of the instrument, intend for the 6-year statute of limitations to apply; or

(2) The grantor executed the instrument fraudulently or in bad faith. [PL 2011, c. 124, §1 (NEW).]

[PL 2011, c. 124, §1 (NEW).]

SECTION HISTORY

PL 2011, c. 124, §1 (NEW).

SUBCHAPTER 3

MISCELLANEOUS ACTIONS

§851. Actions against sheriff for escape; for misconduct

Actions for escape of prisoners committed on execution shall be commenced within one year after the cause of action accrues, but actions against a sheriff, for negligence or misconduct of himself or his deputies, shall be commenced within 4 years after the cause of action accrues.

§852. Mutual and open accounts current

In contract actions to recover the balance due, where there have been mutual dealings between the parties, the items of which are unsettled, whether kept or proved by one party or both, the cause of action shall be deemed to accrue at the time of the last item proved in such account.

§853. Persons under disability may bring action when disability removed

If a person entitled to bring any of the actions under sections 752 to 754, including section 752-C, and under sections 851 and 852 and Title 24, section 2902 and, until July 1, 2017, section 2902-B is a

minor, mentally ill, imprisoned or without the limits of the United States when the cause of action accrues, the action may be brought within the times limited herein after the disability is removed. [PL 2013, c. 329, §1 (AMD).]

SECTION HISTORY

PL 1977, c. 492, §2 (AMD). PL 1985, c. 343, §2 (AMD). PL 2013, c. 329, §1 (AMD).

§854. Actions for breach of promise to marry prohibited

No action or proceeding to recover damages for breach of promise to marry shall be maintained.

§855. Commencement of new action after failure, defeat or reversal

When a summons fails of sufficient service or return by unavoidable accident, or default, or negligence of the officer to whom it was delivered or directed, or the action is otherwise defeated for any matter of form, or by the death of either party the plaintiff may commence a new action on the same demand within 6 months after determination of the original action; and if he dies and the cause of action survives, his executor or administrator may commence such new action within said 6 months.

§856. Death of either party before action commenced

(REPEALED)

SECTION HISTORY

PL 1979, c. 540, §17 (RP).

§857. Rights of alien enemies in time of war

If a person is disabled from prosecuting an action in this State by reason of being an alien subject or citizen of a country at war with the United States, the time during which such war continues shall not be a part of the period herein limited for the commencement of any of said actions.

§858. Limitation on actions for penalties

Actions for any penalty or forfeiture on a penal statute, brought by a person to whom the penalty or forfeiture is given in whole or in part, shall be commenced within one year after the commission of the offense. If no person so prosecutes, it may be recovered by civil action, indictment or information in the name and for the use of the State at any time within 2 years after the commission of the offense, and not afterwards.

§859. Limitation extended in cases of fraud

If a person, liable to any action mentioned, fraudulently conceals the cause thereof from the person entitled thereto, or if a fraud is committed which entitles any person to an action, the action may be commenced at any time within 6 years after the person entitled thereto discovers that he has just cause of action, except as provided in section 3580. [PL 1985, c. 641, §1 (AMD).]

SECTION HISTORY

PL 1985, c. 641, §1 (AMD).

§860. Renewal of promise in writing

In actions founded on any contract, no acknowledgment or promise takes the case out of the operation hereof, unless the acknowledgment or promise is express, in writing and signed by the party chargeable thereby. No such acknowledgment or promise made by one joint contractor affects the liability of the others.

§861. Judgment where action barred against some and not others

In actions against 2 or more joint contractors, if it appears on trial or otherwise that the plaintiff is barred by the provisions hereof as to one or more of the defendants, but is entitled to recover against

any other by virtue of a new acknowledgment, promise or otherwise judgment shall be rendered for the plaintiff against such other, and for the other defendants against the plaintiff.

§862. When nonjoinder of defendants is pleaded

In an action on a contract, if the defendant pleads that another person ought to have been jointly sued and issue is joined thereon, and it appears on the trial that the action was barred by the provisions hereof against such person, the issue shall be found for the plaintiff.

§863. Partial payment and indorsement

Nothing herein contained alters, takes away or lessens the effect of payment of any principal or interest made by any person, but no indorsement or memorandum of such payment made on a promissory note, bill of exchange or other writing, by or on behalf of the party to whom such payment is made or purports to be made, is sufficient proof of payment to take the case out of the statute of limitations. No such payment made by one joint contractor or his executor or administrator affects the liability of another.

§864. Presumption of payment after 20 years

Every judgment and decree of any court of record of the United States or of any state or justice of the peace in this State is presumed to be paid and satisfied at the end of 20 years after any duty or obligations accrued by virtue of such judgment or decree, except for a child support order. For the purposes of this section, "child support order" means a judgment, decree or order, whether temporary, final or subject to modification, issued by a court or an administrative agency of competent jurisdiction for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, that provides for monetary support, health care, arrearages or reimbursement and may include related costs and fees, interest and penalties, income withholding, attorney's fees and other relief. [PL 2017, c. 102, §1 (AMD).]

SECTION HISTORY

PL 2017, c. 102, §1 (AMD).

§865. Application of limitations to counterclaims

All the provisions hereof respecting limitations apply to any counterclaim by the defendant except a counterclaim arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim to the extent of the demand in the plaintiff's claim. The time of such limitation shall be computed as if an action had been commenced therefor at the time the plaintiff's action was commenced. [PL 1969, c. 367, §1 (AMD).]

SECTION HISTORY

PL 1969, c. 367, §1 (AMD).

§866. Defendant out of State when action commenced; insolvency

If a person is out of the State when a cause of action accrues against him, the action may be commenced within the time limited therefor after he comes into the State. If a person is absent from and resides out of the State, after a cause of action has accrued against him, the time of his absence from the State shall not be taken as a part of the time limited for the commencement of the action. If a person is adjudged an insolvent debtor after a cause of action has accrued against him, and such cause of action is one provable in insolvency, the time of the pendency of his insolvency proceedings shall not be taken as a part of the time limited for the commencement of the action. No action shall be brought by any person whose cause of action has been barred by the laws of any state, territory or country while all the parties have resided therein.

§867. Foreign corporations covered by limitations

Any foreign corporation, doing business continuously in this State and having constantly an officer or agent resident herein on whom service of any process may be made, shall be entitled to the benefit of all provisions of law relating to limitation of actions the same as domestic corporations.

§868. Action to recover damages for land taken for public use

No action or proceeding shall be brought or maintained to recover damages caused by the taking of any land, rights or other property to be used for a public purpose when such taking has been authorized by the Legislature, unless the same is commenced within 3 years after the cause first accrued for which the same or like proceedings might have been commenced, nor shall any compensation be awarded for damages sustained for more than 3 years before the commencement of proceedings to recover the same.

§869. Action barred when no administrator 6 years after death

Where no administration is had upon the estate of a deceased person within 6 years from the date of death of said decedent and no petition for administration is pending, all actions upon any claim against said decedent shall be barred.

§870. Judgment by perjury; action on case

1. Action; within 3 years. When a judgment has been obtained against a party by the perjury of a witness introduced at the trial by the adverse party, the injured party may, within 3 years after that judgment or after final disposition of any motion for relief from the judgment, bring an action against such adverse party, or any perjured witness or confederate in the perjury, to recover the damages sustained by the injured party by reason of such perjury. The judgment in the former action does not bar an action under this section.
[PL 2009, c. 187, §1 (NEW).]

2. Specificity of claim. A claim under this section must identify the specific testimony alleged to be false at the initial filing of the claim.
[PL 2009, c. 187, §1 (NEW).]

3. Record; evidence. A claim may not be submitted under this section solely on the same record as in the former trial. Evidence discoverable by due diligence before the trial cannot be introduced as new evidence to establish perjury.
[PL 2009, c. 187, §1 (NEW).]

4. Standard of proof. The plaintiff in an action under this section must prove the alleged perjury by clear and convincing evidence.
[PL 2009, c. 187, §1 (NEW).]

5. Affirmative defense. It is an affirmative defense to an action under this section that the plaintiff has no new evidence to present concerning the alleged perjury.
[PL 2009, c. 187, §1 (NEW).]

6. Strictly construed. The pleading and proof requirements of this section must be strictly construed.
[PL 2009, c. 187, §1 (NEW).]

SECTION HISTORY

PL 2009, c. 187, §1 (RPR).

§871. Public Works Contractors' Surety Bond Law of 1971

1. Title. This section shall be known and may be cited as the "Public Works Contractors' Surety Bond Law of 1971".
[PL 1971, c. 59 (NEW).]

2. Person and claimant. The terms "person" and "claimant" and the masculine pronoun as used in this section shall include individuals, associations, corporations or partnerships.
[PL 1971, c. 59 (NEW).]

3. Surety bonds. Except as provided in Title 5, section 1745, before any contract exceeding $125,000 in amount for the construction, alteration or repair of any public building or other public improvement or public work, including highways, is awarded to any person by the State or by any political subdivision or quasi-municipal corporation or by any public authority, that person must furnish to the State or to the other contracting body, as the case may be, the following surety bonds:

A. A performance bond in an amount equal to the full contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions thereof. Such a bond is solely for the protection of the State or the contracting body awarding the contract, as the case may be. A performance bond issued pursuant to this paragraph must include on its face the name of and contact information for the surety company that issued the bond; and [PL 2007, c. 500, §1 (AMD).]

B. A payment bond in an amount equal to the full amount of the contract solely for the protection of claimants supplying labor or materials to the contractor or the contractor's subcontractor in the prosecution of the work provided for in the contract. The term "materials" includes rental of equipment. A payment bond issued pursuant to this paragraph must include on its face the name of and contact information for the surety company that issued the bond. [PL 2007, c. 500, §1 (AMD).]

When required by the contracting authority, the contractor shall furnish bid security in an amount the contracting authority considers sufficient to guarantee that if the work is awarded the contractor will contract with the contracting agency.

The bid security may be in the form of United States postal money order, official bank checks, cashiers' checks, certificates of deposit, certified checks, money in escrow, bonds from parties other than bonding companies subject to an adequate financial standing documented by a financial statement of the party giving the surety, bond or bonds from a surety company or companies duly authorized to do business in the State.

The bid security may be required at the discretion of the contracting authority to ensure that the contractor is bondable.

The bid securities other than bid bonds must be returned to the respective unsuccessful bidders. The bid security of the successful bidder must be returned to the contractor upon the execution and delivery to the contracting agency of the contract and performance and payment bonds, in terms satisfactory to the contracting agency for the due execution of the work.

In the case of contracts on behalf of the State, the bonds must be payable to the State and deposited with the contracting authority. In the case of all other contracts subject to this section, the bonds must be payable to and deposited with the contracting body awarding the contract.
[PL 2007, c. 500, §1 (AMD).]

3-A. Letter of credit. Notwithstanding the surety bond requirements of subsection 3, at the discretion of the State or other contracting authority, a person may provide an irrevocable letter of credit in lieu of the performance bond required by subsection 3, paragraph A or the payment bond required by subsection 3, paragraph B, or both, to the State or the contracting authority, as the case may be. For purposes of this subsection, "letter of credit" has the same meaning as in Title 11, section 5-1102, subsection (1), paragraph (j).

A. The letter of credit must be:

(1) Issued in favor of the State or other contracting authority by a federally insured financial institution;

(2) In a form satisfactory to the State or other contracting authority; and

(3) In an amount equal to the full amount of the contract. [PL 2007, c. 500, §2 (NEW).]

B. In order to issue an irrevocable letter of credit as an alternative to a surety bond under this subsection, a financial institution or its parent company must:

(1) Maintain a long-term unsecured debt rating of at least "A3" issued by Moody's Investors Service, Inc. or "A-" issued by Standard and Poor's Corporation;

(2) Maintain a short-term commercial paper rating within the 3 highest categories established by Moody's Investors Service, Inc. or Standard and Poor's Corporation; or

(3) Be certified in writing by the Superintendent of Financial Institutions that the financial institution's capital ratios, as calculated in the most recent quarterly consolidated report of condition and income, meet or exceed the requirements for well-capitalized financial institutions. [PL 2007, c. 500, §2 (NEW).]

C. If the letter of credit has an expiration date that is earlier than the date of acceptance of performance of the contract in accordance with the plans, specifications and conditions of the contract, a replacement letter of credit that meets the specifications of paragraph A must be delivered to the State or other contracting authority not later than 30 days prior to that expiration date. [PL 2007, c. 500, §2 (NEW).]

[PL 2007, c. 500, §2 (NEW).]

4. Actions. Any person who has furnished labor or material to the contractor or to a subcontractor of the contractor in the prosecution of the work provided for in a contract in respect to which a payment bond has been furnished under subsection 3, paragraph B, and who has not been paid in full before the expiration of 90 days after the day on which the last of the labor was performed by that person or material was furnished or supplied by that person for which a claim is made, may bring an action on the payment bond in that person's own name for the amount, or the balance thereof, unpaid at the time of the institution of the action. Any such claimant having a direct contractual relationship with a subcontractor of the contractor furnishing such a payment bond but no contractual relationship, express or implied, with that contractor does not have the right of action upon that payment bond unless the claimant has given written notice to the contractor within 90 days from the date on which the claimant performed the last of the labor, or furnished or supplied the last of the material for which the claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such a notice must be served by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business, or at the contractor's residence.

Any such action may not be commenced after the expiration of one year from the date on which the last of the labor was performed or material was supplied for the payment of which the action is brought, except that in the case of a material supplier, when the amount of the claim is not ascertainable due to the unavailability of final quantity estimates, the action may be commenced before the expiration of one year from the date on which the final quantity estimates are determined. The notice of claim from the material supplier to the contractor furnishing the payment bond must be filed before the expiration of 90 days following the determination by the contracting authority of the final quantity estimates.

The contracting body and the agent in charge of its office shall furnish to anyone making written application therefor who states that the person has supplied labor or materials for such work and payment therefor has not been made, or that the person is being sued on any such bond, or that the person is the surety thereon, a certified copy of the bond and the contract for which it was given, which copy is prima facie evidence of the contents, execution and delivery of the original. Applicants shall

pay for the certified copies such reasonable fees as the contracting body or the agent in charge of its office fixes to cover the actual cost of preparation thereof.
[PL 2007, c. 500, §3 (AMD).]

5. Application. This section shall not apply to any contract awarded pursuant to any invitation for bids issued on or before September 23, 1971 or to any bonds furnished in respect to any such contract.
[PL 1971, c. 622, §53 (AMD).]

6. Jurisdiction. An action on a performance bond furnished under subsection 3, paragraph A or an action on a payment bond furnished under subsection 3, paragraph B in accordance with subsection 4 must be brought in the county in this State where the construction, alteration or repair of the public building or other public improvement or public work is located.
[PL 2007, c. 500, §4 (NEW).]

SECTION HISTORY

PL 1971, c. 59 (NEW). PL 1971, c. 622, §53 (AMD). PL 1973, c. 625, §82 (AMD). PL 1985, c. 154 (AMD). PL 1985, c. 554, §2 (AMD). PL 1989, c. 483, §A31 (AMD). PL 1993, c. 436, §1 (AMD). PL 2007, c. 500, §§1-4 (AMD).

PART 3

TRIAL AND JUDGMENT

CHAPTER 301

JUDGES

§1101. Power of court unaffected by existence or expiration of term

The existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action.

§1102. Judge may sit by consent where his town or county is party

(REPEALED)

SECTION HISTORY

PL 1983, c. 253 (RP).

§1103. Petition for assignment of another justice

Within 10 days after the service of a complaint or other application in which equitable relief is sought, the defendant, prior to the filing of his answer, may petition in writing for good cause shown to the Chief Justice of the Superior Court for the assignment of a justice to preside on the matter other than the justice to whom the original complaint or application was presented. Upon the receipt of that petition the Chief Justice of the Superior Court may assign another justice to hear the matter. When the Chief Justice of the Superior Court is presiding on the matter, a petition for the assignment of a justice, other than the Chief Justice of the Superior Court, shall be made to the Chief Justice of the Supreme Judicial Court. Upon the receipt of that petition the Chief Justice of the Supreme Judicial Court may assign another justice to hear the matter. [PL 1983, c. 688, §6 (AMD).]

SECTION HISTORY

PL 1983, c. 688, §6 (AMD).

§1104. Order of view by jury

In any jury trial the presiding justice may order a view by the jury.

§1105. Charge to jury

During a jury trial the presiding justice shall rule and charge the jury, orally or in writing, upon all matters of law arising in the case but shall not, during the trial, including the charge, express an opinion upon issues of fact arising in the case, and such an expression of opinion is sufficient cause for a new trial if either party aggrieved thereby and interested desires it, and the same shall be ordered accordingly by the law court on appeal in a civil or criminal case. [PL 1965, c. 356, §11 (AMD).]

SECTION HISTORY

PL 1965, c. 356, §11 (AMD).

§1106. Disagreement in jury; instructions

When a jury, not having agreed, returns into court stating the fact, the presiding justice may, in the exercise of judicial discretion, explain any questions of law if proposed or restate any particular testimony and send them out again for further consideration. [PL 1991, c. 60 (AMD).]

SECTION HISTORY

PL 1991, c. 60 (AMD).

CHAPTER 303

REFERENCE OF DISPUTES

§1151. Controversies referable; powers of referees; revocation by consent

All controversies which may be the subject of a personal action may be submitted to one or more referees, with the same powers as those appointed by the court. The parties personally or by attorney may sign and acknowledge an agreement before a notary public, although he is one of the referees, in substance as follows:

"Know all men by these presents, that ...., of ...., in the County of ...., and ...., of ...., in the County of ...., have agreed to submit the demand made by said ...., against said ...., which is hereunto annexed," (and all other demands between the parties, as the case may be,) "to the determination of ...., ... and ....; and judgment rendered on their report, or that of a majority of them, made to the Superior Court for the said County of ...., within one year from this day, shall be final. And if either party neglects to appear before the referees, after proper notice given to him of the time and place appointed for hearing the parties, they may proceed in his absence.

Dated this .... day of ...., A.D., 19.... ." [PL 1981, c. 456, Pt. A, §128 (AMD).]

Such agreement shall not be revoked without mutual consent, but the parties may agree when the report shall be made and vary the form accordingly.

SECTION HISTORY

PL 1981, c. 456, §A128 (AMD).

§1152. Submission of all demands; specific demands

If all demands between the parties are so submitted, no specific demand need be annexed to the agreement; but if a specific demand only is submitted, it shall be annexed to the agreement and signed by the party making it and be so stated as to be readily understood.

§1153. Authority of referees

All the referees must meet and hear the parties; but a majority may make the report, which is as valid as if signed by all, if it appears by the report or certificate of the dissenting referee that all attended and heard the parties. They may allow costs or not to either party, unless special provision is made therefor in the submission, but the court may reduce their compensation. Any referee may swear witnesses. [PL 2009, c. 166, §2 (AMD).]

A referee appointed to hear a dispute concerning real property must report the referee's decision within one year of appointment by the court unless good cause for extending this period is shown. [PL 2009, c. 166, §2 (NEW).]

SECTION HISTORY

PL 2009, c. 166, §2 (AMD).

§1154. Return of report

The report shall be made to the court within the time specified in the submission. One of the referees shall deliver it into court, or it shall be sealed up and sent sealed to the court, and shall be opened by the clerk.

§1155. Action on report; appeals

The court may accept, reject or recommit the report. If recommitted, the referees shall notify the parties of the time and place for a new hearing. When the report is accepted, judgment shall be entered thereon as in case of submissions by rule of court. Either party may appeal from such judgment or from rejection of the report.

CHAPTER 305

JURIES

SUBCHAPTER 1

GENERAL PROVISIONS

§1201. Persons exempt from jury service

(REPEALED)

SECTION HISTORY

PL 1971, c. 391, §2 (RP).

§1201-A. Declaration of policy

It is the policy of the State that all persons chosen for jury service be selected at random from the broadest feasible cross section of the population of the area served by the court, that all qualified citizens have the opportunity in accordance with this chapter to be considered for jury service and that qualified citizens fulfill their obligation to serve as jurors when summoned for that purpose. [PL 1981, c. 705, Pt. G, §1 (NEW).]

SECTION HISTORY

PL 1981, c. 705, §G1 (NEW).

§1202. Fine for juror's failure to attend

(REPEALED)

SECTION HISTORY

PL 1971, c. 391, §2 (RP).

§1202-A. Prohibition of discrimination

A citizen may not be excluded from jury service in this State on account of race, color, religion, sex, sexual orientation as defined in Title 5, section 4553, subsection 9-C, national origin, ancestry, economic status, marital status, age or physical handicap, except as provided in this chapter. [RR 2017, c. 1, §6 (COR).]

SECTION HISTORY

PL 1981, c. 705, §G2 (NEW). RR 2017, c. 1, §6 (COR). PL 2017, c. 223, §3 (AMD).

§1203. Juror's fees

(REPEALED)

SECTION HISTORY

PL 1971, c. 316, §§1,2 (AMD). PL 1971, c. 391, §2 (RP). PL 1971, c. 544, §44 (RP).

§1203-A. Definitions

As used in this section, unless the context otherwise indicates, the following terms have the following meanings. [PL 1981, c. 705, Pt. G, §3 (NEW).]

1. Clerk. "Clerk" means the Clerk of Court of the Superior Court and includes any of his assistants. [PL 1983, c. 202, §1 (AMD).]

2. Court. "Court" means the Superior Court of this State and includes, when the context requires, any justice of the court.
[PL 1981, c. 705, Pt. G, §3 (NEW).]

3. Juror. "Juror," for the purposes of this chapter, means any person who attends court for the purpose of serving on a jury, is on call and available to report to court to serve on a jury when so needed and so requested by the court or whose summoned service on a jury is postponed to a future date certain.
[PL 1981, c. 705, Pt. G, §3 (NEW).]

4. Master list. "Master list" means a list of names and addresses, or identifying numbers, of prospective jurors that have been randomly selected from the source list.
[PL 1981, c. 705, Pt. G, §3 (NEW).]

5. Random selection. "Random selection" means the selection of names in a manner immune from the purposeful or inadvertent introduction of subjective bias, so that no recognizable class of the population on the lists from which the names are being selected can be purposely or inadvertently included or excluded.
[PL 1981, c. 705, Pt. G, §3 (NEW).]

6. Source list. "Source list" means the list or lists from which names of prospective jurors are drawn.
[PL 1981, c. 705, Pt. G, §3 (NEW).]

SECTION HISTORY

PL 1981, c. 705, §G3 (NEW). PL 1983, c. 202, §1 (AMD).

§1204. Civil juries

1. Number of members. The court shall seat a jury of either 8 or 9 members, and all jurors shall participate in the verdict unless excused for good cause by the court. Unless the parties otherwise stipulate, the verdict must be decided by the unanimous votes of at least 2/3 of the jurors participating in the verdict and no verdict may be taken from a jury reduced to fewer than 7 members.
[PL 2003, c. 525, §1 (AMD).]

2. Procedures. At the commencement of each term, the clerk shall prepare an alphabetical list of the names of those appearing for duty as traverse jurors. Before each trial, after the court has ruled on challenges for cause, the clerk shall randomly draw by lot from the names of all eligible jurors a sufficient number to comprise the jury panel plus enough to account for peremptory challenges. Peremptory challenges may then be exercised in accordance with court rules. When the panel is complete, the court shall appoint a foreperson to oversee deliberations and to speak for the jury.
[PL 2003, c. 299, §1 (NEW).]

SECTION HISTORY

PL 1965, c. 356, §§12,13 (AMD). PL 1967, c. 441, §3 (AMD). PL 1971, c. 391, §3 (AMD). PL 1971, c. 581, §1 (AMD). PL 1975, c. 41, §1 (AMD). PL 1977, c. 102 (AMD). PL 2003, c. 299, §1 (RPR). PL 2003, c. 525, §1 (AMD).

§1205. Supernumeraries, transfers and excuses

Supernumerary jurors may be excused from time to time until wanted, and they may be placed on either jury as occasion requires. Jurors may be transferred from one jury to the other when convenience requires it. For good reason any juror may be excused.

§1206. Juror's oath

The following shall be the form of oath, administered to traverse jurors in civil causes:

"You, and each of you, swear that in all causes committed to you, you will give a true verdict therein according to the law and the evidence given you. So help you God." [PL 1977, c. 114, §15 (AMD).]

When a juror is conscientiously scrupulous of taking an oath, the word "affirm" shall be used instead of "swear" and the words "this you do under the penalties of perjury" instead of the words "so help you God." [PL 1977, c. 114, §16 (AMD).]

SECTION HISTORY

PL 1977, c. 114, §§15,16 (AMD).

§1207. Foreman

(REPEALED)

SECTION HISTORY

PL 2003, c. 299, §2 (RP).

§1208. Talesman, returned

When, by reason of challenge or other cause, a sufficient number of jurors duly drawn and summoned cannot be obtained for the trial of a cause, the court shall cause jurors to be returned from the bystanders or from the county at large to complete the panel if they are on the jury not less than 7 jurors drawn and returned as provided. Such jurors shall be returned by the sheriff or his deputy or such other disinterested person as the court appoints.

§1209. New jurors summoned during term

The court may, in term time, issue venires for as many jurors as are wanted, to be drawn, notified and returned forthwith or on a day appointed. When in any county the business requires a protracted session, the court may, during the term, excuse all or any of the jurors originally returned and issue venires for new jurors to supply their places, who shall be drawn and notified to attend at such time as the court directs.

§1210. Payment of taxes as disqualification

In prosecutions for recovery of money or other forfeiture, it is not a cause of challenge to a juror that he is liable to pay taxes in a county, town or plantation which may be benefited by the recovery.

SUBCHAPTER 1-A

JURY SERVICE

§1211. Disqualifications and exemptions from jury service

A prospective juror is disqualified to serve on a jury if that prospective juror is not a citizen of the United States, 18 years of age and a resident of the county, or is unable to read, speak and understand the English language. The following persons are exempt from serving as jurors: The Governor, active duty military and all persons exempt under Title 37-B, section 185. [PL 2017, c. 275, §1 (AMD).]

SECTION HISTORY

PL 1971, c. 391, §1 (NEW). PL 1973, c. 461 (AMD). PL 1981, c. 705, §G4 (AMD). PL 1983, c. 202, §2 (AMD). PL 1985, c. 608 (AMD). PL 2005, c. 60, §1 (AMD). PL 2017, c. 275, §1 (AMD).

§1212. No exemptions

(REPEALED)

SECTION HISTORY

PL 1971, c. 391, §1 (NEW). PL 1981, c. 705, §G5 (RP).

§1213. Excuses from jury service

1. Determination. Upon request of a prospective juror, the presiding justice or the clerk of court acting under the supervision of the presiding justice shall determine whether the prospective juror is excused from jury service. The determination must be made on the basis of information provided on the juror qualification form, supplemented by other competent evidence when considered necessary to the determination.
[PL 1999, c. 87, §1 (RPR).]

2. Basis for excuse. A qualified prospective juror may be excused from jury service only upon a showing of undue hardship, extreme inconvenience, public necessity or inability to render satisfactory jury service because of physical or mental disability.

A. A person claiming to be excused on the grounds of disability may be required to submit a physician's certificate or accredited Christian Science practitioner's certificate. The certifying physician or Christian Science practitioner is subject to inquiry by the court at its discretion. [PL 1999, c. 87, §1 (NEW).]

B. Municipal election officials, as defined in Title 21-A, section 1, subsection 14, are excused from serving on a jury on the day of an election. State election officials and municipal clerks and registrars and their employees are excused from serving on a jury for 31 days prior to an election. [PL 1999, c. 87, §1 (NEW).]

C. A person 80 years of age or older who does not wish to serve on a jury is excused from jury service. [PL 2013, c. 74, §1 (NEW).]

[PL 2013, c. 74, §1 (AMD).]

3. Extent of excuse; record. Depending upon the circumstances, a juror may be finally excused from jury service, be required to serve at a later specific time or be required to serve for a period of time less than the usual 15 court days. The clerk shall enter the determination regarding the requested excuse and the reason for the determination in the appropriate record kept for that purpose.

[PL 1999, c. 87, §1 (NEW).]

SECTION HISTORY

PL 1971, c. 391, §1 (NEW). PL 1981, c. 705, §G6 (RPR). PL 1999, c. 87, §1 (RPR). PL 2013, c. 74, §1 (AMD).

§1214. Challenging compliance with selection procedures

Within 7 days after the moving party discovered or by the exercise of diligence could have discovered the grounds therefor, and in any event before the traverse jury is sworn to try the case, a party may move to stay the proceedings, and in a criminal case to dismiss the indictment, or for other appropriate relief, on the ground of substantial failure to comply with the provisions of this chapter for selecting the grand or traverse jury. [PL 1971, c. 622, §54 (AMD).]

Upon motion filed under this section containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with such provisions, the moving party is entitled to present in support of the motion the testimony of the jury commissioners or the clerk, any relevant records and papers not public or otherwise available used by the jury commissioners or the clerk and any other relevant evidence. If the court determines that in selecting either a grand jury or a traverse jury there has been such a substantial failure, the court shall stay the proceedings pending the proper selection of the jury, dismiss an indictment or grant other appropriate relief. [PL 1971, c. 622, §55 (AMD).]

The procedures prescribed by this section are the exclusive means by which a person accused of a crime, the State or a party in a civil case may challenge a jury on the ground that the jury was not selected in conformity with the provisions of this chapter. [PL 1971, c. 391, §1 (NEW).]

SECTION HISTORY

PL 1971, c. 391, §1 (NEW). PL 1971, c. 622, §§54,55 (AMD).

§1215. Mileage and compensation of jurors

A juror is entitled to paid mileage at the rate of 15¢ per mile for travel expenses from the juror's residence to the place of holding court and return, except that, beginning July 1, 2016, a juror is entitled to paid mileage at the rate established in Title 5, section 8. A juror is entitled to compensation at the rate of $15 for each day of required attendance at sessions of the court. [PL 2015, c. 267, Pt. PPP, §1 (AMD).]

SECTION HISTORY

PL 1971, c. 391, §1 (NEW). PL 1981, c. 490, §1 (AMD). PL 1991, c. 528, §E13 (AMD). PL 1991, c. 528, §RRR (AFF). PL 1991, c. 591, §E13 (AMD). PL 2015, c. 267, Pt. PPP, §1 (AMD).

§1216. Frequency and length of service by jurors

1. Frequency. Over the course of a person's life, the person may not be required:

A. To serve or attend court for prospective service as a traverse juror more than 3 times and not more often than once in any 5-year period. For purposes of this paragraph, a requirement to serve or attend court for possible service as a juror for more than 15 court days, except if necessary to complete service in a particular case, is considered a separate call to service as a juror; [PL 2007, c. 241, §1 (NEW).]

B. To serve on more than 3 grand juries but not on more than one grand jury in any 5-year period; or [PL 2007, c. 241, §1 (NEW).]

C. To serve as both a grand and traverse juror in any 5-year period. [PL 2007, c. 241, §1 (NEW).] [PL 2007, c. 241, §1 (NEW).]

2. Term of grand jury service. The terms of the grand jury in any county must be set by the Chief Justice of the Superior Court with a maximum of 12 months' service required. When the number

of grand jurors is reduced by death or otherwise, additional grand jurors may be selected and summoned under the direction of the court at any time.
[PL 2007, c. 241, §1 (NEW).]

SECTION HISTORY

PL 1971, c. 391, §1 (NEW). PL 1981, c. 705, §G7 (AMD). PL 1983, c. 688, §7 (AMD). PL 2007, c. 241, §1 (RPR).

§1217. Penalties for failure to perform jury service

A person summoned for jury service who fails to appear or to complete jury service as directed shall be ordered by the court to appear forthwith and show cause for his failure to comply with the summons. Notwithstanding Title 17-A, section 4-A, a prospective juror who fails to show good cause for noncompliance with the summons is guilty of contempt and upon conviction may be punished by a fine of not more than $100 and by imprisonment for not more than 3 days, or by both. [PL 1981, c. 705, Pt. G, §8 (AMD).]

SECTION HISTORY

PL 1971, c. 391, §1 (NEW). PL 1979, c. 663, §79 (AMD). PL 1981, c. 705, §G8 (AMD).

§1218. Protection of jurors' employment and health insurance

An employer may not deprive an employee of employment or health insurance coverage, or threaten or otherwise coerce the employee with respect to loss of employment or health insurance coverage, because the employee receives a summons for jury service, responds to a summons for jury service, serves as a juror or attends court for prospective jury service. [PL 1989, c. 801, §1 (RPR); PL 1989, c. 801, §4 (AFF).]

Any employer who violates this section is guilty of a Class E crime. [PL 1989, c. 801, §1 (RPR); PL 1989, c. 801, §4 (AFF).]

If an employer discharges an employee or terminates the health insurance coverage of an employee in violation of this section, the employee may bring a civil action within 90 days for recovery of wages or health insurance benefits lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable for wages may not exceed lost wages for 6 weeks. If the employee prevails, the employee must be allowed a reasonable attorney's fee fixed by the court. [PL 1989, c. 801, §1 (RPR); PL 1989, c. 801, §4 (AFF).]

SECTION HISTORY

PL 1971, c. 391, §1 (NEW). PL 1979, c. 541, §A139 (AMD). PL 1979, c. 663, §80 (AMD). PL 1989, c. 801, §§1,4 (RPR).

§1219. Court rules

The Supreme Judicial Court may make and amend rules, not inconsistent with the provisions of this chapter, regulating the selection and service of jurors. [PL 1971, c. 391, §1 (NEW).]

SECTION HISTORY

PL 1971, c. 391, §1 (NEW).

SUBCHAPTER 2

COMMISSIONERS

§1251. Prepare jury list; summon jurors; revise list

(REPEALED)

SECTION HISTORY

PL 1979, c. 57, §1 (RPR). PL 1981, c. 705, §G9 (RP).

§1251-A. Juror selection plan

The Supreme Judicial Court shall adopt and implement a written master plan for the random selection and usage of grand and traverse jurors that shall be designed to foster the policy, protect the rights secured and otherwise comply with the provisions of this chapter. [PL 1981, c. 705, Pt. G, §10 (NEW).]

SECTION HISTORY

PL 1981, c. 705, §G10 (NEW).

§1252. Salaries

(REPEALED)

SECTION HISTORY

PL 1967, c. 414, §3 (AMD). PL 1969, c. 441, §3 (AMD). PL 1971, c. 390, §2 (AMD). PL 1973, c. 540, §2 (AMD). PL 1973, c. 724, §1 (AMD). PL 1975, c. 383, §13 (AMD). PL 1975, c. 408, §29 (AMD). PL 1975, c. 426, §1 (AMD). PL 1975, c. 735, §14 (AMD). PL 1977, c. 114, §17 (RPR). PL 1979, c. 57, §2 (RP).

§1252-A. Source list

1. Lists used. The lists of licensed drivers, persons issued an identification card by the Secretary of State and any person who notifies the clerk of the court in the county of their residence and requests to be put on the source list of prospective jurors shall serve as the source for prospective jurors in each county. These lists may be supplemented with names from other lists specified by the Supreme Judicial Court.
[PL 1981, c. 705, Pt. G, §11 (NEW).]

2. Release to court. Notwithstanding any provision regarding confidentiality, whoever has custody, possession or control of the lists referred to in subsection 1 shall provide those lists to the court at cost for selection of prospective jurors at all reasonable times. All lists so supplied shall contain the name and address of each person on the lists.
[PL 1981, c. 705, Pt. G, §11 (NEW).]

3. Use of source list. The source list shall be used for the random selection of names or identifying numbers of prospective jurors to whom questionnaires shall be sent to determine their qualifications for jury service, as provided in sections 1253-A and 1254-A. When supplemental lists are used, selection of names shall be accomplished in a manner which accords the names on all lists an equal probability of selection.
[PL 1981, c. 705, Pt. G, §11 (NEW).]

4. Notice. At least once each year, the clerk shall give public notice to the residents of the county that their names may be placed on the source list of prospective jurors by notifying the clerk of the court. This notice may be made by newspapers, radio or any other method or combination of methods which will reasonably assure as broad a dissemination as possible to the residents of the county.
[PL 1981, c. 705, Pt. G, §11 (NEW).]

SECTION HISTORY

PL 1981, c. 705, §G11 (NEW).

§1252-B. Master list

When the volume of names on the source list is, in the judgment of the court, so large as to render the drawing of names by the means available to the court unduly cumbersome, burdensome and uneconomical, the court may order that a secondary list be created. This list shall be created by randomly drawing from the source list the number of names the court deems necessary to permit subsequent random selections of names, over a period of time administratively convenient for the court, for the mailing of qualification questionnaires and summonses for jury service. [PL 1981, c. 705, Pt. G, §11 (NEW).]

SECTION HISTORY

PL 1981, c. 705, §G11 (NEW).

§1252-C. Creation and maintenance of lists

The lists required to be created and maintained by this subchapter may be created and maintained by use of electronic data processing equipment. [PL 1981, c. 705, Pt. G, §11 (NEW).]

SECTION HISTORY

PL 1981, c. 705, §G11 (NEW).

§1252-D. Limitation on use of certain information

The lists of licensed drivers provided by the Secretary of State may only be used for the selection of traverse and grand jurors pursuant to this chapter. [PL 1981, c. 705, Pt. G, §11 (NEW).]

SECTION HISTORY

PL 1981, c. 705, §G11 (NEW).

§1253. Vacancies

(REPEALED)

SECTION HISTORY

PL 1979, c. 57, §3 (RP).

§1253-A. Drawing of names to determine qualified jurors

From time to time and in a manner prescribed by the juror selection plan, the clerk shall draw, or cause to be drawn, at random, from the source or master list, as appropriate, the names or identifying numbers of as many prospective jurors as the court deems necessary for service on trials during the time period established by the court. [PL 1981, c. 705, Pt. G, §12 (NEW).]

SECTION HISTORY

PL 1981, c. 705, §G12 (NEW). RR 2013, c. 2, §25 (COR).

§1254. Preparation of list of prospective jurors

(REPEALED)

SECTION HISTORY

PL 1967, c. 336 (RPR). PL 1967, c. 494, §30 (AMD). PL 1967, c. 544, §35 (AMD). PL 1971, c. 391, §4 (AMD). PL 1973, c. 19 (AMD). PL 1979, c. 57, §4 (AMD). PL 1981, c. 705, §G13 (RP).

§1254-A. Qualification questionnaire; juror selection

1. Procedure. The clerk shall, at times considered reasonable and necessary to promote the efficient operation of the court and the juror selection system, mail a juror qualification form to every prospective juror whose name has been drawn in accordance with section 1253-A. The form must be accompanied by instructions directing the prospective juror to fill out and return the form by mail to

the clerk within the time specified. The clerk shall prepare or cause to be prepared a list of the names to whom questionnaires are mailed. The list of questionnaire recipients and the names drawn are confidential and may not be disclosed to any person, except as provided in this chapter.
[PL 2005, c. 285, §1 (AMD).]

2. Content. The juror qualification form must conform, in form and content, to the qualification form prescribed by the Supreme Judicial Court and must solicit information sufficient to determine the prospective juror's qualification for jury service. The qualification questionnaire may also solicit other information including, but not limited to, education and employment.
[PL 2005, c. 285, §1 (AMD).]

3. Ambiguous or erroneous responses. If it appears there is an omission, ambiguity or error in a returned form, the clerk may, at the clerk's discretion, contact the prospective juror by telephone to obtain the additional information, clarification or correction.
[PL 2005, c. 285, §1 (AMD).]

4. Failure to complete form; penalty. A prospective juror who fails to return a completed juror qualification form as instructed may be ordered by the court to appear and show cause why the prospective juror should not be held in contempt for the failure to complete and submit the questionnaire. Notwithstanding Title 17-A, section 4-A, a prospective juror who fails to show good cause for the failure to complete and submit the questionnaire or who without good cause fails to appear pursuant to a court order may be punished by a fine of not more than $100 and by imprisonment for not more than 3 days, or by both.
[PL 2005, c. 285, §1 (AMD).]

5. Intentional misrepresentation. Notwithstanding Title 17-A, section 4-A, a person who intentionally misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror may upon conviction for a violation of this section be punished by a fine of not more than $100 and by imprisonment for not more than 3 days, or by both.
[PL 2005, c. 285, §1 (AMD).]

6. Determination of qualification. The clerk shall determine on the basis of information provided on the juror qualification form, supplemented by other competent evidence when considered necessary to such determination, whether the prospective juror is qualified for jury service. This determination must be reflected on the juror qualification form or any other record designated by the court.
[PL 2005, c. 285, §1 (AMD).]

7. Availability of qualification forms. The names of prospective jurors and the contents of juror qualification forms are confidential and may not be disclosed except as provided in this chapter. The names of prospective jurors and the contents of juror qualification forms may at the discretion of the court be made available to the attorneys and their agents and investigators and the pro se parties at the courthouse for use in the conduct of voir dire examination.
[PL 2005, c. 285, §1 (AMD).]

8. During period of service. During the period of service of jurors and prospective jurors, the names of the members of the jury pool are confidential and may not be disclosed except to the attorneys and their agents and investigators and the pro se parties.
[PL 2005, c. 285, §1 (NEW).]

9. Protection of confidentiality. A person who has access to or receives information or a record designated confidential under this chapter shall maintain the confidentiality of the information or record and use it only for the purposes for which it was released and may not further disclose it except as authorized by the court at the time of the disclosure to that person.
[PL 2005, c. 285, §1 (NEW).]

SECTION HISTORY

PL 1981, c. 705, §G14 (NEW). PL 1983, c. 202, §3 (AMD). PL 2005, c. 285, §1 (AMD).

§1254-B. Preservation of records

1. Records preserved. The clerk shall cause to be preserved all records and lists compiled and maintained in connection with selection and service of jurors for the length of time ordered by the court. [PL 1981, c. 705, Pt. G, §14 (NEW).]

2. Records' confidentiality. The records and information used in connection with the selection process are confidential and may not be disclosed except as provided in this chapter. [PL 2005, c. 285, §2 (AMD).]

3. Exceptions to confidentiality. Once the period of juror service has expired, a person seeking the names of the jurors may file with the court a written request for disclosure of the names of the jurors. The request must be accompanied by an affidavit stating the basis for the request. The court may disclose the names of the jurors only if the court determines that the disclosure is in the interests of justice. The factors the court may consider in determining if the disclosure is in the interests of justice include, but are not limited to, encouraging candid responses from prospective jurors, the safety and privacy interests of prospective jurors and the interests of the media and the public in ensuring that trials are conducted ethically and without bias. [PL 2005, c. 285, §3 (NEW).]

SECTION HISTORY

PL 1981, c. 705, §G14 (NEW). PL 2005, c. 285, §§2,3 (AMD).

§1255. Selection of jurors

(REPEALED)

SECTION HISTORY

PL 1967, c. 336 (RPR). PL 1967, c. 494, §30 (AMD). PL 1967, c. 498 (AMD). PL 1967, c. 510, §§1,2 (AMD). PL 1971, c. 391, §5 (AMD). PL 1975, c. 383, §14 (AMD). PL 1975, c. 408, §30 (AMD). PL 1975, c. 735, §15 (AMD). PL 1977, c. 114, §§18-23 (AMD). PL 1979, c. 57, §5 (RPR). PL 1981, c. 705, §G15 (RP).

§1255-A. Summoning prospective qualified jurors

From time to time, as specified in the juror selection plan, the clerk shall summon or cause to be summoned sufficient prospective jurors as in his judgment are necessary to supply traverse jurors or grand jurors, or both, for the Superior Court. [PL 1981, c. 705, Pt. G, §16 (NEW).]

The summons shall require the prospective juror to report for possible jury service at a specified time and place unless advised by the clerk in advance that his attendance will not be required. [PL 1981, c. 705, Pt. G, §16 (NEW).]

SECTION HISTORY

PL 1981, c. 705, §G16 (NEW).

§1256. New jurors

If for any reason a grand jury or a traverse jury is dismissed before completing its work, the clerk of courts shall proceed to draw and notify new jurors in accordance with section 1255-A. [PL 2005, c. 397, Pt. A, §10 (AMD).]

SECTION HISTORY

PL 1967, c. 544, §36 (NEW). PL 1979, c. 57, §6 (AMD). PL 2005, c. 397, §A10 (AMD).

§1257. Regional juries

The Supreme Judicial Court is authorized to prescribe by rule or order the selection of juries from regions consisting of a single county or a reasonably compact group of counties for trials of criminal prosecutions or civil actions in the Superior Court. If the Supreme Judicial Court shall by rule provide for such regions for the purpose of selection of juries, this chapter shall be applied to such regions and to such regional juries and the word "counties" where it appears in this chapter shall be read to mean "region." [PL 1975, c. 337, §2 (NEW).]

SECTION HISTORY

PL 1975, c. 337, §2 (NEW). PL 1979, c. 57, §7 (AMD).

SUBCHAPTER 3

CHALLENGES

§1301. For cause

The court, on motion of either party in an action, may examine, on oath, any person called as a juror therein, whether he is related to either party, has given or formed an opinion or is sensible of any bias, prejudice or particular interest in the cause. If it appears from his answers or from any competent evidence that he does not stand indifferent in the cause, another juror shall be called and placed in his stead.

§1302. Peremptory

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §14 (AMD). PL 1967, c. 441, §4 (RP).

§1303. Objections not stated before trial waived

If a party knows any objection to a juror in season to propose it before trial and omits to do so, he shall not afterwards make it, unless by leave of court for special reasons.

SUBCHAPTER 4

VERDICTS

§1351. Separate verdicts as to defendants

In actions of contract against more than one defendant, the jury may return a separate verdict as to each defendant or as to 2 or more defendants jointly, and judgments shall be entered accordingly. In case of separate judgment against defendants in the same action, the court shall apportion the costs to be taxed against each defendant.

§1352. Verdict not affected by irregularities

No irregularity in the venires or drawing, summoning, returning or impaneling jurors is sufficient to set aside a verdict, unless the party objecting was injured by the irregularity or unless the objection was made before the return of the verdict.

§1353. Verdict set aside for improper practices with jurors

If either party, in a cause in which a verdict is returned, during the same term of the court, before or after the trial, gives to any of the jurors who try the cause any treat or gratuity or purposely introduces among the papers delivered to the jury when they retire with the cause, any papers which have any

connection with it but were not offered in evidence, the court on motion of the adverse party may set aside the verdict and order a new trial.

§1354. Less than unanimous verdict or finding

In the trial of all civil suits in the Superior Court of this State, if a number of jurors equal to at least 2/3 of the total number of jurors serving on a jury agree on a verdict or finding, they shall return it into court as the verdict or finding of that jury and the trial judge shall so instruct the jury; provided, however, that the parties to a civil suit may stipulate that a verdict or finding of a stated majority of the jurors must be taken as the verdict or finding of the jury. [PL 2003, c. 688, Pt. C, §4 (AMD).]

SECTION HISTORY

PL 1969, c. 310 (NEW). PL 1971, c. 581, §2 (AMD). PL 1975, c. 41, §2 (RPR). PL 2003, c. 688, §C4 (AMD).

CHAPTER 307

CONDUCT OF TRIAL

§1401. Exclusion of minors from courtroom

Any court may exclude minors as spectators from the courtroom during the trial of any cause, civil or criminal, when their presence is not necessary as witnesses or parties.

§1402. Action of trespass; jury to find if willful

In action for trespass on property, the court and jury or judge shall determine whether the trespass was committed willfully. If so found, a record thereof shall be made and a memorandum thereof minuted on the margin of the execution.

§1403. Admission of evidence

Notwithstanding any court rule to the contrary, when, after an event, measures are taken that, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This section does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control or feasibility of precautionary measures, if controverted, or impeachment. [PL 1995, c. 576, §1 (NEW).]

SECTION HISTORY

PL 1995, c. 576, §1 (NEW).

CHAPTER 309

DAMAGES

§1451. Protests of bills

Damages on protests of bills of exchange of $100 or more, payable by the acceptor, drawer or indorser of a bill in this State are, if payable at a place 75 miles distant, 1%; if payable in the state of New York or in any state northerly of it and not in this State, 3%; if payable in any Atlantic state or territory southerly of New York and northerly of Florida, 6%; and in any other state or territory, 9%.

§1452. Actions on covenant; encumbrance as dower; assignment and measure of damages

In an action for breach of covenant against encumbrances contained in a deed of real estate, when the encumbrance is a right of dower, if such dower has been assigned and not released, the value thereof shall be the measure of damages; but if it has been demanded and not assigned, the court, on application of the plaintiff, shall cite the claimant of dower to appear and become a party by personal service made 14 days before the date set for such appearance. If she does not appear or if she appears and refuses to release such right, the court shall appoint 3 commissioners to assign the same, who shall proceed in the manner provided for commissioners appointed under chapter 719 to make partition. When their report is made and accepted by the court, it is a legal assignment of dower and the value thereof is the measure of damages in said action.

§1454. Cost of replacement motor vehicles

In any action where recovery is sought for the destruction or damage of a motor vehicle, the owner of such motor vehicle shall be entitled to recover reasonable rental costs actually expended for a replacement motor vehicle during such time, not to exceed 45 days, as the damaged motor vehicle could not be operated or during such time, not to exceed 45 days, as is required to obtain a replacement motor vehicle for the destroyed motor vehicle. [PL 1989, c. 623 (AMD).]

SECTION HISTORY

PL 1969, c. 263 (NEW). PL 1989, c. 623 (AMD).

CHAPTER 311

TAXATION OF COSTS

§1501. Prevailing party

In all actions, the party prevailing recovers costs unless otherwise specially provided. If, after a verdict, the party in whose favor the jury found carries the case into the law court and the decision there is against him, he recovers no costs after the verdict but the party prevailing in the law court recovers costs accruing after verdict.

§1502. Parties and attorneys

(REPEALED)

SECTION HISTORY

PL 1985, c. 384, §2 (RP).

§1502-A. Trial costs

(REPEALED)

SECTION HISTORY

PL 1969, c. 304 (NEW). PL 1985, c. 384, §3 (RP).

§1502-B. Recoverable costs

The following costs shall be allowed to prevailing parties in civil actions unless the court otherwise specifically directs: [PL 1985, c. 384, §4 (NEW).]

1. Filing fees. Filing fees paid to the clerk;
[PL 1985, c. 384, §4 (NEW).]

2. Fees for service of process. Fees paid for service of process and other documents served by a sheriff, deputy, constable or others authorized by law;
[PL 1985, c. 384, §4 (NEW).]

3. Attendance fees and travel costs paid to witnesses. Attendance fees and travel costs of witnesses as allowed by Title 16, section 251 or other laws;
[PL 1985, c. 384, §4 (NEW).]

4. Travel expenses. Reasonable expenses of travel within the State to the place of trial for the prevailing party or his attorney of record, as provided by rule of the Supreme Judicial Court, or as directed by court, in the absence of that rule; and
[PL 1985, c. 384, §4 (NEW).]

5. Other costs. Such other costs as the Supreme Judicial Court may direct by rule.
[PL 1985, c. 384, §4 (NEW).]

SECTION HISTORY

PL 1985, c. 384, §4 (NEW).

§1502-C. Discretionary costs

In addition to other costs allowed to the prevailing party, the court may include as costs, in such amounts as it considers just and reasonable, any of the following items: [PL 1985, c. 384, §4 (NEW).]

1. Reasonable expert witness fees and expenses. Expert witness fees and expenses, as allowed by Title 16, section 251;
[PL 1985, c. 384, §4 (NEW).]

2. Cost of medical reports. The cost of reasonable medical reports, not including costs of the examination or treatment of a patient, which are prepared for the purpose of litigation and which are exchanged by the parties;
[PL 1985, c. 384, §4 (NEW).]

3. Visual aids. The reasonable costs of charts, diagrams, photographs and other visual aids necessary for clear understanding of the case by the court or jury not to exceed $500;
[PL 1985, c. 384, §4 (NEW).]

4. Costs of depositions. Costs in the taking of depositions as allowed by rule of the Supreme Judicial Court or by other law; and
[PL 1985, c. 384, §4 (NEW).]

5. Other costs. Such other costs as the Supreme Judicial Court may allow by rule.
[PL 1985, c. 384, §4 (NEW).]

SECTION HISTORY

PL 1985, c. 384, §4 (NEW).

§1502-D. Taxing of costs; hearing

(REALLOCATED FROM TITLE 14, SECTION 1503-D)

The clerk shall set costs under section 1502-B and interest under section 1602-B to the extent they appear from the record. The prevailing party or the prevailing party's attorney may submit a bill of costs for all other costs or interest to the court not later than 10 days after entry of judgment and serve copies on all parties who have appeared and may be required to pay these costs. Any party required to pay all or any part of these costs, except a party who is defaulted and has not appeared, may, within 10 days after the date of service, challenge any items of cost or interest and request review by the court. The prevailing party shall, within 10 days after a challenge, submit to the court any vouchers or other records verifying any challenged items of cost or interest. Either side may request oral argument and submit affidavits and briefs. An evidentiary hearing on the reasonableness of costs or interest will be held only when the judge determines that there exists a substantial need for the hearing and the amount of challenged costs or interest are substantial. If the presiding judge determines that the imposition of

costs will cause a significant financial hardship to any party, the judge may waive all or part of the costs with respect to that party. [PL 2003, c. 460, §3 (AMD).]

SECTION HISTORY

PL 1985, c. 737, §A36 (RAL). PL 1989, c. 360 (AMD). PL 2003, c. 460, §3 (AMD).

§1503. Appeals in condemnation proceedings

In all proceedings for the estimation of damages for the taking of lands or other property under any general or special law, if the owner of the land, after an award made by the county commissioners, enters an appeal therefrom and fails to obtain a final judgment for an amount greater than the amount of the said award with interest thereon to the date of said judgment, he shall be subject to costs accruing after the date of said first award and the amount thereof may be applied in reduction of the sum required to be paid by said judgment.

§1503-D. Taxing of costs; hearing

(REALLOCATED TO TITLE 14, SECTION 1502-D)

SECTION HISTORY

PL 1985, c. 384, §4 (NEW). PL 1985, c. 737, §A36 (RAL).

§1504. Plaintiff appealing favorable judgment

When a plaintiff appeals from a judgment of a District Court in his favor and does not recover in the appellate court a greater sum as damages, he recovers only a quarter of the sum last recovered for costs.

§1505. Replevin actions

In actions of replevin commenced in the Superior Court, when the jury finds that each party owned a part of the property, they shall find and state in their verdict the value of the part owned by the plaintiff when replevied without regard to the value as estimated in the replevin bond. If such value does not exceed $20, the plaintiff recovers for costs only 1/4 part of such value.

§1506. Improper action in Superior Court, 1/4 costs; report of referees, full costs allowed

In actions commenced in the Superior Court, except those by or against towns for the support of paupers, if it appears on the rendition of judgment that the action should have been commenced before a District Court, including actions of replevin where the value of the property does not exceed $20, the plaintiff recovers for costs only 1/4 part of his debt or damages. On reports of referees, full costs may be allowed unless the report otherwise provides.

§1507. Damages reduced by counterclaim, full costs

When a counterclaim is filed and the plaintiff recovers not exceeding $20, he is entitled to full costs if the jury certify in their verdict that the damages were reduced to that sum by reason of the amount allowed on the counterclaim.

§1508. Costs of evidence not increased by multiple damages

When a party recovers double or treble costs, the fees of witnesses, depositions, copies and other evidence are not doubled or trebled.

§1509. Petitions for relief

On application of a private person for relief from a judgment or for relief in the nature of certiorari, mandamus or quo warranto, or like process, the court may or may not allow costs to a person appearing on notice as defendant. [PL 1967, c. 441, §5 (AMD).]

SECTION HISTORY

PL 1967, c. 441, §5 (AMD).

§1510. Plaintiff's action dismissed; costs to defendant

When a plaintiff's action is voluntarily or involuntarily dismissed, the defendant recovers costs against him, and in all actions, as well as those of qui tam as others, the party prevailing is entitled to his legal costs.

§1511. Action in name of State by individual

When an action is brought in the name of the State for the benefit of a private person, his name and place of residence shall be indorsed on the summons. If the defendant prevails, judgment for his costs shall be rendered against such person and execution issued as if he were plaintiff.

§1512. State liable in civil action

When a defendant prevails against the State in a civil action, judgment for his costs shall be rendered against it and the treasurer of the county shall pay the amount on a certified copy of the judgment. The amount shall be allowed to him in his account with the State.

§1513. Travel fees not taxable for State

When the State recovers costs in a civil action no fees shall be taxed for the travel of an attorney.

§1514. Divers actions or division of account only one bill of costs

When a plaintiff brings divers actions which might have been joined in one against the same party and which are first in order for trial at the same term of court, or divides an account which might all have been sued for in one action and commences successive actions upon parts of the same or brings more than one action on a joint and several contract, he shall not recover costs nor have execution running against the body of the same defendant, in more than one such action, unless the court, after notice to the defendant and hearing, shall otherwise direct.

§1515. If execution available, no costs in action on judgment

A plaintiff shall not be allowed costs in an action on a judgment of any tribunal on which an execution could issue when such action was commenced, except in trustee process.

§1516. Travel in actions by a corporation

In actions of a corporation, its travel is computed from the place where it is situated, if local, otherwise from the place where its business is usually transacted, not exceeding 40 miles, unless its agent actually travels a greater distance to attend court.

§1517. Power of court

The power of the court to require payment of costs or to refuse them as the condition of amendment or continuance is not affected by this Title.

§1518. Plea of bankruptcy; no costs

When a defendant pleads a discharge in bankruptcy or insolvency obtained after the commencement of the action, he recovers no costs before the time when the certificate was produced in court.

§1519. Hearing on costs; appeals

(REPEALED)

SECTION HISTORY

PL 1985, c. 384, §5 (RP).

§1520. Costs for creditor where debtor not discharged

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§1521. Disclosure proceedings

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§1522. Litigation costs

1. Costs allowed. In any action or proceeding brought by the Attorney General pursuant to any of the provisions listed below or to enforce any of the provisions listed below, the court shall allow litigation costs, including court costs, reasonable attorney's fees and reasonable expert witness fees, to be deposited in the General Fund of the State if the State or any of its officers or agencies is a prevailing party in the action or proceeding:

A. Title 5, section 209; [PL 1991, c. 9, Pt. G, §2 (NEW).]

B. Title 5, section 4681; [PL 1991, c. 9, Pt. G, §2 (NEW).]

C. Title 10, section 1104, subsection 2; [PL 1991, c. 9, Pt. G, §2 (NEW).]

D. Title 10, section 1104, subsection 3; [PL 1991, c. 9, Pt. G, §2 (NEW).]

E. Title 26, section 46; [PL 1991, c. 9, Pt. G, §2 (NEW).]

F. Title 26, section 354; [PL 1991, c. 9, Pt. G, §2 (NEW).]

G. Title 26, section 625-B; [PL 1991, c. 9, Pt. G, §2 (NEW).]

H. Title 26, section 626; [PL 1991, c. 9, Pt. G, §2 (NEW).]

I. Title 26, section 629-B; [PL 1991, c. 9, Pt. G, §2 (NEW).]

J. Title 26, section 631; [PL 1991, c. 9, Pt. G, §2 (NEW).]

K. Title 26, section 781; [PL 1991, c. 9, Pt. G, §2 (NEW).]

L. Title 32, section 16603; [PL 2005, c. 65, Pt. C, §8 (AMD).]

M. Title 32, section 11301; [PL 1991, c. 9, Pt. G, §2 (NEW).]

N. Title 32, section 11302; [PL 1991, c. 9, Pt. G, §2 (NEW).]

O. Title 32, section 11303; [PL 1991, c. 9, Pt. G, §2 (NEW).]

P. Title 38, section 348; [PL 1991, c. 9, Pt. G, §2 (NEW).]

Q. Title 38, section 349; [PL 1991, c. 9, Pt. G, §2 (NEW).]

R. Title 38, section 552; [PL 1991, c. 9, Pt. G, §2 (NEW).]

S. Title 38, section 570; [PL 1991, c. 9, Pt. G, §2 (NEW).]

T. Title 38, section 1319-G; [PL 1991, c. 9, Pt. G, §2 (NEW).]

U. Title 38, section 1319-J; and [PL 1991, c. 9, Pt. G, §2 (NEW).]

V. Title 38, section 1367. [PL 1991, c. 9, Pt. G, §2 (NEW).]

[PL 2005, c. 65, Pt. C, §8 (AMD).]

2. Affect. Costs allowed under subsection 1 do not affect any fees, costs or expenses otherwise recoverable by the State or any of its officers or agencies.

[PL 1991, c. 9, Pt. G, §2 (NEW).]

3. Application. This section applies to any action or proceeding that is pending on the effective date of this section.
[PL 1991, c. 9, Pt. G, §2 (NEW).]

SECTION HISTORY

PL 1991, c. 9, §G2 (NEW). PL 2005, c. 65, §C8 (AMD).

CHAPTER 313

JUDGMENTS

§1601. Entry of judgment; attachments and rights to disclose preserved; death of party

In criminal cases the clerk of courts of a county, by virtue of a certificate from the law court, received in vacation, shall enter judgment as of the preceding term.

In civil cases judgment shall be entered forthwith upon receipt of the certificate of decision from the law court. If the judgment is for the plaintiff, any attachment then in force shall continue for 60 days after entry of such judgment. When a party to an action dies while the action is pending before the law court, and no suggestion of death has been made upon the docket of the county where the action is pending, at the time when the certificate of decision is received by the clerk of courts in such county, any Justice of the Superior Court may order such action to be continued in order that such death may be suggested upon such county docket, and the proper parties entitled to defend or prosecute such action may enter their appearance therein. Such justice may further order that any attachment then in force shall continue for such time in excess of 60 days after entry of judgment as in his discretion he deems necessary to protect the interests of the plaintiff.

§1602. Interest before judgments

(REPEALED)

SECTION HISTORY

PL 1969, c. 397, §1 (RPR). PL 1971, c. 228 (AMD). PL 1977, c. 147 (RPR). PL 1979, c. 655, §1 (AMD). PL 1981, c. 162, §§1,2 (AMD). PL 1983, c. 427, §1 (RPR). PL 1983, c. 583, §7 (AMD). PL 1987, c. 646, §3 (AMD). PL 1991, c. 165 (AMD). PL 2001, c. 471, §D13 (AMD). PL 2003, c. 460, §4 (RP).

§1602-A. Interest after judgment

(REPEALED)

SECTION HISTORY

PL 1983, c. 427, §2 (NEW). PL 1987, c. 646, §4 (RPR). PL 1989, c. 502, §B15 (AMD). PL 1991, c. 489 (AMD). PL 2001, c. 471, §D14 (AMD). PL 2003, c. 460, §5 (RP).

§1602-B. Interest before judgment

1. In small claims. In small claims actions, prejudgment interest is not recoverable unless the rate of interest is based on a contract or note.
[PL 2003, c. 460, §6 (NEW).]

2. On contracts and notes. In all civil and small claims actions involving a contract or note that contains a provision relating to interest, prejudgment interest is allowed at the rate set forth in the contract or note.
[PL 2003, c. 460, §6 (NEW).]

3. Other civil actions; rate. In civil actions other than those set forth in subsections 1 and 2, prejudgment interest is allowed at the one-year United States Treasury bill rate plus 3%.

A. For purposes of this subsection, "one-year United States Treasury bill rate" means the weekly average one-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last full week of the calendar year immediately prior to the year in which prejudgment interest begins to accrue. [PL 2003, c. 460, §6 (NEW).]

B. If the Board of Governors of the Federal Reserve System ceases to publish the weekly average one-year constant maturity Treasury yield or it is otherwise unavailable, then the Supreme Judicial Court shall annually establish by rule a rate that most closely approximates the rate established in this subsection. [PL 2003, c. 460, §6 (NEW).]

[PL 2003, c. 460, §6 (NEW).]

4. Stated rate. When prejudgment interest is awarded pursuant to subsection 2 or 3, the applicable rate must be stated in the judgment.

[PL 2003, c. 460, §6 (NEW).]

5. Accrual; suspension; waiver. Prejudgment interest accrues from the time of notice of claim setting forth under oath the cause of action, served personally or by registered or certified mail upon the defendant until the date on which an order of judgment is entered. If a notice of claim has not been given to the defendant, prejudgment interest accrues from the date on which the complaint is filed. In actions involving a contract or note that contains a provision relating to interest, the rate of interest is fixed as of the time the notice of claim is given or, if a notice of claim has not been given, as of the date on which the complaint is filed. If the prevailing party at any time requests and obtains a continuance for a period in excess of 30 days, interest is suspended for the duration of the continuance. On petition of the nonprevailing party and on a showing of good cause, the trial court may order that interest awarded by this section be fully or partially waived.

[PL 2003, c. 460, §6 (NEW).]

6. Effect on post-judgment interest. This section does not affect post-judgment interest imposed by section 1602-C. Prejudgment interest may not be added to the judgment amount in determining the sum upon which post-judgment interest accrues.

[PL 2003, c. 460, §6 (NEW).]

7. Rate on accrual of interest prior to July 1, 2003. Notwithstanding subsection 3, for actions in which the interest begins to accrue, as determined pursuant to subsection 5, prior to July 1, 2003, the rate of prejudgment interest on civil actions other than those set forth in subsection 2 is as follows:

A. If the judgment does not exceed $30,000, the rate for prejudgment interest is 8%; and [PL 2003, c. 460, §6 (NEW).]

B. If the judgment exceeds $30,000, the rate of prejudgment interest is the one-year United States Treasury bill rate, as defined in subsection 3, plus 1%. [PL 2003, c. 460, §6 (NEW).]

[PL 2003, c. 460, §6 (NEW).]

SECTION HISTORY

PL 2003, c. 460, §6 (NEW).

§1602-C. Interest after judgment

1. Rate. In all civil and small claims actions, post-judgment interest is allowed at a rate equal to:

A. In actions involving a contract or note that contains a provision relating to interest, the rate set forth in the contract or note or the rate in paragraph B, whichever is greater; and [PL 2003, c. 460, §6 (NEW).]

B. In all other actions, the one-year United States Treasury bill rate plus 6%.

(1) For purposes of this paragraph, "one-year United States Treasury bill rate" means the weekly average one-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the last full week of the calendar year immediately prior to the year in which post-judgment interest begins to accrue.

(2) If the Board of Governors of the Federal Reserve System ceases to publish the weekly average one-year constant maturity Treasury yield or it is otherwise unavailable, then the Supreme Judicial Court shall annually establish by rule a rate that most closely approximates the rate established in this paragraph. [PL 2003, c. 460, §6 (NEW).]

The applicable post-judgment interest rate must be stated in the judgment, except for judgments in small claims actions.
[PL 2003, c. 460, §6 (NEW).]

2. Accrual; suspension; waiver. Post-judgment interest accrues from and after the date of entry of judgment and includes the period of any appeal. In actions involving a contract or note that contains a provision relating to interest, the rate of interest is fixed as of the date of judgment. If the prevailing party at any time requests and obtains a continuance for a period in excess of 30 days, interest is suspended for the duration of the continuance. On petition of the nonprevailing party and on a showing of good cause, the trial court may order that interest awarded by this section be fully or partially waived.
[PL 2003, c. 460, §6 (NEW).]

SECTION HISTORY

PL 2003, c. 460, §6 (NEW).

§1603. -- Actions on judgments

(REPEALED)

SECTION HISTORY

PL 1969, c. 397, §2 (RP).

§1604. Judgment divesting real estate recorded in registry of deeds

No judgment or decree divesting any person of title to real estate shall be effectual against any person not a party to the action in which such judgment or decree is rendered, and persons not having actual notice thereof, unless a copy of such judgment or decree or so much thereof as relates to the title to such real estate duly certified by the clerk of courts in and for the county where said judgment or decree is rendered is, within 30 days after the rendering of such judgment or decree, duly recorded in the registry of deeds in the county or district in which such real estate is situated.

§1605. Settlements to be approved by court

No settlement of any action brought in behalf of an infant by next friend or defended on the infant's behalf by guardian or guardian ad litem is valid unless approved by the court in which the action is pending, or affirmed by an entry of judgment. If no action has been commenced, an infant by next friend may apply to any court in which an action based on the claim of the infant could have been commenced for an order approving the settlement of any such claim. An order approving such a settlement has the effect of a judgment. The court may make all necessary orders for protecting the interests of the infant, including requiring that funds be disbursed through establishment of a trust, and may require the guardian ad litem or next friend to give bond to truly account for all money received in behalf of the infant. [PL 1993, c. 97, §1 (AMD).]

SECTION HISTORY

PL 1979, c. 540, §§17-A (NEW). PL 1993, c. 97, §1 (AMD).

PART 4

PROCEEDING AFTER VERDICT OR JUDGMENT

CHAPTER 401

APPEALS

SUBCHAPTER 1

GENERAL PROVISIONS

§1801. Original papers sent upon appeal; exceptions

In cases carried from a District Court to a higher court, all depositions and original papers, except the process by which the action was commenced, the return of service thereon and the pleadings shall be certified by the proper officer and carried up without leaving copies unless otherwise ordered by the court having original cognizance.

§1802. Appeal found to be frivolous

If an appeal to the law court or Superior Court is found by that court to have been frivolous and intended for delay, treble costs may be allowed to the prevailing party. [PL 2001, c. 81, §1 (AMD).]

SECTION HISTORY

PL 2001, c. 81, §1 (AMD).

§1803. No oral testimony on appeal; additional evidence

No witnesses shall be heard orally before the law court as a part of the case on appeal, but the court may, in such manner and on such terms as it deems proper, authorize additional evidence to be taken when the same has been omitted by accident or mistake or discovered after the hearing.

SUBCHAPTER 2

SUPERIOR COURT

§1851. Objections; appeals

For all purposes for which an exception has heretofore been necessary in civil cases, it is sufficient that a party, at the time the order or ruling of the court is made or sought, makes known to the court the action that the party desires the court to take or the party's objection to the action of the court and the grounds for the objection. If a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice that party. In any civil case any party aggrieved by any judgment, ruling or order may appeal therefrom to the law court. The time for taking the appeal and the manner and any conditions for the taking of the appeal are as the Supreme Judicial Court provides by rule. [PL 2001, c. 17, §2 (AMD).]

SECTION HISTORY

PL 2001, c. 17, §2 (AMD).

SUBCHAPTER 3

DISTRICT COURT

§1901. Supreme Judicial Court; exceptions

1. Appeals from District Court. Except as provided in subsection 3 or by court rule, an appeal may be taken from the District Court to the Supreme Judicial Court sitting as the Law Court. The time for taking the appeal and the manner and any conditions for the taking of the appeal are as the Supreme Judicial Court provides by rule.
[PL 2001, c. 17, §3 (AMD).]

2. Exceptions.

[PL 1999, c. 731, Pt. ZZZ, §7 (RP); PL 1999, c. 731, Pt. ZZZ, §42 (AFF).]

3. Exceptions. An appeal from the District Court is to the Superior Court in the case of:

A. An appeal in a forcible entry and detainer case, pursuant to section 6008 and the Maine Rules of Civil Procedure, Rule 80D(f); [PL 2005, c. 48, §2 (AMD).]

B. An appeal in a small claims case brought pursuant to chapter 738 and the Maine Rules of Civil Procedure, Rule 80L; and [PL 2005, c. 48, §2 (AMD).]

C. An appeal of an involuntary hospitalization brought pursuant to Title 34-B, section 3864, subsection 11. [PL 2005, c. 48, §2 (NEW).]
[PL 2005, c. 48, §2 (AMD).]

SECTION HISTORY

PL 1975, c. 552, §2 (AMD). PL 1993, c. 338, §1 (AMD). PL 1993, c. 675, §B10 (RPR). PL 1999, c. 731, §ZZZ7 (AMD). PL 1999, c. 731, §ZZZ42 (AFF). PL 2001, c. 17, §3 (AMD). PL 2005, c. 48, §2 (AMD).

§1902. Appeals without trial

In actions in a District Court, either party, after appearing and filing his pleadings, may waive a trial and give the adverse party judgment, and then appeal as if there had been an actual trial.

§1903. Appellant's recognizance

If so requested by the adverse party, the appellant shall within one week after notice of such request, or within such further time as may be allowed by the court, recognize to such adverse party in a reasonable sum, with condition to prosecute his appeal with effect and pay all costs arising after the appeal.

§1904. Production of copies and papers

When such appeal is completed, the clerk shall file in the appellate court, the record and the originals of all papers filed in the cause. [PL 1965, c. 19, §3 (AMD).]

SECTION HISTORY

PL 1965, c. 19, §3 (AMD).

CHAPTER 403

TITLE TO REAL ESTATE BY LEVY OF EXECUTION

SUBCHAPTER 1

GENERAL PROVISIONS

§1951. Expenses part of execution

The expenses of levy in any of the modes provided by this chapter in a levy, sale or redemption are part of the execution.

§1952. Creditor or debtor may act by representative

Everything which a creditor or debtor is required in this chapter to do may be done by his executors or administrators, or by any person lawfully claiming under him.

§1953. Real estate of deceased taken by execution

(REPEALED)

SECTION HISTORY

PL 1979, c. 540, §18 (RP).

§1954. Lands of debtor to State sold on execution

When an execution is issued in the name or for the use of the State, the debtor's real estate may be taken thereby and sold at auction, notice thereof being given as provided in section 2202, except that notice shall also be published in the state paper, and the last publication in both papers shall be 6 days before the sale. The officer shall make and execute to the purchaser a deed of the estate sold. The debtor has the same right to redeem as to redeem lands levied on by appraisement.

§1955. Attachment of right to conveyance effects premises

When the right of a debtor to a conveyance of real estate by bond or contract is attached, and a deed is made to the debtor during its existence, the attachment takes effect upon the premises, which may be levied on as in other cases.

§1956. Deed given to assignee; right sold; remedy of purchaser

When, during the existence of an attachment, a deed has been given to an assignee, the right of the debtor should be sold on the execution. When the right has been sold, and there has been no previous conveyance to the debtor, the purchaser has the same remedies in his own name against the obligor or contractor as the debtor would have had, by an action to recover damages for nonfulfillment, or to compel a specific performance, and when assignment before attachment is alleged, the assignee may be made a party. Upon refusal of the obligor or contractor, on request of the purchaser, to give correct information of the amount due or condition remaining to be performed, the purchaser may maintain his action without previous payment, performance or tender. Upon a hearing, the court may grant and decree such relief, payment or performance, as is equitable.

§1957. Alleged assignment contested

When an assignment of the bond or contract is alleged and the plaintiff contests it, the alleged assignee shall be made a party to the action, and an issue framed to be tried by a jury, which shall find whether such an assignment existed and was valid. If the assignee does not appear, the assignment is invalid.

SUBCHAPTER 2

LEVY BY APPRAISEMENT

§2001. Real estate levied on; appraisal

Real estate attachable, including the right to cut timber and grass as described in chapter 507, subchapter III, may be taken to satisfy an execution, by causing it to be appraised by 3 disinterested persons, one chosen by the creditor, one by the debtor and the other by the officer having the execution for service, who shall give notice to the debtor or his attorney, residing in the county where the land

lies, to choose an appraiser, and shall allow him a reasonable time therefor, and if he neglects, appoint one for him.

§2002. Appraisers sworn; view of land

The appraisers may be sworn by the officer without fee or by a dedimus justice, faithfully and impartially to appraise the real estate to be taken, and a certificate of the oath shall be made, stating the date of its administration on the back of the execution by the person who administered it. They shall then proceed with the officer to view and examine the land so far as is necessary for a just estimate of its value. [PL 1987, c. 736, §12 (AMD).]

SECTION HISTORY

PL 1981, c. 456, §A50 (AMD). PL 1987, c. 736, §12 (AMD).

§2003. Return contains value and description of estate

The appraisers shall in a return made and signed by them on the back of the execution, or annexed thereto, state the value of the estate appraised, and describe it by metes and bounds, or in such other manner that it may be distinctly known and identified, whatever the nature of the estate may be.

§2004. Appraisal when several parcels taken

When several parcels of land are taken, they may be appraised separately or together. When taken at different times, there may be different sets of appraisers. A levy is valid when the return is signed by 2 of the appraisers, the other appearing to have been sworn and to have acted.

§2005. Officer's return, contents

The officer, in his return on the execution, shall state substantially the time when the land was taken on execution; how the appraisers were appointed; that they were duly sworn; that they appraised and set off the premises, after viewing the same, at the price specified; that he delivered seizin and possession to the creditor or his attorney, or assigned the same to him as in case of remainder or other incorporeal estate; and the description of the premises by himself or by reference to the return of the appraisers. If the appraisers' return is signed by 2 only, he must state whether all were present and acted. He may refer to and adopt, in his return, the return of the appraisers, and the subsequent proceedings will be valid though made after the return day of the execution or after the removal or disability of the officer.

§2006. Estates tail

Estates tail shall be taken, appraised and held as estates in fee simple.

§2007. Estate held in joint tenancy taken in execution

The whole or part of an estate held in joint tenancy or in common may be taken to satisfy an execution, in the same manner as other real estate is now taken and held in common, but the whole estate must be described and the share owned by the debtor must be stated.

§2008. Debtor's interest passes by levy

All the debtor's estate, interest or share in the premises, whether held in tail, reversion, remainder, for life, years or otherwise, passes by a levy, unless it is larger than the estate mentioned in the appraisers' return.

§2009. Levy on rents and profits

When the estate cannot be described as provided in section 2003, the execution may be levied on its rents and profits, and the officer may give seizin thereof to the creditor, and cause a person in possession to become tenant to him or, on his refusal, may turn him out and give possession to the creditor.

§2010. Part taken, damage to whole

When the premises consist of a mill, mill privilege or other estate more than sufficient to satisfy the execution, which cannot be divided by metes and bounds without damage to the whole, an undivided part of it may be taken and the whole described, or it may be levied on as provided in section 2009.

§2011. Levy on life estate

A levy may be made on an estate for life as on other real estate, and its value appraised; or it may be made on its rents and profits, and an appraisement of them made for a term of time, if the life so long continues, computing interest on the execution, and deducting the rents and profits from time to time when due. When the estate expires before the end of the term for which it was taken, the creditor by an action on the judgment may recover the balance due.

§2012. Levy on leasehold; disposal of rent

When the levy is made on the whole of an estate under lease, the rent shall be paid to the creditor from the time of the levy. When made on part of it, the appraisers shall determine what portion of the rent is to be paid to him, and it shall be paid to him accordingly.

§2013. Seizin and possession delivered; debtor not ousted

The officer shall deliver to the creditor or his attorney, seizin and possession of an estate levied on, so far as the nature of the estate and the title of the debtor admit. When a remainder, reversion or right of redemption is taken, the debtor in possession shall not be ousted, but his right therein shall be assigned to the creditor, and a return made accordingly.

§2014. Levy on land fraudulently conveyed or disseized

A levy may be made on land fraudulently conveyed by a debtor, or of which he has been disseized and into which he has a right of entry. In such case, the tenant in possession shall not be ousted, but the officer shall deliver to the creditor a momentary seizin, sufficient to enable him to maintain an action for its recovery in his own name.

§2015. Debt assigned; estate held in trust for assignee

When the debt has been previously assigned for a valuable consideration, the creditor named in the execution holds an estate levied on to satisfy it in trust for his assignee, who is entitled to a conveyance thereof, which may be enforced by a civil action.

§2016. Execution returned and recorded

The officer shall return the execution into the clerk's office where it is returnable, and within 3 months after completing the levy cause it, with the return thereon, to be recorded in the registry of deeds where the land lies.

§2017. Unrecorded levy void against purchaser or creditor

When not recorded as provided in section 2016, the levy is void against a person who has purchased for a valuable consideration, or has attached or taken on execution, the same premises without actual notice thereof. If the levy is recorded after the 3 months, it will be valid against a conveyance, attachment or levy made after such record.

§2018. Levy waived or void

A creditor who has received seizin of a levy not recorded cannot waive it unless the estate was not the property of the debtor, or not liable to seizure on execution, or cannot be held by the levy, when it may be considered void, and he may resort to any other remedy for satisfaction of his judgment.

§2019. Failure of title, alias execution; debtor may convey by deed

When the execution has been recorded and the estate levied on does not pass by the levy for causes named in section 2018, the creditor may by motion in the court issuing the execution require the debtor to show cause why an alias execution should not be issued on the same judgment. If the debtor does not show sufficient cause, the levy may be set aside, and an alias execution issued for the amount then due on the judgment, unless during its pendency the debtor tenders in court a deed of release of the land levied on, and makes it appear that the land, at the time of the levy, was and still is his property, and pays the expenses of the levy and the taxable costs of the action. The judgment shall be satisfied for the amount of the levy.

§2020. Judgment assignee may bring action if estate does not pass by levy

When a judgment has been assigned for a valuable consideration, and bona fide, in writing, and a levy of an execution issued on such judgment has been made, and the estate does not pass by the levy, and the creditor dies after the levy, the assignee may bring an action in the court issuing the execution, setting forth the facts aforesaid therein, and requiring the debtor to show cause why another execution should not issue on the same judgment, in the name and for the benefit of said assignee. If the debtor, after being duly summoned, does not show sufficient cause why it should not be done, the levy may be set aside; and the court from which said execution issued may order and issue another execution on the same judgment, for the amount of the original debt, interest and costs, in the name and for the benefit of such plaintiff, and against such debtor and his property, in the usual form, with necessary charges.

§2021. Assignee may bring action in own name

In all cases where a judgment has been assigned as provided for in section 2020 and is not discharged, the assignee may bring a civil action thereon in his own name. Upon averment and proof of the facts aforesaid, the court may render judgment and execution thereon in his favor, subject to any legal defense which the debtor might have if the action were instituted by the original creditor.

§2022. Levy commences when appraisers sworn

For the purpose of fixing the amount due on the execution and the time when the debtor's right to redeem expires, all levies shall be considered to commence on the day of the date of the administration of the oath to the appraisers, although it may appear by the return of the officer that the estate was seized on execution before, or that the proceedings were not completed until after that day.

§2023. Validity of excess levy; remedy

When, by an error of the officer, the amount for which the levy was made exceeds the amount of debt or damage, costs, interest and costs of levy, by a sum not greater than 1% thereof, it is valid if otherwise legally made. The debtor or owner of the estate may maintain a civil action against such officer or his principal to recover all damages occasioned thereby, or a civil action against the creditor to have such error corrected, and the court may correct it, in any just and equitable manner, or it may decree a pecuniary compensation for the injury.

SUBCHAPTER 3

REDEMPTION OF LEVIES BY APPRAISEMENT

§2101. Creditor out of State or unknown; payment

Real estate levied on may be redeemed within one year thereafter, by tendering to the creditor the amount of its appraisement with interest from the time of levy, with reasonable expenses incurred for its improvement or repair, or in saving it from loss by the nonpayment of taxes legally assessed thereon prior to the levy, after deducting rents and profits with which he is chargeable. The creditor shall thereupon by his deed prepared at the expense of the debtor release to him all his title to the premises. When the creditor resides out of the State, or his residence is unknown, such payment is sufficient if

made to the clerk of courts in the county where the real estate levied upon is situated, and such payment has the same effect as if made to the creditor.

§2102. Ascertainment of amount due

The debtor may have the amount due ascertained by a justice of the peace. After a hearing before the justice of the peace, the justice of the peace shall make in writing and sign a certificate of the sum found due, which is conclusive. The debtor may tender that sum, which is effectual to redeem, although he had before tendered a different sum. [PL 1987, c. 736, §13 (AMD).]

SECTION HISTORY

PL 1981, c. 456, §A51 (AMD). PL 1987, c. 736, §13 (AMD).

§2103. Failure to release after tender; recovery of land

If the creditor does not release the premises within 10 days after payment or tender of the amount due, the debtor may recover the same by a real action on his own seizin; but before judgment is entered he must bring into court, for the creditor, the money tendered.

§2104. Determination of amount due

The debtor, without tender, may, within one year and in season to have the amount ascertained and paid or tendered within the year, bring an action the complaint in which shall offer to pay the amount due, and the court shall ascertain it and require the debtor to bring it into court for the creditor, and the debtor thereupon shall be entitled to a decree in his favor, and to a writ of possession for the premises.

§2105. Costs regulated; redemption of life estates

Costs may be awarded to either party, except not against the creditor, unless he has, on request, unreasonably refused to render an account of rents and profits and of expenses for improvements and repairs, or to execute a deed of release as required in this chapter. When he has tendered such deed to the debtor before his action was commenced by the debtor, and in his answer relies upon it, and brings the deed into court for the debtor, he shall recover his costs. This section is applicable to the redemption of an estate for life, levied on by taking the rents and profits.

SUBCHAPTER 4

LEVIES ON EQUITIES OF REDEMPTION

§2151. Levy on mortgaged lands; deduction of amount due; remedy for errors

Levies may be made on lands mortgaged as on lands not mortgaged, and the amount due on the mortgage may be deducted by the appraisers from their estimated value, and stated in their return. If the full amount due was not deducted, or if the levy was made in the usual form, and it is ascertained that there was a mortgage on the premises, not including other real estate, and not known to the creditor at the time of the levy, it shall nevertheless be valid, and the creditor may recover of the debtor the amount which should have been and was not deducted, or the amount due on such mortgage.

§2152. Redemption; recovery by nonredeeming debtors

Levies made as provided in section 2151 may be redeemed within one year, as in other cases. When the debtor pays on the mortgage after the levy, and does not redeem, he may recover of the creditor the amount so paid, in a civil action.

SUBCHAPTER 5

LEVY BY SALE

§2201. Sale of real estate rights and interests

Real estate attachable and all rights and interests therein, including the right to cut timber and grass, as described in chapter 507, subchapter III, rights of redeeming real estate mortgaged, rights to a conveyance of it by bond or contract, interests by virtue of possession and improvement of lands as described in chapters 723 and 725 and estates for a term of years, may be taken on execution and sold, and the officer shall account to the debtor for any surplus proceeds of the sale, to be appropriated as provided in section 5001. Such seizure and sale pass to the purchaser all the right, title and interest that the execution debtor has in such real estate at the time of such seizure, or had at the time of the attachment thereof on the original writ, subject to the debtor's right of redemption. This section does not repeal any other modes of levy of execution provided in this chapter.

§2202. Notice of sale

The officer in such case shall give written notice of the time and place of sale to the debtor in person or by leaving the same at his last and usual place of abode, if known to be an inhabitant of the State, and cause it to be posted in a public place in the town where the land lies and in 2 adjoining towns, if so many adjoin; and if the land is situated in 2 or more towns, then in each of those towns and in 2 towns adjoining each of them; and if the land is in 2 or more counties and is contiguous, an officer in either county may take or seize on execution all the right of the debtor in such land, give, post and cause the notices to be published as required, and sell the whole right. When the land is not within any town, the notice shall be posted in 2 public places of the shire town of the county in which the land lies, instead of the posting aforesaid. When the debtor is not a resident of such county, the personal notice may be forwarded to him by mail, postage paid; all to be done 30 days before the day of sale. The notice shall be published for 3 weeks successively before the day of sale in a newspaper of general circulation in such county. [PL 1987, c. 667, §9 (AMD).]

SECTION HISTORY

PL 1987, c. 667, §9 (AMD).

§2203. Mortgagee to disclose amount due

When a right of redemption has been attached and judgment recovered, and a sale of it is to be made, the creditor may demand of the mortgagee to disclose, in writing under his hand, the condition of the mortgage and the sum due thereon, which shall be furnished within 24 hours, and in case of neglect he shall be liable for damages.

§2204. No disclosure; compulsion by deposition

If the disclosure mentioned in section 2203 is not furnished within that time, the creditor may apply to any notary public authorized to take depositions, in the county where the land lies or where the mortgagee resides, who shall take his deposition in relation to the facts required to be disclosed, and may exercise the power to compel attendance and disclosure which is authorized for taking a deposition in perpetuam. [PL 1987, c. 736, §14 (AMD).]

SECTION HISTORY

PL 1987, c. 736, §14 (AMD).

§2205. Sale at auction and deed; debtor's interest

The officer shall sell such right or interest at public auction to the highest bidder, and execute and deliver to the purchaser a sufficient deed thereof which, being recorded in the registry of deeds of the county or district where the land lies within 3 months after the sale, conveys to him all the title of the debtor in the premises. When such bidder on demand of the officer does not pay him the sum for which it was sold, he shall immediately sell it again as before, and if it does not sell for so much as at the first sale, the person to whom it was struck off at the first sale shall be accountable for the difference to the

officer, who may recover it, to be indorsed on the execution, if not satisfied, and if satisfied paid to the debtor.

§2206. Adjournment of sale by officer; completion by another

When the officer deems it for the interest of all concerned to postpone the sale, he may adjourn it for any time not exceeding 7 days, and so from time to time until a sale is made, giving notice at the time of each adjournment by public proclamation. When he is unable to attend at the time and place of sale, another officer may adjourn it not exceeding 10 days, and if such inability is not then removed, may sell and make his return as the first officer might.

§2207. Seizure considered made; proceedings after return day valid.

The seizure on execution is considered made on the day when notice of the sale is given, and if the sale is not completed within 60 days after judgment it holds the right or interest seized within that time. The subsequent proceedings and return are valid, if made after the return day of the execution or after removal or disability of the officer.

§2208. Titles of banks and corporations, as mortgagees, sold

The titles of banks or corporations, as mortgagees of land, may be taken on execution and sold as real estate and interests therein are taken and sold. The officer may by deed convey the same, and a debt secured by such mortgage and remaining unpaid will pass with the mortgagee's title to the purchaser, who may recover the premises or debt in his own name. In such action, a copy of the mortgage, attested by the register of deeds, is prima facie evidence of such deed, and of the contracts secured by it, as remaining due at the time of trial. The cashier of the bank or clerk of the corporation, on reasonable request of the officer, shall furnish him with a certified copy of such contract and of all payments made thereon.

§2209. Transfer after notice of seizure invalid

No transfer of such mortgage or of the debt secured thereby, made by such corporation after notice of the seizure thereof on execution has been filed in the registry of deeds of the county or district where the land lies, or given to the party to be affected thereby, has any validity against the purchaser at such sale.

SUBCHAPTER 6

REDEMPTION OF REAL ESTATE; RIGHTS AND INTEREST

§2251. Redemption of rights and interest

Real estate, and rights and interests therein, and mortgages and debts so sold, may be redeemed within one year, as land levied on by appraisement may be. The rights and remedies of the parties are the same for this purpose, as those of mortgagor and mortgagee.

§2252. Attachment and sale of rights to redeem

The right of a debtor to redeem from a sale or from a levy by appraisement may be attached and sold on execution, as an equity of redemption may be, and the parties have the same rights and remedies. Attachments of such estate or equity of redemption, made before such levy or sale, are effectual on such right of redeeming, in the order in which they were made, in preference to attachments made subsequent to such levy or sale.

§2253. Redemption of property by creditor seizing right; repayment from proceeds of sale

When a creditor has seized on execution a right that would expire within 60 days, to redeem from a mortgage, sale or levy on execution, he may pay or tender to the person entitled thereto the amount

which the debtor would have to pay to redeem the same. The officer selling such right shall first pay from the proceeds of sale the amount so paid by the creditor with interest, unless the debtor has paid it. The residue, if any, shall be applied in satisfaction of the execution.

SUBCHAPTER 7

SALE OF RAILROAD FRANCHISES

§2301. Execution sale of railroad franchises

When the franchise of a railroad has been sold on execution as provided in section 4855, the officer may convey the same by deed, which shall be recorded in the registry of deeds of each county or district in which any part of such railroad lies. The debtor has the same right of redemption from such sale as from sales of real estate under section 2201.

SUBCHAPTER 8

REDEMPTION BY OUT-OF-STATE DEFAULTED DEFENDANTS

§2351. Defaulted out-of-state defendant may redeem

A defendant living out of the State, defaulted in an action without an appearance or other service than a newspaper publication, may, within 6 months after the levy of an execution on his real estate or the sale of a right of redemption, bring an action for relief from the judgment in such action, and instead of the year allowed in other cases, he may redeem from such levy or sale at any time within 3 months after the relief is denied, or after final judgment in the action if the relief is granted. If such judgment is in his favor, the amount thereof shall be allowed towards such redemption, notwithstanding a conveyance of such estate by the creditor; and if it is larger than the amount of the levy or sale, and interest, he shall have an execution for the balance.

§2352. Waste prohibited; remedy

No strip or waste shall be made on such estate before or during the pendency of proceedings under section 2351. After final judgment in the action, if relief from the judgment is granted, the plaintiff in such action, besides other remedies, may, within said 3 months, without a tender or demand to account, bring his action, for the redemption of such estate.

CHAPTER 405

RECORDS

§2401. Recording requirements for proceedings involving real estate

1. Destruction prohibited.

[PL 1991, c. 125 (NEW); MRSA T. 14 §2401, sub-§1 (RP).]

2. Identification on docket. On and after January 1, 1992, judicial proceedings in any Maine court, including appeals from judicial proceedings, that affect title to real estate must be identified on the docket. Judicial proceedings subject to this section include but are not limited to proceedings involving:

A. Partition actions; [PL 1991, c. 125 (NEW).]

B. Boundary and access disputes; [PL 1991, c. 125 (NEW).]

C. Insolvency; [PL 1991, c. 125 (NEW).]

D. Mortgage foreclosure; [PL 1991, c. 125 (NEW).]

E. Declaratory judgment actions; [PL 1991, c. 125 (NEW).]

F. Attachment, mechanics liens and other statutory liens; [PL 1993, c. 114, §1 (AMD); PL 1993, c. 114, §4 (AFF).]

G. Dissolution; and [PL 1991, c. 125 (NEW).]

H. Actions to quiet title. [PL 1991, c. 125 (NEW).]

This section does not apply to the descent of real estate in divorce governed by Title 19-A, section 953, small claims actions in District Court or proceedings over which the Probate Court has exclusive jurisdiction.
[PL 1995, c. 694, Pt. D, §16 (AMD); PL 1995, c. 694, Pt. E, §2 (AFF).]

3. Judgment required; recording and contents. The judgment in the proceeding must be signed by the judge and contain the following provisions:

A. The names and addresses, if known, of all parties to the action, including the counsel of record; [PL 1991, c. 824, Pt. D, §1 (AMD); PL 1991, c. 824, Pt. D, §2 (AFF).]

B. The docket number; [PL 1991, c. 726, §1 (NEW).]

C. A finding that all parties have received notice of the proceedings in accordance with the applicable provisions of the Maine Rules of Civil Procedure and, if the notice was served or given pursuant to an order of a court, including service by publication, that the notice was served or given pursuant to the order; [PL 1991, c. 824, Pt. D, §1 (AMD); PL 1991, c. 824, Pt. D, §2 (AFF).]

D. An adequate description of real estate involved; [PL 2009, c. 402, §9 (AMD).]

E. [PL 1991, c. 824, Pt. D, §1 (RP); PL 1991, c. 824, Pt. D, §2 (AFF).]

F. A certification to be signed by the clerk after the appeal period has expired, certifying that the applicable period has expired without action or the final judgment has been entered after remand following appeal; and [PL 2009, c. 402, §9 (AMD).]

G. With regard to mortgage foreclosure actions, the title "judgment of foreclosure and sale," the street address of the real estate involved, if any, and the book and page number of the mortgage, if any. [PL 2009, c. 476, Pt. B, §1 (AMD); PL 2009, c. 476, Pt. B, §9 (AFF).]

Unless a proposed judgment with the provisions required in this subsection is presented to the court at the time of the court's decision, the court shall name the party responsible for preparing a judgment with the required provisions. An attested copy of the judgment with the signed clerk's certification must be recorded in the registry of deeds for the county or counties where the subject property is located within one year of the entry of the final judgment unless otherwise ordered by the court. For the purposes of this section, a judgment is not final until all applicable appeal periods have expired and any appellate proceedings and subsequent actions on remand, if any, have been concluded. The court shall name the party responsible for recording the attested copy of the judgment and for paying the appropriate recording fees. The judgment has no effect as to any person not a party to the proceeding who has no actual knowledge of the judgment unless an attested copy of the judgment is recorded in accordance with this section. A judgment of foreclosure and sale for recording may not be recorded in the registry of deeds unless it is in compliance with the requirements of this section. Failure to comply with this section does not affect the validity of the underlying judgment.
[PL 2009, c. 476, Pt. B, §1 (AMD); PL 2009, c. 476, Pt. B, §9 (AFF).]

4. Abstract; recording and contents.

[PL 1991, c. 726, §2 (RP).]

5. Original abstract filing.

[PL 1991, c. 726, §2 (RP).]

6. Nonjudicial proceedings. This section does not apply to mechanics liens, attachments or other statutory lien proceedings affecting title to real estate until the liens are enforced pursuant to judicial proceedings.
[PL 1993, c. 114, §3 (NEW); PL 1993, c. 114, §4 (AFF).]

7. Transition. Abstracts of judgments and attested copies of judgments dated before November 1, 1993 that are signed by the clerk but not by the judge and that otherwise comply with subsection 3, paragraphs A to F are deemed to comply with the recording requirements of this section.
[PL 1993, c. 114, §3 (NEW); PL 1993, c. 114, §4 (AFF).]

SECTION HISTORY

PL 1991, c. 125 (NEW). PL 1991, c. 726, §§1,2 (AMD). PL 1991, c. 824, §D1 (AMD). PL 1991, c. 824, §D2 (AFF). PL 1993, c. 114, §§1-3 (AMD). PL 1993, c. 114, §4 (AFF). PL 1995, c. 694, §D16 (AMD). PL 1995, c. 694, §E2 (AFF). PL 2009, c. 402, §9 (AMD). PL 2009, c. 476, Pt. B, §1 (AMD). PL 2009, c. 476, Pt. B, §9 (AFF).

PART 5

PROVISIONAL REMEDIES; SECURITY

CHAPTER 501

TRUSTEE PROCESS

SUBCHAPTER 1

PROCEDURE BEFORE JUDGMENT

ARTICLE 1

GENERAL PROVISIONS

§2601. Actions in which trustee process used

In connection with the commencement of any personal action, except actions only for specific recovery of goods and chattels, for malicious prosecution, for slander by writing or speaking or for assault and battery, trustee process may be used in the Superior Court or in the District Court.

§2602. Persons not to be adjudged trustees

No person shall be adjudged trustee:

1. Negotiable instruments. By reason of any negotiable bill, draft, note or other security drawn, accepted, made or indorsed by him, except in the cases provided in section 2629;

2. Collections by legal process. By reason of any money or other thing received or collected by him as an officer, by force of a legal process in favor of the principal defendant in the trustee process, although it has been previously demanded of him by the defendant;

3. Money held by officer, accountable to defendant. By reason of any money in his hands as a public officer for which he is accountable to the principal defendant;

4. Debts due defendant. By reason of any money or other thing due from him to the principal defendant unless, at the time of the service of the summons upon him, it is due absolutely and not on any contingency;

5. Debt due on a judgment. By reason of any debt due from him on a judgment while he is liable to an execution thereon;

6. Wages. By reason of any amount due from him to the principal defendant as wages for his personal labor or that of his wife or minor children. Moreover, wages of minor children and of women are not, in any case, subject to trustee process on account of any debt of parent or husband.
[PL 1971, c. 408, §2 (AMD).]

7. Debt paid. Where service was made on him by leaving a copy or a summons and before actual notice of such service or reasonable ground of belief that it was made, he paid the debt due to the principal defendant or gave his negotiable security therefor;

8. Board furnished Legislator. By reason of any amount due for board furnished a member of the Legislature while in attendance thereon;

9. Safe deposit box. By reason of the renting as a national bank, trust company, savings bank, savings and loan association, credit union or safe deposit company of any safe deposit box or on account of the contents thereof; and
[PL 1991, c. 386, §28 (AMD).]

10. Money deposited. By reason of any money deposited with him in a broker's trust account under Title 32, section 13178, except to the extent provided in that section.
[PL 1987, c. 395, Pt. A, §42 (AMD).]

SECTION HISTORY

PL 1965, c. 354 (AMD). PL 1967, c. 318 (AMD). PL 1971, c. 408, §2 (AMD). PL 1971, c. 468, §1 (AMD). PL 1987, c. 395, §A42 (AMD). PL 1991, c. 386, §28 (AMD).

§2602-A. Attorneys' liens; allegedly stolen property

In any civil action in which the plaintiff or plaintiffs seek the restoration of or compensation for money or other personal property allegedly taken by theft by the defendant or defendants and in which trustee process is used with regard to such money or other personal property, the claim of the plaintiff or plaintiffs shall have priority over an attorney's lien for services performed or to be performed for the defendant or defendants. [PL 1975, c. 690 (NEW).]

SECTION HISTORY

PL 1975, c. 690 (NEW).

§2603. Effect of service on trustee; service on partnership

Service on the trustee binds all goods, effects or credits of the principal defendant entrusted to and deposited in the trustee's possession, to respond to the final judgment in the action, as when attached by ordinary process if process describing the principal defendant with reasonable certainty is received at a time and in a manner that affords the trustee a reasonable opportunity to act on it. When a partnership is made a trustee on trustee process, service upon one member of the firm is a sufficient attachment of the property of the principal defendant in the possession of the firm, if that service is made at any place of business of the firm or, if that service is made elsewhere, that legal service is afterward made upon the other members of the firm. [PL 2003, c. 149, §3 (AMD).]

SECTION HISTORY

PL 2003, c. 149, §3 (AMD).

§2604. County where action brought; divorce; financial institution as trustee; counterclaim

If all the trustees live in the same county, the action must be brought there; if they reside in different counties, in any county in which one of them resides; and in a trustee process against a corporation, its residence is deemed to be in the county in which it has its established or usual place of business, held its last annual meeting or usually holds its meetings; except that an action in which a railroad corporation is named and alleged as trustee may be brought in any county in which the railroad corporation runs and operates its road; and except that an action in which a financial institution authorized to do business in this State or credit union authorized to do business in this State is named and alleged as trustee may be brought in any county in which the financial institution or credit union maintains a place of business. [PL 2003, c. 149, §4 (AMD).]

When trustee process is used in connection with the commencement of an action for divorce, the action must be brought in the county in which the court has jurisdiction over the parties named in the action, and the alleged trustee, although residing in another county, may be summoned to appear in the county in which the court has jurisdiction over the parties named in the action and must answer and make disclosure in that county. The court sitting therein shall have full power and authority to award from the funds found to be held by the alleged trustee and belonging to the defendant such sum or sums as it may deem proper as an award for alimony or in lieu thereof. [PL 2003, c. 149, §4 (AMD).]

When trustee process is used in connection with a counterclaim arising out of the transaction or occurrence that is the subject matter of the opposing party's claim, the alleged trustee may be summoned to appear in the county in which the action is pending, even though that trustee does not reside or maintain a usual place of business in that county. [PL 2003, c. 149, §4 (AMD).]

SECTION HISTORY

PL 2003, c. 149, §4 (AMD).

§2605. Definitions relating to venue

In determining where an action commenced by trustee process shall be brought in the District Court under this chapter the word "county" shall mean "division" and the word "counties" shall mean "divisions."

§2606. Additional trustees

After service of the summons and complaint upon the principal defendant, the court, on motion without notice, may for cause shown order an additional attachment on trustee process against the same or an additional trustee, except for wages or salary due the defendant.

§2607. When trustees may appear for principal

When the principal is out of the State at the time of service and has no agent therein and does not appear in his own person or by attorney, any one or more of the trustees having goods, effects or credits in their hands, and being adjudged trustees, may appear in his behalf and in his name plead and defend the cause.

§2608. Corporation as trustee; answer and disclosure

Except as provided in section 2608-A, all domestic corporations and all foreign or alien companies or corporations established by the laws of any other state or country and having a place of business or doing business within this State may be summoned as trustees, and trustee summonses may be served on them as other process is served on any such companies or corporations. They may answer by attorney or agent and make disclosures, which must be signed and sworn to by an attorney or agent or another person upon whom legal service of the summons may be made. The same proceedings must thereupon

be had throughout except necessary changes in form, as in other cases of foreign attachment. [PL 2003, c. 149, §5 (AMD).]

SECTION HISTORY

PL 2003, c. 149, §5 (AMD).

§2608-A. Service on financial institution as trustee

Service of trustee process on a financial institution authorized to do business in this State or credit union authorized to do business in this State, as defined in Title 9-B, section 131, is effected by one of the following means: [PL 2003, c. 149, §6 (NEW).]

1. Designated office. Personal service by any lawful means upon the office designated by the financial institution or credit union for service of trustee process in a registry maintained for this purpose by the Secretary of State; or
[PL 2003, c. 149, §6 (NEW).]

2. Acceptance by designated officer or employee. Acceptance of service in writing by an officer or employee of the financial institution or credit union expressly authorized to accept service of trustee process.
[PL 2003, c. 149, §6 (NEW).]

SECTION HISTORY

PL 2003, c. 149, §6 (NEW).

§2609. Taxes due corporation from defendant exempt

Any corporation summoned as trustee of a defendant may set off and deduct from any amount found due the defendant from the trustee and attached by trustee process the amount due from the defendant to the trustee for taxes.

§2610. Nonresident adjudged trustee

A person summoned as trustee may be adjudged trustee by the court although he was not then and never had been an inhabitant of the State. The action may be brought in the county in which either the plaintiff or principal defendant resides.

§2611. Discharge of trustees; effect on principal

If all the persons summoned as trustees are discharged or the action against them is discontinued, the plaintiff shall not proceed against the principal defendant unless there was sufficient personal service of the summons on him; but he may assume the defense of the action.

§2612. Trustee out of county may appear by attorney

A person summoned as trustee, and not then living in the county where the summons is returnable, need not appear in person in the original action or on motion after judgment; but he may appear by attorney and declare whether he had any goods or effects of the principal in his hands when the summons was served, and thereupon offer to submit himself to examination on oath.

§2613. Complaint considered true

If the plaintiff proceeds no further, the complaint shall be considered true.

§2614. Trustee not appearing defaulted

When a person summoned as trustee neglects to appear and answer to the action, the trustee must be defaulted and adjudged trustee to the extent that such a person holds goods, effects or credits of the principal defendant otherwise available to satisfy the unsatisfied portion of final judgment. Nothing in this section limits the additional remedies available under this chapter for the trustee's failure to

disclose, including the assessment of costs under section 2701 or, in a proper case, contempt. [PL 2003, c. 149, §7 (AMD).]

SECTION HISTORY

PL 2003, c. 149, §7 (AMD).

§2615. Questions of fact for court or jury

Any question of fact arising upon such additional allegations may, by consent, be decided by the court or submitted to a jury in such manner as the court directs.

§2616. Disclosure of assignment of principal's claim

When it appears by the answers of a trustee that any goods, effects or credits in his hands are claimed by a 3rd person by virtue of an assignment from the principal debtor or in some other way, the court may permit such claimant to appear, if he sees cause. If he does not appear voluntarily, notice may be issued and served on him as the court directs. If he appears, he may be admitted as a party to the action so far as respects his title to the goods, effects or credits in question, and he may allege and prove any facts not stated or denied in the disclosure of the trustee. If he does not appear in person or by attorney, the assignment shall have no effect to defeat plaintiff's attachment.

§2617. Principal defendant may testify

On the trial between the attaching creditor and such claimant, the principal defendant may be examined as a witness for either party if there is no other objection to his competency except his being a party to the original action.

§2618. Form of judgment against principal and trustee

When the plaintiff recovers judgment against the principal and there is any supposed trustee who has not appeared and been discharged by disclosure or discontinuance of the action against him, the court shall award judgment and execution against the goods, effects and credits in his hands, as well as against the principal, in the usual form.

§2619. Executor or administrator liable as trustee; stockholders

Any debt or legacy due from an executor or administrator and any goods, effects and credits in his hands, as such, may be attached by trustee process. The amount which a stockholder of a corporation is liable to pay to a judgment creditor thereof may be attached by a creditor of such judgment creditor by trustee process served on such stockholder at any time after the commencement of the judgment creditor's action against him, and before the rendition of judgment therein.

§2620. Settling value as between principal and trustee

When, by the terms of the contract between the trustee and the principal debtor, any mode of ascertaining the value of the property to be delivered to the officer is pointed out, the officer shall, on application of the trustee, notify the principal debtor previous to the delivery that the value may be thus ascertained so far as it may affect the performance of the contract. In other cases the value of the property, as between the principal and the trustee, shall be estimated and ascertained by the appraisal of 3 disinterested men chosen, one by the trustee, one by the officer and one by the principal if he sees cause; and if he neglects or refuses, by the officer. They shall all be duly sworn to appraise the same and the officer, justice and appraisers shall certify their doings on the execution.

§2621. Part of goods taken; delivery of residue

When a part of such goods and articles is taken on execution, the trustee may deliver the residue to the principal or tender it to him within 30 days after satisfaction of the execution, as he might have delivered the whole.

§2622. Disposal of surplus

Any surplus money remaining in the hands of the officer after satisfying the execution and fees shall be paid to the principal, if within his precinct; if not, to the trustee.

§2623. Trustee process after commitment of debtor

When a judgment creditor has caused the debtor to be committed on execution and afterwards discovers goods, effects or credits of the debtor not attachable by ordinary process of law, he may have the benefit of the trustee process like any other creditor if, within 7 days after service of the process, he discharges the debtor from prison by a written direction to the jailer stating the reason therefor, but such discharge shall not annul or affect the judgment.

§2624. Defendant summoned as trustee of plaintiff

When an action is brought for the recovery of a demand and the defendant is summoned as a trustee of the plaintiff, the action shall be continued to await the disclosure of the trustee unless the court otherwise orders, and if the defendant is adjudged trustee, the disclosure and the proceedings thereon may be given in evidence on the trial of the action between the trustee and his creditor.

§2625. Defendant in pending action summoned as trustee of plaintiff

If, during the pendency of an action, the defendant is summoned as trustee of the plaintiff, the first action may nevertheless proceed so far as to ascertain by a verdict or otherwise, what sum, if any, is due from the defendant; but the court may, on motion of the plaintiff in the trustee action, continue it for judgment until the termination of the trustee action, or until the attachment therein is dissolved by the discharge of the trustee or satisfaction of the judgment otherwise.

§2626. Defendant not judged trustee after judgment in first action

If the first action is not continued and judgment is rendered therein, the defendant shall not afterwards be adjudged a trustee on account of the demand thus recovered against him while he is liable to an execution thereon.

§2627. Before final judgment, defendant judged trustee in other action

If, before final judgment is rendered in the first action, the defendant in that action is adjudged trustee in the other and pays thereon the money demanded in the first action or any part of it, the fact shall be stated on the record of the first action and judgment therein shall be rendered for the costs due to the plaintiff and for such part of the debt or damages, if any, as remains due and unpaid.

§2628. Money or thing trusteed before it is payable

Any money or other thing due absolutely to the principal defendant may be attached before it has become payable, but the trustee is not required to pay or deliver it before the time appointed therefor by the contract.

§2629. Goods fraudulently conveyed, trusteed

If an alleged trustee has in his possession goods, effects or credits of the principal defendant which he holds under a conveyance fraudulent and void as to the defendant's creditors, he may be adjudged a trustee on account thereof, although the principal defendant could not have maintained an action therefor against him.

§2630. Retention of pay due trustee; unliquidated damages excepted

Every trustee may retain or deduct out of the goods, effects and credits in his hands all his demands against the principal defendant, of which he could have availed himself if he had not been summoned as trustee, by way of counterclaim on trial or by a setoff of judgments or executions between himself and the principal defendant, except unliquidated damages for wrongs and injuries. He is liable for the balance only, after their mutual demands are adjusted.

§2631. Amount chargeable to trustee

When a person is adjudged trustee on disclosure in the original action, the amount for which he is chargeable shall be fixed by the court, subject to appeal, and be conclusive in proceedings after judgment unless, for cause shown, an additional disclosure is allowed. On default, the amount need not be expressed in the judgment. In all proceedings after judgment, if he is adjudged trustee, the amount for which he is chargeable shall be set forth.

§2632. Discharge no bar to principal's claim

If an alleged trustee is discharged, the judgment shall be no bar to an action brought by the principal defendant against him for the same demand.

ARTICLE 2

EXAMINATION AND DISCLOSURE

§2701. Liability of trustee for failure to disclose

If a person resident in the county in which the action is commenced is summoned and neglects to serve a disclosure under oath submitting to examination within the time required therefor, without reasonable excuse, he is liable for all costs afterwards arising in the action, to be paid out of his own goods or estate if judgment is rendered for the plaintiff, unless paid out of the goods or effects in his hands belonging to the principal.

§2702. False disclosure

Whoever, summoned as trustee, upon his examination willfully and knowingly answers falsely, shall be deemed guilty of perjury, and shall pay to the plaintiff in the action so much of the judgment recovered against the principal defendant as remains unsatisfied, with interest and costs, to be recovered in a civil action.

§2703. Commissioner to take disclosure

The court in which the action is pending may appoint a commissioner to take the trustee's examination and disclosure when any reasonable cause appears and may prescribe the notice to be given to the plaintiff of the time and place thereof. Upon return of such service, the examination and disclosure shall be taken and sworn to before the commissioner, and being certified by him and returned to court, the same proceedings may be had thereon as if it had been in court.

§2704. Trustee leaving State discloses before notary

When a person summoned as trustee is about to depart from the State or go on a voyage and not return before his disclosure under oath is required to be served, he may apply to a notary public of the county where he resides for a notice to the plaintiff to appear before the notary at a place and time appointed for taking his disclosure. On service made and returned according to the order of the notary, the examination and disclosure shall be taken and sworn to before him; and being certified and returned to the court, the same proceedings may be had thereon as if it had been in court. [PL 1981, c. 456, Pt. A, §52 (AMD).]

SECTION HISTORY

PL 1981, c. 456, §A52 (AMD).

§2705. Trustee may disclose by consent

The examination and disclosure of any person summoned as trustee may be taken, as provided in section 2704, when the plaintiff and trustee consent thereto.

§2706. Disclosure sworn to

The disclosure, when completed and subscribed by the trustee, shall be sworn to by him in open court or before a notary public. [PL 1981, c. 456, Pt. A, §53 (AMD).]

SECTION HISTORY

PL 1981, c. 456, §A53 (AMD).

§2707. Examination of trustee

If the plaintiff thinks proper to examine the supposed trustee on oath, the answers may be taken in the county in which the trustee resides before a Justice of the Superior Court or a notary public. [PL 1981, c. 456, Pt. A, §53 (AMD).]

SECTION HISTORY

PL 1981, c. 456, §A53 (AMD).

§2708. Disclosure under oath

When a trustee has submitted himself to examination on oath in court, his disclosure may be sworn to before a justice of the court or a notary public, and being filed in court, shall have the same effect as if sworn to in open court. [PL 1981, c. 456, Pt. A, §53 (AMD).]

SECTION HISTORY

PL 1981, c. 456, §A53 (AMD).

§2709. Trustee may submit statement of facts

If a person summoned admits that he has in his hands goods, effects or credits of the principal or wishes to refer that question to the court upon the facts, he may make a declaration of such facts as he deems material and submit himself thereupon to a further examination on oath. Such declaration and further examination, if any, shall be sworn to as before provided for in this chapter.

§2710. Disclosure deemed true

The answers and statements sworn to by a trustee shall be deemed true in deciding how far he is chargeable until the contrary is proved, but the plaintiff, defendant and trustee may allege and prove any facts material in deciding that question.

§2711. Time extended for trustee to disclose

The plaintiff and supposed trustee may by agreement entered on the docket extend the time within which the supposed trustee may make disclosure, preserving all the advantages that he would have on appearing and disclosing within the time required.

§2712. Disclosure of property mortgaged to trustee

When a trustee states in his disclosure that he had, at the time when the process was served on him, in his possession property not exempted by law from attachment, mortgaged, pledged or delivered to him by the principal defendant to secure the payment of money due to him and that the principal defendant has an existing right to redeem it by payment thereof, the court before which the action is pending shall order that on payment or tender of such money by the plaintiff to said trustee within such time as the court orders and while the right of redemption exists, he shall deliver the property to the officer serving the process, to be held and disposed of as if it had been attached on mesne process; and in default thereof, that he shall be charged as the trustee of the principal debtor. This order shall be entered on the records of the court.

§2713. Excess determined by court or jury

If it appears that the plaintiff has complied with the order of the court and that the trustee has refused or neglected to comply therewith, the court shall enter up judgment against him for the amount due and returned unsatisfied on the execution if there appears to be in his hands such an amount of the property

mortgaged over and above the sum due him; but if not, then for the amount of said property exceeding that sum, if any. The amount of this excess shall be determined by the court or jury.

§2714. On disclosure trustee delivers property to officer

If, by the disclosure, it appears that the property in the hands of the supposed trustee was mortgaged, pledged or subject to a lien to indemnify him against any liability or to secure the performance of any contract or condition and that the principal defendant has an existing right to redeem it, the court may order that, upon the discharge of such liability or the performance of such contract or condition by the plaintiff, within such time as the court orders and while the right of redeeming exists, such trustee shall deliver the property to the officer, to be by him held and disposed of as if it had been attached.

ARTICLE 3

INTEREST SUBJECT TO REDEMPTION

§2751. Demands assigned as security trusteed and redeemed

When it appears that a person summoned as trustee is indebted to the principal defendant on any demand on which he might be held as trustee, but that it has been conditionally assigned as security and the principal defendant has a subsisting right to redeem it, the court may order that on fulfillment of such conditions by the plaintiff within the time fixed by the court and while the right to redeem exists, the trustee shall be held for the full amount of such demand. When the court is satisfied that its order has been complied with, it may charge the trustee accordingly.

§2752. Plaintiff's rights in case of redemption

The officer making demand on the trustee upon the execution shall first deduct from the amount received by him the sum paid by the plaintiff to redeem, if any, with interest and shall apply the balance on the execution. If the demand has been redeemed otherwise than by the payment of money, the plaintiff shall be subrogated for the holder thereof and have the same rights and remedies against the principal defendant, and may enforce them, at his own expense, in the name of such holder or otherwise.

ARTICLE 4

SALE ON EXECUTION

§2801. Trustee's articles delivered to officer for sale

When a person summoned as trustee is bound to deliver to the principal defendant any specific articles, he shall deliver them or so much thereof as may be necessary, to the officer holding the execution. They shall be sold by the officer and the proceeds applied and accounted for as if they had been taken on execution in common form.

§2802. Remedy where trustee refuses to deliver

If the trustee neglects or refuses to deliver them, or sufficient to satisfy the execution, the judgment creditor has his remedy on motion as provided in sections 2951 to 2955 and section 3001; and the debtor has his remedy for an overplus belonging to him as at common law.

§2803. Disposal of proceeds

The officer, having sold on execution any personal property delivered to him by virtue of this chapter, after deducting the fees and charges of sale, shall pay to the plaintiff the sum by him paid or tendered to the trustee or applied in the performance of such contract or condition or discharge of such liability and the interest from the time of such payment, tender or application to the time of sale. So

much of the residue as is required therefor, he shall apply in satisfaction of the plaintiff's judgment and pay the balance, if any, to the debtor, first paying the trustee his costs accruing as provided in section 2902.

§2804. Trustee may sell mortgaged property

Nothing contained in this chapter shall prevent the trustee from selling the goods in his hands for the payment of the sum for which they were mortgaged, pledged or otherwise liable, at any time before the amount due to him is paid or tendered, if the sale would have been authorized by the terms of the contract between him and the principal defendant.

ARTICLE 5

DEATH OF TRUSTEE

§2851. Goods held by administrator

If a person summoned as a trustee in his own right dies before the judgment recovered by the plaintiff is satisfied, the goods, effects and credits in his hands at the time of attachment remain bound thereby, and his executors or administrators are liable therefor as if the summons had been originally served on them.

§2852. Before judgment; administrator cited

If he dies before judgment in the original action, his executor or administrator may appear voluntarily or may be cited to appear as in case of the death of a defendant in an ordinary action. Further proceedings shall then be conducted as if the executor or administrator had been originally summoned as trustee; except that the examination of the deceased, if any had been taken and filed, shall have the same effect as if he were living.

§2853. Failure of administrator to appear; judgment rendered

If in such case the executor or administrator does not appear, the plaintiff, instead of suggesting the death of the deceased, may take judgment against him by default or otherwise, as if he were living. The executor or administrator shall pay, on the execution, the amount which he would have been liable to pay to the principal defendant. He shall be thereby discharged from all demands on the part of the principal defendant in the action for the amount so paid, as if he had himself been adjudged trustee.

§2854. Failure of executor or administrator to pay; plaintiff proceeds on motion

If the executor or administrator in the case last mentioned does not voluntarily pay the amount in his hands, the plaintiff may proceed on motion as if the judgment in the first action had been against him as trustee, but if he is discharged, he may recover costs or not at the discretion of the court.

§2855. Death of trustee within 30 days after judgment; procedure to preserve attachment

If any person against whom execution issues as trustee is not living at the expiration of 30 days after final judgment in the action, the demand, to be made by force of the execution for continuing the attachment as provided in section 2956, may be made on his executor or administrator at any time within 30 days after his appointment with the same effect as if made within 30 days after the judgment.

§2856. Execution where administrator judged trustee

When an executor or administrator is adjudged trustee on account of goods, effects or credits in his hands or possession merely as executor or administrator in an action originally commenced against him as a trustee, or against the deceased, the execution shall not be served on his own goods or estate or on his person; but he is liable for the amount in his hands, in like manner and to the same extent only, as he would have been to the principal defendant if there had been no trustee process.

§2857. Remedy on bond where executor or administrator fails to pay

If after final judgment against an executor or administrator for any certain sum due from him as trustee he neglects to pay it, the original plaintiff in the foreign attachment has the same remedy for recovering the amount, either upon a suggestion of waste or by an action on the administration bond, as the principal defendant in the foreign attachment would have had upon a judgment recovered by himself for the same demand against the executor or administrator.

ARTICLE 6

COSTS AND EXPENSES

§2901. Discontinuance of action

When a trustee action is discontinued or settled by the principal parties to the action, the trustee is entitled to no costs if the plaintiff or the plaintiff's attorney, at least 7 days before the trustee's disclosure under oath is required to be served, notifies the trustee in writing that the action has been discontinued. Upon conclusion of the principal action, when the goods, effects or credits trusteed are not to be used to satisfy a judgment, the plaintiff or the plaintiff's attorney shall notify the trustee in writing within 30 days of the extinguishment of plaintiff's claim to such property. [PL 2003, c. 149, §8 (AMD).]

If the trustee discloses possession of goods, effects or credits of the principal defendant, or by virtue of default is adjudged trustee, and the trusteed funds are not collected or released within 7 years, they must be presumed abandoned under Title 33, chapter 45 unless the trustee is served with a certificate of the clerk of the appropriate court, between 30 and 90 days prior to such date, evidencing that the principal action is still pending. [PL 2019, c. 498, §10 (AMD).]

SECTION HISTORY

PL 2003, c. 149, §8 (AMD). PL 2019, c. 498, §10 (AMD).

§2902. Trustee entitled to costs; payment

If any supposed trustee serves within the time required therefor a disclosure under oath declaring that at the time of the service of the trustee process upon him he had no goods, effects or credits of the principal in his possession and submitting himself to an examination, on oath, he is entitled to his costs as in civil actions where issue is joined for trial. If adjudged a trustee, he may deduct his costs from the goods, effects and credits in his hands and he shall be chargeable for the balance only to be paid on the execution. If such goods, effects and credits are not of sufficient value to discharge the costs taxed in his favor, he shall have judgment and execution against the plaintiff for the balance of such costs, after deducting the sum disclosed, in the same manner as if he had been discharged.

§2903. Lien for costs on articles at hand; payment by officer

Where any person is adjudged trustee for specific articles in his hands, he has a lien thereon for his costs. The officer who disposes thereof on execution shall pay the trustee the amount due him for costs and deduct it from the amount of sale and account to the creditor for the balance. The amount of such fees shall be indorsed on the execution by the clerk and be evidence of the lien.

§2904. Compensation when trustee in another county

When the trustee, at the time when the summons was served on him, did not live in the county where the summons is returnable, the court shall, in case of his discharge, allow him, in addition to his legal fee, a reasonable compensation for his time and expenses in appearing and defending.

§2905. Trustees jointly liable for costs

When several trustees, resident in the county where the action is pending, are summoned and neglect to appear, the judgment for costs shall be rendered against them jointly.

§2906. Costs when trustees out of county or reside out of State

Persons summoned as trustees, residing out of the county where the action is pending, are not liable for any costs arising on the original process. If the person summoned as trustee is out of the State at the time the summons is served on him and appears within 20 days after his return, he shall be allowed his costs and charges as if he had appeared at the time otherwise required therefor.

§2907. Action fails, costs for defendant and trustee

When the plaintiff does not support his action, the court shall award costs against him in favor of the principal and in favor of the persons summoned as trustees severally who appeared and submitted to examination on oath, and several executions shall issue accordingly.

§2908. No costs for trustee unless he appears

When a person, summoned as trustee, does not come into court and declare that he had no property or credits of the principal in his hands when the summons was served and submit himself to examination on oath, the court shall not award costs in his favor although the action is voluntarily dismissed.

§2909. Trustee's liability for costs

If the amount disclosed is as large as the sum recovered in the action, the trustee is liable to no costs after service of the trustee process upon him; otherwise, he is liable to legal costs.

§2910. Trustee's failure to pay costs when liable

If the person summoned as trustee and liable for costs as provided in section 2701 does not voluntarily pay them when demanded by the officer serving the execution, the officer shall state the fact in his return thereon. If it appears thereby that the costs have not been paid by anyone, the court shall award execution against such trustee for the amount thereof.

SUBCHAPTER 2

PROCEDURE AFTER JUDGMENT

ARTICLE 1

GENERAL PROVISIONS

§2951. Motion by plaintiff against trustee

When a person adjudged a trustee in the original action does not, on demand of the officer holding the execution, pay over and deliver to him the goods, effects and credits in his hands and the execution is returned unsatisfied, the plaintiff may on motion in the original action require the trustee to show cause why judgment and execution should not be awarded against him and his own goods and estate for the sum remaining due on the judgment against the principal defendant. A trustee who has not appeared shall be given such notice as the court may direct.

§2952. Judgment against trustee where no examination

After notice of a motion under section 2951 has been served, if the person neglects to appear and answer to the motion, that person must be defaulted and adjudged trustee to the extent that the person holds goods, effects or credits of the principal defendant otherwise available to satisfy the unsatisfied portion of final judgment. Nothing in this section limits the additional remedies available under this

chapter for the trustee's failure to disclose, including the assessment of costs under section 3102. [PL 2003, c. 149, §9 (AMD).]

SECTION HISTORY

PL 2003, c. 149, §9 (AMD).

§2953. Judgment when all trustees default

When all the trustees are defaulted in proceedings after judgment, not having been examined in the original action, the court may enter up joint or several judgments, as the case requires, and issue execution in common form.

§2954. Default on proceedings after judgment

If a trustee defaulted on proceedings after judgment was examined in the original action, judgment shall be rendered on the facts stated in his disclosure or proved at the trial, for such part of the goods, effects and credits for which he is chargeable as trustee as remain in his hands, if any, or so much thereof as is then due and unsatisfied on the judgment against the principal defendant. If it appears that such person paid and delivered the whole amount thereof on the execution issued on the original judgment, he is not liable for costs on the proceedings after judgment.

§2955. Trustee may be examined again though examined in original action

If he had been examined in the original action, the court may permit or require him to be examined anew in the proceedings after judgment. He may then prove any matter proper for his defense. The court may enter such judgment as law and justice require, upon the whole matter appearing on such examination and trial.

§2956. Goods not demanded in 30 days are liable to other attachment

When a person is adjudged trustee, if the goods, effects and credits in his hands are not demanded of him by virtue of the execution within 30 days after final judgment, their attachment by the original process is dissolved and they are liable to another attachment as though the prior attachment had not been made; but when the debt due from the trustee to the principal defendant is payable at a future day or specific property is in his hands which he is bound to deliver at a future day, the attachment continues until the expiration of 30 days after such debt is payable in money or the property is demanded of the trustee.

§2957. Principal may recover where no 2nd attachment

If there is no 2nd attachment, the principal defendant may recover the goods, effects and credits, if not so demanded, as if they had not been attached.

§2958. Demand where trustee out of State or lacks dwelling in State

When the officer holding an execution cannot find the trustee in the State, a copy of the execution may be left at his dwelling house or last and usual place of abode, with notice to the trustee indorsed thereon and signed by the officer, signifying that he is required to pay and deliver, towards satisfying such execution, the goods, effects and credits for which he is liable. When such trustee has no dwelling house or place of abode in the State, such copy and notice may be left at his dwelling house or place of abode without the State or be delivered to him personally by the officer or other person by his direction. Such notice in either case is a sufficient demand for the purposes mentioned in sections 2956 and 2957.

§2959. Effect of judgment against trustee

A judgment against any person as trustee discharges him from all demands by the principal defendant or his executors or administrators for all goods, effects and credits paid, delivered or accounted for by the trustee thereon. If he is afterwards sued for the same by the defendant or his executors or administrators, such judgments and disposal of the goods, effects and credits, being

proved, shall be a bar to the action for the amount so paid or delivered by him. Such payment, delivery or accounting for may be made either to the officer holding the execution or to the plaintiff or his attorney of record, and may be proved by the officer's return upon the execution, by indorsement made thereon by the plaintiff or his attorney of record or by any other competent evidence.

§2960. Trustee process on judgment dismissed; costs

When trustee process is used in connection with an action on a judgment on which execution might legally issue and it appears to the court that, at the time of bringing it, the defendant openly had visible property liable to attachment sufficient to satisfy such judgment, or that it was brought for the purpose of vexation or to accumulate costs, it shall at any time on motion be dismissed, with costs to the defendant.

ARTICLE 2

COSTS AND EXPENSES

§3001. Liability for costs if discharged in proceedings after judgment

If the trustee appears and answers in the proceedings after judgment and was not examined in the original action, he may be examined as he might have been in the original action. If, on such examination, he appears not chargeable, the court shall render judgment against him for costs only, if resident in the county where the original process was returnable; but if not resident in such county, he shall not pay or recover costs.

§3002. Trustee exempt from costs in proceedings after judgment

If a person summoned as trustee is prevented from appearing in the original action by absence from the State or any other reason deemed sufficient by the court and a default is entered against him, he is not liable for costs in the proceedings after judgment; but, on his disclosure, the court may allow him his reasonable costs and charges, to be retained or recovered as if he had appeared in the original action.

ARTICLE 3

APPEALS

§3051. On appeal whole case re-examined by law court

Whenever objections are made to the ruling and decision of a justice as to the liability of a trustee, the whole case may be reexamined and determined by the law court on appeal and remanded for further disclosure or other proceedings, as justice requires.

SUBCHAPTER 3

DISTRICT COURTS

§3101. Form and service of trustee summons

When a trustee process is issued by a District Court, the summons shall be substantially in the form used in the Superior Court, and be served 7 days before the return day in the same manner as in the Superior Court; and shall be brought in the division where either of the supposed trustees resides. If not so brought, it shall be dismissed and the trustees shall recover their costs.

§3102. Default for nonappearance; costs

When the person summoned under section 3101 does not appear and answer to the action, that person must be defaulted, adjudged trustee to the extent provided in section 2614 and be liable to costs. If that person appears at the return day and submits to an examination on oath and is discharged, the person must be allowed legal costs. If the person is charged, the person may retain the amount of costs. When the plaintiff dismisses the action against the trustee or the principal, the trustee must be allowed costs. [PL 2003, c. 149, §10 (AMD).]

SECTION HISTORY

PL 2003, c. 149, §10 (AMD).

§3103. Subsequent proceedings; discharge if judgment less than $5 except counterclaim

All subsequent proceedings in such actions shall be the same as in the Superior Court, varying the forms as circumstances require. When, in a trustee action before such District Court, the debt recovered against the principal is less than $5, the trustee shall be discharged unless the judgment is so reduced by means of a counterclaim filed.

§3104. Execution where principal or trustee moves

If, after a judgment is rendered in such trustee process, the principal defendant or trustee removes from the county in which it was rendered, such court may issue execution against either, directed to the proper officer of any other county where he is supposed to reside.

§3105. Discharge of trustee in another county

When an action is brought against a trustee in a county where he resides but where neither the plaintiff nor defendant resides, and the trustee is discharged or the action is dismissed as to him, the action shall still proceed if there was legal service on the principal defendant, unless it is set forth by motion or answer and established on hearing that the trustee was collusively included in the action for the purpose of giving the court in such county jurisdiction.

CHAPTER 502

ENFORCEMENT OF MONEY JUDGMENTS

§3120. Purpose

The purpose of this chapter is to provide an efficient procedure for the enforcement of money judgments. It is not an exclusive procedure and may be utilized with any other available procedure. [PL 1987, c. 184, §1 (NEW).]

SECTION HISTORY

PL 1987, c. 184, §1 (NEW).

§3121. Definitions

For the purposes of this chapter, unless the context otherwise indicates, the following words shall have the following meanings: [PL 1971, c. 408, §1 (NEW).]

1. Earnings. "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commissions, bonuses or otherwise, and includes periodic payments pursuant to a pension or retirement program.
[PL 1971, c. 408, §1 (NEW).]

2. Disposable earnings. "Disposable earnings" means that part of the earnings of any judgment debtor remaining after the deduction from those earnings of any amounts required by law to be withheld.

[PL 1971, c. 408, §1 (NEW).]

2-A. Individual. "Individual" means only a natural person.
[PL 1987, c. 184, §2 (NEW).]

3. Judgment creditor. "Judgment creditor" means any person, corporation, partnership or other entity who or which is the owner of any judgment unsatisfied in whole or in part, and the Department of Human Services when it is collecting child support.
[PL 1995, c. 419, §6 (AMD).]

4. Judgment debtor. "Judgment debtor" means any person, corporation, partnership or other entity against whom or which a judgment has been entered and that judgment is unsatisfied in whole or in part.
[PL 1971, c. 408, §1 (NEW).]

5. Person. "Person" means an individual, trust, estate, partnership, association, company, corporation, political subdivision or instrumentality of the State.
[PL 1987, c. 184, §2 (NEW).]

6. Sheriff. For the purposes of sections 3134 to 3136, "sheriff" means a sheriff, deputy sheriff, police officer, special police officer or constable.
[PL 1987, c. 184, §2 (NEW).]

Whenever a judgment creditor, judgment debtor or a 3rd party is a corporation or other legal entity and is required to perform any act under this chapter, such acts shall be performed by the officers, directors or managing agents of the entity or by the persons controlling the entity, whichever is appropriate. Except where personal appearance or testimony is required in response to a subpoena or civil order of arrest under this chapter, the judgment creditor, judgment debtor or 3rd party may act by or through an attorney. [PL 1987, c. 184, §3 (AMD).]

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1987, c. 184, §§2,3 (AMD). PL 1995, c. 419, §6 (AMD).

§3121-A. Venue

1. Commencement of proceedings. Notwithstanding Title 4, section 155 and any provisions set forth elsewhere, and except as provided in subsection 2 and Title 19-A, section 2361, subsection 2, any proceeding under this chapter must be commenced in a division of the District Court as follows.

A. Except as provided in paragraph D, if the judgment debtor is an individual who resides within this State, the proceeding must be commenced in the division in which the judgment debtor resides. [PL 1995, c. 419, §7 (AMD).]

B. Except as provided in paragraph D, if the judgment debtor is a nonresident individual, the proceeding must be commenced in the division in which the debtor is commorant. [PL 1995, c. 419, §7 (AMD).]

C. Except as provided in paragraph D, if the judgment debtor is not an individual, the proceeding must be commenced in a division in which the debtor maintains a place of business. If the judgment debtor does not maintain a place of business in this State, the proceeding must be commenced in a division in which a civil summons could be served upon the debtor or in any division in which the action resulting in the judgment could have been brought. [PL 1995, c. 419, §7 (AMD).]

D. Any proceeding under this chapter may be commenced in the division where the judgment creditor, if an individual, resides or, if not an individual, has a place of business, except that a consumer debt proceeding must be commenced, at the option of the creditor, in the division where the consumer transaction occurred or where the judgment debtor resides. Consumer debts are

limited to debts arising from purchases that are primarily for personal, family or household purposes. [PL 1989, c. 655 (AMD).]

[PL 1995, c. 694, §17 (AMD); PL 1995, c. 694, Pt. E, §2 (AFF).]

2. Civil order of arrest; contempt. Any proceeding under this chapter in which the judgment debtor is an individual who resides in this State shall be transferred to the division in which the debtor resides immediately after:

A. The issuance of a civil order of arrest pursuant to section 3134, subsection 1, or section 3136; or [PL 1987, c. 184, §4 (NEW).]

B. The filing of a motion for contempt pursuant to section 3134, subsection 2. [PL 1987, c. 184, §4 (NEW).]

The division in which the judgment debtor resides shall be set forth in the affidavit or statement under oath required by section 3134, subsection 1 or 2, or section 3136, subsection 1. Any civil order of arrest issued pursuant to section 3134, subsection 1, or section 3136, and any contempt subpoena or civil contempt order issued pursuant to section 3134, subsection 2, shall be returnable only to the division in which the judgment debtor resides if that debtor is an individual who resides in this State. Any proceedings in which the judgment debtor is not such a resident individual shall be maintained as provided in subsection 1.

[PL 1987, c. 184, §4 (NEW).]

3. Improper venue, transfer, objection. If any proceeding under this chapter is brought or continued in the wrong division, the court, upon motion or its own initiative, may transfer the proceeding to the proper division. Any objection to improper venue is waived if not made before the entry of any order under this section after the appearance of the judgment debtor before the court. The court, at any time and upon motion or its own initiative, may transfer a proceeding under this subsection to another division for the convenience of the parties or witnesses, or in the interest of justice or equity.

[PL 1987, c. 184, §4 (NEW).]

4. Consent. With the approval of the court, any proceeding under this chapter may be commenced or continued in any division consented to by the judgment debtor and the judgment creditor.

[PL 1987, c. 184, §4 (NEW).]

SECTION HISTORY

PL 1987, c. 184, §4 (NEW). PL 1989, c. 655 (AMD). PL 1995, c. 419, §7 (AMD). PL 1995, c. 694, §D17 (AMD). PL 1995, c. 694, §E2 (AFF).

§3122. Subpoenas

1. Disclosure subpoena. A judgment creditor, for the purpose of determining the ability of the judgment debtor to satisfy the judgment, may subpoena the judgment debtor by disclosure subpoena to appear before a judge of the District Court. The subpoenas shall be issued in blank by the clerks of the District Court. The subpoena shall set forth the title of the action; the date and place where the judgment debtor is ordered to appear for the disclosure hearing; an order to produce any documents requested by the judgment creditor; a warning that failure to obey the subpoena may result in the arrest of that person or an order to the debtor's employer to withhold a portion of the debtor's wage, or both; and a notification that the debtor is entitled to be heard on issues concerning his ability to pay the judgment and whether his income or assets are exempt from court order.

[PL 1987, c. 184, §5 (NEW).]

2. Witness subpoena. Any party may subpoena any witness to any hearing provided for in this chapter in the manner authorized by law.

[PL 1987, c. 184, §5 (NEW).]

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1973, c. 429 (AMD). PL 1973, c. 477, §§1,2 (AMD). PL 1981, c. 389, §1 (RPR). PL 1987, c. 184, §5 (RPR).

§3123. Service disclosure of subpoena

1. Service on individual.

[PL 1997, c. 21, §1 (RP).]

2. Service on nonindividual.

[PL 1997, c. 21, §1 (RP).]

3. Service of disclosure subpoena. Service of the disclosure subpoena on a judgment debtor must be made by delivering a copy of the subpoena to the judgment debtor by any method by which service of civil summons may be made at least 10 days prior to the disclosure hearing.
[PL 1997, c. 21, §2 (NEW).]

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1973, c. 477, §3 (AMD). PL 1981, c. 389, §2 (AMD). PL 1987, c. 184, §6 (RPR). PL 1997, c. 21, §§1,2 (AMD).

§3124. Successive disclosures

A judgment creditor may subpoena the judgment debtor to disclose no more often than once every 6 months, except upon motion for good cause shown. [PL 1971, c. 408, §1 (NEW).]

SECTION HISTORY

PL 1971, c. 408, §1 (NEW).

§3125. Appearance and examination of the debtor

1. Disclosure hearing. Unless there is an agreement which meets the requirements of subsection 2, the judgment debtor shall appear at the time and place indicated in the subpoena for a hearing to determine his ability to pay the judgment. The debtor shall be placed under oath and shall disclose his income, assets and any other information which will aid the judgment creditor in enforcing the judgment. Unless the debtor fails to appear for the disclosure hearing, testimony of the debtor shall be taken before the court issues any order pursuant to this chapter.
[PL 1987, c. 184, §7 (NEW).]

2. Agreement. If the creditor or the debtor, at or prior to the disclosure hearing, presents the court with a written agreement for an order pursuant to section 3126-A with affidavit signed by the judgment debtor on a form provided by the District Court, the court may enter an order for an installment payment in the amount agreed upon by the parties or a lesser amount without the necessity of appearance by the parties. In determining whether to accept, reject or modify to a lesser amount the agreement of the parties, the court shall apply the factors set forth in section 3126-A, subsection 4.
[PL 1999, c. 587, §1 (AMD).]

3. Continuances. A continuance of the disclosure hearing may be granted for good cause.
[PL 1987, c. 184, §7 (NEW).]

4. Witnesses. Either party may subpoena any witness to the disclosure hearing for the purpose of taking testimony as to the ability of the judgment debtor to satisfy the judgment.
[PL 1987, c. 184, §7 (NEW).]

5. Orders. In appropriate circumstances, the court may issue any combination of orders allowed by this chapter.
[PL 1987, c. 184, §7 (NEW).]

6. Termination. If the court is satisfied that the debtor has no earnings, property or other assets from which he can satisfy the judgment, in whole or in part, the disclosure shall be terminated. Failure of the judgment creditor to appear at the time and date set forth in the subpoena shall result in a termination of the disclosure hearing. Any dismissal or withdrawal of the disclosure subpoena by the judgment creditor after it has been served on the debtor shall be considered a termination of the disclosure hearing. A terminated hearing shall be considered a completed hearing for the purposes of section 3124.
[PL 1987, c. 184, §7 (NEW).]

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1987, c. 184, §7 (RPR). PL 1987, c. 708, §7 (AMD). PL 1999, c. 587, §1 (AMD).

§3125-A. Debtor subject to loss or suspension of right to operate or register a motor vehicle

A judgment debtor subject to suspension or loss of the right to operate or register a motor vehicle under Title 29-A, section 2251, subsection 10 may request a disclosure hearing on the issue of how to satisfy the judgment. The court may enter an order for an installment payment agreement in the manner agreed upon by the parties or a modified order in accord with the factors set forth in section 3126-A, subsection 4. If the parties fail to reach an agreement for an order, the judgment debtor may ask the court for the entry of an installment payment agreement in consideration of those factors. [PL 1999, c. 587, §2 (AMD).]

SECTION HISTORY

PL 1991, c. 699, §1 (NEW). PL 1995, c. 65, §A37 (AMD). PL 1995, c. 65, §§A153,C15 (AFF). PL 1999, c. 587, §2 (AMD).

§3126. Fees and costs

The disclosure subpoena, return of service and the writ of execution or an attested copy thereof shall be filed with the clerk, together with a filing fee as established by the Supreme Judicial Court pursuant to Title 4, section 175. The fee and actual costs of service shall be added to the judgment, unless the judgment creditor or his attorney fails to appear in accordance with section 3125 or unless the judge orders otherwise. Costs of service incurred by the creditor, in addition to the filing fee and the service of the disclosure subpoena, may be imposed upon the judgment debtor or the 3rd party at the discretion of the court. [PL 1987, c. 184, §8 (AMD).]

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1985, c. 506, §B11 (AMD). PL 1987, c. 184, §8 (AMD).

§3126-A. Installment payments

Following a disclosure hearing, the court shall determine the amount, if any, of the installment payments that the judgment debtor must make to the judgment creditor. [PL 1999, c. 587, §3 (NEW).]

1. Definition. For purposes of this section, "exempt income" means the debtor's right to receive:

A. A social security benefit, unemployment compensation or a local public assistance benefit; [PL 1999, c. 587, §3 (NEW).]

B. A veteran's benefit; [PL 1999, c. 587, §3 (NEW).]

C. A disability, illness or unemployment benefit; [PL 1999, c. 587, §3 (NEW).]

D. Alimony, support or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependents of the debtor; and [PL 1999, c. 587, §3 (NEW).]

E. A payment or account under a stock bonus, pension, profit sharing, annuity, individual retirement account or similar plan to the extent described in section 4422, subsection 13, paragraph E. [PL 1999, c. 587, §3 (NEW).]

[PL 1999, c. 587, §3 (NEW).]

2. Installment payment order not permitted. The court may not order a judgment debtor to make installment payments if the judgment debtor is receiving or will receive money or earnings only from a source or sources exempt from attachment and execution under sections 4421 to 4426.

[PL 1999, c. 587, §3 (NEW).]

3. Maximum amount of earnings subject to installment payment order. In the case of a judgment debtor who is an individual, the maximum amount of earnings for any workweek that is subject to an installment order may not exceed the least of:

A. Twenty-five percent of the sum of the judgment debtor's disposable earnings and exempt income for that week; [PL 1999, c. 587, §3 (NEW).]

B. The amount by which the sum of disposable earnings and exempt income for that week exceeds 40 times the minimum hourly wage prescribed by 29 United States Code, Section 206(a)(1); or [PL 1999, c. 587, §3 (NEW).]

C. The total amount of disposable earnings. [PL 1999, c. 587, §3 (NEW).]

[PL 1999, c. 587, §3 (NEW).]

4. Factors to consider in determining amount of installment payment order. In determining the amount of installment payments, the court may take into consideration:

A. The reasonable requirements of the judgment debtor and the judgment debtor's dependents; [PL 1999, c. 587, §3 (NEW).]

B. Any payments the judgment debtor is required to make to satisfy other judgment orders or wage assignments; [PL 1999, c. 587, §3 (NEW).]

C. Other judgment orders or wage assignments that have priority; [PL 1999, c. 587, §3 (NEW).]

D. The amount due on the judgment; [PL 1999, c. 587, §3 (NEW).]

E. The amount of money or earnings being or to be received; and [PL 1999, c. 587, §3 (NEW).]

F. Any other factors the court considers material and relevant. [PL 1999, c. 587, §3 (NEW).]

[PL 1999, c. 587, §3 (NEW).]

5. Manner of making payments. The court may prescribe the time, place and manner in which payments are to be made.

[PL 1999, c. 587, §3 (NEW).]

6. Certain orders not subject to limitations. The limitations set forth in subsection 3 do not apply to:

A. An order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure if the administrative procedure is established by state law, affords substantial due process and is subject to judicial review; [PL 1999, c. 587, §3 (NEW).]

B. An order of any court of the United States having jurisdiction over cases under 11 United States Code, chapter 13; or [PL 1999, c. 587, §3 (NEW).]

C. A debt due for state or federal tax. [PL 1999, c. 587, §3 (NEW).]

[PL 1999, c. 587, §3 (NEW).]

7. Maximum earnings subject to garnishment. The maximum part of the aggregate disposable earnings of an individual for any workweek that is subject to garnishment to enforce an order for the support of any person may not exceed:

A. When the individual is supporting a spouse or dependent child, other than a spouse or child with respect to whose support such order is used, 50% of that individual's disposable earnings for that week; and [PL 1999, c. 587, §3 (NEW).]

B. When the individual is not supporting such a spouse or dependent child described in paragraph A, 60% of that individual's disposable earnings for that week. [PL 1999, c. 587, §3 (NEW).]

If the support order being enforced is made with respect to a period that is prior to the 12-week period that ends with the beginning of that workweek, the percentage of disposable earnings subject to the garnishment is 55% under paragraph A and 65% under paragraph B.
[PL 1999, c. 587, §3 (NEW).]

8. Order to Department of Labor. When it is shown upon ex parte motion and affidavit that the judgment debtor has failed to make 2 or more payments required by an installment payment order under this section, the court shall order the Department of Labor to provide the judgment creditor with the name and address of the current or most recent employer of the judgment debtor, if any, together with the date the employer last reported wage information concerning the judgment debtor. The affidavit must specify the manner of application of all payments made pursuant to the installment payment order. An order directed to the Department of Labor under this section may be served by the judgment creditor by ordinary mail, accompanied by a reasonable fee set by the Department of Labor calculated to cover the full labor, overhead and other costs of administering the order pursuant to state rules and federal regulations. The Department of Labor shall respond to the judgment creditor within 20 days after receipt of the court order.
[PL 2015, c. 275, §1 (NEW).]

SECTION HISTORY

PL 1999, c. 587, §3 (NEW). PL 2015, c. 275, §1 (AMD).

§3127. Installment payments

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1983, c. 155, §1 (RPR). PL 1987, c. 184, §9 (AMD). PL 1999, c. 587, §4 (RP).

§3127-A. Order to 3rd parties to hold and answer

1. Order to hold and answer. Upon a disclosure hearing when it is shown that there is a reasonable likelihood that a 3rd party has possession or control of property in which the judgment debtor may have an interest or that the 3rd party may be indebted to the judgment debtor for other than earnings, the court, upon request of the judgment creditor, may approve the service on the 3rd party of an order to hold and answer. The order to hold and answer shall state the amount owed on the judgment debt and shall set forth the specific property of the judgment debtor alleged to be in the possession of the 3rd party, as well as any specific debt other than earnings, alleged to be owed to the judgment debtor. The order shall demand an answer under oath from the 3rd party listing all property in the possession of the 3rd party in which the judgment debtor has an interest and listing all debts, other than earnings, owed by the 3rd party to the judgment debtor, as of the date and time the order is served. The order to hold and answer shall state the consequences of the failure of the 3rd party to answer. An order to hold and answer shall be served on the 3rd party and the judgment debtor within 20 days of the date of the order. An answer form shall be supplied to the 3rd party with the order.
[PL 1987, c. 184, §10 (NEW).]

2. Answer. Within 20 days of service of the order, the 3rd party shall:

A. File with the court the answer required in the order; and [PL 1987, c. 184, §10 (NEW).]

B. Serve copies of the answer on the judgment debtor and the judgment creditor in the manner provided in the Maine Rules of Civil Procedure, Rule 5. [PL 1987, c. 184, §10 (NEW).]

[PL 1987, c. 184, §10 (NEW).]

3. Hold and answer. The 3rd party served with the order to hold and answer, upon receipt of the order, shall withhold and account for any property belonging to the judgment debtor and any debt due the judgment debtor, except earnings. Unless the judgment debtor or the judgment creditor requests a hearing within 20 days of the filing of the answer of the 3rd party, the property or debt listed shall be subject to any order permitted under section 3131 or 3132.

[PL 1987, c. 184, §10 (NEW).]

4. Hearing on motion. Within 20 days of the service of the answer of the 3rd party on the other parties, the judgment debtor or the judgment creditor may request by motion a hearing on the extent of the judgment debtor's interest in the property listed, the failure of the 3rd party to list property or money owed, the exempt status of property listed or any other issue concerning the judgment debtor's interest in property in the possession of the 3rd party. The motion shall be served on all parties. If after the hearing the court is satisfied as to the existence and extent of the nonexempt property of the debtor held by the 3rd party, or as to the existence and extent of any nonexempt money debt, other than earnings owed by the 3rd party to the judgment debtor, it shall make an order provided for under section 3131 or 3132.

[PL 1987, c. 184, §10 (NEW).]

5. Exception. This section does not apply to collection of amounts due on negotiable instruments or certificates of deposit unless the judgment creditor has previously obtained possession of the documents pursuant to section 3132 or otherwise.

[PL 1987, c. 184, §10 (NEW).]

6. Default. Failure of a 3rd party, duly served with an order to withhold and answer, to timely file an answer shall constitute a default as to questions of possession and ownership between the 3rd party and the judgment debtor of the specific property or debt set forth in the order. In addition, the 3rd party shall be subject to an order pursuant to section 3131 or 3132 and shall be subject to a contempt proceeding.

[PL 1987, c. 184, §10 (NEW).]

7. Enlargement of time limits. The time limits in this section may be enlarged as provided in the Maine Rules of Civil Procedure, Rule 6.

[PL 1987, c. 184, §10 (NEW).]

SECTION HISTORY

PL 1987, c. 184, §10 (NEW).

§3127-B. Order to employer or payor of earnings

1. Order. When it is shown upon ex parte motion and affidavit that the judgment debtor has either failed to timely make 2 or more payments required by an installment order under section 3126-A or when the judgment debtor has failed to appear, after having been subpoenaed for a hearing provided for in this chapter, the court may approve the service of an order to withhold and answer on the judgment debtor's employer or other payor of earnings. The order must state the amount owed on the judgment debt, interest and costs. If the court has previously determined an installment payment amount under section 3126-A, the order must state that amount. The order must demand an answer under oath listing the dollar amounts of all earnings owed or payable to the debtor and the calculation of the judgment debtor's disposable earnings. The order must be served on the employer or other payor and

on the judgment debtor within 60 days of the date of the order. A form answer must be attached to the order when served on the employer or other payor of earnings.
[PL 1999, c. 587, §5 (AMD).]

2. Withhold and answer. The employer or other payor served with the order shall calculate the maximum dollar amount of the employee's disposable earnings which may be applied to the debt under section 3126-A by using the form answer attached to the order. Within 20 days of service of the order, the employer or other payor of earnings shall:

A. File the completed form answer with the court; [PL 1987, c. 184, §11 (NEW).]

B. Serve copies of the answer on the judgment debtor and the judgment creditor in the manner provided in the Maine Rules of Civil Procedure, Rule 5; and [PL 1987, c. 184, §11 (NEW).]

C. Withhold from the employee and pay to the judgment creditor the amount of the previously ordered installment payment or the maximum dollar amount of the employee's disposable earnings which may be applied to the debt, whichever amount is less, until the court orders otherwise or the debt is satisfied. [PL 1987, c. 184, §11 (NEW).]

[PL 1999, c. 587, §5 (AMD).]

3. Hearing on motion. Within 20 days of the service of the answer of the employer or other payor of earnings, the judgment debtor or the judgment creditor may request by motion a hearing to determine what amount, if any, of the judgment debtor's earnings should be ordered payable by the employer or other payor to the judgment creditor. The motion must be served on the employer or other payor as well as the other party. After the hearing, if the court is satisfied as to the existence and amount of the judgment debtor's disposable earnings payable by the employer or other payor, it may issue an order to the employer or other payor to withhold an amount, subject to the requirements of section 3126-A, from the earnings of the judgment debtor and pay the amount to the judgment creditor. If the court fails to find disposable earnings payable by the employer or other payor, it may terminate the withholding required under subsection 2. If the court terminates withholding or reduces the amount withheld, the court may order appropriate reimbursement of the judgment debtor by either the employer or the judgment creditor. No reimbursement or retroactive withholding is permitted against the employee if the court order increases the amount withheld.
[PL 1999, c. 587, §5 (AMD).]

4. Withholding charge. An employer or other payor subject to a withholding order may charge a fee of $1 per check issued and forwarded to the judgment creditor. This fee shall be deducted from the amount withheld prior to its remittance to the judgment creditor.
[PL 1987, c. 184, §11 (NEW).]

5. Default. Failure of an employer or other payor of earnings, duly served with an order to withhold and answer, to timely file an answer shall constitute a default and subject the employer or other payor to separate liability for an amount equal to that portion of the judgment debt which could properly have been withheld under subsection 2, plus interest. This liability accumulates unless the employer or other payor files a late answer. When the employer files a late answer, the accumulated liability continues for 20 days from the answer or, if a motion is filed under subsection 3, until the court makes an order.
[PL 1987, c. 184, §11 (NEW).]

6. No discharge or contribution. No employer may discharge any employee because his earnings are subject to an order under this section. The employer shall not have a cause of action against the employee to recover any amounts paid by the employer to the creditor under the employer's separate liability as provided under subsection 5.
[PL 1987, c. 184, §11 (NEW).]

7. Enlargement of time limits. The time limits in this section may be enlarged as provided in the Maine Rules of Civil Procedure, Rule 6.
[PL 1987, c. 184, §11 (NEW).]

SECTION HISTORY

PL 1987, c. 184, §11 (NEW). PL 1999, c. 587, §5 (AMD).

§3128. Factors in determining the amount of the installment order

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1987, c. 184, §12 (AMD). PL 1999, c. 587, §6 (RP).

§3128-A. Order to seek employment

1. Order; exceptions. If a child support obligor claims inability to pay in a disclosure proceeding under section 3125 or Title 19-A, section 2361, the court may order the obligor to seek employment or participate in work activities as defined by section 407(d) of the Social Security Act, and make progress reports on that activity to the court or the Department of Human Services unless:

A. The obligor proves by a preponderance of the evidence that the obligor is engaged in diligent, bona fide efforts to seek work; or [PL 1995, c. 419, §8 (NEW).]

B. The obligor proves by a preponderance of the evidence that the obligor does not have the ability to seek work. [PL 1995, c. 419, §8 (NEW).]
[PL 1997, c. 537, §8 (AMD); PL 1997, c. 537, §§9, 62 (AFF).]

2. Contents. The order must contain, but is not limited to, the following directives:

A. That the obligor seek employment within a specified amount of time; [PL 1995, c. 419, §8 (NEW).]

B. That the obligor file weekly with the court or the Department of Human Services, as applicable, a report on any new employment of the obligor or at least 5 new attempts by the obligor to find employment; [PL 1995, c. 419, §8 (NEW).]

C. That the obligor include in the report filed pursuant to paragraph B the name, address and telephone number of the new employer or the names, addresses and telephone numbers of the employers with whom the obligor attempted to seek employment and the names of the individuals the obligor contacted to inquire about or apply for employment; and [PL 1995, c. 419, §8 (NEW).]

D. That failure to comply with the order is evidence, absent good cause, of willful nonpayment of child support for which the obligor may be held in contempt. [PL 1995, c. 419, §8 (NEW).]
[PL 1995, c. 419, §8 (NEW).]

3. Duration. The order continues in effect for one year.
[PL 2015, c. 186, §1 (AMD).]

4. Subsequent orders. The court may issue any order or combination of orders under this chapter to enforce an order under this section.
[PL 1995, c. 419, §8 (NEW).]

5. Report. If an obligor is ordered to report to the Department of Human Services pursuant to subsection 2, the Department of Human Services shall monitor compliance with the order and may petition the court to enforce the order.
[PL 1995, c. 419, §8 (NEW).]

6. Failure to report. Failure to report or otherwise comply with an order under this section, absent good cause, is evidence of willful nonpayment of child support for which the obligor may be held in contempt under section 3136.
[PL 1995, c. 419, §8 (NEW).]

7. Representation of the Department of Human Services; training. The Commissioner of Human Services may designate employees of the department who are not attorneys to represent the department in District Court in a proceeding filed under this section. The Commissioner shall ensure that appropriate training is provided to all employees designated to represent the department under this subsection.
[PL 1995, c. 419, §8 (NEW).]

8. Rulemaking. The Department of Human Services shall adopt rules to implement its responsibilities under this section.
[PL 1995, c. 419, §8 (NEW).]

9. Repeal.

[PL 1997, c. 537, §10 (RP); PL 1997, c. 537, §62 (AFF).]

SECTION HISTORY

PL 1995, c. 419, §8 (NEW). PL 1995, c. 694, §D18 (AMD). PL 1995, c. 694, §E2 (AFF). PL 1997, c. 537, §§8,10 (AMD). PL 1997, c. 537, §§9,62 (AFF). PL 2011, c. 34, §1 (AMD). PL 2015, c. 186, §1 (AMD).

§3129. Modification of orders

The court may at any time, on its own motion or on the motion of any party and upon notice and hearing, make an order suspending, revising or revoking any order made pursuant to this chapter upon a showing that the circumstances of any party so require. [PL 1987, c. 184, §13 (AMD).]

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1973, c. 477, §4 (AMD). PL 1987, c. 184, §13 (AMD).

§3130. Provisional installment payment order

Pending the sale of any property under section 3131, the court may issue an installment payment order as provided in section 3126-A. Upon the completion of the sale, the judgment creditor must file with the court an affidavit including the items required in an affidavit under section 3126-A and which in addition must state the total amount of installment payments received since such installment payment order was entered, the balance due to the judgment creditor and the number of installments required to retire the balance remaining on such judgment, if any, which number must equal the balance due divided by the dollar amount provided for each installment in such installment payment order. [PL 1999, c. 587, §7 (AMD).]

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1973, c. 477, §5 (RPR). PL 1999, c. 587, §7 (AMD).

§3131. Turnover orders, sales

1. Turnover order. When it is shown at a hearing under this chapter that the judgment debtor owns personal property or real property which is not wholly exempt from attachment or execution pursuant to sections 4421 to 4426, the court shall determine the value of the property or interest and the extent to which the property or interest is exempt. Upon request of the judgment creditor, the court shall order the judgment debtor to turn over to the judgment creditor in partial or full satisfaction of the judgment, interest and costs, such items of property which are not in whole or in part exempt and the

value of which is determined to be less than or equal to the amount owed on the judgment, interest and costs.
[PL 1987, c. 184, §14 (NEW).]

2. Sale order. Upon the request of the judgment creditor, the court shall order the sale by the judgment creditor of property owned by the judgment debtor in full or partial satisfaction of the amount owed on the judgment, interest and costs, including the costs of sale, in the following situations:

A. When it is determined that the value of wholly nonexempt property is greater than the amount owed on the judgment, interest and costs, and the judgment creditor and judgment debtor cannot agree as to which items of property shall be applied to the satisfaction of the judgment; [PL 1987, c. 184, §14 (NEW).]

B. When wholly nonexempt property is not available to fully satisfy the judgment and it is determined that the value of partially exempt property is greater than the exemption available for that item and the property cannot practically be divided into its exempt and nonexempt portions; or [PL 1987, c. 184, §14 (NEW).]

C. When the judgment debtor's property is not subject to physical division or it is otherwise impractical to provide for satisfaction of the judgment in kind. [PL 1987, c. 184, §14 (NEW).]
[PL 1987, c. 184, §14 (NEW).]

3. Notice of turnover order and sale. The judgment creditor shall give notice of any turnover order or sale to any person who has a security interest, mortgage, lien, encumbrance or other interest in the property when the interest is recorded, possessory or of which the judgment creditor has actual knowledge. The judgment creditor shall provide notice of sale to the judgment debtor. In the case of a turnover order, the notice must include a copy of the order, the name and address of the judgment creditor and the name and address of the attorney, if any, representing the judgment creditor in the disclosure proceeding. Notice of a turnover order must be provided within 30 days after the entry of the turnover order. In the case of a sale, the notice must be of the type which a secured creditor is required to provide to a debtor in a sale of secured property subject to Title 11, section 9-1611, and must be provided at the time required under that section. If the judgment creditor fails to provide the required notice of sale or turnover order to others, the creditor is liable to the 3rd parties for any loss caused by the failure.
[PL 1999, c. 699, Pt. D, §10 (AMD); PL 1999, c. 699, Pt. D, §30 (AFF).]

4. Redemption and time of sale. Any real property subject to a sale order may be redeemed from the sale order within 90 days from the date of the order by payment to the judgment creditor of the amount of the judgment, costs and interest through the date of payment.

A. If redemption does not occur within the redemption period, the judgment creditor shall sell the real property within 30 days after the end of that period, unless the 30-day period is extended for cause by order upon motion made within the 30-day period. [PL 1987, c. 184, §14 (NEW).]

B. The judgment creditor shall sell personal property subject to a sale order within 30 days of the order, unless that time period is extended for cause by order upon motion made within the 30-day period. The property may be redeemed before the sale occurs by payment to the judgment creditor of the amount of the judgment, costs and interest through the date of payment, plus expenses of sale incurred through that date. [PL 1987, c. 184, §14 (NEW).]
[PL 1987, c. 184, §14 (NEW).]

5. Method and effect of sale. Sale of the property may be by public or private sale and by any method which is commercially reasonable. The judgment creditor may buy at any sale at which a secured party could buy if the sale occurred pursuant to Title 11, section 9-1610. The sale has the effect accorded dispositions under Title 11, section 9-1617, whether the property is real or personal.
[PL 1999, c. 699, Pt. D, §10 (AMD); PL 1999, c. 699, Pt. D, §30 (AFF).]

6. Sale proceeds. When the property is subject to a security interest, mortgage, lien, encumbrance or other interest which is subordinate to that of the judgment creditor and which is recorded, possessory or of which the judgment creditor has actual knowledge, which secures the payment of any indebtedness, the judgment creditor shall remit the excess of any sale proceeds over the amount owed on the judgment, costs and interest through the sale date, plus the expenses of sale, to the holder of the interest up to the amount of the indebtedness. The judgment creditor shall remit to the 3rd party any exempt portion of the sale proceeds subject to the 3rd party's interest. The judgment creditor shall remit any further excess, plus any exempt portion of the sale proceeds which is not subject to a 3rd party interest, to the judgment debtor and shall be entitled to any deficiency.
[PL 1987, c. 708, §8 (AMD).]

7. Affidavit of sale. Within 30 days of the sale, the judgment creditor shall file with the court an affidavit setting forth the date, place, manner, expenses and proceeds of the sale and reciting that a copy of the affidavit has been delivered to the judgment debtor, or mailed to the last known address of the judgment debtor, and to any 3rd party entitled to receive notice of the sale under subsection 3.
[PL 1987, c. 184, §14 (NEW).]

8. Challenge to sale. The judgment debtor or the 3rd party may contest the accounting of the sale, including the manner in which it was conducted, by motion filed within 30 days of the mailing or delivery of the affidavit to the debtor. Any challenge shall not affect ownership of, or title to, the property sold, but shall be for money damages only. If the sale is challenged by the judgment debtor and it is found that the judgment creditor failed to comply with the requirements of this section, it shall be presumed that the proceeds of a properly conducted sale would have at least fully satisfied the judgment. Such a presumption against the judgment creditor may be overcome only by clear and convincing evidence.
[PL 1987, c. 184, §14 (NEW).]

9. Lien. An order entered pursuant to this section constitutes a lien against the property which is the subject of the order and against the proceeds of any disposition of the property by the judgment debtor which occurs at any time after entry of the order. The lien extends to proceeds of any disposition of the property, real or personal, subject to the lien of the judgment creditor to the extent that a secured party would have an interest in the proceeds under Title 11, section 9-1315, subsection (1). The lien must be for the full amount of the unpaid judgment, interest and costs, and becomes perfected as to 3rd parties on the earlier of:

A. The time the judgment creditor or purchaser takes possession of the property; [PL 1987, c. 184, §14 (NEW).]

B. If the property is real estate, the time when an attested copy of the turnover or sale order is filed with the registry of deeds where a mortgage would be filed to be duly perfected; [PL 1987, c. 184, §14 (NEW).]

C. If the property is personalty of a type a security interest in which may be perfected by filing pursuant to Title 11, the time when an attested copy of the turnover or sale order is filed in the office of the Secretary of State; [PL 1999, c. 699, Pt. D, §11 (AMD); PL 1999, c. 699, Pt. D, §30 (AFF).]

D. If the property is a motor vehicle for which a certificate of title is required, the time when an attested copy of the turnover or sale order is delivered to the office of the Secretary of State where notice would be delivered pursuant to Title 29-A, section 665, subsection 1; or [PL 1995, c. 65, Pt. A, §38 (AMD); PL 1995, c. 65, Pt. A, §153 (AFF); PL 1995, c. 65, Pt. C, §15 (AFF).]

E. If the judgment creditor or purchaser takes possession of the property, or if an order is recorded, filed or delivered pursuant to this subsection during the pendency of any properly perfected prejudgment or post-judgment attachment obtained in the underlying action, or any judgment lien

created pursuant to section 4651, the time when the attachment or lien was duly perfected against the property. [PL 1987, c. 184, §14 (NEW).]

[RR 1999, c. 2, §14 (COR); RR 1999, c. 2, §15 (AFF).]

10. Equitable powers. The court is given equitable powers to make all appropriate orders to effectuate or compel obedience to turnover or sale orders.

[PL 1987, c. 184, §14 (NEW).]

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1973, c. 477, §6 (RPR). PL 1983, c. 125, §1 (AMD). PL 1987, c. 184, §14 (RPR). PL 1987, c. 708, §8 (AMD). PL 1995, c. 65, §A38 (AMD). PL 1995, c. 65, §§A153,C15 (AFF). RR 1999, c. 2, §14 (COR). RR 1999, c. 2, §15 (AFF). PL 1999, c. 699, §§D10,11 (AMD). PL 1999, c. 699, §D30 (AFF).

§3132. Possessory lien

When it is shown at a hearing under this chapter that the judgment debtor owns or otherwise has an interest in personal property in which a security interest may be perfected only by possession as set forth in Title 11, Article 8-A or 9-A, upon request of the judgment creditor, the court shall order a lien on the judgment debtor's interest in so much of such property as is not exempt from attachment and execution pursuant to sections 4421 to 4426, and as will satisfy the unpaid judgment plus interest and costs. Any lien ordered under this section is perfected as to 3rd parties as of the time the judgment creditor takes possession of the property or the document evidencing the property. [PL 1999, c. 699, Pt. D, §12 (AMD); PL 1999, c. 699, Pt. D, §30 (AFF).]

Any lien ordered under this section extends to the proceeds of any disposition of any property subject to the lien of the judgment creditor which occurs at any time after entry of the lien order to the same extent that a secured party would have an interest in such proceeds pursuant to Title 11, section 9-1315, subsection (1). The court is given equitable power to make all appropriate orders, including, but not limited to, turnover orders, to assist the judgment creditor in perfecting a lien under this section and to effectuate or compel obedience to any orders issued pursuant to this section. [PL 1999, c. 699, Pt. D, §12 (AMD); PL 1999, c. 699, Pt. D, §30 (AFF).]

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1983, c. 125, §2 (AMD). PL 1987, c. 184, §15 (RPR). PL 1999, c. 699, §D12 (AMD). PL 1999, c. 699, §D30 (AFF).

§3133. Judgment creditor's remedies

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1987, c. 184, §16 (RP).

§3134. Failure to appear

1. Issuance of civil order of arrest. If the judgment debtor fails to appear after being duly served with a subpoena under section 3123 or with an order to appear and disclose under Title 19-A, section 2361, and the judgment creditor appears at the time and place named in that subpoena, the creditor may request the court to issue a civil order of arrest. The court shall issue a civil order of arrest upon the written request of the creditor stating that the creditor knows of no infirmity, disability or good cause preventing the appearance of the debtor. The request must contain the address and telephone number where the creditor or the creditor's representative can be reached and the address of the debtor.

[PL 1995, c. 694, Pt. D, §19 (AMD); PL 1995, c. 694, Pt. E, §2 (AFF).]

2. Alternative methods. Instead of requesting a civil order of arrest pursuant to subsection 1:

A. The judgment creditor may request the court to issue an order for appearance, and the court shall order the debtor to appear in court at a certain date and time for further disclosure proceedings. This order must be served upon the debtor in hand by the sheriff, who shall obtain from the debtor a personal recognizance bond to appear in court at the specified date and time; or [PL 2013, c. 150, §1 (NEW).]

B. The creditor may proceed by way of a motion for contempt for failure to appear. This motion must be served upon the debtor with a contempt subpoena in the manner set forth in section 3136. If the debtor, after being duly served with a contempt subpoena, fails to appear at the time and place named in the contempt subpoena, the court may find the debtor in civil contempt and shall issue a civil order of arrest under section 3136, subsection 4 or, at the creditor's request, shall issue an order for appearance pursuant to paragraph A. [PL 2013, c. 150, §1 (NEW).]

[PL 2015, c. 275, §2 (AMD).]

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1987, c. 184, §17 (RPR). PL 1987, c. 708, §9 (AMD). PL 1995, c. 419, §9 (AMD). PL 1995, c. 694, §D19 (AMD). PL 1995, c. 694, §E2 (AFF). PL 2013, c. 150, §1 (AMD). PL 2015, c. 275, §2 (AMD).

§3135. Civil order of arrest

A civil order of arrest issued under section 3134, subsection 1, or section 3136, must direct the sheriff to arrest the individual named in the order and bring the individual to a hearing any day the court is in session. In the case of a nonindividual debtor, the civil order of arrest must be issued for the arrest of any officer, director or managing agent of the debtor or other agent appointed by the debtor to accept service and who was served with the disclosure subpoena. [PL 1997, c. 17, §1 (AMD).]

After a civil order of arrest has been issued, the sheriff shall cause the debtor named in the order to be arrested and shall deliver the debtor without undue delay to the division of the District Court designated in the civil order of arrest or obtain from the debtor a personal recognizance bond to appear in court at the specified date and time. The sheriff may take such steps determined necessary for the sheriff's safety or the safety of others then present, including searching the debtor for weapons, if the sheriff has a reasonable suspicion that the debtor has a weapon, and handcuffing the debtor if that is necessary to transport the debtor to the court or to cause the debtor to remain peaceably at the court. Upon arrival at the court, the sheriff shall notify the clerk or bailiff that the debtor is present and may release the debtor into the custody of the bailiff. The sheriff shall instruct the debtor that the debtor must wait at the court until released by the court or clerk. Upon release of the debtor into the custody of the bailiff, the sheriff need not remain with the debtor at the court. [PL 2011, c. 177, §1 (AMD).]

After the judgment debtor is brought to the court, the clerk shall promptly notify the judgment creditor or the judgment creditor's attorney of record in person or by telephone that the presence of one of them is required for a hearing. If a disclosure or contempt hearing cannot be held that day due to the inability of the judgment creditor or the judgment creditor's attorney to appear or due to the absence of the judge or the inability of the court to hear the matter because of other business, the court or clerk shall release the debtor upon the debtor's personal recognizance for appearance on a date certain. [PL 2011, c. 177, §1 (AMD).]

If the debtor fails to appear at the time and place specified in a notice of disclosure hearing in a small claims action or in a disclosure subpoena or contempt subpoena issued pursuant to section 3134, subsection 2 or in a personal recognizance bond obtained by the sheriff, clerk or court, and upon request of the judgment creditor, the court shall order the Department of Labor to provide the judgment creditor with the name and address of the current or most recent employer of the debtor, if any, together with the date the employer last reported wage information concerning the debtor and issue an additional civil order of arrest pursuant to section 3134 directing the sheriff to cause the debtor named in the order to

be arrested and delivered to the District Court without obtaining from the debtor a personal recognizance bond. [PL 2015, c. 275, §3 (AMD).]

An order directed to the Department of Labor under this section may be served by the judgment creditor by ordinary mail, accompanied by a reasonable fee set by the Department of Labor calculated to cover the full labor, overhead and other costs of administering the order pursuant to state rules and federal regulations. The Department of Labor shall respond to the judgment creditor within 20 days after receipt of the court order. [PL 2015, c. 275, §4 (AMD).]

A debtor admitted to personal recognizance bond under this section or section 3134 shall date and sign the bond and provide the following information: date of birth, hair color, eye color, height, weight, gender, race, telephone number, name of employer, address of employer and days and hours of employment. [PL 2015, c. 275, §5 (AMD).]

A debtor who fails to appear for a disclosure or contempt hearing after being released upon the debtor's personal recognizance commits a Class E crime. [PL 2011, c. 177, §1 (NEW).]

Unless the judgment debtor shows good cause for failure to appear after being duly served with a disclosure subpoena under section 3123, a contempt subpoena under section 3136 or an order to appear and disclose under Title 19-A, section 2361, the debtor must be ordered to pay the costs of issuing and serving the civil order for arrest. The costs of issuing and serving the civil order for arrest are $25 plus mileage at a rate of 42¢ per mile. The fee payable to sheriffs and their deputies for civil orders for arrest is governed by Title 30-A, section 421, subsection 6. [PL 2009, c. 205, §2 (AMD).]

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1973, c. 477, §7 (AMD). PL 1987, c. 184, §18 (RPR). PL 1987, c. 708, §10 (AMD). PL 1991, c. 498, §1 (AMD). PL 1995, c. 419, §10 (AMD). PL 1995, c. 694, §D20 (AMD). PL 1995, c. 694, §E2 (AFF). PL 1997, c. 17, §§1,2 (AMD). PL 2009, c. 205, §§1, 2 (AMD). PL 2011, c. 177, §1 (AMD). PL 2013, c. 150, §§2, 3 (AMD). PL 2015, c. 275, §§3-7 (AMD).

§3136. Contempt

1. Motion for contempt. Whenever a judgment debtor or any other person fails to comply with any court order entered pursuant to this chapter, except an order against a judgment debtor issued for failure to comply with a disclosure subpoena, the judgment creditor may file a motion with the court to hold that person in contempt. The motion shall be under oath and set forth the facts that give rise to the motion or shall be accompanied with a supporting affidavit setting forth the facts.
[PL 1987, c. 184, §19 (NEW).]

2. Contempt subpoena. For the purpose of the contempt hearing, the judgment creditor shall have the right to subpoena the person sought to be held in contempt. Contempt subpoenas shall be issued in blank by the clerks of the District Court. The contempt subpoena shall set forth the title of the action, the date and place where the person sought to be held in contempt is ordered to appear for the contempt hearing, an order to produce any documents requested by the judgment creditor, a warning that failure to obey the contempt subpoena may result in the arrest of that person and that a finding of contempt by the court may result in the person being fined or imprisoned, or both, until the person complies with the court order.
[PL 1987, c. 184, §19 (NEW).]

3. Service of contempt subpoena and motion. The subpoena shall be served with a copy of the motion for contempt and supporting affidavit, if any, upon the person sought to be held in contempt at least 10 days prior to the hearing by an officer qualified to serve civil process in the same manner as provided in section 3123.
[PL 1987, c. 184, §19 (NEW).]

4. Failure to appear. If the person sought to be held in contempt fails to appear after being duly served with a contempt subpoena and the judgment creditor appears at the time and place named in the subpoena, upon the request of the judgment creditor, the judge shall issue a civil order of arrest directing the sheriff to arrest the person and bring the person to the court on any day the court is in session. In the case of a nonindividual, the civil order of arrest must be issued for the arrest of any officer, director or managing agent who was served with the contempt subpoena.
[PL 1997, c. 17, §3 (AMD).]

5. Orders. Upon a finding at the contempt hearing that a court order has been disobeyed by the person and that the person has the present ability to comply with the order, the person must be adjudged in civil contempt. The court has the power to impose such reasonable fine or imprisonment as the circumstances require, provided that the person is given an opportunity to purge that person of the contempt. Whenever the person personally purges that person of the contempt, the court shall release the person from imprisonment and may remit any fine or a portion of the fine. In addition, the court may enter orders pursuant to sections 3126-A, 3127-A, 3127-B, 3130, 3131 and 3132 to assure the person's compliance with the court order and to aid the judgment creditor in the enforcement of the order.
[PL 1999, c. 587, §8 (AMD).]

Nothing contained in this section may limit in any way the court's power to enter a finding of criminal contempt in appropriate circumstances. [PL 1987, c. 184, §19 (RPR).]

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1973, c. 477, §8 (AMD). PL 1973, c. 788, §59 (AMD). PL 1987, c. 184, §19 (RPR). PL 1997, c. 17, §3 (AMD). PL 1999, c. 587, §8 (AMD).

§3137. Orders to employers or payors of earnings

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §1 (NEW). PL 1973, c. 477, §9 (AMD). PL 1981, c. 389, §3 (AMD). PL 1987, c. 184, §20 (RP).

§3138. Enforcement of administrative orders

An administrative order of any agency or department requiring the payment of money to that agency or department is enforceable through the Superior Court under the following procedure. A certified copy of the administrative order must be filed with the court in the county in which the administrative order was issued. The administrative order must be accompanied by an affidavit from an authorized representative of the agency or department or from an assistant attorney general acting as counsel for the agency. The affidavit must state the facts showing that the agency or department provided notice of and opportunity for a hearing to contest the claim, that all applicable time periods for appeal have run and that the administrative order is final. [PL 2011, c. 181, §1 (NEW).]

The court shall then render a pro forma decision in accordance with the administrative order of the agency, which has the same effect as if it were rendered in an action in which equitable relief is sought, duly heard and determined by the court. The decision may thereafter be enforced as a money judgment pursuant to this chapter and chapter 502-A. [PL 2011, c. 181, §1 (NEW).]

SECTION HISTORY

PL 2011, c. 181, §1 (NEW).

CHAPTER 502-A

ENFORCEMENT OF FINES OWED TO THE STATE

§3141. Scope and procedure

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

1. Applicability. The procedures established by this chapter:

A. Apply to all monetary fines, surcharges and assessments, however designated, imposed by a court:

(1) In a civil violation or traffic infraction proceeding; or

(2) As part of a sentence for a criminal conviction; [PL 1999, c. 743, §3 (NEW).]

B. Must be utilized, to the maximum extent possible, to obtain prompt and full payment of all such fines, surcharges and assessments; and [PL 1999, c. 743, §3 (NEW).]

C. Are in addition to, and not in lieu of, those otherwise authorized by law. [PL 1999, c. 743, §3 (NEW).]

As used in this chapter, "fine" includes any surcharge or assessment required by law to be imposed as all or part of a sentence for a criminal conviction and any other costs or other fees the court assesses or imposes against a defendant in any civil or criminal adjudication, including appointed counsel fees and restitution.
[PL 1999, c. 743, §3 (RPR).]

2. Notice to defendant.
[PL 2007, c. 475, §1 (RP).]

3. Immediate payment. When a court has imposed a fine, as described in subsection 1, the imposition of such a fine constitutes an order to pay the full amount of the fine in accordance with this chapter. Following imposition of the fine, the court shall inform the defendant that full payment of the fine is due immediately and shall inquire of the defendant what arrangements the defendant has made to comply with the court's order to pay the fine. Without utilizing the provisions of subsection 4, the court may allow the defendant a period of time, not to extend beyond the time of the close of the clerk's office on that day, within which to return to the court and tender payment of the fine. If the defendant fails to appear as directed, the court shall issue a civil order of arrest. The arrest order must be carried out by the sheriff as a civil order of arrest is carried out under section 3135. If the underlying offense involves any violation of Title 23, section 1980; Title 28-A, section 2052; or Title 29-A, the court shall also, upon the defendant's failure to appear, suspend the defendant's license or permit to operate motor vehicles in this State and the right to apply for or obtain a license or permit to operate a motor vehicle in this State.

If the defendant claims an inability to pay the fine, the court shall inquire into the defendant's ability to pay and shall make a determination of the defendant's financial ability to pay the fine. If the court finds that the defendant has the financial ability to make immediate payment of the fine in full, the court shall order the defendant to pay the fine. Failure or refusal to pay as ordered by the court subjects the defendant to the contempt procedures provided in section 3142.
[PL 1995, c. 65, Pt. A, §39 (AMD); PL 1995, c. 65, Pt. A, §153 (AFF); PL 1995, c. 65, Pt. C, §15 (AFF).]

4. Installment payments. If the court concludes that the defendant has the ability to pay the fine, but that requiring the defendant to make immediate payment in full would cause a severe and undue hardship for the defendant and the defendant's dependents, the court may authorize payment of the fine by means of installment payments in accordance with this subsection. When a court authorizes payment of a fine by means of installment payments, it shall issue, without a separate disclosure hearing, an order that the fine be paid in full by a date certain, that the defendant has a legal duty to move the court

for a modification of time or method of payment to avoid a default and that in default of payment the defendant must appear in court to explain the failure to pay.

In fixing the date of payment, the court shall issue an order that will complete payment of the fine as promptly as possible without creating a severe and undue hardship for the defendant and the defendant's dependents.
[PL 2007, c. 475, §2 (AMD).]

5. Appointment of agent. Any defendant who has been authorized by the court to pay a fine by installments shall be considered to have irrevocably appointed the clerk of the court as his agent upon whom all papers affecting his liability may be served.
[PL 1987, c. 414, §2 (NEW).]

6. Ability to pay the fine. "Ability to pay" means that the resources of the defendant and his dependents, including all available income and resources, are sufficient to provide the defendant and his dependents with a reasonable subsistence compatible with health and decency.
[PL 1987, c. 414, §2 (NEW).]

7. (TEXT EFFECTIVE UNTIL 10/1/21) (TEXT REPEALED 10/1/21) Remedies. Failure to pay by the date fixed by the court's order or an amended order subjects the defendant to the contempt procedures provided in section 3142, a restricted license under Title 29-A, section 2605-A and all procedures for collections provided for in sections 3127-A, 3127-B, 3131, 3132, 3134, 3135 and 3136. An installment agreement under this section must be considered an agreement under section 3125 and a court order to pay under section 3126-A. In addition to other penalties provided by law, the court may impose on the defendant reasonable costs for any failure to appear.

This subsection is repealed October 1, 2021.
[PL 2017, c. 462, §1 (AMD).]

8. (TEXT EFFECTIVE 10/1/21) Remedies. Failure to pay by the date fixed by the court's order or an amended order subjects the defendant to the contempt procedures provided in section 3142, suspensions under Title 29-A, section 2605 and all procedures for collections provided for in sections 3127-A, 3127-B, 3131, 3132, 3134, 3135 and 3136. An installment agreement under this section must be considered an agreement under section 3125 and a court order to pay under section 3126-A. In addition to other penalties provided by law, the court may impose on the defendant reasonable costs for any failure to appear.

This subsection takes effect October 1, 2021.
[PL 2017, c. 462, §2 (NEW).]

SECTION HISTORY

PL 1987, c. 414, §2 (NEW). PL 1987, c. 708, §§11,12 (AMD). PL 1989, c. 875, §§E17,18 (AMD). PL 1991, c. 548, §A4 (AMD). PL 1991, c. 806, §4 (AMD). PL 1995, c. 65, §§A39,40 (AMD). PL 1995, c. 65, §§A153,C15 (AFF). PL 1999, c. 587, §9 (AMD). PL 1999, c. 743, §3 (AMD). PL 2007, c. 475, §§1, 2 (AMD). PL 2017, c. 462, §§1, 2 (AMD).

§3141-A. Setoff of fines against lottery winnings

The State Court Administrator appointed pursuant to Title 4, section 15 shall periodically notify the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations, referred to in this subsection as "the bureau," of all persons who owe a monetary fine, surcharge or assessment imposed by a court to the State under this Title. Prior to paying any lottery winnings that must be paid directly by the bureau, the bureau shall determine whether the lottery winner is on the list of persons who owe a monetary fine, surcharge or assessment imposed by a court to the State under this Title. If the winner is on the list of persons who owe a monetary fine, surcharge or assessment imposed by a court, the bureau shall suspend payment of the winnings and provide notice

to the winner of its intention to set off the winnings against the monetary fine, surcharge or assessment owed. The bureau shall provide the winnings due to the winner to the State Court Administrator in payment of any monetary fine, surcharge or assessment owed by the winner under this Title. The bureau shall release any remaining winnings in accordance with state law. [PL 2019, c. 304, §2 (NEW).]

SECTION HISTORY

PL 2019, c. 304, §2 (NEW).

§3142. Contempt hearing and punishment

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

1. Punishment. Unless the defendant shows that failure to pay a fine was not attributable to a willful refusal to obey the order or to a failure on the defendant's part to make a good faith effort to obtain the funds required for the payment, the court may find the defendant in civil contempt and may impose punishment, as the case requires, of:

A. A reasonable fine not to exceed $500; or [PL 2003, c. 193, §3 (AMD).]

B. [PL 2003, c. 193, §3 (RP).]

C. **(TEXT EFFECTIVE UNTIL 10/1/21) (TEXT REPEALED 10/1/21)** The suspension of any license, certification, registration, permit, approval or other similar document evidencing the granting of authority to hunt, fish or trap or to engage in a profession, occupation, business or industry, not including a registration, permit, approval or similar document evidencing the granting of authority to engage in the business of banking pursuant to Title 9-B or, except as provided in paragraph D, a motor vehicle license or permit issued by the Secretary of State, the right to operate a motor vehicle in this State and the right to apply for or obtain a license or permit, as provided in Title 29-A. Licenses and registration subject to suspension include, but are not limited to:

(1) Licenses issued by the Commissioner of Marine Resources, as provided in Title 12, section 6409;

(2) Licenses issued by the Commissioner of Inland Fisheries and Wildlife, as provided in Title 12, section 10902, subsection 3; and

(3) Watercraft, snowmobile and all-terrain vehicle registrations, as provided in Title 12, section 10902, subsection 3.

This paragraph is repealed October 1, 2021; [PL 2017, c. 462, §3 (AMD).]

D. **(TEXT EFFECTIVE UNTIL 10/1/21) (TEXT REPEALED 10/1/21)** A restricted license as provided in Title 29-A, section 2605-A.

This paragraph is repealed October 1, 2021; or [PL 2017, c. 462, §4 (NEW).]

E. **(TEXT EFFECTIVE 10/1/21)** The suspension of any license, certification, registration, permit, approval or other similar document evidencing the granting of authority to hunt, fish or trap or to engage in a profession, occupation, business or industry, not including a registration, permit, approval or similar document evidencing the granting of authority to engage in the business of banking pursuant to Title 9-B. Licenses and registration subject to suspension include, but are not limited to:

(1) Licenses issued by the Commissioner of Marine Resources, as provided in Title 12, section 6409;

(2) Licenses issued by the Commissioner of Inland Fisheries and Wildlife, as provided in Title 12, section 10902, subsection 3;

(3) Watercraft, snowmobile and all-terrain vehicle registrations, as provided in Title 12, section 10902, subsection 3; and

(4) Motor vehicle licenses or permits issued by the Secretary of State, the right to operate a motor vehicle in this State and the right to apply for or obtain a license or permit, as provided in Title 29-A, section 2605.

This paragraph takes effect October 1, 2021. [PL 2017, c. 462, §5 (NEW).]
[PL 2017, c. 462, §§3-5 (AMD).]

2. Notification of issuing entity and person. Upon suspension of the person's license, certification, registration, permit, approval or other similar document evidencing the granting of authority to hunt, fish or trap or to engage in a profession, occupation, business or industry, the court shall notify the person and the issuing agency that the court has ordered the suspension. The issuing agency shall immediately record the suspension except that, in the case of a suspension of a driver's license or right to operate a motor vehicle, if the suspension results from the nonpayment of a fine that is not related to the operation of a motor vehicle, the suspension may not take effect until 60 days after the mailing of the notice. The court shall immediately notify that person by regular mail or personal service. Written notice is sufficient if sent to the person's last known address.
[PL 2005, c. 325, §1 (AMD).]

3. Purge of contempt. The court shall provide an opportunity for the defendant to purge the contempt by complying with the court's order to pay or with an amended order to pay. The provisions of the Maine Rules of Civil Procedure, Rule 66 and the Maine Rules of Unified Criminal Procedure, Rule 42 do not apply to proceedings initiated under this section.
[PL 2015, c. 431, §2 (AMD).]

SECTION HISTORY

PL 1987, c. 414, §2 (NEW). PL 1987, c. 708, §13 (AMD). PL 1999, c. 743, §4 (RPR). PL 2001, c. 471, §A20 (AMD). PL 2003, c. 193, §3 (AMD). PL 2003, c. 414, §B26 (AMD). PL 2003, c. 414, §D7 (AFF). PL 2003, c. 614, §9 (AFF). PL 2005, c. 325, §1 (AMD). PL 2005, c. 397, §§A51,52 (AFF). PL 2015, c. 431, §2 (AMD). PL 2017, c. 462, §§3-5 (AMD).

§3143. Default judgments

(REPEALED)

SECTION HISTORY

PL 1987, c. 414, §2 (NEW). PL 1987, c. 708, §13 (AMD). PL 1987, c. 861, §§12-14 (AMD). PL 1989, c. 875, §§E19,20 (AMD). PL 1991, c. 549, §6 (RP). PL 1991, c. 549, §17 (AFF).

§3144. Criminal failure to appear; cost of extradition

It is the intent of the Legislature that, when appropriate, the respective district attorney shall utilize Title 17-A, section 17, subsection 4 and prosecute defendants who fail to appear. Any costs of extradition of a defendant who has been charged with the offense of failure to appear must be assessed against the defendant and reimbursed to the Extradition and Prosecution Expenses Account in the appropriate prosecutorial district, established pursuant to Title 15, section 224-A. [PL 2013, c. 566, §1 (AMD).]

SECTION HISTORY

PL 1987, c. 414, §2 (NEW). PL 2013, c. 566, §1 (AMD).

§3145. Appeal

A court order to pay a fine for a civil violation or a traffic infraction shall be stayed by the court upon request of the defendant if an appeal is taken and if the defendant deposits all of the fine with the

clerk of the court. If, on appeal, the judgment is reversed, the clerk shall immediately refund to the defendant, or to such person as the defendant directs, any funds deposited to cover the defendant's fine. If the judgment is affirmed, the funds deposited shall be applied by the clerk in payment of the fine. The clerk shall immediately notify the defendant and the court that an application has been made and the fine paid in full. [PL 1987, c. 414, §2 (NEW).]

SECTION HISTORY

PL 1987, c. 414, §2 (NEW).

§3146. Exemptions

(REPEALED)

SECTION HISTORY

PL 1987, c. 414, §2 (NEW). PL 2017, c. 462, §6 (RP).

§3146-A. Exemptions

Beginning October 1, 2021, the exemptions from attachment and execution specified in sections 4421 to 4426 do not apply to the collection of fines covered by this chapter. [PL 2017, c. 462, §7 (NEW).]

SECTION HISTORY

PL 2017, c. 462, §7 (NEW).

§3147. Payment by credit card

The Judicial Department may implement a procedure for the payment of fines by use of major credit cards and may assess a reasonable fee upon the defendant to cover any administrative expenses incurred in connection with the use of credit cards as a method of paying fines. [PL 2015, c. 158, §1 (AMD).]

SECTION HISTORY

PL 1987, c. 414, §2 (NEW). PL 2015, c. 158, §1 (AMD).

CHAPTER 503

DISCLOSURES

SUBCHAPTER 1

GENERAL PROVISIONS

§3151. Criminals not precluded from oath

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3152. Scope of evidence; depositions

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3153. Disclosures on islands

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3154. False disclosure; liability

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3155. Fraudulent concealment or transfer; liability

(REPEALED)

SECTION HISTORY

PL 1985, c. 641, §2 (RP).

SUBCHAPTER 2

JUSTICES TO HEAR DISCLOSURE

§3201. Selection

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3202. District Court Judges

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3203. Examination of debtor twice refused discharge

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

SUBCHAPTER 3

DISCLOSURE BEFORE JUDGMENT

§3251. Notice

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3252. Determination of exemption from arrest

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3253. Certificate of disclosed real estate to be filed

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3254. Lien on personal estate preserved

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3255. Disclosure on mesne process by consent

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3256. Body execution

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3257. Property which cannot be reached

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

SUBCHAPTER 4

DISCLOSURE AFTER JUDGMENT

ARTICLE 1

GENERAL PROVISIONS

§3301. Owner of judgment may have disclosure any time

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3302. Appraisal and setoff; no wage assignment

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3303. Where no demand in 30 days property returned to debtor (REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3304. Preservation of lien on real estate (REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3305. Lien on personal property; concealment (REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3306. New disclosure after 3 years and while judgment in force (REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

ARTICLE 2

COMMISSIONERS

§3351. Appointment; renewal of former executions (REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3352. Vacancy in office (REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3353. Commissioner to record proceedings (REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

ARTICLE 3

MAGISTRATES

§3401. Unable to attend; adjournment

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3402. Magistrate who refused oath incompetent to again hear disclosure

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

ARTICLE 4

SUBPOENAS

§3451. Subpoena to appear and disclose

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3452. Amendment of errors in application or subpoena

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3453. Service of subpoena

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3454. Persons holding property in trust or in fraud of creditors must appear and testify

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

ARTICLE 5

EXAMINATION

§3501. Appearance and examination of debtor

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3502. Proceedings on examination

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3503. Administration of oath by magistrate

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3504. Offering of evidence

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3505. Default recorded for nonappearance

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

ARTICLE 6

BODY EXECUTION

§3551. Where security and compliance no body execution

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3552. Failure to obtain benefit of oath

(REPEALED)

SECTION HISTORY

PL 1969, c. 432 (AMD). PL 1969, c. 590, §§18-A (AMD). PL 1971, c. 408, §6 (RP).

§3553. Release of arrested debtor

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3554. Hearing

(REPEALED)

SECTION HISTORY

PL 1969, c. 590, §§18-B (NEW). PL 1971, c. 408, §6 (RP).

CHAPTER 504

UNIFORM FRAUDULENT TRANSFER ACT

§3571. Short title

This chapter may be cited as the Uniform Fraudulent Transfer Act. [PL 1985, c. 641, §3 (NEW).]

SECTION HISTORY

PL 1985, c. 641, §3 (NEW).

§3572. Definitions

As used in this Act, unless the context otherwise indicates, the following terms have the following meanings. [PL 1985, c. 641, §3 (NEW).]

1. Affiliate. "Affiliate" means:

A. A person who directly or indirectly owns, controls or holds with power to vote, 20% or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(1) As a fiduciary or agent without sole discretionary power to vote the securities; or

(2) Solely to secure a debt, if the person has not exercised the power to vote; [PL 1985, c. 641, §3 (NEW).]

B. A corporation 20% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote, by the debtor, or a person who directly or indirectly owns, controls or holds with power to vote 20% or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(1) As a fiduciary or agent without sole power to vote the securities; or

(2) Solely to secure a debt, if the person has not exercised the power to vote; [PL 1985, c. 641, §3 (NEW).]

C. A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or [PL 1985, c. 641, §3 (NEW).]

D. A person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets. [PL 1985, c. 641, §3 (NEW).]

[PL 1985, c. 641, §3 (NEW).]

2. Asset. "Asset" means property of a debtor, but does not include:

A. Property to the extent that it is encumbered by a valid lien; or [PL 1985, c. 641, §3 (NEW).]

B. Property to the extent that it is generally exempt under nonbankruptcy law. [PL 1985, c. 641, §3 (NEW).]

[PL 1985, c. 641, §3 (NEW).]

3. Claim. "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.

[PL 1985, c. 641, §3 (NEW).]

4. Creditor. "Creditor" means a person who has a claim.

[PL 1985, c. 641, §3 (NEW).]

5. Debt. "Debt" means liability on a claim.

[PL 1985, c. 641, §3 (NEW).]

6. Debtor. "Debtor" means a person who is liable on a claim.

[PL 1985, c. 641, §3 (NEW).]

7. Insider. "Insider" includes:

A. If the debtor is an individual:

(1) A relative of the debtor or of a general partner of the debtor;

(2) A partnership in which the debtor is a general partner;

(3) A general partner in a partnership described in subparagraph (2); or

(4) A corporation of which the debtor is a director, officer or person in control; [PL 1985, c. 641, §3 (NEW).]

B. If the debtor is a corporation:

(1) A director of the debtor;

(2) An officer of the debtor;

(3) A person in control of the debtor;

(4) A partnership in which the debtor is a general partner;

(5) A general partner in a partnership described in subparagraph (4); or

(6) A relative of a general partner, director, officer or person in control of the debtor; [PL 1985, c. 641, §3 (NEW).]

C. If the debtor is a partnership:

(1) A general partner in the debtor;

(2) A relative of a general partner in, or a general partner of or of a person in control of, the debtor;

(3) Another partnership in which the debtor is a general partner;

(4) A general partner in a partnership described in subparagraph (3); or

(5) A person in control of the debtor; [PL 1985, c. 641, §3 (NEW).]

D. An affiliate or an insider of an affiliate as if the affiliate were the debtor; and [PL 1985, c. 641, §3 (NEW).]

E. A managing agent of the debtor. [PL 1985, c. 641, §3 (NEW).]

[PL 1985, c. 641, §3 (NEW).]

8. Lien. "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common law lien or a statutory lien.

[PL 1985, c. 641, §3 (NEW).]

9. Person. "Person" means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust or any other legal or commercial entity.

[PL 1985, c. 641, §3 (NEW).]

10. Property. "Property" means anything that may be the subject of ownership.

[PL 1985, c. 641, §3 (NEW).]

11. Relative. "Relative" means an individual related by consanguinity within the 3rd degree as determined by the common law, a spouse or an individual related to a spouse within the 3rd degree as so determined, and includes an individual in an adoptive relationship within the 3rd degree.

[PL 1985, c. 641, §3 (NEW).]

12. Transfer. "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease or creation of a lien or other encumbrance.
[PL 2009, c. 415, Pt. A, §10 (AMD).]

13. Valid lien. "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.
[PL 1985, c. 641, §3 (NEW).]

SECTION HISTORY

PL 1985, c. 641, §3 (NEW). PL 2009, c. 415, Pt. A, §10 (AMD).

§3573. Insolvency

1. Debts greater than assets. A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation.
[PL 1985, c. 641, §3 (NEW).]

2. Presumption of insolvency. A debtor who is generally not paying his debts as they become due is presumed to be insolvent.
[PL 1985, c. 641, §3 (NEW).]

3. Partnership insolvency. A partnership is insolvent under subsection 1 if the sum of the partnership's debts is greater than the aggregate of all of the partnership's assets at a fair valuation, and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.
[PL 1985, c. 641, §3 (NEW).]

4. Assets; exclusion. Assets under this section do not include property that has been transferred, concealed or removed with intent to hinder, delay or defraud creditors or that has been transferred in a manner making the transfer voidable under this Act.
[PL 1985, c. 641, §3 (NEW).]

5. Debts. Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.
[PL 1985, c. 641, §3 (NEW).]

SECTION HISTORY

PL 1985, c. 641, §3 (NEW).

§3574. Value

1. Value defined. Value is given for a transfer or an obligation if in exchange for the transfer or obligation property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.
[PL 1985, c. 641, §3 (NEW).]

2. Reasonably equivalent value; foreclosure. For the purposes of section 3575, subsection 1, paragraph B, and section 3576, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust or security agreement.
[PL 1985, c. 641, §3 (NEW).]

3. Contemporaneous transfer. A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

[PL 1985, c. 641, §3 (NEW).]

SECTION HISTORY

PL 1985, c. 641, §3 (NEW).

§3575. Transfers fraudulent as to present and future creditors

1. Fraudulent transfer. A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

A. With actual intent to hinder, delay or defraud any creditor of the debtor; or [PL 1985, c. 641, §3 (NEW).]

B. Without receiving a reasonably equivalent value in exchange for the transfer or obligations and the debtor:

(1) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(2) Intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as the debts became due. [PL 1985, c. 641, §3 (NEW).]

[PL 1985, c. 641, §3 (NEW).]

2. Determination of actual intent. In determining actual intent under subsection 1, paragraph A, consideration may be given, among other factors, to whether:

A. The transfer or obligation was to an insider; [PL 1985, c. 641, §3 (NEW).]

B. The debtor retained possession or control of the property transferred after the transfer; [PL 1985, c. 641, §3 (NEW).]

C. The transfer or obligation was disclosed or concealed; [PL 1985, c. 641, §3 (NEW).]

D. Before the transfer was made or obligation was incurred, the debtor sued or threatened with suit; [PL 1985, c. 641, §3 (NEW).]

E. The transfer was of substantially all the debtor's assets; [PL 1985, c. 641, §3 (NEW).]

F. The debtor absconded; [PL 1985, c. 641, §3 (NEW).]

G. The debtor removed or concealed assets; [PL 1985, c. 641, §3 (NEW).]

H. The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred; [PL 1985, c. 641, §3 (NEW).]

I. The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred; [PL 1985, c. 641, §3 (NEW).]

J. The transfer occurred shortly before or shortly after a substantial debt was incurred; and [PL 1985, c. 641, §3 (NEW).]

K. The debtor transferred the essential assets of the business to a lienor who had transferred the assets to an insider of the debtor. [PL 1985, c. 641, §3 (NEW).]

[PL 1985, c. 641, §3 (NEW).]

SECTION HISTORY

PL 1985, c. 641, §3 (NEW).

§3576. Transfers fraudulent as to present creditors

1. Transfers without receipt of reasonably equivalent value. A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or

the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.
[PL 1985, c. 641, §3 (NEW).]

2. Transfer to insider. A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time and the insider had reasonable cause to believe that the debtor was insolvent.
[PL 1985, c. 641, §3 (NEW).]

SECTION HISTORY

PL 1985, c. 641, §3 (NEW).

§3577. When transfer is made or obligation is incurred

For the purposes of this Act: [PL 1985, c. 641, §3 (NEW).]

1. Perfection of transfer. A transfer is made:

A. With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and [PL 1985, c. 641, §3 (NEW).]

B. With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this Act that is superior to the interest of the transferee; [PL 1985, c. 641, §3 (NEW).]
[PL 1985, c. 641, §3 (NEW).]

2. Transfer; relation back. If applicable law permits the transfer to be perfected as provided in subsection 1 and the transfer is not so perfected before the commencement of an action for relief under this Act, the transfer is made immediately before the commencement of the action;
[PL 1985, c. 641, §3 (NEW).]

3. Other transfer. If applicable law does not permit the transfer to be perfected as provided in subsection 1, the transfer is made when it becomes effective between the debtor and the transferee;
[PL 1985, c. 641, §3 (NEW).]

4. Transfer not made until debtor acquired rights in asset. A transfer is not made until the debtor has acquired rights in the asset transferred; and
[PL 1985, c. 641, §3 (NEW).]

5. Obligation; when incurred. An obligation is incurred:

A. If oral, when it becomes effective between the parties; or [PL 1985, c. 641, §3 (NEW).]

B. If evidenced by a writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee. [PL 1985, c. 641, §3 (NEW).]
[PL 1985, c. 641, §3 (NEW).]

SECTION HISTORY

PL 1985, c. 641, §3 (NEW).

§3578. Remedies of creditors

1. Action for relief. In any action for relief against a transfer or obligation under this Act, a creditor, subject to the limitations provided in section 3579, may obtain:

A. Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim; [PL 1985, c. 641, §3 (NEW).]

B. An attachment, trustee process or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by law; or [PL 1985, c. 641, §3 (NEW).]

C. Subject to applicable principles of equity and in accordance with applicable civil rules of procedure:

(1) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(2) Appointment of a receiver to take charge of the asset transferred or of other property of the transferee;

(3) Damages in an amount not to exceed double the value of the property transferred or concealed; or

(4) Any other relief the circumstances may require. [PL 1991, c. 114 (AMD).]

[PL 1991, c. 114 (AMD).]

2. Execution. If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.
[PL 1985, c. 641, §3 (NEW).]

SECTION HISTORY

PL 1985, c. 641, §3 (NEW). PL 1991, c. 114 (AMD).

§3579. Defenses, liability and protection of transferee

1. Transfer or obligation not voidable. A transfer or obligation is not voidable under section 3575, subsection 1, paragraph A, against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.
[PL 1985, c. 641, §3 (NEW).]

2. Judgment. Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under section 3578, subsection 1, paragraph A, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection 3, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

A. The first transferee of the asset or the person for whose benefit the transfer was made; or [PL 1985, c. 641, §3 (NEW).]

B. Any subsequent transferee other than a good-faith transferee or obligee who took for value or from any subsequent transferee or obligee. [PL 1985, c. 641, §3 (NEW).]

[PL 1985, c. 641, §3 (NEW).]

3. Value of asset. If the judgment under subsection 2 is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.
[PL 1985, c. 641, §3 (NEW).]

4. Rights of good-faith transferee or obligee. Notwithstanding voidability of a transfer or an obligation under this Act, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation to:

A. A lien on or a right to retain any interest in the asset transferred; [PL 1985, c. 641, §3 (NEW).]

B. Enforcement of any obligation incurred; or [PL 1985, c. 641, §3 (NEW).]

C. A reduction in the amount of the liability on the judgment. [PL 1985, c. 641, §3 (NEW).]
[PL 1985, c. 641, §3 (NEW).]

5. Defenses; lease termination and foreclosure of security interest. A transfer is not voidable under section 3575, subsection 1, paragraph B, or section 3576, subsection 1, if the transfer results from:

A. Termination of a lease upon default by the debtor when the termination is pursuant to the terms of the lease and applicable law; or [PL 1985, c. 641, §3 (NEW).]

B. Enforcement of a security interest in compliance with the Uniform Commercial Code, Title 11, Article 9-A. [PL 1999, c. 699, Pt. D, §13 (AMD); PL 1999, c. 699, Pt. D, §30 (AFF).]
[PL 1999, c. 699, Pt. D, §13 (AMD); PL 1999, c. 699, Pt. D, §30 (AFF).]

6. Defenses; insider transfers. A transfer is not voidable under section 3576, subsection 2:

A. To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien; [PL 1985, c. 641, §3 (NEW).]

B. If made in the ordinary course of business or financial affairs of the debtor and the insider; or [PL 1985, c. 641, §3 (NEW).]

C. If made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor. [PL 1985, c. 641, §3 (NEW).]
[PL 1985, c. 641, §3 (NEW).]

SECTION HISTORY

PL 1985, c. 641, §3 (NEW). PL 1999, c. 699, §D13 (AMD). PL 1999, c. 699, §D30 (AFF).

§3580. Extinguishment of cause of action

A cause of action with respect to a fraudulent transfer or obligation under this Act is extinguished unless action is brought: [PL 1985, c. 641, §3 (NEW).]

1. Intent to defraud. Under section 3575, subsection 1, paragraph A, within 6 years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant; or
[PL 1985, c. 641, §3 (NEW).]

2. Failure to receive reasonably equivalent value; transfer to insider. Under section 3575, subsection 1, paragraph B, or section 3576, subsection 1 or 2, within 6 years after the transfer was made or the obligation was incurred.
[PL 1985, c. 641, §3 (NEW).]

SECTION HISTORY

PL 1985, c. 641, §3 (NEW).

§3581. Supplementary provisions

Unless displaced by the provisions of this Act, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency or other validating or invalidating cause, supplement its provisions. [PL 1985, c. 641, §3 (NEW).]

SECTION HISTORY

PL 1985, c. 641, §3 (NEW).

§3582. Uniformity of application and construction

This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it. [PL 1985, c. 641, §3 (NEW).]

SECTION HISTORY

PL 1985, c. 641, §3 (NEW).

CHAPTER 505

ARRESTS

SUBCHAPTER 1

DEBTORS ABOUT TO LEAVE STATE

§3601. Arrest of debtor about to leave State

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3602. Disclosure on arrest

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3603. Notice to plaintiff

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3604. Justices may adjourn

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3605. Adjudication of justices; discharge

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3606. Duration of lien; certification

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

SUBCHAPTER 2

ARRESTS ON MESNE PROCESS

§3651. Arrested debtor may give bond to disclose after judgment

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3652. Proceedings where bond on mesne process

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3653. Debtor free for 30-day lien period

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3654. Creditor's election to arrest on execution or otherwise

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

SUBCHAPTER 3

JUDGMENT DEBTORS IN TORT AND OTHER ACTIONS

§3701. Body execution

In any civil action, except where express provision is by law made to the contrary, an execution shall not run against the body of the judgment debtor. [PL 1971, c. 408, §3 (AMD).]

SECTION HISTORY

PL 1971, c. 408, §3 (AMD).

§3702. Debtor may disclose without bond

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3703. Disclosure in jail

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3704. Debtor remanded or oath allowed

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3705. Release by bond

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3706. Validity of bond

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3707. Application for examination; citation

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3708. Service of citation

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3709. Examination; errors or defects in citation

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3710. Interrogatories

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3711. Oath

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3712. Disclosure, appraisal and setoff

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3713. Acceptance within 30 days or return to debtor

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3714. Certificate of discharge

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3715. Effect of certificate

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3716. Release by creditor

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3717. Judgment in force after discharge

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3718. Lien on real estate disclosed

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3719. Lien on personal property; concealment

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3720. Bond returned; creditor may have bond

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3721. Judgment on forfeit

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

SUBCHAPTER 4

BONDS

§3801. Validity of bond

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3802. Limitation of actions on bonds

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3803. Recovery of damages on bond

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3804. New judgment on bond; costs

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3805. No bond where willful trespass; oath

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

SUBCHAPTER 5

SUPPORT OF DEBTORS IN JAIL

§3851. Support by creditor

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§3852. Adjustment of price of support

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

SUBCHAPTER 6

TAX CASES

§3901. Persons arrested for taxes and officers for noncollection deemed poor debtors

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

SUBCHAPTER 7

CONTRACT ACTIONS

§3951. No body executions on contracts

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

SUBCHAPTER 8

DEBTORS TO THE STATE

§4001. State debtor may apply to Justice of Superior Court

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§4002. Power to release debtor

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§4003. Release or discharge of debt on payment or security of part

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§4004. Compliance by jailer

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§4005. Record of adjudication

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§4006. Power of county commissioners

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§4007. Application to take oath; notice

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

SUBCHAPTER 9

EXEMPTIONS

§4051. Holidays

No person shall be arrested in a civil action, on mesne process, or execution or on a warrant for taxes on any legal holiday. On the day of any military training, inspection, review or election, no officer or soldier required by law to attend the same shall be arrested on any such processes. [PL 1971, c. 408, §4 (AMD).]

SECTION HISTORY

PL 1971, c. 408, §4 (AMD).

§4052. Election days

No elector shall be arrested, except for treason, felony or breach of the peace, on the days of election of United States, state or town officers.

CHAPTER 507

ATTACHMENTS

SUBCHAPTER 1

GENERAL PROVISIONS

§4101. Attachment by counterclaim, cross-claim or 3rd party

Attachment of real estate, goods and chattels, or other property may be made by a party bringing a counterclaim, a cross-claim or a 3rd party complaint in the same manner as upon an original claim. For purposes of applicable statutes, the word "plaintiff" shall refer to the party to the action who makes the attachment and the word "defendant" shall refer to the party to the action whose property is attached.

§4102. Subsequent attachments

After service of the summons and complaint upon the defendant, the court on motion without notice may for cause shown order an additional attachment of real estate, goods and chattels on other property.

SUBCHAPTER 2

PERSONAL PROPERTY

ARTICLE 1

GENERAL PROVISIONS

§4151. Property subject to attachment

All goods and chattels may be attached and held as security to satisfy the judgment for damages and costs which the plaintiff may recover, except such as, from their nature and situation, have been considered as exempt from attachment according to the principles of the common law as adopted and practiced in the State, and such as are hereinafter mentioned. Such personal property may be attached on writs issued by the District Court in any division, when directed to the proper officer.

Following the entry of judgment in a civil action and prior to the issuance of a writ of execution upon the judgment, any interest in real or personal property, which is not exempt from attachment and execution, may be attached by the plaintiff by the filing in the registry of deeds for the county in which the property is located, with respect to real property, or in the office of the Secretary of State, with respect to property of a type a security interest in which may be perfected by a filing in such office under Title 11, Article 9-A, of an attested copy of the court order awarding judgment. Fees for the recording of the order must be as otherwise provided for similar documents. Notwithstanding section 4454, the filing constitutes perfection of the attachment. The party whose property has been so attached must be immediately notified by certified letter, mailed by the plaintiff to the party's last known address, which must inform the party that an attachment has been filed against the party's real or personal property and must specify the registry of deeds or office of the Secretary of State in which the attachment has been recorded. [PL 1999, c. 699, Pt. D, §14 (AMD); PL 1999, c. 699, Pt. D, §30 (AFF).]

SECTION HISTORY

PL 1985, c. 187, §1 (AMD). PL 1999, c. 699, §D14 (AMD). PL 1999, c. 699, §D30 (AFF).

§4152. Property kept where found; owner's bond

Personal property attached may be kept upon the premises where the same is found and the attaching officer may appoint a keeper thereof. If the owner of said property or the occupant of said premises requests the officer in writing to remove said keeper, the officer shall remove the property attached or the keeper without unreasonable delay. If the defendant in writing requests the officer making the attachment to allow said property attached to remain upon the premises where found until he may give a bond dissolving said attachment, the officer shall not remove said property until the defendant has had a reasonable opportunity to give said bond.

§4153. Attachment of hay and animals

When hay in a barn, horses or neat cattle are attached and are suffered to remain by permission of the officer in the defendant's possession on security given for their safekeeping and delivery to the officer, they are not subject to a 2nd attachment to the prejudice of the first.

§4154. Optional method of attachment

Any interest in real or personal property, which is not exempt from attachment and execution, may be attached by the plaintiff by the filing in the registry of deeds for the county in which the property is located, with respect to real property, or in the office of the Secretary of State, with respect to property of a type a security interest in which may be perfected by a filing in such office under Title 11, Article 9-A, of an attested copy of the court order approving the real or personal property attachment, provided that the order is filed within 30 days after the order approving the attachment, or within such additional time as the court may allow upon a timely motion. Fees for the recording of the order must be as otherwise provided for similar documents. Notwithstanding section 4454, the filing constitutes perfection of the attachment and service of a copy of the court's order must be made upon the defendant in accordance with the Maine Rules of Civil Procedure pertaining to service of writs of attachment. [PL 1999, c. 699, Pt. D, §16 (AMD); PL 1999, c. 699, Pt. D, §30 (AFF).]

SECTION HISTORY

PL 1965, c. 306, §§30-A (AMD). PL 1981, c. 279, §5 (AMD). PL 1983, c. 125, §3 (RPR). PL 1985, c. 187, §2 (AMD). PL 1999, c. 699, §D16 (AMD). PL 1999, c. 699, §D30 (AFF).

§4155. Shares in a corporation

(REPEALED)

SECTION HISTORY

PL 1965, c. 306, §31 (RP).

§4156. Franchise and other corporate property

The franchise and all right to demand and take toll and all other property of a corporation may be attached on mesne process, and the attaching officer shall serve an attested copy of the writ of attachment upon the corporation in the same manner as other process.

§4157. Successive attachments

Successive attachments in one or more counties may be made upon the same writ of attachment by the same or different officers before service of the summons upon the person whose property is attached; but none after such service except on order of the court on motion without notice and for cause shown. Personal property attached on process may be subsequently attached by a different officer, who shall furnish the last preceding attaching officer with a copy of the precept within a reasonable time.

§4158. Replevin of property attached and claimed by non-party to action; sale

When personal property, attached on mesne process, is claimed by a person not a party to the action, he may replevy it within 10 days after notice given him therefor by the attaching creditor, and not afterwards. After that, the attaching officer, without impairing the rights of such person, at the request and on the responsibility of the plaintiff and with consent of other attaching creditors, if any, may sell it at auction as on execution, unless the debtor claims it as his and forbids the sale.

§4159. Effect of creditor's failure to recover judgment

If the attaching creditor, after having paid the amount ordered by the court, does not recover judgment, he may nevertheless hold the property until the debtor has repaid with interest the amount so paid.

§4160. Restriction of right to attach replevied goods

Goods, taken by replevin from an attaching officer, shall not be further attached as property of the original defendant in any other manner than that provided in sections 4202 and 4203, so long as they are held by the person who replevied them or by any one holding under him, unless the original defendant has acquired a new title to the goods.

ARTICLE 2

DEATH OR REMOVAL OF ATTACHING OFFICER

§4201. Attached goods not assets of deceased officer's estate

Personal property, attached by an officer and in his possession, and his claim for damages when it is taken from him remain subject to such attachment in case of his death, as if he were alive, and are not assets belonging to his estate.

§4202. Replevied goods liable to further attachments

The property described in section 4201 replevied from the officer is liable to further attachments as if in his possession. If there is judgment for a return in the replevin action, the plaintiff and his sureties are liable for the whole property or its value, although some attachments were made after the replevin.

§4203. Death or removal of officer; further attachments

If an attaching officer dies or is removed from office while the attachment is in force, whether the property was in his possession or not, it and its proceeds may be further attached by any other officer the same as it might have been by the first officer. Such further attachments shall be made by a return setting forth an attachment in common form and by whom the property was previously attached; and if the goods have not been replevied, by leaving a certified copy of the writ of attachment, omitting the declaration and of the return of that attachment, with the former officer if living, or if dead, with his executor or administrator, or if none has been appointed, with the person having possession of the goods; or if the goods have been replevied and the officer who made the original attachment is dead, such copy shall be left with his executors or administrators or with the plaintiff in replevin. The attachment shall be considered as made when such copy is delivered in either of the modes described.

ARTICLE 3

MORTGAGED OR PLEDGED PROPERTY

§4251. Attachment of encumbered personal property

Personal property not exempt from attachment, which is subject to a security interest or which has been mortgaged, pledged or subject to any lien created by law and of which the debtor has the right of redemption, may be attached, held and sold as if unencumbered, subject to sections 4159 and 4252 to 4256. [PL 1967, c. 213, §5 (AMD).]

SECTION HISTORY

PL 1967, c. 213, §5 (AMD).

§4252. Liability of officer attaching encumbered property

When personal property, attached on a writ or seized on execution, is claimed by virtue of a security interest, mortgage, pledge or lien, the claimant shall not bring an action against the attaching officer therefor: [PL 1967, c. 213, §6 (AMD).]

1. Notice. Until he has given him at least 48 hours' written notice of his claim and the true amount thereof; or

2. Payment. If the officer or creditor within that time discharges the claim by paying same or tendering the amount due thereon; or

3. Property restored. If the officer within that time restores the property; or

4. Claimant to answer. Where the property was attached on a writ or seized on execution while in the hands or possession of the debtor, the attaching creditor within that time summons the claimant to answer in the same action such questions as may be put to him relative to the consideration, validity and amount due secured by such security interest, mortgage or lien.
[PL 1971, c. 622, §55-A (AMD).]

Such summons may be in substantially the following form:

Summons to Claimant

State of Maine — Superior Court
....., SS. — Civil Action, File Number . . . . . .
A.B., Plaintiff
v.
C.D., Defendant — Summons
E.F., Claimant

You are hereby summoned and required to appear at our ..... Court, to be held at ....., on the ..... day of ..... in an action between ....., plaintiff, and ....., defendant, in which the following described property, claimed by you as secured party, was attached as the property of said defendant; viz., ..., and there to answer in such action, such questions as may be put to you relative to the consideration, validity and amount justly due secured by such security, and abide the judgment of the court thereon.

If you fail to appear and answer, you will thereby waive the right to hold said property under the claimed security.

(Signed) .....

Clerk of said Superior Court

(Seal of the Court)

Dated ..... [PL 1967, c. 213, §6 (AMD).]

Such summons, when property is attached on the writ, shall be returnable to the court to which the writ is returnable not less than 10 days nor more than 60 days after service thereof, and when property is seized on execution such summons shall be made returnable to the court issuing such execution on any day fixed by the court not less than 10 days nor more than 60 days thereafter. Service in either case shall be by copy of such summons. If in either case the secured party or claimant fails to appear and answer, or after hearing fails to establish his claim under such security interest, pledge or lien, he thereby waives the right to hold the property thereon. [PL 1967, c. 213, §6 (AMD).]

SECTION HISTORY

PL 1967, c. 213, §6 (AMD). PL 1971, c. 622, §§55-A (AMD). PL 1971, c. 622, §55-A (AMD).

§4253. Claimant to account within 10 days after notice; false account

The officer may give the claimant written notice of his attachment. If he does not within 10 days thereafter deliver to the officer a true account of the amount due on his claim, he thereby waives the right to hold the property thereon as against the attaching creditor. If his account is false, he forfeits to the creditor double the amount of the excess, to be recovered in a civil action. [PL 1967, c. 213, §7 (AMD).]

SECTION HISTORY

PL 1967, c. 213, §7 (AMD).

§4254. Validity of claim established

If, upon examination held under section 4252, it appears that the security interest, mortgage, pledge or lien is valid, the court, having first ascertained the amount justly due upon it, may direct the attaching creditor to pay the same to the claimant or his assigns within such time as it orders. If he does not pay or tender the amount within the time prescribed, the attachment shall be vacated and the property shall be restored. If the attaching creditor pays or tenders the amount directed to be paid within such time and the claimant or his assigns fail to immediately assign such security interest, mortgage, pledge or lien to the attaching creditor, the claimant or his assigns shall be estopped from claiming any interest in such attached goods by virtue of his security interest, mortgage, pledge or lien. [PL 1967, c. 213, §8 (AMD).]

SECTION HISTORY

PL 1967, c. 213, §8 (AMD).

§4255. Validity of mortgage tried before jury; costs

(REPEALED)

SECTION HISTORY

PL 1967, c. 213, §9 (RP).

§4256. Disposition of proceeds of sale

When the attaching creditor has paid to the claimant or his assigns the amount ordered by the court, the sheriff after making the sale shall pay to the creditor, and the creditor may retain out of the proceeds of the property attached, when sold, the amount so paid with interest, and the balance shall be applied to the payment of his debt. [PL 1967, c. 213, §10 (AMD).]

SECTION HISTORY

PL 1967, c. 213, §10 (AMD).

ARTICLE 4

PROPERTY OF PART OWNERS

§4301. Property of part owners; attachment; disposal

When personal property is attached in a civil action against one or more part owners thereof, at the request of another part owner, it shall be appraised as provided, one appraiser to be chosen by the creditor, one by the officer and the other by the requesting part owner. Thereupon it shall be delivered to such part owner on his giving bond to the officer with 2 sufficient sureties, conditioned to restore it in like good order, pay the appraised value of the defendant's share therein or satisfy all judgments recovered in the attaching actions, if demanded within the time during which it would be held by the attachments. Such bond shall be returned with the writ of attachment with the doings of the officer thereon.

§4302. Payment; part owner's lien; attachment dissolved

If any part of such appraised value is so paid, the defendant's share of the property is thereby pledged to the party paying. If not redeemed, he may sell it and account to the defendant for the balance, if any. If the attachment is dissolved, he shall restore such share to the defendant or to the attaching officer for him.

ARTICLE 5

SALES OF ATTACHED PROPERTY

§4351. Sale of attached personal property

When personal property is attached, the officer, by consent of the debtor and creditor, may sell it on the writ of attachment before or after filing in court, observing the directions for selling on execution. If it is attached by different officers, it may be so sold by the first attaching officer; or in case of his death, if he was a deputy sheriff, by the sheriff or another deputy by written consent of the debtor and all attaching creditors. The proceeds, after deducting necessary expenses, shall be held by the officer making the sale, subject to the successive attachments as if sold on execution.

§4352. Perishable goods; sale without consent

When personal property liable to perish, be wasted, greatly reduced in value by keeping or be kept at great expense is attached, and the parties do not consent to a sale thereof, the same may be ordered sold either before or after entry of the action, in accordance with sections 4158 and 4353 to 4355.

§4353. Petition for sale; order

Either party may, on motion to the court setting forth the reasons therefor, petition the court to order the expeditious sale of the attached property. After such notice as the court may order and hearing on the motion, the court may, in its discretion, order the attached property to be sold and the proceeds held as security for the claim involved. As a part of its order, the court may impose such restrictions and conditions as it deems necessary for the conduct of such sale, the protection of lienors, the furnishing of bonds for the protection of the interests of any party, and to protect the interest of the attaching creditor and debtor.

§4354. Proceeds attached in hands of officers; surplus

The proceeds of such property sold by order of court may be further attached by the officer as property of the defendant while remaining in his hands; and held and disposed of as if the property itself had been attached; but after retaining enough to satisfy all attachments existing thereon at any time, nothing herein shall prevent his paying the surplus to the debtor.

§4355. Right of priority in case of sale preserved

When goods which are sold by order of court in the manner provided have been attached by several creditors, any one of them may demand and receive satisfaction of his judgment, notwithstanding any prior attachments, if he is otherwise entitled to demand the money and a sufficient sum is left of the proceeds of the goods or of their appraised value to satisfy all prior attachments.

ARTICLE 6

EXEMPTIONS

§4401. Items exempt

(REPEALED)

SECTION HISTORY

PL 1967, c. 412, §§2,3 (AMD). PL 1967, c. 496 (AMD). PL 1973, c. 377, §2 (AMD). PL 1973, c. 512, §1 (AMD). PL 1977, c. 453, §§1-3 (AMD). PL 1981, c. 431, §1 (RP).

§4402. Debtor's interest exceeding interest exempt

(REPEALED)

SECTION HISTORY

PL 1977, c. 453, §4 (NEW). PL 1981, c. 431, §1 (RP).

ARTICLE 7

EXEMPTIONS

§4421. Definitions

As used in this article, unless the context otherwise indicates, the following words have the following meanings. [PL 1981, c. 431, §2 (NEW).]

1. Dependent. "Dependent" includes a spouse, whether or not actually dependent.
[PL 1981, c. 431, §2 (NEW).]

1-A. Debtor. "Debtor" means an individual debtor.
[PL 1983, c. 125, §4 (NEW).]

2. Value. "Value" means fair market value as of the date of the attachment or, in a proceeding under the United States Code, Title 11, the date of the filing of the petition.
[PL 1981, c. 431, §2 (NEW).]

SECTION HISTORY

PL 1981, c. 431, §2 (NEW). PL 1983, c. 125, §4 (AMD).

§4422. Exempt property

The following property is exempt from attachment and execution, except to the extent that it has been fraudulently conveyed by the debtor. [PL 1985, c. 187, §3 (AMD).]

1. Residence. The exemption of a debtor's residence is subject to this subsection.

A. Except as provided in paragraph B, the debtor's aggregate interest, not to exceed $47,500 in value, in real or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor, except that if minor dependents of the debtor have their principal place of residence with the debtor, the debtor's aggregate interest may not exceed $95,000 and except that if the debtor's interest is held jointly with any other person or persons, the exemption may not exceed in value the lesser of $47,500 or the product of the debtor's fractional share times $95,000. [PL 2007, c. 579, §1 (AMD).]

B. The debtor's aggregate interest, not to exceed $95,000 in value, in property described in paragraph A, if the debtor or a dependent of the debtor is either a person 60 years of age or older or a person physically or mentally disabled and because of such disability is unable to engage in substantial gainful employment and whose disability has lasted or can be expected to last for at least 12 months or can be expected to result in death; except that if the debtor's interest is held jointly with any other person or persons, the exemption may not exceed in value the lesser of $95,000 or the product of the fractional share of the debtor's interest times $190,000. This paragraph does not apply to liens obtained prior to its effective date or to judgments based on torts involving other than ordinary negligence on the part of the debtor. [PL 2007, c. 579, §2 (AMD).]

C. That portion of the proceeds from any sale of property which is exempt under this section shall be exempt for a period of 6 months from the date of receipt of such proceeds for purposes of reinvesting in a residence within that period. [PL 1989, c. 286, §1 (NEW).]
[PL 2007, c. 579, §§1, 2 (AMD).]

2. Motor vehicle. The debtor's interest, not to exceed $7,500 in value, in one motor vehicle.
[PL 2017, c. 209, §1 (AMD).]

3. Clothing; furniture; appliances; and similar items. The debtor's interest, not to exceed $200 in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments, that are held primarily for the personal, family or household use of the debtor or a dependent of the debtor.
[PL 1981, c. 431, §2 (NEW).]

4. Jewelry. The debtor's aggregate interest, not to exceed $750 in value, in jewelry held primarily for the personal, family or household use of the debtor or a dependent of the debtor and the debtor's interest in a wedding ring and an engagement ring.
[PL 1991, c. 741, §2 (AMD).]

5. Tools of the trade. The debtor's aggregate interest, not to exceed $5,000 in value, in any implements, professional books or tools of the trade of the debtor or the trade of a dependent of the debtor, including, but not limited to, power tools, materials and stock designed and procured by the debtor and necessary for carrying on the debtor's trade or business and intended to be used or wrought in that trade or business.
[PL 1991, c. 741, §2 (AMD).]

6. Furnaces, stoves and fuel. The debtor's interest in the following items held primarily for the personal, family or household use of the debtor or a dependent of the debtor:

A. One cooking stove; [PL 1981, c. 431, §2 (NEW).]

B. All furnaces or stoves used for heating; and [PL 1981, c. 431, §2 (NEW).]

C. All cooking and heating fuel not to exceed 10 cords of wood, 5 tons of coal, 1,000 gallons of petroleum products or its equivalent. [PL 1981, c. 431, §2 (NEW).]

[PL 1981, c. 431, §2 (NEW).]

7. Food, produce and animals. The debtor's interest in the following items held primarily for the personal, family or household use of the debtor or a dependent of the debtor:

A. All food provisions, whether raised or purchased, reasonably necessary for 6 months; [PL 1981, c. 431, §2 (NEW).]

B. All seeds, fertilizers, feed and other material reasonably necessary to raise and harvest food through one growing season; and [PL 1981, c. 431, §2 (NEW).]

C. All tools and equipment reasonably necessary for raising and harvesting food. [PL 1981, c. 431, §2 (NEW).]

[PL 1981, c. 431, §2 (NEW).]

8. Farm equipment. The debtor's interest in one of every type of farm implement reasonably necessary for the debtor to raise and harvest agricultural products commercially, including any personal property incidental to its maintenance and operation.
[PL 1981, c. 431, §2 (NEW).]

9. Fishing boat. The debtor's interest in one boat, not exceeding 46 feet in length, used by the debtor primarily for commercial fishing.
[PL 2013, c. 510, §1 (AMD).]

9-A. Logging implements. The debtor's interest in one of every type of professional logging implement reasonably necessary for the debtor to harvest and haul wood commercially, including any personal property incidental to its maintenance and operation.
[PL 2009, c. 532, §1 (NEW).]

10. Life insurance contract. Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.
[PL 1981, c. 431, §2 (NEW).]

11. Life insurance dividends, interest and loan value. The debtor's aggregate interest, not to exceed in value $4,000 less any amount of property of the estate transferred in the manner specified in the United States Code, Title 11, Section 542(d), in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is dependent.
[RR 2011, c. 1, §19 (COR).]

12. Health aids. Professionally prescribed health aids for the debtor or a dependent of the debtor.
[PL 1981, c. 431, §2 (NEW).]

13. Disability benefits; pensions. The debtor's right to receive the following:

A. A social security benefit, unemployment compensation or a federal, state or local public assistance benefit, including, but not limited to, the federal earned income tax credit and additional child tax credit; [PL 2007, c. 276, §1 (AMD).]

B. A veterans' benefit; [PL 1981, c. 431, §2 (NEW).]

C. A disability, illness or unemployment benefit; [PL 1981, c. 431, §2 (NEW).]

D. Alimony, support or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor; or [PL 2017, c. 177, §1 (AMD).]

E. A payment or account under a stock bonus, pension, profit-sharing, annuity or similar plan or contract on account of illness, disability, death, age or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless:

(1) The plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose;

(2) The payment is on account of age or length of service; and

(3) The plan or contract does not qualify under the United States Internal Revenue Code of 1986, Section 401(a), 403(a), 403(b), 408 or 409. [RR 2017, c. 1, §7 (COR).]

F. [PL 2017, c. 177, §3 (RP).]
[RR 2017, c. 1, §7 (COR).]

13-A. Retirement funds. Retirement funds to the extent those funds are in a fund or account that is exempt from taxation under the United States Internal Revenue Code of 1986, Section 401, 403, 408, 408A, 414, 457 or 501(a), up to an aggregate value of $1,000,000. This subsection does not exempt:

A. Amounts contributed to the account or fund within 120 days before:

(1) The debtor files for bankruptcy if this exemption is being applied in a federal bankruptcy proceeding; or

(2) If this exemption is being applied in a proceeding other than a federal bankruptcy proceeding or for child support or spousal support covered by paragraph B, the earlier of the entry of judgment or other ruling against the debtor or the issuance of the levy, attachment, garnishment or other execution or order against which this exemption is being applied; or [PL 2017, c. 177, §4 (NEW).]

B. Amounts in the account or fund necessary to satisfy child support or spousal support obligations. [PL 2017, c. 177, §4 (NEW).]
[PL 2017, c. 177, §4 (NEW).]

14. Legal awards; life insurance benefits. The debtor's right to receive or property that is traceable to the following:

A. An award under a crime victim's reparation law; [PL 1981, c. 431, §2 (NEW).]

B. A payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor; [PL 1981, c. 431, §2 (NEW).]

C. A payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of the individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor; [PL 1981, c. 431, §2 (NEW).]

D. A payment, not to exceed $12,500, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or [PL 1991, c. 741, §3 (AMD).]

E. A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor. [PL 1981, c. 431, §2 (NEW).]

[PL 1991, c. 741, §3 (AMD).]

15. Other property. The debtor's aggregate interest, not to exceed in value $400, in any property, whether or not otherwise exempt under this section.

[PL 1981, c. 431, §2 (NEW).]

16. Unused residence exemption. The debtor's interest, equal to any unused amount of the exemption provided under subsection 1 but not exceeding $6,000, in any property exempt under subsections 3 and 5 and subsection 14, paragraph D.

[PL 1991, c. 741, §4 (AMD).]

SECTION HISTORY

PL 1981, c. 431, §2 (NEW). PL 1985, c. 187, §3 (AMD). PL 1989, c. 286, §1 (AMD). PL 1991, c. 741, §§1-4 (AMD). PL 1995, c. 35, §1 (AMD). PL 2001, c. 306, §§1-5 (AMD). PL 2003, c. 47, §§1,2 (AMD). PL 2007, c. 276, §1 (AMD). PL 2007, c. 579, §§1, 2 (AMD). PL 2009, c. 532, §1 (AMD). RR 2011, c. 1, §19 (COR). PL 2013, c. 510, §1 (AMD). RR 2017, c. 1, §7 (COR). PL 2017, c. 177, §§1-4 (AMD). PL 2017, c. 209, §1 (AMD).

§4423. Exempt property acquired within 90 days

Notwithstanding section 4424, if within 90 days of the attachment, or, in a proceeding under the United States Code, Title 11, the date of the filing of the petition, the debtor transfers his nonexempt property and as a result acquires, improves or increases in value property otherwise exempt under section 4422, his interest shall not be exempt to the extent that the acquisition, improvement or increase in value exceeds the reasonable needs of the debtor or his dependents. [PL 1983, c. 480, Pt. A, §9 (AMD).]

SECTION HISTORY

PL 1981, c. 431, §2 (NEW). PL 1983, c. 480, §A9 (AMD).

§4424. Interest in excess of exemption

1. Forced sale. If the debtor's interest in any property exempt under section 4422 exceeds the exempt amount, the whole of the property may be sold.

[PL 1981, c. 431, §2 (NEW).]

2. Distribution of proceeds. The proceeds of a sale under subsection 1 shall be distributed in the following order:

A. To the debtor in the amount of his exempt interest; [PL 1981, c. 431, §2 (NEW).]

B. To the creditor attaching or executing on the property; and [PL 1981, c. 431, §2 (NEW).]

C. To the debtor, the balance of the proceeds. [PL 1981, c. 431, §2 (NEW).]

[PL 1991, c. 431, §2 (NEW).]

3. Exception for residence. With respect to a residence in which the debtor has an exempt interest, the debtor may designate as exempt from sale under subsection 1 any part of the residence having a value not in excess of the amount of his exemption.

[PL 1981, c. 431, §2 (NEW).]

SECTION HISTORY

PL 1981, c. 431, §2 (NEW).

§4425. Exceptions

1. Residence. The debtor's interest in a residence shall not be exempt from claims secured by real estate mortgages on or security interests in the residence or claims of lien creditors under Title 10, chapter 603.
[PL 1981, c. 431, §2 (NEW).]

2. Other property. The debtor's interest in other property shall not be exempt from claims secured by purchase money security interests in the property, except that the debtor's interest in property otherwise exempt under section 4422, subsections 8 and 9 shall not be exempt from claims secured by security interests in the property.
[PL 1981, c. 431, §2 (NEW).]

SECTION HISTORY

PL 1981, c. 431, §2 (NEW).

§4426. Exemptions in bankruptcy proceedings

Notwithstanding anything to the contrary in the United States Code, Title 11, Section 522(b), a debtor may exempt from property of the debtor's estate under United States Code, Title 11, only that property exempt under the United States Code, Title 11, Section 522(b)(3)(A) and (B), except that any debtor eligible for a residence exemption under section 4422, subsection 1, paragraph B, may exempt the amount allowed in that paragraph. [PL 2011, c. 203, §1 (AMD).]

SECTION HISTORY

PL 1981, c. 431, §2 (NEW). PL 1989, c. 286, §2 (AMD). PL 2011, c. 203, §1 (AMD).

SUBCHAPTER 3

REAL PROPERTY

ARTICLE 1

GENERAL PROVISIONS

§4451. Real estate and interests subject to attachment

All real estate liable to be taken on execution as provided in chapter 403; the right to cut and carry away grass and timber from land sold by this State or Massachusetts, the soil of which is not sold and all other rights and interests in real estate may be attached on mesne process and held to satisfy the judgment recovered by the plaintiff, but the officers need not enter on or view the estate to make such attachment.

§4452. Writ of attachment from District Court

If a District Court has jurisdiction in any action, real estate and interests in real estate attachable on writs of attachment from the Superior Court may be attached on writs of attachment or taken on executions from such court.

§4453. Attachment of right of redemption

When a right of redeeming real estate mortgaged or taken on execution is attached and such estate is redeemed or the encumbrance removed before the levy of the execution, the attachment holds the premises discharged of the mortgage or levy, as if they had not existed.

§4454. Recording necessary to validity; claim specified in writ; seizure on execution; lien

No attachment of real estate on mesne process creates any lien thereon, unless the nature and amount of plaintiff's demand is set forth in the complaint or specifications therein or account annexed thereto, nor unless the officer making it within 5 days thereafter files in the office of the register of deeds in the county or district in which some part of said estate is situated an attested copy of so much of his return on the writ of attachment as relates to the attachment, with the value of the defendant's property which he is thereby commanded to attach, the names of the parties, the date of the writ of attachment and the court to which it is returnable. If the copy is not so filed within 5 days, the attachment takes effect from the time it is filed, although it is after service on the defendant, if before the time he is required to serve his answer. No seizure of real estate on execution, where there is no subsisting attachment thereof made in the action in which such execution issues, creates any lien thereon, unless the officer making it within 5 days thereafter files in the office of the register of deeds in the county or district in which some part of said estate is situated an attested copy of so much of his return on said execution as relates to the seizure, with the names of the parties, the date of the execution, the amount of the debt and costs named therein and the court by which it was issued. If the copy is not so filed, the seizure takes effect from the time it is filed. Such proceedings shall be had in such office by the register of deeds, as are prescribed in Title 33, chapter 11. All recorded deeds take precedence over unrecorded attachments.

§4455. Action ineffectual against nonparty until attachment recorded

No action in which the title to real estate is involved is effectual against any person not a party thereto or having actual notice thereof until either:

1. Attachment made and recorded. An attachment of such real estate is duly made and recorded in the registry of deeds, in and for the county or district in which such real estate is situated, in the same manner as attachments of real estate in other actions are now recorded; or

2. Certificate recorded. A certificate setting forth the names of the parties, the date of the complaint and the filing thereof and a description of the real estate in litigation as described in said complaint, duly certified by the clerk of courts in and for the county where said complaint is pending is recorded in the registry of deeds in the county or district in which such real estate is situated.

§4456. Redemption or payment where right of redemption or contract for conveyance attached

When a right to redeem real estate under mortgage, levy, sale on execution or for taxes or a right to a conveyance by contract is attached, the plaintiff in the action, before or after sale on execution, may pay or tender to the person entitled thereto the amount required to discharge such encumbrance or fulfill such contract. Thereby the title and interest of such person vest in the plaintiff subject to the defendant's right to redeem. Such redemption by the defendant or any person claiming under him by a title subsequent to the attachment shall not affect such attachment, but it shall continue in force and the prior encumbrance as against it shall be deemed discharged.

§4457. Mortgagee or contractor to indicate sum due and release on payment

Such person, on written demand, shall give the plaintiff a true written statement of the amount due him; and on payment or tender thereof shall release all his interest in the premises; and if he refuses, he may be compelled to do so in a civil action seeking equitable relief. Such release shall recite that under authority of this section and section 4456 the plaintiff had attached the premises and paid or tendered the amount due the grantor. The plaintiff shall thereupon hold such title in trust for the defendant, and subject to his right of redemption, without power of alienation until after one year from the termination of said action, or from the sale of the equity on any execution recovered therein.

ARTICLE 2

DEATH OF PARTY

§4501. Attachments survive death of plaintiff

When a plaintiff dies before the expiration of 60 days from the rendition of judgment in his favor, or before the expiration of 60 days after the clerk of courts in the county where the action is pending receives a certificate of decision from the law court ordering final judgment for the plaintiff, and no suggestion of death has been made upon the docket of said courts, execution may issue as is now provided and all attachments then in force continue for 90 days thereafter.

§4502. Attachments dissolved by death of insolvent

The attachment of personal property continues in force after the death of the debtor as if living, unless before a sale thereof on execution his estate is decreed insolvent; but it is dissolved by such decree, and the officer, on demand thereafter, shall restore such property to the executor or administrator on payment of his legal fees and charges of keeping.

§4503. Liability of officer selling before demand; setoff prohibited

If, after such decree and before such demand, the officer has sold the property on execution, he is liable to the executor or administrator in a civil action, for the proceeds, if in his hands; but if paid over to the judgment creditor, such creditor is so liable, and he shall not set off any demand which he has against the executor or the administrator or against the estate of the deceased.

§4504. Appraisal of attached property

After the death of a defendant and before a decree of insolvency on his estate, the executor or administrator may demand of the attaching officer a certified copy of his return on the writ of attachment, with a description of the property attached, so that it may be described in the inventory of the estate subject to the attachment, and the appraisers may demand a view thereof so as to appraise it. If the officer fails to comply with either demand, he forfeits to the executor or administrator not less than $10 nor more than $30.

§4505. Actions by officers for attached goods do not abate by party's death

An action, brought by an officer for taking from him personal property attached by him, does not abate by the death of either party, but may be prosecuted by or against his executor or administrator. If the officer is dead and his representative recovers the property or money, it shall be held and applied as if he were alive, but, if he fails to recover, he shall return the property or pay the damages awarded in full, although the estate of the deceased is insolvent.

§4506. Continuance of action after officer's death

If an officer authorized to serve precepts dies pending an action for or against him for official neglect or misconduct and no administration is granted on his estate within 3 months thereafter, the party for whose benefit the action is so prosecuted or defended may carry it on in his own name by entering his appearance and giving security for costs, as the court directs.

ARTICLE 3

EXEMPTIONS

§4551. Homestead exemption

(REPEALED)

SECTION HISTORY

PL 1973, c. 512, §2 (RPR). PL 1977, c. 453, §5 (AMD). PL 1977, c. 614 (AMD). PL 1979, c. 75, §1 (AMD). PL 1981, c. 431, §3 (RP).

§4552. Exceptions

(REPEALED)

SECTION HISTORY

PL 1967, c. 412, §4 (AMD). PL 1969, c. 315, §§1,2 (AMD). PL 1973, c. 512, §3 (RPR). PL 1981, c. 431, §3 (RP).

§4553. Creditors claiming greater value

(REPEALED)

SECTION HISTORY

PL 1969, c. 315, §3 (AMD). PL 1973, c. 512, §4 (RPR). PL 1977, c. 453, §6 (AMD). PL 1979, c. 75, §2 (AMD). PL 1981, c. 431, §3 (RP).

§4554. Death of householder

(REPEALED)

SECTION HISTORY

PL 1973, c. 512, §5 (RPR). PL 1979, c. 540, §19 (RPR). PL 1981, c. 431, §3 (RP).

ARTICLE 4

EXEMPTIONS

§4561. Residence exemption

Exemptions with respect to residences are governed by subchapter II, Article 7. [PL 1981, c. 431, §4 (NEW).]

SECTION HISTORY

PL 1981, c. 431, §4 (NEW).

SUBCHAPTER 4

DISSOLUTION

§4601. Duration of attachment

An attachment of real or personal estate continues during the time within which an appeal may be taken from the judgment and during the pendency of any appeal. When a judgment for the plaintiff has become final by expiration of the time for appeal, by dismissal of an appeal or on certificate of decision from the law court, any such attachment shall continue for 60 days; except attachments of real estate taken on execution; or equities of redemption sold on execution; or an obligee's conditional right to a conveyance of real estate sold on execution; or property attached and replevied; or property attached belonging to a person dying thereafter, or specially provided for in any other case. [PL 1987, c. 184, §21 (AMD).]

In addition to any other provisions of law, attachments of real or personal estates may be enforced and their duration may be extended as provided in sections 3131, 3132 and 4651 [PL 1987, c. 184, §21 (NEW).]

SECTION HISTORY

PL 1981, c. 279, §6 (AMD). PL 1987, c. 184, §21 (AMD).

§4602. Methods of dissolution

An attachment of real or personal property is dissolved when a judgment for the defendant has become final by expiration of the time for appeal, by dismissal of an appeal or on certificate of decision from the law court; by a decree of insolvency on his estate before a levy or sale on execution; by insolvency proceedings commenced within 4 months as provided in the insolvency law; by a reference of the action and all demands between the parties thereto by a rule of court and judgment on the report of the referees; and by an amendment of the complaint, by consent of parties, so as to embrace a larger demand than it originally did, and judgment for the plaintiff thereon, unless the record shows that no claims were allowed the plaintiff not originally stated in the complaint.

§4603. Certificate of dissolution

When an attachment is dissolved by judgment for the defendant, or if the complaint in the action in which an attachment is made is not filed with the court within 30 days after the first attachment therein, the clerk of the court shall give any person applying therefor a certificate of that fact, which the register of deeds shall note on the margin of the record of the attachment. The said clerk of courts may charge a fee of 50¢ for such certificate.

Before or after the filing of said complaint in said court, or before or after judgment thereon, or if said complaint is not filed in court, the plaintiff or his attorney in such action may discharge the attachment in writing on the margin of the record thereof, or said plaintiff or said attorney may give a certificate, signed, sealed and acknowledged by him that said attachment is in whole or in part discharged, which the register of deeds shall record with a reference thereto on the margin of the records of attachments. The register of deeds shall note the record of said discharge on the margin of the records of attachments within an hour of the delivery to him of either of the aforesaid certificates. Such attachments may be discharged on the record thereof in the registry of deeds by an attorney-at-law authorized in writing by the plaintiff in said action, provided said writing is first recorded or filed in said registry of deeds with a reference thereto made by said register of deeds on the margin of the record of the attachment.

§4604. Real estate attachment discharged of record on dissolution

When an attachment of real estate is made in any action and the complaint is not filed in court, or when any attachment of real estate is dissolved by lapse of time or failure to levy upon the judgment debt within the time prescribed by law to preserve said attachment and the said attachment then remains undischarged upon the records of the registry of deeds, the plaintiff upon the demand of the defendant shall either cause the said attachment to be discharged upon the records of the registry of deeds or give a certificate, signed, sealed and acknowledged by him that said attachment is discharged, when said certificate is prepared and presented to the plaintiff by the defendant, which said certificate the register of deeds shall record with reference thereto on the margin of the record of said attachment.

§4605. Failure or refusal to discharge attachment

If the plaintiff shall upon demand unreasonably delay or refuse to discharge the said attachment as prescribed in section 4604, then the defendant by action filed in the county in which the attachment of said real estate was made shall be entitled on proof thereof to have the attachment discharged by a decree of the court duly filed in the registry of deeds, which the register of deeds shall record with reference thereto on the margin of the record of said attachment.

§4606. Petition for valuation and release

Any defendant, whose interest in real estate is attached on mesne process, may petition the Superior Court, setting forth the names of the parties to the action, the court and county in which it is returnable or pending, the fact of the attachment, the particular real estate and his interest therein, its value and his

desire to have it released from the attachment. Such court shall issue a written notice which shall be served on all parties to the action living in the State, including trustees mentioned in section 4611, and on the plaintiff's attorney, 10 days at least before the time fixed therein for a hearing.

§4607. Valuation and release on debtor's bond

If, at the hearing, such court finds that such interest is worth as much as the amount ordered in the writ to be attached, it shall order such defendant to give bond to the plaintiff, with sufficient sureties, conditioned that within 30 days after judgment for the plaintiff has become final by expiration of the time for appeal, by dismissal of an appeal or on certificate of decision from the law court, he will pay the judgment recovered by the plaintiff, with his costs on the petition, such bond, except as otherwise provided, to be in an amount equal to the amount ordered in the writ to be attached; but, if it finds that such interest is worth less than the amount ordered in the writ to be attached, such bond, except as otherwise provided, shall be in an amount equal to the value of such interest. If, in either event the court shall find that the value of the interest attached is in excess of the amount of any judgment which the plaintiff may reasonably be expected to recover, with his costs on the petition, it may fix the amount of such bond at such sum, not exceeding the amount ordered to be attached and not exceeding the value of the interest attached, as it may deem adequate to protect the plaintiff in the collection of any judgment recovered by him, with his costs on the petition.

§4608. Proceedings and bond filed in clerk's office

The petition and proceedings thereon shall be filed in the clerk's office in the county where the action is pending or returnable and recorded as a part of the case. The bond, when approved by such justice, shall be filed therein for the use of the plaintiff.

§4609. Certificate of proceedings from clerk recorded

The clerk shall give the petitioner an attested copy of the petition and proceedings with a certificate under seal of the court attached thereto, that such bond has been duly filed in his office. The recording of such copy and certificate in the registry of deeds in the county where such real estate or interest therein lies vacates the attachment.

§4610. Vacating attachment of personal property

When personal property is attached, the same proceedings may be had as provided in sections 4606 to 4609 and the officer shall be notified of the hearing, and the delivery to him of the copy and certificate mentioned in section 4609 vacates the attachment and he shall return the property to the petitioner on demand. When the property attached is stock in a banking or other corporation or is such that the attachment must be recorded in the town clerk's office, such copy and certificate shall be filed with the officer of such corporation, who shall be entitled to 20¢ for filing the same and necessary certificate thereof, or with the town clerk with whom the attachment is filed, and thereby the attachment is vacated.

§4611. Vacating foreign attachments

In cases of foreign attachment, the same proceedings originated by any principal defendant may be had, except that the bond to the plaintiff shall be conditioned to pay the amount, if any, which he may finally recover against the trustees, with costs on the petition, within 30 days after judgment, not exceeding the amount of the judgment against the principal defendant. The court shall require the petitioner to give bond to each trustee named in the petition, with sureties, in a sum sufficient to protect him against any judgment recovered by the plaintiff and paid by him, and his legal costs in the action, and the costs allowed him by the court at the hearing on the petition, if he appears. Such bonds, when approved by the court, shall be filed in the clerk's office for the use of the trustees. The delivery of the copy and certificate to the trustees vacates the attachment of any goods, effects or credits in their hands belonging to the petitioner.

§4612. Costs

The party finally prevailing in the action shall recover the costs of these proceedings, taxed as costs of court in other cases and certified by the court, and execution shall issue therefor.

§4613. Bond

When real estate or personal property is attached on mesne process, and in all cases of attachment on trustee process, the attachment shall be vacated upon the defendant or someone in his behalf delivering to the officer who made such attachment, or to the plaintiff or his attorney, a bond to the plaintiff in a penal sum not exceeding the amount of the attachment, such bond to be approved as to penal sum and sureties by the plaintiff or his attorney, or by any Justice or clerk of the Superior Court, conditioned that within 30 days after the rendition of the judgment, or after the adjournment of the court in which it is rendered or after the certificate of decision of the law court shall be received in the county where the cause is pending, he will pay to the plaintiff or his attorney of record the amount of said judgment including costs. The bond shall be returned by the officer with the process, for the benefit of the plaintiff, and thereupon all liability of the officer to the plaintiff by reason of such attachment shall cease. Upon request, the plaintiff or his attorney shall give to the defendant a certificate acknowledging the discharge of such attachment, which may be recorded in the registry of deeds or town clerk's office, as the case may be, in which the return of the attachment is filed. If stock in any corporation is attached, such certificate shall be filed with the officer of the corporation with whom the return of such attachment is filed and he shall record the same. In trustee process the alleged trustee shall not be liable to the principal defendant for the goods, effects and credits in his hands or possession until such certificate shall be delivered to him, and upon receiving such certificate he shall be discharged from further liability in said trustee action and need not disclose and shall not recover costs.

CHAPTER 509

EXECUTIONS

SUBCHAPTER 1

GENERAL PROVISIONS

§4651. Issue and return

Executions may be issued on a judgment of the Superior Court or the District Court after the judgment has become final by the expiration of the time for appeal, by dismissal of an appeal or on certificate of decision from the law court, unless the court has pursuant to rule ordered execution at an earlier time, and are returnable within 3 years after issuance. [PL 1995, c. 45, §1 (AMD).]

1. Filing of lien.

[PL 1987, c. 184, §22 (RP).]

2. Date and place of filing.

[PL 1987, c. 184, §22 (RP).]

3. Amount of debt or damage.

[PL 1987, c. 184, §22 (RP).]

4. Name of judgment creditor.

[PL 1987, c. 184, §22 (RP).]

5. Statement.

[PL 1987, c. 184, §22 (RP).]

SECTION HISTORY

PL 1965, c. 182 (AMD). PL 1965, c. 455 (AMD). PL 1981, c. 160 (AMD). PL 1983, c. 125, §5 (AMD). PL 1985, c. 187, §4 (AMD). PL 1987, c. 184, §22 (AMD). PL 1995, c. 45, §1 (AMD).

§4651-A. Execution liens

1. Lien on real estate. The filing of an execution duly issued by a court of this State or an attested copy thereof with a registry of deeds within 3 years after issuance of the execution creates a lien in favor of each judgment creditor upon the right, title and interest of each judgment debtor in all real estate against which a mortgage would be duly perfected if filed in the registry and that is not exempt from attachment and execution.
[PL 2005, c. 62, §1 (AMD).]

2. Lien on personal property. The filing of an execution duly issued by a court of this State or an attested copy thereof in the office of the Secretary of State within 3 years after issuance of the execution creates a lien in favor of each judgment creditor upon the right, title and interest of each judgment debtor in personal property that is not exempt from attachment and execution and that is of a type against which a security interest could be perfected by the filing of a financing statement with the office of the Secretary of State.
[PL 2005, c. 62, §2 (AMD).]

3. Lien on motor vehicles. The filing of an execution duly issued by a court of this State or an attested copy thereof where a proof of transfer would be delivered pursuant to Title 29-A, section 665, subsection 1, and delivery of an application pursuant to Title 29-A, section 657, within 3 years after issuance of the execution creates a lien in favor of each judgment creditor upon the right, title and interest of each judgment debtor in any motor vehicle for which a title certificate must be obtained pursuant to Title 29-A, chapter 7.
[PL 2005, c. 62, §3 (AMD).]

4. Amount of lien. A lien created by this section shall be in the amount sufficient to satisfy the judgment together with interest and costs.
[PL 1987, c. 184, §23 (NEW).]

5. Notice to judgment debtor. A lien created by this section becomes void and loses its status as a perfected security interest with respect to the right, title and interest of any particular judgment debtor and with respect to any other creditors of the judgment debtor unless the judgment creditor notifies the judgment debtor by certified or registered mail sent to the judgment debtor's last known address on or before the 20th day after filing or recording of the existence of the lien. The notice must contain the following:

A. The fact that a lien has been filed; [PL 1987, c. 184, §23 (NEW).]

B. The date and place the lien was filed; [PL 1987, c. 184, §23 (NEW).]

C. The amount of the judgment and costs as stated in the execution; [PL 1987, c. 184, §23 (NEW).]

D. The name of the judgment creditor and attorney, if any, including their addresses; and [PL 1987, c. 184, §23 (NEW).]

E. The following statement: "To dissolve this lien, please contact (the creditor or the creditor's attorney)." [PL 1997, c. 20, §1 (AMD).]
[PL 1997, c. 20, §1 (AMD).]

6. Filing during pendency of attachment; date of perfection. If a lien created by this section is filed or recorded during the pendency of any prejudgment or post-judgment attachment obtained in the underlying civil action against property subject to the lien, the effective date of the lien in the property must relate back to the date of perfection of the attachment. The relation back applies only to that

portion of the lien up to the amount of the attachment. The remainder of such a lien, and the full amount of a lien created when no attachment is pending, becomes effective and perfected from the date of the filing or recording of the execution.
[PL 2001, c. 275, Pt. A, §1 (AMD).]

7. Enforcement. The lien provided in this section may be enforced by a turnover or sale order pursuant to section 3131.
[PL 1987, c. 184, §23 (NEW).]

8. Abuse of lien process. A creditor who fails to discharge an execution filed against property of a debtor that is exempt from attachment and execution is liable to the debtor for actual damages suffered as a result of the failure to discharge if the debtor gave written notice and proof to the creditor that the property filed against is exempt from attachment and execution and the creditor failed to discharge the execution within 15 days after receiving the notice and proof. A debtor who prevails in an action to recover damages under this subsection is entitled to reasonable attorney's fees and costs incurred in bringing the action.
[PL 2001, c. 117, §1 (NEW).]

8. (REALLOCATED TO T. 14, §4651-A, sub-§9) Duration of lien; renewal.

[RR 2001, c. 1, §17 (RAL); PL 2001, c. 275, Pt. A, §2 (NEW).]

9. (REALLOCATED FROM T. 14, §4651-A, sub-§8) Duration of lien; renewal. A lien created pursuant to this section after the effective date of this subsection continues for a period of 20 years from the date of the filing of the writ of execution or of the recording of the writ of execution in the registry of deeds, unless the judgment is paid, discharged or released. A lien may be renewed once for a period of 20 years from the filing or recording of a renewal, pluries or alias writ of execution in the same manner as the original writ of execution was filed or recorded, with the same notice as required by subsection 5.

A. If the renewal writ is filed or recorded before the expiration of the 20-year period of the original writ of execution, the renewal writ relates back to the date that the original writ of execution was filed or recorded and prevents the expiration of the lien. [RR 2001, c. 1, §17 (RAL).]

B. A lien created pursuant to this section when the date of the recording of the writ of execution in the registry of deeds is more than 18 years prior to the effective date of this subsection may be renewed as provided in this subsection if the renewal writ is recorded within 2 years of the effective date of this subsection. [RR 2001, c. 1, §17 (RAL).]
[RR 2001, c. 1, §17 (RAL).]

10. Validation of liens. Subject to subsections 5, 8 and 9, a lien filed pursuant to subsection 1, 2 or 3 is valid and enforceable if the execution was issued on or after September 29, 1995 and the lien was filed within 3 years of the issuance of the execution.
[PL 2005, c. 62, §4 (NEW).]

SECTION HISTORY

PL 1987, c. 184, §23 (NEW). PL 1995, c. 65, §A41 (AMD). PL 1995, c. 65, §§A153,C15 (AFF). PL 1997, c. 20, §1 (AMD). PL 1999, c. 699, §D15 (AMD). PL 1999, c. 699, §D30 (AFF). RR 2001, c. 1, §17 (COR). PL 2001, c. 117, §1 (AMD). PL 2001, c. 275, §§A1,2 (AMD). PL 2005, c. 62, §§1-4 (AMD).

§4652. One-year limit; exception

No first execution shall be issued after one year from the time the judgment has become final by the expiration of the time for appeal, by dismissal of an appeal, or on certificate of decision from the

law court, except in cases provided for by section 4701 in which the first execution may be issued within not less than one year nor more than 2 years from the time of judgment.

§4653. Renewal in 10 years

An alias or pluries execution may be issued within 10 years after the day of issuance of the preceding execution and not afterwards. [PL 2001, c. 275, Pt. A, §3 (AMD).]

SECTION HISTORY

PL 2001, c. 275, §A3 (AMD).

§4654. Execution not timely; motion against debtor

When execution is not issued within the times prescribed by sections 4652 and 4653, motion against the debtor may be made to show cause why execution on the judgment should not be issued, and if no sufficient cause is shown, execution may be issued thereon.

§4655. Interest on judgments

On executions issued on judgments interest shall be collected from the time of judgment.

§4656. New execution on proof of loss

A justice of the court in which the judgment was rendered, upon proof by affidavit or otherwise of the loss or destruction of an execution unsatisfied in whole or in part, may order a new execution to be issued for what remains unsatisfied.

§4657. Execution on award to creditor by commissioners on solvent estate

(REPEALED)

SECTION HISTORY

PL 1979, c. 540, §20 (RP).

§4658. Executions directed into other counties

When a debtor removes or is out of the county in which judgment is rendered against him by a Judge of a District Court, such judge may issue execution against him, directed to the proper officers in the county where he is supposed to be, and it has the same force as if issued by a court in the latter county.

§4659. Actions and executions; when directed into other counties

In actions against bail, indorsers for costs, and proceedings after judgment against executors or administrators, and in all actions against 2 or more defendants before a Judge of a District Court, where the defendant or trustee resides out of the county where the proceedings are had, the judge may direct the summons, writ or execution to any proper officer of the county where such defendant or trustee resides, who shall charge fees of travel from the place of his residence to the place of service only, and postage paid by him.

SUBCHAPTER 2

BONDS

§4701. Execution stayed one year unless bond given

Execution shall not issue upon a judgment by default against an absent defendant in a personal action who has no actual notice thereof until one year after entry of the judgment unless the plaintiff first gives bond to the defendant with one or more sureties in double the amount of damages and costs, conditioned to repay to the defendant the amount of the judgment or any part thereof from which he

may ultimately be relieved as a result of motion therefor. If a bond is given, any attachment of real or personal property or attachment on trustee process shall continue for 60 days after the bond is filed with the court. If a bond is not given, any such attachment shall continue for one year and 60 days after entry of the default judgment. If the defaulted defendant files within one year of the default judgment a motion for relief therefrom, any such attachment shall continue until 60 days after denial of the motion, if it is denied, and if the motion is granted in whole or in part, shall continue for the same period as the attachment would have continued if the default judgment had not been entered.

§4702. Bond left with clerk

The bond shall be deposited with the clerk, who shall decide upon the sufficiency of the sureties, subject to an appeal to a justice of the court.

§4703. Executions on default judgment without bond, valid after one year

Whenever through accident, inadvertence or mistake an execution has been issued by the clerk or judge of any court in any county upon a judgment rendered on default of an absent defendant in a personal action, within one year after the rendition of such judgment, without deposit of the bond specified in sections 4701 and 4702, all proceedings upon or by virtue of such execution or judgment shall, after one year from the rendition of such judgment, have the same effect and validity as if the bond had been duly given, deposited and approved unless relief from the judgment has been sought within said year. If such relief from the judgment is denied, all such proceedings shall be valid as aforesaid after such dismissal.

SUBCHAPTER 3

SALES ON EXECUTION

ARTICLE 1

GENERAL PROVISIONS

§4751. Goods sold on execution

All chattels, real and personal liable at common law to attachment and not exempted therefrom by statute, may be taken and sold on execution as prescribed in this subchapter and subchapter 4. Credits of a sole proprietorship doing business under an assumed or trade name, partnership, limited liability company or corporation, other than payroll accounts expressly so designated to the credit holder by the account owner, may be taken on execution by an officer and turned over to the judgment creditor to be applied to the judgment, together with interest and costs. [PL 2007, c. 88, §2 (AMD); PL 2007, c. 466, Pt. B, §19 (AFF).]

SECTION HISTORY

PL 1983, c. 125, §6 (AMD). PL 1985, c. 187, §5 (AMD). PL 2007, c. 88, §2 (AMD). PL 2007, c. 466, Pt. B, §19 (AFF).

§4752. Time of sale

Goods and chattels, legally taken on execution, shall be safely kept by the officer at the expense of the debtor for 4 days at least after the day on which they were taken, exclusive of Sunday. They shall be sold within 14 days after the day of seizure, except as otherwise provided, unless before the time of sale the debtor redeems them by otherwise satisfying the execution.

§4753. Notice of sale

The officer shall post public notice of the time and place of sale, at least 48 hours before the time thereof, in 2 or more public places in the town or place of sale.

§4754. Adjournment of sale; time

If at the time so appointed the officer is prevented by sickness or other casualty from attending at such place or is present and deems it for the advantage of all concerned to postpone the sale, he may postpone it not exceeding 6 days after the day appointed; and so, from time to time, for like good cause, giving notice of every adjournment as required in section 4753.

§4755. Adjournment to different place

For good reason and for the purpose of obtaining a better price for the goods, the officer may, if he deems it for the benefit of the debtor, adjourn the auction to another place in the same town.

§4756. Indemnity may be required

When there is reasonable doubt as to the ownership of goods or their liability to be taken on execution, the officer may require sufficient indemnity.

§4757. Buyer's refusal; penalty

If the highest bidder at such sale refuses to take and pay for an article, the officer shall sell it again at auction at any time within 10 days, giving due notice of the 2nd sale; and account for what he receives on the 2nd sale, and for any damages that he recovers of the first bidder for a loss on the resale, as for so much received on the execution.

§4758. Return of sale; fraud in sale or return

The officer shall, in his return on the execution, particularly describe each article or lot of goods sold and the price at which it was sold. If he commits any fraud in the sale or return, he forfeits to the debtor 5 times the sum of which he defrauds him, to be recovered in a civil action.

§4759. Disposal of proceeds

The money arising from the sale of any property on execution shall be applied to pay the charges and satisfy the execution. The residue, if any, shall be returned to the debtor on demand or otherwise applied as provided in section 5001.

§4760. Buildings on leased land sold for land rent; redemption

When a lessor of lands, leased for the purpose of erecting a building thereon, commences an action against the lessee, attaches the buildings within 6 months after the rent becomes due and recovers such rent, he may on execution cause the rents and profits of such buildings to be sold for a term sufficient to pay the debt and costs or cause such building to be sold like any other personal estate. In all cases, any mill or building seized and sold on execution as a chattel personal may be redeemed within one year, as land levied upon by appraisement may be. The remedies and rights of the parties are the same as those of mortgagor and mortgagee, except the rate of interest, which shall be 10% a year.

§4761. Warrant against turnpike and other corporations taking toll

When damages are assessed in favor of a person by the county commissioners, by a committee or by verdict of a jury for an injury sustained by him through the acts of any corporation authorized to demand and receive toll, and they are not paid within 30 days after order or the acceptance of such verdict or report of the committee, he may have a warrant of distress against such corporation for such damages, interest and costs. The officer holding such warrant may adjourn the vendue, as in the sale of goods on execution. All proceedings respecting the attachment and sale on execution of the franchise of such corporation and sales on warrant of distress may be had in the county in which the creditor, the president, clerk, treasurer or a director of said corporation, if there is any such officer, if not, a stockholder, resides.

§4762. Proceeds of sale of mortgaged property; sale without tender

After deducting his fees and charges of sale, the officer shall apply the proceeds of the sale of property mortgaged or pledged to the payment of the sum paid or tendered to the mortgagee, pledgee or holder, and the interest thereon from the time of such payment; and the residue of such proceeds shall be applied to the satisfaction of the plaintiff's judgment as provided by law; or the plaintiff may have the property seized and sold on the execution, as in other cases, subject to the rights and interests of such mortgagee, pledgee or holder, without paying or tendering the debt due to him.

ARTICLE 2

COIN AND BANK NOTES

§4801. Mode of sale

Current gold or silver coin may be taken on execution and paid to the creditor as money collected; and bank notes and all other evidences of debts, issued by any moneyed corporation and circulated as money, may be taken on execution and paid to the creditor at their par value if he will accept them; otherwise, they may be sold like other chattels.

ARTICLE 3

CORPORATE FRANCHISES

§4851. Notice of sale

When judgment is recovered against a bridge, canal or other incorporated company with power to receive toll, its franchise may be sold on execution at public auction by giving notice of the time and place of sale by posting a notification in any town in which the treasurer, clerk or any officer thereof, if there are any officers, and if not, where any stockholder resides, for 30 days at least before the day of sale, and by causing an advertisement, naming the creditor thereon, to be inserted for 3 weeks successively in a newspaper of general circulation in a county where either of said officers, or, if the company is without officers, where any stockholder resides, the last publication being at least 4 days before the day of sale. [PL 1987, c. 667, §10 (AMD).]

SECTION HISTORY

PL 1987, c. 667, §10 (AMD).

§4852. Mode of sale; possession

In the sale of such franchise, whoever will pay and satisfy such execution, all fees and incidental expenses, in consideration of being entitled to receive to his own use all such toll as the corporation is entitled to receive, for the shortest period of time, is the highest bidder and the purchaser for such period; and immediately after such sale, the officer shall deliver to him possession of the tollhouses and gates, in whatever county situated, and state his doings therein in his return.

§4853. Rights and duties of purchaser

The purchaser of such franchise and those claiming under him may receive to their own use the tolls accruing within the time limited in the purchase, and shall have all the powers of the corporation necessary for the convenient use of the property, be subject to the same duties and penalties during the term of said purchase and may recover of said corporation any moneys paid or expenses incurred in consequence of such liability, and without their fault or negligence.

§4854. Right of corporation to redeem

The corporation, at any time within 3 months after the day of sale, may redeem said franchise by paying to the purchaser the sum which he paid in satisfaction of the execution, with 12% interest, in addition to the toll received.

§4855. Application of provisions to railroad franchises in State; notice in interested county; conveyance

Sections 4851 to 4854 apply to the franchises of railroad corporations whose railroads lie wholly within the State, except that notice shall be given of the time and place of such sale by posting a notification thereof at the courthouse in each county through which such railroad runs, either wholly or in part, for 30 days at least before the day of sale and by causing an advertisement to be inserted for 3 weeks successively in at least one newspaper published in each county through which the road runs, either wholly or in part, the last publication to be at least 4 days before the day of sale; and if there is no newspaper printed in any one or more of such counties, then in the state paper instead. When the company has an established office in the State, notice of the sale shall also be given by leaving an attested copy thereof at the office of said company not less than 30 days previous to such sale. Notice given in the manner herein provided is sufficient. The officer shall deliver to the purchaser a conveyance by deed of the franchise so sold.

ARTICLE 4

CORPORATE SHARES

§4901. Mode of sale

Any share or interest of a stockholder or proprietor in an incorporated company may be taken on execution and sold in the following manner and not otherwise, anything in the charter of such company to the contrary notwithstanding.

§4902. Notice of seizure

If the property was not attached on mesne process in the same action, the officer shall leave a copy of the execution with the treasurer, cashier, clerk or other recording officer of the company and the property shall be considered as seized on execution when the copy is so left. If it was so attached and remains attached, the officer shall proceed in seizing and selling it on execution as provided in section 4905.

§4903. Certification of shares by corporate officers

The officer of the company having the care of the records or account of shares or interest of the stockholders shall, on exhibition to him of the execution, give the officer holding it a certificate of the number of shares held by the judgment debtor or of the amount of his interest. [PL 1969, c. 504, §24 (AMD).]

SECTION HISTORY

PL 1969, c. 504, §24 (AMD).

§4904. Shares sold transferred; new certificate to purchaser; dividends

Within 14 days after the sale, the officer shall leave an attested copy of the execution and of the return thereon with the officer of the company whose duty it is to record transfers of shares. The purchaser is thereupon entitled to a certificate or certificates of the shares bought by him, on paying the fees therefor and for recording the transfers. If such shares or interest were attached in the action in which the execution issued, he shall have all dividends which accrue after the attachment.

§4905. Notice of sale

In selling such shares or interest, the officer holding the execution shall give notice in writing of the time and place of sale to the debtor, by leaving it at his last and usual place of abode if within the county where the officer dwells, otherwise by forwarding it to him by mail if his residence is known to such officer, postage paid, whether within or without the State and public notice thereof by posting it in one or more public places in the town where the sale is to be made and in 2 adjoining towns, if there are so many, 30 days at least before the day of sale; and shall publish an advertisement of the same import, naming the judgment debtor, for 3 weeks successively before the day of sale in a newspaper of general circulation in the county. [PL 1987, c. 667, §11 (AMD).]

SECTION HISTORY

PL 1987, c. 667, §11 (AMD).

ARTICLE 5

EXECUTIONS AGAINST TOWNS

§4951. Executions and warrants of distress against towns

All executions or warrants of distress against a town shall be issued against the goods and chattels of the inhabitants thereof and against the real estate situated therein, whether owned by such town or not. The officer executing them shall satisfy them by distress and sale of the goods and chattels of the inhabitants as provided by law. For want thereof, after diligent search, which fact the officer shall certify in his return, he shall levy upon and sell so much of the real estate in said town by lots, as they are owned, occupied or lotted out upon the plan thereof, as is necessary to satisfy said precepts and expenses of sale.

§4952. Notice and incidents of sale

The officer shall advertise in the state paper and in a newspaper of general circulation in the county where the lands lie, if any, for 3 weeks successively, the names of such proprietors as are known to him, of the lands which he proposes to sell, with the amount of the execution or warrant of distress. Where the names of the proprietors are not known, he shall publish the numbers of the lots or divisions of said land and the last publication shall be 3 months before the time appointed for the sale. If necessary to complete the sale, he may adjourn it from day to day not exceeding 3 days. He shall give a deed to the purchaser of said land in fee, expressing therein the cause of sale. The proprietor of the land so sold may redeem it within a year after the sale by paying the sum for which it was sold, the necessary charges and interest thereon. [PL 1987, c. 667, §12 (AMD).]

SECTION HISTORY

PL 1987, c. 667, §12 (AMD).

§4953. Remedy of owner of property sold

The owner of any real or personal estate so sold may recover against the town, in a civil action, the full value thereof with interest at the rate of 12% yearly, with costs of the action; and may prove and recover the real value thereof, whatever was the price at which it was sold.

SUBCHAPTER 4

SUCCESSIVE EXECUTIONS

§5001. Several executions

If goods or other property sold on execution have been attached by other creditors or seized on other executions by the same or another officer, or if, before payment of the residue to the debtor, any other writ of attachment or execution against him is delivered to the officer who made the sale, the proceeds shall be applied to the discharge of the several judgments in the order in which the writs of attachment or execution were served. The residue, if any, shall be paid over to the debtor.

§5002. Notice of 2nd attachment to first attaching officer

If a share in a corporation or other property that may be attached without taking and keeping possession thereof is attached or taken on execution, and is subsequently attached or taken on execution by another officer, he shall give notice thereof to the officer who sells under the first attachment or seizure. If, without such notice, he pays the balance of the proceeds of the sale to the debtor, he is not liable therefor to the person claiming under such subsequent attachment or seizure.

§5003. Preservation of lien in case of prior attachment

When real or personal estate is seized on execution and further service is suspended by a prior attachment thereof, such estate shall be bound by the seizure until it is set off or sold in whole or in part under the prior attachment, or until the attachment is dissolved, if the officer seizing such real estate, within 5 days thereafter, files in the office of the register of deeds in the county or district where it lies a copy of his return of the seizure, with the names of the parties, the court at which judgment was recovered, and the date and the amount of the execution. The register shall file and enter the same of record, as in case of attachment of real estate on writs. Like fees shall be allowed to the officer and register therefor.

§5004. Removal of prior attachment

If the prior attachment is dissolved or the estate is set off or sold in part under it, the estate or remaining part thereof continues bound for 30 days thereafter by such seizure on execution. The service of the execution may be completed within that time as if the estate had been then first seized thereon, although the return day of the execution has passed.

§5005. Setoff of executions

When an officer has in his hands executions, wherein the creditor in one is debtor in the other in the same capacity and trust, he shall cause one execution to satisfy the other so far as it will extend. If one of such executions is in the hands of the officer, and the creditor in the other tenders his execution to him and requests him to do so, he shall so set off one against the other.

§5006. No setoff allowed

Executions shall not thus be set off against each other, when the sum due on one of them has been lawfully and in good faith assigned to another person before the creditor in the other execution became entitled to the sum due thereon; nor when there are several creditors or debtors in one execution, and the sum due on the other is due to or from a part of them only; nor to so much of the first execution as is due to the attorney in the action for his fees and disbursements therein.

CHAPTER 511

BAIL IN CIVIL ACTION

§5051. Bail bond returned with writ

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§5052. Sureties

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§5053. Liability of obligors

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§5054. Surrender of principal

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§5055. Names of bail entered on execution

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§5056. Officer to notify bail; fees paid

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§5057. Surrender of principal in court

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§5058. Avoidance of principal; liability of bail

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§5059. When action lies against bail

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§5060. Pleadings and defense by bail

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§5061. Surrender of principal; exoneration of bail

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

§5062. Remedy of bail against principal

(REPEALED)

SECTION HISTORY

PL 1971, c. 408, §6 (RP).

PART 6

EXTRAORDINARY WRITS

CHAPTER 601

GENERAL PROVISIONS

§5301. Concurrent jurisdiction

The Supreme Judicial Court and the Superior Court shall have and exercise concurrent original jurisdiction in proceedings in habeas corpus, prohibition, error, mandamus, quo warranto and certiorari. [PL 1967, c. 441, §6 (AMD).]

SECTION HISTORY

PL 1967, c. 441, §6 (AMD).

CHAPTER 603

CERTIORARI

§5351. Court of issue

(REPEALED)

SECTION HISTORY

PL 1967, c. 441, §7 (RP).

§5352. Proceedings

(REPEALED)

SECTION HISTORY

PL 1967, c. 441, §7 (RP).

§5353. Costs

(REPEALED)

SECTION HISTORY

PL 1967, c. 441, §7 (RP).

§5354. Limitations

(REPEALED)

SECTION HISTORY

PL 1967, c. 441, §7 (RP).

CHAPTER 605

QUO WARRANTO

§5401. Issuance of writ

(REPEALED)

SECTION HISTORY

PL 1967, c. 441, §7 (RP).

§5402. Attorney General excused as party

(REPEALED)

SECTION HISTORY

PL 1967, c. 441, §7 (RP).

CHAPTER 607

MANDAMUS

§5451. Petition; questions of law reserved; issue and return

(REPEALED)

SECTION HISTORY

PL 1967, c. 441, §7 (RP).

§5452. Return and answer; judgment and peremptory writ; costs; false return

(REPEALED)

SECTION HISTORY

PL 1967, c. 441, §7 (RP).

§5453. Citation of 3rd person to show cause

(REPEALED)

SECTION HISTORY

PL 1967, c. 441, §7 (RP).

§5454. No abatement on death, resignation or removal

(REPEALED)

SECTION HISTORY

PL 1967, c. 441, §7 (RP).

CHAPTER 609

HABEAS CORPUS

§5501. Right to writ

Every person unlawfully deprived of his personal liberty by the act of another, except in the cases mentioned, shall of right have a writ of habeas corpus according to the provisions herein contained.

§5502. Post-conviction habeas corpus

(REPEALED)

SECTION HISTORY

PL 1979, c. 701, §2 (RP).

§5503. Jurisdiction; commencement of proceedings; petition; amendments

(REPEALED)

SECTION HISTORY

PL 1979, c. 701, §2 (RP).

§5504. Contents of petition

(REPEALED)

SECTION HISTORY

PL 1979, c. 701, §2 (RP).

§5505. Further pleadings and procedure

(REPEALED)

SECTION HISTORY

PL 1969, c. 545 (AMD). PL 1971, c. 342, §1 (AMD). PL 1979, c. 701, §2 (RP).

§5506. Counsel for indigent petitioners

(REPEALED)

SECTION HISTORY

PL 1979, c. 701, §2 (RP).

§5507. Waiver of grounds not claimed; effect of prior petition of coram nobis or error

(REPEALED)

SECTION HISTORY

PL 1979, c. 701, §2 (RP).

§5508. Review of final judgment; release pending appeal

(REPEALED)

SECTION HISTORY

PL 1969, c. 261 (AMD). PL 1971, c. 342, §2 (AMD). PL 1979, c. 701, §2 (RP).

§5509. Minors in armed forces entitled to writ

A minor enlisted within the State into the Army or Navy of the United States without the written consent of his parent or guardian shall have all the benefits of this chapter on the application of himself, parent or guardian.

§5510. Parent or guardian of minor may have writ

The parent or guardian of any minor imprisoned or restrained of his liberty shall be entitled to the writ of habeas corpus for him, if he would be entitled to it on his own application.

§5511. Application for writ on behalf of another

The Supreme Judicial Court or the Superior Court or any justice of either of said courts, on application of any person, may issue the writ of habeas corpus to bring before them any party alleged to be imprisoned or restrained of his liberty but not convicted and sentenced, who would be entitled to it on his own application, when from any cause he is incapable of making it.

§5512. Writ not available

The following persons shall not of right have such writ:

1. Persons committed to jail for certain offenses. Persons committed to or confined in prison or jail on suspicion of treason, felony or accessories before the fact to a felony, when the same is plainly and specifically expressed in the warrant of commitment;

2. Persons committed on civil process. Persons committed in execution of civil legal process or on mesne process on any civil action on which they are liable to be arrested or imprisoned.

§5513. Application

Application for such writ by any person shall be made to any Justice of the Supreme Judicial Court or Superior Court, regardless whether or not the Supreme Judicial Court or Superior Court is in session. It shall be made returnable before such justice to whom application is made. If the writ is denied and an appeal taken to the law court, the person restrained may be admitted to bail within the discretion of the justice rendering judgment thereon, pending such appeal.

§5514. Where writ returnable; entry of judgment

When awarded by a Justice of the Supreme Judicial Court or of the Superior Court, such writ may issue, under his hand and seal or upon his order from any clerk's office in vacation as if issued by the court, and run throughout the State, and may be returnable before the court or before himself or any other justice thereof, and shall be entered upon the docket of the court in the county where returnable, and the judgment shall there be recorded by the clerk.

§5515. Application; denial of writ

The application shall be in writing, signed and sworn to by the person making it, stating the place where and the person by whom the restraint is made. The applicant shall produce to the court or justice a copy of the precept by which the person is so restrained, attested by the officer holding it. If, on inspection, it appears to the court or justice that such person is thereby lawfully imprisoned or restrained of his liberty, a writ shall not be granted, unless from examination of the whole case, the court or justice is of opinion that it ought to issue.

§5516. Excessive bail

If it appears that he is imprisoned on mesne process for want of bail and the court or justice thinks that excessive bail is demanded, reasonable bail shall be fixed, and on giving it to the plaintiff, he shall be discharged.

§5517. Refusal of copy of precept; writ granted

If the prison keeper or other officer having the custody of such person refuses or unreasonably delays to deliver to the applicant an attested copy of the precept by which he restrains him on demand therefor, the court or justice, on proof of such demand and refusal, shall forthwith issue the writ as prayed for.

§5518. Form of writ

When such writ is issued on an application in behalf of any person described in section 5512, it shall be substantially as follows:

"STATE OF MAINE.

"C...., ss. To A. B., of ....;
(L.S.) Greeting.

"We command you, that you have the body of C. D., in our prison, at ...., under your custody," (or by you imprisoned and restrained of his liberty, as the case may be,) "as it is said, together with the day and cause of his taking and detaining, by whatever name he is called or charged, before our Supreme Judicial" (or Superior) "Court, held at ...., within and for the County of ...., immediately after the receipt of this writ, to do and receive what our said court shall then and there consider concerning him in this behalf, and have you there this writ.

"Witness ....., Esquire, our ...., at ...., this.... day of ...., in the year 19...

...., Clerk."

The like form shall be used by any justice of said court, changing what should be changed, when such writ is awarded by him.

§5519. Time of service, return and tender of fees

When such writ is offered to the officer to whom it is directed, he shall receive it. On payment or tender of such sum as the court or justice thereof directs, he shall make due return thereof within 3 days if the place of return is within 20 miles of the place of imprisonment; if over 20 and less than 100 miles, within 7 days; and if more than 100 miles, within 14 days. If such writ was issued against such officer, on his refusal or neglect to deliver, on demand, to the applicant a copy of the precept by which he restrained the person of his liberty, in whose behalf application was made, then the officer shall obey the writ without payment or tender of expenses.

§5520. Production of body of restrained person; sickness

The person making the return shall, at the same time, bring the body of the party, as commanded in the writ, if in his custody or power or under his restraint, unless prevented by sickness or infirmity of such party. In such case that fact shall be stated in the return. If proved to the satisfaction of the court or justice, a justice of the court may proceed to the place where the party is confined and there make his examination or may adjourn it to another time or make such other order in the case as law and justice require.

§5521. Examination of causes of restraint

On return of the writ, the court or justice, without delay, shall proceed to examine the causes of imprisonment or restraint, and may adjourn such examination from time to time.

§5522. Notice to interested persons before discharge

When it appears that the party is detained on any process under which any other person has an interest in continuing such imprisonment or restraint, the party shall not be discharged until notice has been given to such other person or his attorney, if within the State or within 30 miles of the place of examination, to appear and object, if he sees cause. If imprisoned on any criminal accusation, he shall not be discharged until sufficient notice has been given to the Attorney General or other attorney for the State that he may appear and object, if he thinks fit.

§5523. Proceedings in court

The party imprisoned or restrained may deny allegations of fact in the return or statement and may allege other material facts. The court or justice may, in a summary way, examine the cause of imprisonment or restraint, hear evidence produced on either side, and if no legal cause is shown for

such imprisonment or restraint, the court or justice shall discharge him, except as provided in section 5516.

§5524. Detention for bailable offense; admission to bail

(REPEALED)

SECTION HISTORY

PL 1981, c. 456, §A54 (AMD). PL 1987, c. 736, §15 (AMD). PL 1987, c. 758, §5 (RP). PL 1989, c. 502, §A39 (RP).

§5525. Form of writ if restraint not by officer

In cases of imprisonment or restraint of personal liberty by any person not a sheriff, deputy sheriff, constable, jailer or marshal, deputy marshal or other officer of the courts of the United States, the writ shall be in the following form, viz:

"STATE OF MAINE.

[L.S.] "To the sheriffs of our several counties and their respective deputies,

Greeting.

"We command you, that you take the body of C.D., of ...., imprisoned and restrained of his liberty, as it is said, by A.B., of ...., and have him before our Supreme Judicial" (or Superior) "Court, held at ...., within and for our County of ...., immediately after receipt of this writ, to do and receive what our court shall then and there consider concerning him in this behalf; and summon the said A.B. then and there to appear before our said court, to show cause for taking and detaining said C.D., and have you there this writ with your doings thereon.

"Witness, ..., Esquire, our ...., at ...., this ... day of ...., in the year 19.... ...., Clerk."

§5526. Issuance and service of writ

The writ described in section 5525 may be issued by the Supreme Judicial Court or Superior Court sitting in any county in which the person in whose behalf application is made is restrained or by any justice thereof, the form to be varied so far as necessary when issued by a justice of the court, and may be served in any county in the State.

§5527. Designation of unknown person; restraining person

The person having custody of the prisoner may be designated by the name of his office, if he has any, or by his own name; or if both are unknown or uncertain, he may be described by an assumed name. Anyone served with the writ shall be deemed the person thereby intended.

§5528. -- restrained person

The person restrained shall be designated by his name, if known; if unknown or uncertain, in any other way so as to make known who is intended.

§5529. Form of return

In cases under section 5518, the person who makes the return, and in cases under section 5525, the person in whose custody the prisoner is found, shall state in writing to the court or justice before whom the process is returned, plainly and unequivocally:

1. Whether party in custody. Whether he has or has not the party in his custody or power, or under restraint;

2. If so, authority and cause. If he has, he shall state, at large, the authority and true and whole cause of such imprisonment or restraint upon which the party is detained; and,

3. If transferred to another. If he has had the party in his custody or power or under his restraint and has transferred him to another, he shall state particularly to whom, at what time, for what cause and by what authority such transfer was made.

§5530. Verification of returns

Such return or statement shall be signed and sworn to by the person making it, unless he is a sworn public officer and makes and signs his return in his official capacity.

§5531. Custody of party

The party may be bailed to appear from day to day until judgment is rendered or remanded or committed to the sheriff or placed in custody, as the case requires.

§5532. Neglect of officer to deliver copy of precept

An officer forfeits $200 to a prisoner if the officer refuses or neglects, within the time period provided in subsection 1 or 2, to deliver a true and attested copy of the warrant or process by which the officer detains a prisoner to any person who demands it and tenders the fee for the copy. [PL 1987, c. 639 (RPR).]

1. Sentenced prisoners. In the case of sentenced prisoners, the copy of the warrant or process must be delivered within 3 business days of the demand. As used in this subsection, "business day" has the same meaning as found in Title 21-A, section 1, subsection 4.
[PL 1987, c. 639 (NEW).]

2. Other prisoners. In the case of any prisoner other than a sentenced prisoner, the copy of the warrant or process, which need not be a true and attested copy, must be delivered within 4 hours of the demand.
[PL 1991, c. 402, §1 (AMD).]

SECTION HISTORY

PL 1987, c. 639 (RPR). PL 1991, c. 402, §1 (AMD).

§5533. Failure to serve writ; contempt

If any person or officer to whom such writ is directed refuses to receive it or neglects to obey and execute it as required, and no sufficient cause is shown therefor, he forfeits to the aggrieved party $400. The court or justice before whom the writ was returnable shall proceed forthwith by attachment as for a contempt, to compel obedience to the writ and to punish for the contempt.

§5534. Attachment against sheriff; service

If such attachment is issued against a sheriff or his deputy, it may be directed to any person therein designated, who shall thereby have power to execute it, and the sheriff or his deputy may be committed to jail on such process in any county but his own.

§5535. Refusal to obey writ

If the person to whom the writ is directed refuses to obey and execute it, the court or justice may issue a precept to any officer or other person therein named, commanding him to bring the person for whose benefit the writ was issued before such court or justice. The prisoner shall thereupon be discharged, bailed or remanded as if brought in on habeas corpus.

§5536. No rearrest after discharge

No person discharged by post-conviction review, except as provided in Title 15, chapter 305-A, shall be again imprisoned or restrained for the same cause, unless indicted therefor, convicted thereof or committed for want of bail; or unless, after a discharge for defect of proof or some material defect in the commitment in a criminal case, he is arrested on sufficient proof and committed by legal process for the same offense. [PL 1981, c. 470, Pt. A, §32 (AMD).]

SECTION HISTORY

PL 1981, c. 470, §A32 (AMD).

§5537. Transfer of prisoner with intent to elude service; penalty

A person ordered to be committed to prison on a criminal charge shall be carried to such prison as soon as may be and shall not be delivered from one officer to another except for easy and speedy conveyance; nor removed without his consent from one county to another unless by habeas corpus. If anyone having in his custody or under his power a person entitled to a writ of habeas corpus, whether issued or not, transfers him to the custody of another or changes his place of confinement with intent to elude the service of such writ, he forfeits $400 to the party aggrieved.

§5538. Penalty no bar to action

No penalty established by this chapter shall bar any action at common law for damages for false imprisonment.

§5539. Third person may appear by stipulating for costs

When a person is unlawfully carried out of the State or is imprisoned in a secret place, any other person may appear for him in an action therefor in his name, who shall stipulate for the payment of costs as the court orders.

§5540. Bail; exceptions

(REPEALED)

SECTION HISTORY

PL 1987, c. 758, §6 (RP).

§5541. Bail commissioners appointed by the court

(REPEALED)

SECTION HISTORY

PL 1979, c. 257, §1 (RPR). PL 1981, c. 456, §A55 (AMD). PL 1983, c. 688, §8 (AMD). PL 1987, c. 162 (RPR). PL 1987, c. 758, §7 (RP).

§5542. Bail for persons committed for not finding sureties

(REPEALED)

SECTION HISTORY

PL 1965, c. 356, §§15,16 (AMD). PL 1973, c. 228 (AMD). PL 1975, c. 205 (AMD). PL 1985, c. 35 (AMD). PL 1987, c. 758, §8 (RP).

§5543. Surety bonds authorized in criminal cases

In any criminal proceeding or mesne process or other process where a bail bond recognizance or personal sureties or other obligation is required, or whenever any person is arrested and is required or permitted to recognize with sureties for his appearance in court, the court official or other authority authorized by law to accept and approve the same shall accept and approve in lieu thereof, when offered, a good and sufficient surety bond duly executed by a surety company authorized to do business in this State.

§5544. Admission to bail before commitment; on Lord's Day

(REPEALED)

SECTION HISTORY

PL 1971, c. 291 (AMD). PL 1973, c. 788, §60 (AMD). PL 1977, c. 510, §2 (AMD). PL 1979, c. 663, §81 (AMD). PL 1987, c. 758, §9 (RP).

§5545. Habeas corpus for prisoner as witness

A court may issue a writ of habeas corpus, when necessary, to bring before it a prisoner for trial in a cause pending in such court, or to testify as a witness when his personal attendance is deemed necessary for the attainment of justice.

Whenever, under this section or under any other section in this chapter, a court issues a writ of habeas corpus ordering before it a prisoner confined in any penal or correctional institution under the control of the Department of Corrections, or confined in any county jail, its order as to the transportation of the prisoner to and from the court must be directed to the sheriff of the county in which the court is located. It is the responsibility of the sheriff or any one or more of the sheriff's authorized deputies pursuant to any such order to safely transport a prisoner to and from the court and to provide safe and secure custody of the prisoner during the proceedings, as directed by the court. At the time of removal of a prisoner from an institution, the transporting officer shall leave with the head of the institution an attested copy of the order of the court, and upon return of the prisoner shall note that return on the copy. [PL 2015, c. 335, §5 (AMD).]

Any prisoner who escapes from custody of the sheriff or any of his deputies or any other law enforcement officer following removal for appearance in court, from a penal or correctional institution or from a county jail, and prior to return thereto, shall be chargeable with escape from the penal or correctional institution or county jail from which he was removed, and shall be punished in accordance with Title 17-A, section 755. [PL 1975, c. 740, §1-A (RPR).]

SECTION HISTORY

PL 1969, c. 71 (AMD). PL 1971, c. 224 (AMD). PL 1975, c. 740, §1-A (AMD). PL 1989, c. 722, §4 (AMD). PL 1995, c. 560, §K82 (AMD). PL 1995, c. 560, §K83 (AFF). PL 1999, c. 583, §1 (AMD). PL 2001, c. 354, §3 (AMD). PL 2003, c. 689, §B6 (REV). PL 2007, c. 653, Pt. A, §4 (AMD). PL 2015, c. 335, §5 (AMD).

§5546. Habeas corpus for mentally ill person

When a mentally ill person is arrested or imprisoned on mesne process or execution in a civil action, a Justice of the Supreme Judicial Court or of the Superior Court or the judge of probate within his county, on application, may inquire into the case; issue a writ of habeas corpus; cause such person to be brought before him for examination; and after notice to the creditor or his attorney, if either is living in the State, and a hearing, if it is proved to the satisfaction of said justice or judge that the person is mentally ill, he may discharge him from arrest or imprisonment; and the creditor may make a new arrest on the same demand when the debtor becomes of sound mind. If he is arrested on the same demand a 2nd time before he becomes of sound mind and is again discharged for that reason, he is forever after exempt from arrest for the same cause.

§5547. Orders to ensure the integrity of the judicial process

(REPEALED)

SECTION HISTORY

PL 1987, c. 300 (NEW). PL 1987, c. 758, §10 (RP). MRSA T. 14 §5547 (RP).

PART 6-A

CIVIL VIOLATION PROCEEDINGS

CHAPTER 621

GENERAL PROVISIONS

§5601. Statute of limitations

1. Three-year period of limitation. A proceeding against a person for a Title 29-A traffic infraction or a Title 12 civil violation related to marine resources laws and inland fisheries and wildlife laws must be commenced within 3 years after the traffic infraction or civil violation is committed. The burden is on the defendant to prove by a preponderance of the evidence that a proceeding against a person for the traffic infraction or civil violation was commenced after the expiration of the 3-year period of limitation.
[PL 2001, c. 421, Pt. A, §1 (NEW); PL 2001, c. 421, Pt. C, §1 (AFF).]

2. Limitations on period of limitation. The period of limitation may not run:

A. During any time when the defendant is absent from the State, but in no event may this paragraph extend the period of limitation by more than 5 years; or [PL 2001, c. 421, Pt. A, §1 (NEW); PL 2001, c. 421, Pt. C, §1 (AFF).]

B. During any time when a traffic infraction or civil violation proceeding against the defendant for the same traffic infraction or civil violation based on the same conduct is pending in this State. [PL 2001, c. 421, Pt. A, §1 (NEW); PL 2001, c. 421, Pt. C, §1 (AFF).]
[PL 2001, c. 421, Pt. A, §1 (NEW); PL 2001, c. 421, Pt. C, §1 (AFF).]

3. Definitions. For purposes of this section:

A. A civil violation is committed when every definitional component of the civil violation has occurred or, if the civil violation consists of a continuing course of conduct, at the time when the course of conduct or the defendant's complicity in the course of conduct is terminated; and [PL 2001, c. 421, Pt. A, §1 (NEW); PL 2001, c. 421, Pt. C, §1 (AFF).]

B. A civil violation proceeding is commenced whenever a complaint or citation is filed. [PL 2001, c. 421, Pt. A, §1 (NEW); PL 2001, c. 421, Pt. C, §1 (AFF).]
[PL 2001, c. 421, Pt. A, §1 (NEW); PL 2001, c. 421, Pt. C, §1 (AFF).]

SECTION HISTORY

PL 2001, c. 421, §A1 (NEW). PL 2001, c. 421, §C1 (AFF).

§5602. Restitution

The court may order a person adjudicated as having committed a civil violation to pay restitution as part of the judgment. Title 17-A, chapter 69 applies to the determination, ordering, payment and enforcement of an order of restitution. [PL 2019, c. 113, Pt. C, §28 (AMD).]

SECTION HISTORY

PL 2001, c. 421, §A1 (NEW). PL 2001, c. 421, §C1 (AFF). PL 2019, c. 113, Pt. C, §28 (AMD).

§5603. License suspension

1. Grounds for suspension. A department or agency of the State may suspend a license, permit or certificate issued by that department or agency if the person holding the license, permit or certificate is convicted or adjudicated of violating a law or rule administered by that department or agency.
[PL 2001, c. 421, Pt. A, §1 (NEW); PL 2001, c. 421, Pt. C, §1 (AFF).]

2. Effective date of suspension. For violations having a minimum statutory suspension period, a suspension is effective upon conviction or adjudication and the license, permit or certificate holder must surrender the license, permit or certificate immediately to the issuing department or agency of the

State. For a violation that does not have a minimum statutory suspension period, a suspension is effective upon written notification of suspension by the department or agency. The license holder must surrender that license, permit or certificate to the department or agency upon receipt of a notice of suspension and is entitled to a hearing under subsection 3.
[PL 2001, c. 421, Pt. A, §1 (NEW); PL 2001, c. 421, Pt. C, §1 (AFF).]

3. Hearing. A person receiving a notice of suspension under subsection 2 may request a hearing on that suspension. A request for a hearing must be in writing and must be made not later than 30 days after receipt of the suspension notice required under subsection 2. The department or agency of the State that issued the suspension notice shall notify the person of the date and location of the hearing.

A. A person may present evidence at a hearing concerning the violation that might justify reinstatement of the license, permit or certificate or the reduction of the suspension period. If the person denies any of the facts contained in the record, the person has the burden of proof. [PL 2001, c. 421, Pt. A, §1 (NEW); PL 2001, c. 421, Pt. C, §1 (AFF).]

B. Decisions of the department or agency must be in writing. Except as provided in paragraph C, the department or agency may reinstate the license, permit or certificate or reduce the suspension period if the department or agency finds that the person has not been convicted or adjudicated, or that reinstatement of the license, permit or certificate or reduction of the suspension period would be in the best interests of justice. [PL 2001, c. 421, Pt. A, §1 (NEW); PL 2001, c. 421, Pt. C, §1 (AFF).]

C. The department or agency may not waive or reduce any mandatory minimum suspension period established in statute. [PL 2001, c. 421, Pt. A, §1 (NEW); PL 2001, c. 421, Pt. C, §1 (AFF).]
[PL 2001, c. 421, Pt. A, §1 (NEW); PL 2001, c. 421, Pt. C, §1 (AFF).]

4. Supplement; superseded. The authority conferred by this section is in addition to the authority a department or agency of the State has to enforce violations under other provisions of law. Statutes that provide specific authority for a department or agency to suspend or revoke a license, permit or certificate supersede this section.

This section may not be construed to create any right to a hearing when such a hearing otherwise would be within the discretion of the department or agency in accordance with law.
[PL 2001, c. 421, Pt. A, §1 (NEW); PL 2001, c. 421, Pt. C, §1 (AFF).]

SECTION HISTORY

PL 2001, c. 421, §A1 (NEW). PL 2001, c. 421, §C1 (AFF).

§5604. Monetary sanctions

1. Designation. A monetary sanction authorized by law and imposed by the court for a civil violation may be designated a "fine," "penalty," "forfeiture," "surcharge" or "assessment" or may be designated by another similar term.
[PL 2003, c. 452, Pt. X, §1 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

2. Civil violation. Use of the terminology under subsection 1 in describing a monetary sanction for a civil violation does not limit or prohibit the application of Title 17-A, section 4-B, subsection 3.
[PL 2003, c. 452, Pt. X, §1 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

SECTION HISTORY

PL 2003, c. 452, §X1 (NEW). PL 2003, c. 452, §X2 (AFF).

§5605. Community service work for a person who violates a municipal ordinance

1. Community service work. The court may order a person adjudicated as having violated a municipal ordinance to perform a specific number of hours of community service work for the benefit of the State, a county, a municipality, a school administrative district or other public entity, a charitable

institution or other entity approved by the court if the municipality whose ordinance is violated has a community service work program that provides oversight of the community service order and ensures meaningful compliance with the community service requirements.
[PL 2013, c. 114, §1 (NEW).]

2. Failure to perform work. An adjudicated person who is ordered to perform community service work pursuant to subsection 1 and who fails to complete the work within the time specified by the court must be returned to the court for further disposition.
[PL 2013, c. 114, §1 (NEW).]

3. Supervision. Neither the judicial branch nor the Department of Corrections is responsible for supervision of community service work pursuant to this section.
[PL 2013, c. 114, §1 (NEW).]

SECTION HISTORY

PL 2013, c. 114, §1 (NEW).

PART 7

PARTICULAR PROCEEDINGS

CHAPTER 701

ACTIONS BY OR AGAINST BANKRUPTS AND INSOLVENTS

§5801. When action maintainable

A person who has been declared a bankrupt or an insolvent may maintain an action respecting his former property in his own name, unless objection is made, if before final judgment the assent of his trustee or assignee is filed in the office of the clerk of the court in which the action is pending.

§5802. Attachments 4 months preceding

Actions in which an actual attachment of property was made 4 months prior to the filing of a petition in bankruptcy or insolvency by any defendant therein shall be disposed of under the ordinary rules of proceedings in court.

§5803. Recovery of provable debts

All other actions for recovery of a debt provable in bankruptcy or insolvency, when it appears that any defendant therein has filed his petition in bankruptcy or insolvency or has been adjudged a bankrupt or an insolvent, on petition of his creditors before or after the commencement of the action, shall be continued until the bankrupt or insolvent proceedings are closed unless the plaintiff strikes such defendant's name from the action, which he may do without costs; but when such defendant does not use diligence in the prosecution of his bankrupt or insolvent proceedings, after 30 days' notice to him in writing from the plaintiff, the court may refuse further delay.

§5804. Plea of discharge in bankruptcy

A discharge in bankruptcy may be pleaded by a simple averment that on the day of its date such discharge was granted to the bankrupt and a certificate of such discharge under seal of the court granting the same shall be conclusive evidence in favor of such bankrupt of the fact and regularity of such discharge.

CHAPTER 703

ACTIONS FOR DOWER

§5851. Widow may sue for dower

(REPEALED)

SECTION HISTORY

PL 1979, c. 540, §21 (RP).

§5852. Demand and time of bringing action

(REPEALED)

SECTION HISTORY

PL 1979, c. 540, §21 (RP).

§5853. Demand on corporation

(REPEALED)

SECTION HISTORY

PL 1979, c. 540, §21 (RP).

§5854. Plea of nontenure

(REPEALED)

SECTION HISTORY

PL 1979, c. 540, §21 (RP).

§5855. Damages for detaining dower

(REPEALED)

SECTION HISTORY

PL 1979, c. 540, §21 (RP).

§5856. Action against tenant of freehold; prior tenant liable

(REPEALED)

SECTION HISTORY

PL 1979, c. 540, §21 (RP).

§5857. Death of plaintiff

(REPEALED)

SECTION HISTORY

PL 1979, c. 540, §21 (RP).

§5858. Writ of seizin and proceedings in setting off dower

(REPEALED)

SECTION HISTORY

PL 1979, c. 540, §21 (RP).

§5859. Assignments of rents and profits

(REPEALED)

SECTION HISTORY

PL 1979, c. 540, §21 (RP).

§5860. Apportionment of costs

(REPEALED)

SECTION HISTORY

PL 1979, c. 540, §21 (RP).

§5861. Waste

(REPEALED)

SECTION HISTORY

PL 1979, c. 540, §21 (RP).

§5862. Dower anew after eviction

(REPEALED)

SECTION HISTORY

PL 1979, c. 540, §21 (RP).

CHAPTER 705

COUNTERCLAIMS

§5901. Unpaid taxes

A city or town in an action by a delinquent taxpayer may assert a counterclaim for any unpaid taxes against any properly authorized payment to which the taxpayer is entitled, provided prior to trial the amount shall have been paid to the tax collector and a receipt in writing shall have been given to the person taxed, as prescribed in Title 36, section 905.

§5902. Demands due from deceased persons

Demands against a person belonging to a defendant at the time of death of such person may be asserted by counterclaim against claims prosecuted by his personal representative. If a balance is found due to the defendant, judgment shall be in like form and of like effect as if he had commenced an action therefor. [PL 1979, c. 540, §22 (AMD).]

SECTION HISTORY

PL 1979, c. 540, §22 (AMD).

§5903. Persons in representative capacities

In actions against executors, administrators, trustees or others in a representative capacity, they may assert by counterclaim such demands as those whom they represent might have so asserted in actions against them; but no demands due to or from them in their own right can be asserted by counterclaim in such actions.

§5904. Actions by insolvent estates

In joint or several actions by the executor or administrator of an estate represented insolvent against 2 or more persons having joint or several demands against such estate, the demands may be asserted by counterclaim by either of the defendants. If, on trial, a balance is found due to the defendants jointly or to either of them, judgment shall be entered for such balance as the jury finds or the court orders, and it shall be treated and disposed of as other judgments against insolvent estates.

CHAPTER 706

UNIFORM ARBITRATION ACT

§5927. Validity of arbitration agreement

A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. This chapter also applies to arbitration agreements between employers and employees or between their respective representatives, unless otherwise provided in the agreement. [PL 1967, c. 430 (NEW).]

SECTION HISTORY

PL 1967, c. 430 (NEW).

§5928. Proceedings to compel or stay arbitration

1. Application. On application of a party showing an agreement described in section 5927 and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party, otherwise, the application shall be denied.
[PL 1967, c. 430 (NEW).]

2. Stay of proceedings. On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be forthwith and summarily tried and the stay ordered if found for the moving party. If found for the opposing party, the court shall order the parties to proceed to arbitration.
[PL 1967, c. 430 (NEW).]

3. Arbitration where action pending. If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subsection 1, the application must be made therein. Otherwise and subject to section 5944, the application may be made in the Superior Court or the District Court.
[PL 2011, c. 80, §4 (AMD).]

4. Stay of action where arbitration ordered. Any action or proceeding involving an issue subject to arbitration shall be stayed, if an order for arbitration or an application therefor has been made under this section or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.
[PL 1967, c. 430 (NEW).]

5. Order for arbitration not to be refused. An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated have not been shown.
[PL 1967, c. 430 (NEW).]

SECTION HISTORY

PL 1967, c. 430 (NEW). PL 2011, c. 80, §4 (AMD).

§5929. Appointment of arbitrators by court

If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and his successor has not been duly appointed, the

court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement. [PL 1967, c. 430 (NEW).]

SECTION HISTORY

PL 1967, c. 430 (NEW).

§5930. Majority action by arbitrators

The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by this chapter. [PL 1967, c. 430 (NEW).]

SECTION HISTORY

PL 1967, c. 430 (NEW).

§5931. Hearing

Unless otherwise provided by the agreement: [PL 1967, c. 430 (NEW).]

1. Notice of hearing. The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than 5 days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause, or upon their own motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.
[PL 1967, c. 430 (NEW).]

2. Evidence. The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.
[PL 1967, c. 430 (NEW).]

3. Decision. The hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.
[PL 1967, c. 430 (NEW).]

SECTION HISTORY

PL 1967, c. 430 (NEW).

§5932. Representation by attorney

A party has the right to be represented by an attorney at any proceeding or hearing under this chapter. A waiver thereof prior to the proceeding or hearing is ineffective. [PL 1967, c. 430 (NEW).]

SECTION HISTORY

PL 1967, c. 430 (NEW).

§5933. Witnesses, subpoenas, depositions

1. Witnesses before arbitrators. The arbitrators may cause to be issued subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the court by a party or the arbitrators, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action.
[PL 1967, c. 430 (NEW).]

2. Depositions. On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.
[PL 1967, c. 430 (NEW).]

3. Compelling attendance. All provisions of law compelling a person under subpoena to testify are applicable.
[PL 1967, c. 430 (NEW).]

4. Fees. Fees for attendance as a witness shall be the same as for a witness in the Superior Court.
[PL 1967, c. 430 (NEW).]

SECTION HISTORY

PL 1967, c. 430 (NEW).

§5934. Award

1. Delivery. The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.
[PL 1967, c. 430 (NEW).]

2. Times for making. An award shall be made within the time fixed therefor by the agreement or, if not so fixed, within such time as the court orders on application of a party. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.
[PL 1967, c. 430 (NEW).]

SECTION HISTORY

PL 1967, c. 430 (NEW).

§5935. Change of award by arbitrators

On application of a party or, if an application to the court is pending under sections 5937 to 5939, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in section 5939, subsection 1, paragraphs A and C or for the purpose of clarifying the award. The application shall be made within 20 days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating he must serve his objections thereto, if any, within 10 days from the notice. The award so modified or corrected is subject to sections 5937 to 5939. [PL 1967, c. 430 (NEW).]

SECTION HISTORY

PL 1967, c. 430 (NEW).

§5936. Fees and expenses of arbitration

Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award. [PL 1967, c. 430 (NEW).]

SECTION HISTORY

PL 1967, c. 430 (NEW).

§5937. Confirmation of an award

Upon application of a party, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in sections 5938 and 5939. [PL 1967, c. 430 (NEW).]

SECTION HISTORY

PL 1967, c. 430 (NEW).

§5938. Vacating an award

1. Vacating award. Upon application of a party, the court shall vacate an award where:

A. The award was procured by corruption, fraud or other undue means; [PL 1967, c. 430 (NEW).]

B. There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party; [PL 1967, c. 430 (NEW).]

C. The arbitrators exceeded their powers; [PL 1967, c. 430 (NEW).]

D. The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of section 5931, as to prejudice substantially the rights of a party; [PL 1967, c. 430 (NEW).]

E. There was no arbitration agreement and the issue was not adversely determined in proceedings under section 5928 and the party did not participate in the arbitration hearing without raising the objection; or [PL 1967, c. 430 (NEW).]

F. The award was not made within the time fixed therefor by the agreement or, if not so fixed, within such time as the court has ordered, and the party has not waived the objection. [PL 1967, c. 430 (NEW).]

But the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.
[PL 1967, c. 430 (NEW).]

2. Application. An application under this section shall be made within 90 days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within 90 days after such grounds are known or should have been known.
[PL 1967, c. 430 (NEW).]

3. Rehearing. In vacating the award on grounds other than stated in paragraph E of subsection 1 the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the court in accordance with section 5929, or, if the award is vacated on grounds set forth in paragraphs C and D of subsection 1 the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with section 5929. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.
[PL 1967, c. 430 (NEW).]

4. Confirmation of award. If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.
[PL 1967, c. 430 (NEW).]

SECTION HISTORY

PL 1967, c. 430 (NEW).

§5939. Modification or correction of award

1. Application. Upon application made within 90 days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

A. There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award; [PL 1967, c. 430 (NEW).]

B. The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or [PL 1967, c. 430 (NEW).]

C. The award is imperfect in a matter of form, not affecting the merits of the controversy. [PL 1967, c. 430 (NEW).]

[PL 1967, c. 430 (NEW).]

2. Modification or correction of award. If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

[PL 1967, c. 430 (NEW).]

3. Joinder of application. An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

[PL 1967, c. 430 (NEW).]

SECTION HISTORY

PL 1967, c. 430 (NEW).

§5940. Judgment or decree on award

Upon the granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto and disbursements may be awarded by the court.

[PL 1967, c. 430 (NEW).]

SECTION HISTORY

PL 1967, c. 430 (NEW).

§5941. Judgment roll, docketing

1. Entry of judgment. On entry of judgment or decree, the clerk shall prepare the judgment roll consisting, to the extent filed, of the following:

A. The agreement and each written extension of the time within which to make the award; [PL 1967, c. 430 (NEW).]

B. The award; [PL 1967, c. 430 (NEW).]

C. A copy of the order confirming, modifying or correcting the award; and [PL 1967, c. 430 (NEW).]

D. A copy of the judgment or decree. [PL 1967, c. 430 (NEW).]

[PL 1967, c. 430 (NEW).]

2. Docketed as if in action. The judgment or decree may be docketed as if rendered in an action.

[PL 1967, c. 430 (NEW).]

SECTION HISTORY

PL 1967, c. 430 (NEW).

§5942. Applications to court

Except as otherwise provided, an application to the court under this chapter shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an

order shall be served in the manner provided by law for the service of a summons in an action. [PL 1967, c. 430 (NEW).]

SECTION HISTORY

PL 1967, c. 430 (NEW).

§5943. Court, jurisdiction

The term "court" means the Superior Court or the District Court of this State. The making of an agreement described in section 5927 providing for arbitration in this State confers jurisdiction on the court to enforce the agreement under this chapter and to enter judgment on an award under the agreement. [PL 2011, c. 80, §5 (AMD).]

SECTION HISTORY

PL 1967, c. 430 (NEW). PL 2011, c. 80, §5 (AMD).

§5944. Venue

If the action is to be heard in the Superior Court, an initial application must be made to the Superior Court of the county in which the agreement provides the arbitration hearing must be held or, if the hearing has been held, in the county in which it was held. Otherwise the application must be made in the county where the adverse party resides or has a place of business or, if the adverse party has no residence or place of business in this State, to the court of any county. All subsequent applications must be made to the court hearing the initial application unless the court otherwise directs. [PL 2011, c. 80, §6 (AMD).]

If the action is to be heard in the District Court, an initial application must be made to the division of the District Court in which the agreement provides the arbitration hearing must be held or, if the hearing has been held, in the division in which it was held. Otherwise the application must be made in the division where the adverse party resides or has a place of business or, if the adverse party has no residence or place of business in this State, to any District Court. All subsequent applications must be made to the court hearing the initial application unless the court otherwise directs. [PL 2011, c. 80, §6 (NEW).]

SECTION HISTORY

PL 1967, c. 430 (NEW). PL 2011, c. 80, §6 (AMD).

§5945. Appeals

1. Grounds for appeal. An appeal may be taken from:

A. An order denying an application to compel arbitration made under section 5928; [PL 1967, c. 430 (NEW).]

B. An order granting an application to stay arbitration made under section 5928, subsection 2; [PL 1967, c. 430 (NEW).]

C. An order confirming or denying confirmation of an award; [PL 1967, c. 430 (NEW).]

D. An order modifying or correcting an award; [PL 1967, c. 430 (NEW).]

E. An order vacating an award without directing a rehearing; or [PL 1967, c. 430 (NEW).]

F. A judgment or decree entered pursuant to the provisions of this chapter. [PL 1967, c. 430 (NEW).]

[PL 1967, c. 430 (NEW).]

2. Procedure. The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

[PL 1967, c. 430 (NEW).]

SECTION HISTORY

PL 1967, c. 430 (NEW).

§5946. Act not retroactive

This chapter applies only to agreements made subsequent to October 7, 1967. [PL 1973, c. 625, §83 (AMD).]

SECTION HISTORY

PL 1967, c. 430 (NEW). PL 1973, c. 625, §83 (AMD).

§5947. Uniformity of interpretation

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. [PL 1967, c. 430 (NEW).]

SECTION HISTORY

PL 1967, c. 430 (NEW).

§5948. Intent

Nothing in this chapter shall be deemed to repeal or amend Title 26, chapter 9-A, entitled "Municipal Public Employees Labor Relations Law." This chapter shall not apply to any provision contained in a policy of automobile liability insurance for arbitration of a claim under the uninsured motorist coverage. [PL 1971, c. 544, §46 (AMD).]

SECTION HISTORY

PL 1967, c. 430 (NEW). PL 1969, c. 287, §1 (RPR). PL 1971, c. 544, §46 (AMD).

§5949. Short title

This chapter may be cited as the "Uniform Arbitration Act." [PL 1967, c. 430 (NEW).]

SECTION HISTORY

PL 1967, c. 430 (NEW).

CHAPTER 707

DECLARATORY JUDGMENTS ACT

§5951. Uniformity of interpretation; title

This chapter shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact them, and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees; and may be cited as the "Uniform Declaratory Judgments Act."

§5952. Definitions

The word "person," wherever used in this chapter, shall be construed to mean any person, partnership, joint stock company, unincorporated association or society, or municipal or other corporation of any character whatsoever.

§5953. Scope

Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration

may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree.

§5954. Construction and validity of statutes

Any person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

§5955. Construction of contracts before or after breach

A contract may be construed either before or after there has been a breach thereof.

§5956. Rights of executor, fiduciaries and other interested persons

Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin or cestui que trust in the administration of a trust, or of the estate of a decedent, an infant, a person who is legally incompetent or a person who is insolvent may have a declaration of rights or legal relations in respect thereto: [PL 2009, c. 299, Pt. A, §2 (AMD).]

1. Ascertain class of creditors, heirs, etc. To ascertain any class of creditors, devisees, legatees, heirs, next of kin or others; or

2. Direct fiduciary to do or not to do certain act. To direct the executors, administrators or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

3. Determine questions. To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

SECTION HISTORY

PL 2009, c. 299, Pt. A, §2 (AMD).

§5957. Extent of relief

The enumeration in sections 5954 to 5956 does not limit or restrict the exercise of the general powers conferred in section 5953 in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.

§5958. Discretion of court

The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

§5959. Review

All orders, judgments and decrees under this chapter may be reviewed as other orders, judgments and decrees.

§5960. Supplemental relief

Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree to show cause why further relief should not be granted forthwith.

§5961. Jury trial

When a proceeding under this chapter involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending.

§5962. Costs

In any proceeding under this chapter, the court may make such award of costs as may seem equitable and just.

§5963. Parties

When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party and shall be entitled to be heard, and if the statute, ordinance or franchise is alleged to be unconstitutional, the Attorney General shall be served with a copy of the proceeding and be entitled to be heard.

CHAPTER 709

ENTRY AND DETAINER

SUBCHAPTER 1

RESIDENTIAL LANDLORDS AND TENANTS

§6000. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2015, c. 293, §1 (NEW).]

1. Domestic violence. "Domestic violence" means conduct described in Title 17-A, chapters 9, 11, 12 and 13; Title 17-A, sections 432, 433, 506, 506-A, 506-B, 758, 805, 806, 852 and 853; and Title 19-A, section 4002, subsection 1, when the victim of that conduct or threat is a family or household member, as defined in Title 19-A, section 4002, subsection 4 or dating partner, as defined in Title 19-A, section 4002, subsection 3-A.
[PL 2015, c. 293, §1 (NEW).]

2. Sexual assault. "Sexual assault" means any conduct described under Title 17-A, chapters 11, 12 and 35 and Title 17-A, sections 852 and 853.
[PL 2015, c. 293, §1 (NEW).]

2-A. Sexual harassment. "Sexual harassment" means verbal or physical conduct of a sexual nature directed at a specific person, including, but not limited to, unwelcome sexual advances; sexually suggestive remarks or actions; unwanted hugs, touches or kisses; and requests for sexual favors. "Sexual harassment" includes retaliation for communicating about or filing a complaint of sexual harassment.
[RR 2019, c. 1, Pt. A, §13 (COR).]

3. Stalking. "Stalking" means any conduct described in Title 17-A, section 210-A.
[PL 2015, c. 293, §1 (NEW).]

4. Victim. "Victim" means an individual who has been subject to domestic violence, sexual assault or stalking.
[PL 2015, c. 293, §1 (NEW).]

SECTION HISTORY

PL 2015, c. 293, §1 (NEW). PL 2019, c. 351, §1 (AMD). RR 2019, c. 1, Pt. A, §13 (COR).

§6001. Availability of remedy

1. Persons against whom process may be maintained. Process of forcible entry and detainer may be maintained against a disseisor who has not acquired any claim by possession and improvement; against a tenant holding under a written lease or contract or person holding under such a tenant; against a tenant where the occupancy of the premises is incidental to the employment of a tenant; at the expiration or forfeiture of the term, without notice, if commenced within 7 days from the expiration or forfeiture of the term; against a tenant at will, whose tenancy has been terminated as provided in section 6002; and against manufactured housing owners and tenants pursuant to Title 10, chapter 951, subchapter 6. When there are multiple occupants of an apartment or residence, the process of forcible entry and detainer is effective against all occupants if the plaintiff names as parties "all other occupants" together with all adult individuals whose names appear on the lease or rental agreement for the premises or whose tenancy the plaintiff has acknowledged by acceptance of rent or otherwise.
[PL 2017, c. 210, Pt. B, §39 (AMD).]

1-A. Foreclosure. A bona fide tenancy in a building for which a foreclosure action brought pursuant to either section 6203-A or 6321 is pending or for which a foreclosure judgment has been entered may be terminated only pursuant to the provisions of the federal Protecting Tenants at Foreclosure Act of 2009, Public Law 111-22, Sections 701 to 704.
[PL 2009, c. 566, §1 (NEW).]

1-B. Residential lease without termination or notice language. If a written residential lease or contract does not include a provision to terminate the tenancy or does not provide for any written notice of termination in the event of a material breach of a provision of the written residential lease or contract, either the landlord or the tenant may terminate the written residential lease or contract pursuant to this subsection.

A. A landlord may terminate the tenancy in accordance with section 6002, subsections 1 and 2. After a landlord has provided notice and service as provided in section 6002, including language advising the tenant that the tenant has the right to contest the termination in court, the landlord may commence a forcible entry and detainer action as provided in this section. [PL 2011, c. 122, §1 (NEW).]

B. A tenant may terminate the tenancy by providing the landlord with 7 days' written notice of the termination if the landlord has substantially breached a provision of the written residential lease or contract. In the event that the tenant or the tenant's agent has made at least 3 good faith efforts to personally serve the landlord in-hand, that service may be accomplished by both mailing the notice by first-class mail to the landlord's last known address and by leaving the notice at the landlord's last and usual place of abode. [PL 2011, c. 420, Pt. D, §1 (AMD); PL 2011, c. 420, Pt. D, §6 (AFF).]

[PL 2011, c. 420, Pt. D, §1 (AMD); PL 2011, c. 420, Pt. D, §6 (AFF).]

2. Persons who may not maintain process. The process of forcible entry and detainer may not be maintained against a tenant by a 3rd party lessee, grantee, assignee or donee of the tenant's premises, unless a tenant at will has received notice of termination in accordance with section 6002 by either the grantor or the grantee of the conveyance.
[PL 1985, c. 638, §4 (AMD).]

3. Presumption of retaliation. In any action of forcible entry and detainer there is a rebuttable presumption that the action was commenced in retaliation against the tenant if, within 6 months prior to the commencement of the action, the tenant has:

A. Asserted the tenant's rights pursuant to section 6021 or section 6030-D; [PL 2013, c. 324, §1 (AMD).]

B. Complained as an individual, or if a complaint has been made in that individual's behalf, in good faith, of conditions affecting that individual's dwelling unit that may constitute a violation of a building, housing, sanitary or other code, ordinance, regulation or statute, presently or hereafter adopted, to a body charged with enforcement of that code, ordinance, regulation or statute, or such a body has filed a notice or complaint of such a violation; [PL 2009, c. 566, §2 (AMD).]

C. Complained in writing or made a written request, in good faith, to the landlord or the landlord's agent to make repairs on the premises as required by any applicable building, housing or sanitary code, or by section 6021, or as required by the rental agreement between the parties; [PL 2015, c. 293, §2 (AMD).]

D. [PL 1989, c. 484, §2 (NEW); MRSA T. 14 §6001, sub-§3, ¶D (RP).]

E. Prior to being served with an eviction notice, filed, in good faith, a fair housing complaint for which there is a reasonable basis with the Maine Human Rights Commission or filed, in good faith, a fair housing complaint for which there is a reasonable basis with the United States Department of Housing and Urban Development concerning acts affecting that individual's tenancy; [PL 2019, c. 351, §2 (AMD).]

F. Prior to being served with an eviction notice, provided the landlord or the landlord's agent with notice that the tenant or tenant's minor child is a victim; or [PL 2019, c. 351, §2 (AMD).]

G. Prior to being served with an eviction notice, communicated to the landlord or the landlord's agent about an act of sexual harassment or filed a complaint with a law enforcement agency, the Maine Human Rights Commission or a court of an act of sexual harassment by the landlord or the landlord's agent against the tenant or a family or household member of the tenant. [PL 2019, c. 351, §2 (NEW).]

If an action of forcible entry and detainer is brought for any reason set forth in section 6002, subsection 1 or for violation of a lease provision, the presumption of retaliation does not apply, unless the tenant has asserted a right pursuant to section 6026.

No writ of possession may issue in the absence of rebuttal of the presumption of retaliation.
[PL 2019, c. 351, §2 (AMD).]

4. Membership in tenants' organization. No writ of possession may issue when the tenant proves that the action of forcible entry and detainer was commenced in retaliation for the tenant's membership in an organization concerned with landlord-tenant relationships.
[PL 1981, c. 428, §1 (NEW).]

5. Affirmative defense. A tenant may raise the affirmative defense of failure of the landlord to provide the tenant with a reasonable accommodation pursuant to Title 5, chapter 337 or the federal Fair Housing Act, 42 United States Code, Section 3604(f)(3)(B). The court shall deny the forcible entry and detainer and not grant possession to the landlord if the court determines that the landlord has a duty to offer a reasonable accommodation and has failed to do so and there is a causal link between the accommodation requested and the conduct that is the subject of the forcible entry and detainer action.

The court shall grant the forcible entry and detainer if the court determines that the landlord is otherwise entitled to possession and:

A. The landlord does not have a duty to offer a reasonable accommodation; [PL 2011, c. 405, §2 (NEW).]

B. The landlord has, in fact, offered a reasonable accommodation; or [PL 2011, c. 405, §2 (NEW).]

C. There is no causal link between the accommodation requested and the conduct that is the subject of the forcible entry and detainer action. [PL 2011, c. 405, §2 (NEW).]

For purposes of this subsection, "reasonable accommodation" means a change, exception or adjustment to a rule, policy, practice or service that is necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common access spaces for that dwelling. [PL 2011, c. 405, §2 (RPR).]

6. Domestic violence, sexual assault and stalking. This subsection applies to incidents involving domestic violence, sexual assault or stalking.

A. A victim may not be evicted based on an incident or incidents of actual or threatened domestic violence, sexual assault or stalking occurring at the premises or reporting to any agency such incidents that otherwise may be construed as:

(1) A nuisance under section 6002;

(2) Damage to property under section 6002; or

(3) A lease violation arising from a nuisance, a disturbance or damage to premises. [PL 2015, c. 293, §5 (NEW).]

B. A victim may not be held liable for damage to the property related to an incident or incidents of actual or threatened domestic violence, sexual assault or stalking beyond the value of the victim's security deposit, as long as the alleged perpetrator is a tenant and the victim provides written notice of the damage and documentation required pursuant to paragraph H within 30 days of the occurrence of the damage. [PL 2015, c. 293, §5 (NEW).]

C. A landlord may bifurcate a lease or tenancy without regard to whether a household member who is a victim is a signatory to the lease in order to evict or terminate the tenancy of a perpetrator of domestic violence, sexual assault or stalking. In bifurcating a tenancy, a landlord may not interfere with a victim's property rights as allocated in a valid court order. Nothing in this section may be construed to create a tenancy that previously did not exist. [PL 2015, c. 293, §5 (NEW).]

D. A victim may terminate a lease early due to an incident or threat of domestic violence, sexual assault or stalking by providing:

(1) Seven days' written notice and documentation required pursuant to paragraph H, in the case of a lease of less than one year; or

(2) Thirty days' written notice and documentation required pursuant to paragraph H, in the case of a lease with a term of one year or more.

A victim is not liable for any unpaid rent under the victim's lease. [PL 2015, c. 293, §5 (NEW).]

D-1. A tenant who is the victim of sexual harassment by a landlord or the landlord's agent may terminate a lease as set forth in paragraph D if the tenant provides documentation set forth in paragraph H. [PL 2019, c. 351, §3 (NEW).]

E. Nothing in this section prohibits a landlord from evicting a tenant for reasons unrelated to domestic violence, sexual assault or stalking. [PL 2015, c. 293, §5 (NEW).]

F. Nothing in this section prohibits a landlord from instituting a forcible entry and detainer action against the tenant of the premises who perpetrated the domestic violence, sexual assault or stalking or obtaining a criminal no trespass order against a nontenant who perpetrates such violence or abuse at the premises. [PL 2015, c. 494, Pt. A, §10 (AMD).]

G. Nothing in this section limits the rights of a landlord to hold a perpetrator of the domestic violence, sexual assault or stalking liable for damage to the property. [PL 2015, c. 293, §5 (NEW).]

H. When a victim asserts any of the provisions contained within this chapter specifically available to a victim, except for changing locks according to section 6025, subsection 1, a victim shall provide to the landlord documentation of the alleged conduct by the perpetrator, including the perpetrator's name. Acceptable documentation includes, but is not limited to:

(1) A statement signed by a Maine-based sexual assault counselor as defined in Title 16, section 53-A, subsection 1, paragraph B, an advocate as defined in Title 16, section 53-B, subsection 1, paragraph A or a victim witness advocate as defined in Title 16, section 53-C, subsection 1, paragraph C;

(2) A statement signed by a health care provider, mental health care provider or law enforcement officer, including the license number of the health care provider, mental health care provider or law enforcement officer if licensed;

(3) A copy of a protection from abuse complaint or a temporary order or final order of protection;

(4) A copy of a protection from harassment complaint or a temporary order or final order of protection from harassment;

(5) A copy of a police report prepared in response to an investigation of an incident of domestic violence, sexual assault or stalking; and

(6) A copy of a criminal complaint, indictment or conviction for a domestic violence, sexual assault or stalking charge. [PL 2017, c. 455, §3 (AMD).]

[PL 2019, c. 351, §3 (AMD).]

SECTION HISTORY

PL 1971, c. 322, §1 (AMD). PL 1977, c. 401, §2 (AMD). PL 1981, c. 428, §1 (RPR). PL 1985, c. 638, §4 (AMD). PL 1989, c. 484, §§1,2 (AMD). PL 1995, c. 60, §2 (AMD). PL 1995, c. 372, §1 (AMD). PL 2009, c. 566, §§1-3 (AMD). PL 2011, c. 122, §1 (AMD). PL 2011, c. 405, §§1, 2 (AMD). PL 2011, c. 420, Pt. D, §1 (AMD). PL 2011, c. 420, Pt. D, §6 (AFF). PL 2013, c. 324, §1 (AMD). PL 2015, c. 293, §§2-5 (AMD). PL 2015, c. 494, Pt. A, §10 (AMD). PL 2017, c. 210, Pt. B, §39 (AMD). PL 2017, c. 455, §3 (AMD). PL 2019, c. 351, §§2, 3 (AMD).

§6002. Tenancy at will; buildings on land of another

Tenancies at will must be terminated by either party by a minimum of 30 days' notice, except as provided in subsections 2 and 4, in writing for that purpose given to the other party, but if the landlord or the landlord's agent has made at least 3 good faith efforts to serve the tenant, that service may be accomplished by both mailing the notice by first class mail to the tenant's last known address and by leaving the notice at the tenant's last and usual place of abode. In cases when the tenant has paid rent through the date when a 30-day notice would expire, the notice must expire on or after the date through which the rent has been paid. Either party may waive in writing the 30 days' notice at the time the notice is given, and at no other time prior to the giving of the notice. A termination based on a 30-day notice is not affected by the receipt of money, whether previously owed or for current use and occupation, until the date a writ of possession is issued against the tenant during the period of actual occupancy after receipt of the notice. When the tenancy is terminated, the tenant is liable to the process of forcible entry and detainer without further notice and without proof of any relation of landlord and tenant unless the tenant has paid, after service of the notice, rent that accrued after the termination of the tenancy. These provisions apply to tenancies of buildings erected on land of another party. Termination of the tenancy is deemed to occur at the expiration of the time fixed in the notice. A 30-day notice under this paragraph and a 7-day notice under subsection 2 may be combined in one notice to the tenant. [PL 2015, c. 293, §6 (AMD).]

A notice to terminate under this section must include language advising the tenant that the tenant has the right to contest the termination in court. Failure to include language regarding the right to contest termination in the notice to terminate is not grounds to dismiss a forcible entry and detainer action. If the landlord fails to include language required by this paragraph in a notice to terminate and the tenant does not appear at the court hearing scheduled in any forcible entry and detainer action arising from the notice to terminate, the landlord's failure to include the required language in the notice to terminate constitutes sufficient grounds to set aside any default judgment entered against the tenant for failure to appear at the court hearing. This paragraph does not limit the right of a tenant to raise as a defense in an action for forcible entry and detainer the landlord's failure to include language in the notice to terminate as required by a lease agreement or any federal or state statutes, regulations or rules affecting the tenancy. [PL 2009, c. 566, §4 (NEW).]

1. Causes for 7-day notice of termination of tenancy. Notwithstanding any other provisions of this chapter, the tenancy may be terminated upon 7 days' written notice in the event that the landlord can show, by affirmative proof, that:

A. The tenant, the tenant's family or an invitee of the tenant has caused substantial damage to the demised premises that the tenant has not repaired or caused to be repaired before the giving of the notice provided in this subsection; [PL 2009, c. 171, §2 (NEW).]

B. The tenant, the tenant's family or an invitee of the tenant caused or permitted a nuisance within the premises, has caused or permitted an invitee to cause the dwelling unit to become unfit for human habitation or has violated or permitted a violation of the law regarding the tenancy; [PL 2015, c. 293, §7 (AMD).]

C. The tenant is 7 days or more in arrears in the payment of rent; [PL 2017, c. 103, §1 (AMD).]

D. The tenant is a perpetrator of domestic violence, sexual assault or stalking and the victim is also a tenant; [PL 2017, c. 103, §2 (AMD).]

E. The tenant or the tenant's guest or invitee is the perpetrator of violence, a threat of violence or sexual assault against another tenant, a tenant's guest, the landlord or the landlord's employee or agent, except that this paragraph does not apply to a tenant who is a victim as defined in section 6000, subsection 4 and who has taken reasonable action under the circumstances to comply with the landlord's request for protection of the tenant, another tenant, a tenant's guest or invitee, the landlord or the landlord's employee or agent or of the landlord's property; or [PL 2017, c. 103, §3 (NEW).]

F. The person occupying the premises is not an authorized occupant of the premises. [PL 2017, c. 103, §3 (NEW).]

If a tenant who is 7 days or more in arrears in the payment of rent pays the full amount of rent due before the expiration of the 7-day notice in writing, that notice is void. Thereafter, in all residential tenancies at will, if the tenant pays all rental arrears, all rent due as of the date of payment and any filing fees and service of process fees actually expended by the landlord before the issuance of the writ of possession as provided by section 6005, then the tenancy must be reinstated and no writ of possession may issue.

In the event that the landlord or the landlord's agent has made at least 3 good faith efforts to personally serve the tenant in-hand, that service may be accomplished by both mailing the notice by first class mail to the tenant's last known address and by leaving the notice at the tenant's last and usual place of abode.

Payment or written assurance of payment through the general assistance program, as authorized by the State or a municipality pursuant to Title 22, chapter 1161, has the same effect as payment in cash. [PL 2017, c. 103, §§1-3 (AMD).]

2. Ground for termination notice. A notice of termination issued pursuant to subsection 1 must indicate the specific ground claimed for issuing the notice.

A. If a ground claimed is rent arrearage of 7 days or more, the notice must also include a statement:

(1) Indicating the amount of the rent that is 7 days or more in arrears as of the date of the notice; and

(2) Setting forth the following notice: "If you pay the amount of rent due as of the date of this notice before this notice expires, then this notice as it applies to rent arrearage is void. After this notice expires, if you pay all rental arrears, all rent due as of the date of payment and any filing fees and service of process fees actually paid by the landlord before the writ of possession issues at the completion of the eviction process, then your tenancy will be reinstated." [PL 2009, c. 171, §3 (NEW).]

B. If the notice states an incorrect rent arrearage or contains any other clerical errors that do not significantly or materially alter the purpose or understanding of the notice, the notice cannot be held invalid if the landlord can show the error was unintentional. [PL 2009, c. 171, §3 (NEW).]

[PL 2009, c. 171, §3 (RPR).]

3. Breach of warranty of habitability as an affirmative defense. In an action brought by a landlord to terminate a rental agreement on the ground that the tenant is in arrears in the payment of rent, the tenant may raise as a defense any alleged violation of the implied warranty and covenant of habitability, provided that the landlord or the landlord's agent has received actual or constructive notice of the alleged violation, and has unreasonably failed under the circumstances to take prompt, effective steps to repair or remedy the condition and the condition was not caused by the tenant or another person acting under the tenant's control. Upon finding that the dwelling unit is not fit for human habitation, the court shall permit the tenant either to terminate the rental agreement without prejudice or to reaffirm the rental agreement, with the court assessing against the tenant an amount equal to the reduced fair rental value of the property for the period during which rent is owed. The reduced amount of rent thus owed must be paid on a pro rata basis, unless the parties agree otherwise, and payments become due at the same intervals as rent for the current rental period. The landlord may not charge the tenant for the full rental value of the property until such time as it is fit for human habitation.

[PL 1995, c. 208, §1 (AMD).]

4. Victims of domestic violence, sexual assault or stalking. A victim may terminate the victim's tenancy in a tenancy-at-will or a lease with a term of less than one year with 7 days' written notice and documentation required pursuant to section 6001, subsection 6, paragraph H due to an incident or threat of domestic violence, sexual assault or stalking. A victim of domestic violence, sexual assault or stalking may terminate the victim's tenancy in a lease with a term of one year or more with 30 days' written notice and documentation required pursuant to section 6001, subsection 6, paragraph H. When written notice is provided to the landlord, the victim is not liable for any rent due beyond the date the notice expires or the date the victim vacates the unit, whichever is later, unless the victim has prepaid rent for the month, in which case the landlord is not required to refund the rent for that month.

[PL 2015, c. 293, §9 (NEW).]

SECTION HISTORY

PL 1971, c. 322, §§2,3 (AMD). PL 1971, c. 544, §§46-A,47 (AMD). PL 1977, c. 441 (AMD). PL 1979, c. 232 (AMD). PL 1979, c. 298 (AMD). PL 1981, c. 65 (AMD). PL 1981, c. 428, §§2-4 (AMD). PL 1983, c. 398 (AMD). PL 1989, c. 284 (AMD). PL 1993, c. 202, §1 (AMD). PL 1993, c. 211, §2 (AMD). PL 1995, c. 208, §1 (AMD). PL 1999, c. 248, §§1,2 (AMD). PL 2003, c. 296, §1 (AMD). PL 2009, c. 171, §§1-3 (AMD). PL 2009, c. 566, §4 (AMD). PL 2015, c. 293, §§6-9 (AMD). PL 2017, c. 103, §§1-3 (AMD).

§6003. Jurisdiction

The District Court shall have jurisdiction of cases of forcible entry and detainer.

The court shall schedule and hold the hearing as soon as practicable, but no later than 10 days after the return day except that the court may grant a continuance for good cause shown. Any defendant requesting a recorded hearing shall file a written answer enumerating all known defenses on or before the return day. [PL 1997, c. 151, §1 (AMD).]

SECTION HISTORY

PL 1981, c. 428, §5 (AMD). PL 1989, c. 452, §1 (AMD). PL 1997, c. 151, §1 (AMD).

§6004. Commencement of action

The process of forcible entry and detainer must be commenced and service made in the same manner as other civil actions, except that if at least 3 good faith efforts on 3 different days have been made to serve the defendant, service may be accomplished by both mailing the summons and complaint by first-class mail to the defendant's last known address and leaving the summons and complaint at the defendant's last and usual place of abode. If service has been made by mailing and posting the summons and complaint, the plaintiff shall file with the court an affidavit demonstrating that compliance with the requirement of service has occurred. When the plaintiff lives out of the State and a recognizance is required of the plaintiff, any person may recognize in the plaintiff's behalf and is personally liable. [PL 2015, c. 22, §1 (AMD).]

SECTION HISTORY

PL 2013, c. 135, §1 (RPR). PL 2015, c. 22, §1 (AMD).

§6004-A. Mediation

The court may, in any residential tenancy under this subchapter, at any time refer the parties to mediation on any issue. [PL 2007, c. 246, §2 (NEW); PL 2007, c. 246, §6 (AFF).]

1. Mediated agreement. An agreement reached by the parties through mediation must be reduced to writing, signed by the parties and presented to the court for approval as a court order.
[PL 2007, c. 246, §2 (NEW); PL 2007, c. 246, §6 (AFF).]

2. No agreement; good faith effort required. When agreement through mediation is not reached on an issue, the court shall determine that the parties made a good faith effort to mediate the issue before proceeding with a hearing. If the court finds that either party failed to make a good faith effort to mediate, the court may order the parties to submit to mediation, may dismiss the action or a part of the action, may render a decision or judgment by default, may assess attorney's fees and costs or may impose any other sanction that is appropriate in the circumstances.
[PL 2007, c. 246, §2 (NEW); PL 2007, c. 246, §6 (AFF).]

3. Mediation not ordered; consent. The court may not order mediation in cases in which no mediator is available or mediation would delay any hearing in the matter, unless the parties consent to a delay in the proceedings to allow mediation to take place.
[PL 2007, c. 246, §2 (NEW); PL 2007, c. 246, §6 (AFF).]

4. Mediators provided. The Court Alternative Dispute Resolution Service, established in Title 4, section 18-B, shall provide mediators for mediations under this section.
[PL 2007, c. 246, §2 (NEW); PL 2007, c. 246, §6 (AFF).]

5. Rules; fees. The Supreme Judicial Court may adopt rules of procedure for actions under this chapter.
[PL 2007, c. 246, §2 (NEW); PL 2007, c. 246, §6 (AFF).]

SECTION HISTORY

PL 2007, c. 246, §2 (NEW). PL 2007, c. 246, §6 (AFF).

§6005. Writ of possession; service

When the defendant is defaulted or fails to show sufficient cause, judgment must be rendered against the defendant by the District Court for possession of the premises. Seven calendar days after the judgment is entered, the court shall issue the writ of possession to remove the defendant. The writ may be served by a sheriff or a constable. If at least 3 good faith efforts on 3 different days have been made to serve the defendant, service may be accomplished by both mailing the notice by first-class mail to the defendant's last known address and leaving the writ of possession at the defendant's last and usual place of abode. A writ of possession may not issue in any case in which the ground for termination of the tenancy at will was rent arrearage and the defendant paid the amount necessary to reinstate the tenancy as provided by section 6002. [PL 1999, c. 248, §3 (AMD).]

An additional writ of possession may be issued by the clerk at the request of the plaintiff after issuance of the first writ. [PL 1989, c. 452, §2 (NEW).]

When a writ of possession has been served on the defendant by a constable or sheriff, and the defendant fails to remove himself or his possessions within 48 hours of service by the constable or sheriff, the defendant is deemed a trespasser without right and the defendant's goods and property are considered by law to be abandoned and subject to section 6013. [PL 1981, c. 428, §6 (NEW).]

SECTION HISTORY

PL 1979, c. 327, §1 (AMD). PL 1981, c. 428, §6 (AMD). PL 1989, c. 452, §2 (AMD). PL 1995, c. 208, §2 (AMD). PL 1997, c. 151, §2 (AMD). PL 1997, c. 336, §1 (AMD). PL 1997, c. 683, §A6 (AMD). PL 1999, c. 248, §3 (AMD).

§6006. Claim of title

(REPEALED)

SECTION HISTORY

PL 1995, c. 448, §1 (RP).

§6007. Allegation that defendant's claim is frivolous

(REPEALED)

SECTION HISTORY

PL 1995, c. 448, §1 (RP).

§6008. Appeal

1. Right to appeal. Either party may appeal on questions of law from a judgment to the Superior Court as in other civil actions. Either party may appeal on any issue triable by right by a jury to a trial de novo in the Superior Court as provided in this section. The time for filing an appeal of the judgment of the District Court expires upon the issuance of the writ of possession pursuant to section 6005 or 30 days from the time the judgment is entered, whichever occurs first.
[PL 1997, c. 336, §2 (AMD).]

2. Appeal by defendant; record; stay. When the defendant appeals, the defendant shall pay to the plaintiff or, if there is a dispute about the rent, to the District Court, any unpaid portion of the current month's rent or the rent arrearage, whichever is less. The District Court shall promptly transmit the record and any such payments to the Superior Court without waiting for the preparation of a transcript of recorded testimony. The Superior Court may stay the issuance of a writ of possession pending disposition of the appeal.

A. The Superior Court shall condition the granting and continuation of the stay on the defendant's payment of rent for the premises as required by this subsection at the time of appeal and on payment of any rent that has accrued since the filing of the appeal to the plaintiff or, if there is a dispute

about the rent, into an escrow account to be administered by the clerk of the Superior Court. Upon application of either party, the Superior Court may authorize payments from the escrow account for appropriate expenses related to the premises. The appeal decision or an agreement of the parties must provide for the disposition of the escrowed rent. [PL 1997, c. 336, §2 (AMD).]

B. The Superior Court may condition the granting and continuation of the stay, in appropriate cases, on the defendant's agreement to refrain from causing any nuisance or damage. [PL 1995, c. 448, §2 (NEW).]

[PL 1997, c. 336, §2 (AMD).]

3. Vacation of stay; security; remedial order. Upon finding a violation of the conditions for granting the stay, the Superior Court shall vacate the stay and may issue a writ of possession. The Superior Court may require the plaintiff to provide security as may be necessary to protect the defendant's interest while the appeal is pending. If the defendant prevails, the Superior Court may issue a remedial order as necessary to make the defendant whole, including damages.

[PL 1995, c. 448, §2 (NEW).]

4. Claim of title. In disputes involving a claim of title, the District Court may provide for discovery on an expedited schedule.

[PL 1995, c. 448, §2 (NEW).]

5. Security. For the purposes of this section, "security" may include a bond, an escrow account, a lien, a mortgage, an order to make payments under a lease or contract as they become due or any other financial protection as is reasonably necessary to protect the interests of a party. The District Court and the Superior Court may make any necessary orders with respect to the provision of security, revise the orders when required by the interests of justice, sanction a party for failure to comply with a security requirement and waive or modify the requirement of security for good cause shown and recited in an order.

[PL 1995, c. 448, §2 (NEW).]

6. Affidavit required. A notice of appeal filed by the defendant must be accompanied by an affidavit stating the defendant has complied with the requirements of subsection 2 regarding the payment of rent.

[PL 2011, c. 405, §3 (NEW).]

SECTION HISTORY

PL 1979, c. 172, §1 (AMD). PL 1989, c. 377 (AMD). PL 1995, c. 448, §2 (RPR). PL 1997, c. 336, §2 (AMD). PL 2011, c. 405, §3 (AMD).

§6009. Judgment for plaintiff; possession on recognizance; damages

(REPEALED)

SECTION HISTORY

PL 1979, c. 172, §2 (RPR). PL 1995, c. 448, §3 (RP).

§6010. Sums due for rent and damages

Sums due for rent on leases under seal or otherwise and claims for damages to premises rented may be recovered in an action, specifying the items and amount claimed, but no action shall be maintained for any sum or sums claimed to be due for rental or for any claim for damages for the breach of any of the conditions claimed to be broken on the part of the lessee, his legal representatives, assigns or tenant, contained in a lease or written agreement to hire or occupy any building, buildings or part of a building, during a period when such building, buildings or part of a building, which the lessee, his assigns, legal representatives or tenant may occupy or have a right to occupy, shall have been destroyed or damaged by fire or other unavoidable casualty so that the same shall be thereby rendered unfit for use or habitation; provided that nothing herein shall render invalid or unenforceable an agreement contained

in a lease of any building, buildings, or part of a building used primarily for other than residential purposes or in the case of any lease securing obligations guaranteed by the Maine Guaranty Authority or in any written instrument to pay the rental stipulated in said lease or agreement or any portion of such rental during a period when the building, buildings or part of a building described therein shall have been destroyed or damaged by fire or other unavoidable casualty so that the same shall be rendered unfit for use or habitation, in whole or in part. [PL 1973, c. 633, §21 (AMD).]

In any action for sums due for rent, if the court finds that: [PL 1977, c. 401, §3 (NEW).]

1. Notice of condition. The tenant, without unreasonable delay, gave to the landlord or to the person who customarily collects rent on behalf of the landlord written notice of a condition which rendered the rented premises unfit for human habitation;
[PL 1977, c. 401, §3 (NEW).]

2. Cause of condition. The condition was not caused by the tenant or another person acting under his control;
[PL 1977, c. 401, §3 (NEW).]

3. Failure to take steps. The landlord unreasonably failed under the circumstances to take prompt, effective steps to repair or remedy the condition; and
[PL 1979, c. 127, §112 (RPR).]

4. Rental payments current. The tenant is current in rental payments owing to the landlord at the time written notice was given.
[PL 1979, c. 127, §112 (RPR).]

Then the court shall deduct from the amount of rent due and owing the difference between the rental price and the fair value of the use and occupancy of the premises from the time of written notice, as provided in subsection 1, to the time when the condition is repaired or remedied. In determining the fair value of the use and occupancy of the premises, there is a rebuttable presumption that the rental price is the fair value of the rented premises free from any condition rendering it unfit for human habitation. Any agreement by a tenant to waive the rights or benefits provided by this section is void. A written agreement whereby the tenant accepts specified conditions that may violate the warranty of fitness for human habitation in return for a stated reduction in rent or other specified fair consideration is binding on the tenant and the landlord. [RR 2013, c. 2, §26 (COR).]

A perpetrator of domestic violence, sexual assault or stalking that occurs in a residential rental property against a tenant of the property, household member or a tenant's guest is liable to the tenant for the tenant's damages as a result of the domestic violence, sexual assault or stalking regardless of whether or not the perpetrator is also a tenant. Such damages include, but are not limited to, moving costs, back rent, current rent, damage to the unit, court costs and attorney's fees. [PL 2015, c. 293, §10 (NEW).]

Nothing in this section relating to damages as a result of domestic violence, sexual assault or stalking creates liability on behalf of a landlord. [PL 2015, c. 293, §10 (NEW).]

SECTION HISTORY

PL 1969, c. 540 (AMD). PL 1973, c. 633, §21 (AMD). PL 1977, c. 401, §3 (AMD). PL 1979, c. 127, §§112,113 (AMD). RR 2013, c. 2, §26 (COR). PL 2015, c. 293, §10 (AMD).

§6010-A. Landlord's duty to mitigate

1. Scope of section. If a tenant unjustifiably moves from the premises prior to the effective date for termination of the tenant's tenancy and defaults in payment of rent, or if the tenant is removed for failure to pay rent or any other breach of a lease or tenancy at will agreement, the landlord may recover rent and damages except amounts which the landlord could mitigate in accordance with this section, unless the landlord has expressly agreed to accept a surrender of the premises and end the tenant's

liability. Except as the context may indicate otherwise, this section applies to the liability of a tenant under a lease or tenancy at will agreement or the tenant's assignee.
[PL 2009, c. 566, §5 (AMD).]

2. Measure of recovery. In any claim against a tenant for rent and damages, or for either, the amount of recovery shall be reduced by the net rent obtainable by reasonable efforts to rerent the premises. "Reasonable efforts" means those steps which the landlord would have taken to rent the premises if they had been vacated in due course, provided that those steps are in accordance with local rental practice for similar properties. In the absence of proof that greater net rent is obtainable by reasonable efforts to rerent the premises, the tenant shall be credited with rent actually received under a rerental agreement minus expenses incurred as a reasonable incident of acts under subsection 4, including a fair proportion of any cost of remodeling or other capital improvements. In any case, the landlord may recover, in addition to rent and other elements of damage, all reasonable expenses of listing and advertising incurred in rerenting and attempting to rerent, except as taken into account in computing the net rent. If the landlord has used the premises as part of reasonable efforts to rerent, under subsection 4, paragraph C, the tenant shall be credited with the reasonable value of the use of the premises, which shall be presumed to be equal to the rent recoverable from the defendant unless the landlord proves otherwise. If the landlord has other similar premises for rent and receives an offer from a prospective tenant not obtained by the defendant, it shall be reasonable for the landlord to rent the other premises for his own account in preference to those vacated by the defaulting tenant.
[PL 1985, c. 293, §3 (NEW).]

3. Burden of proof. The landlord must allege and prove that he has made efforts to comply with this section. The tenant has the burden of proving that the efforts of the landlord were not reasonable, that the landlord's refusal of any offer to rent the premises or a part of the premises was not reasonable, that any terms and conditions upon which the landlord has in fact rerented were not reasonable and that any temporary use by the landlord was not part of reasonable efforts to mitigate in accordance with subsection 4, paragraph C. The tenant shall also have the burden of proving the amount that could have been obtained by reasonable efforts to mitigate by rerenting.
[PL 1985, c. 293, §3 (NEW).]

4. Acts privileged in mitigation of rent or damages. The following acts by the landlord shall not defeat his right to recover rent and damages and shall not constitute an acceptance of surrender of the premises:

A. Entry, with or without notice, for the purpose of inspecting, preserving, repairing, remodeling and showing the premises; [PL 1985, c. 293, §3 (NEW).]

B. Rerenting the premises or a part of the premises, with or without notice, with rent applied against the damages caused by the original tenant and in reduction of rent accruing under the original lease or tenancy at will agreement; [PL 2009, c. 566, §6 (AMD).]

C. Use of the premises by the landlord until such time as rerenting at a reasonable rent is practical, not to exceed one year, if the landlord gives prompt written notice to the tenant that the landlord is using the premises pursuant to this section and that he will credit the tenant with the reasonable value of the use of the premises to the landlord for such a period; and [PL 1985, c. 293, §3 (NEW).]

D. Any other act which is reasonably subject to interpretation as being in mitigation of rent or damages and which does not unequivocally demonstrate an intent to release the defaulting tenant. [PL 1985, c. 293, §3 (NEW).]

[PL 2009, c. 566, §6 (AMD).]

SECTION HISTORY

PL 1985, c. 293, §3 (NEW). PL 2009, c. 566, §§5, 6 (AMD).

§6011. House of ill fame; lease void at landlord's option

When the tenant of a dwelling house is convicted of keeping it as a house of ill fame, the lease or contract by which he occupies it may, at the option of the landlord, be deemed void and the landlord shall have the same remedy to recover possession as against a tenant holding over after his term expires.

§6012. Personal property

(REPEALED)

SECTION HISTORY

PL 1973, c. 428 (NEW). PL 1979, c. 231 (AMD). PL 1995, c. 448, §4 (RPR). PL 2001, c. 133, §§1,2 (AMD). PL 2009, c. 245, §5 (RP).

§6013. Property unclaimed by tenant

Any personal property that remains in a rental unit after entry of judgment in favor of the landlord or that is abandoned or unclaimed by a tenant following the tenant's vacating the rental unit must be disposed of as follows. [PL 2011, c. 405, §4 (AMD).]

1. Place in storage. The landlord shall place in storage in a safe, dry, secured location any personal property that is abandoned or unclaimed by a tenant following the tenant's vacating the rental unit.
[PL 2009, c. 566, §7 (NEW).]

2. Notice to tenant. Notice to the tenant by the landlord is governed by this subsection. Notice may be sent at any time after entry of judgment in favor of the landlord or after the tenant has vacated the rental unit.

A. If the tenant is still in possession of the rental unit, the landlord shall send written notice by first-class mail with proof of mailing to the tenant at the address of the rental unit of the landlord's intent to dispose of, in accordance with subsection 5, any property remaining in the rental unit following the tenant's vacating the rental unit. Notwithstanding subsections 3 and 5, the notice provided pursuant to this paragraph may not limit the time in which the tenant may claim the property to less than 7 days following the mailing of the notice or 48 hours after service of the writ of possession, whichever period is longer. [RR 2011, c. 1, §20 (COR).]

B. If the tenant has vacated the rental unit, the landlord shall send written notice by first-class mail with proof of mailing to the last known address of the tenant concerning the landlord's intent to dispose of the property stored pursuant to subsection 1. The notice must include an itemized list of the items and containers of items of the property and advise the tenant that if the tenant does not respond to the notice within 7 days the landlord may dispose of the property as set forth in subsection 5. [PL 2011, c. 405, §5 (NEW).]
[RR 2011, c. 1, §20 (COR).]

3. Release of property claimed. If the tenant claims the property within 7 days after the notice under subsection 2 is sent, the landlord shall release the property to the tenant and may not condition release of the property to the tenant upon payment of any fee or any other amount that may be owed to the landlord by the tenant.
[PL 2011, c. 405, §6 (AMD).]

4. Continuation of storage for claimed property. If the tenant responds to the notice sent pursuant to subsection 2, the landlord shall continue to store the property for at least 14 days after the landlord sent the notice.
[PL 2011, c. 405, §6 (AMD).]

5. Conditional release; sale or disposal. A landlord shall comply with the following.

A. If the tenant makes an oral or written claim for the property within 7 days after the date the notice described in subsection 2 is sent, the landlord may not condition the release of the property

to the tenant upon the tenant's payment of any rental arrearages, damages and costs of storage as long as the tenant makes arrangements to retrieve the property by the 14th day after the notice described in subsection 2 is sent. [PL 2011, c. 405, §6 (AMD).]

B. If the tenant makes the claim as set forth in paragraph A but fails to retrieve the property by the 14th day, the landlord may employ one or more of the remedies described in paragraph D. [PL 2011, c. 405, §6 (AMD).]

C. If the tenant does not make an oral or written claim for the property within 7 days after the notice described in subsection 2 is sent, the landlord may employ one or more of the remedies described in paragraph D. [PL 2011, c. 405, §6 (AMD).]

D. With regard to any property that remains unclaimed by the tenant in accordance with this subsection, the landlord may take one or more of the following actions:

(1) Condition the release of the property to the tenant upon the tenant's payment of all rental arrearages, damages and costs of storage;

(2) Sell any property for a reasonable fair market price and apply all proceeds to rental arrearages, damages and costs of storage and sale. All remaining balances must be forwarded to the Treasurer of State; or

(3) Dispose of any property that has no reasonable fair market value. [PL 2009, c. 566, §7 (NEW).]

[PL 2011, c. 405, §6 (AMD).]

6. Waiver. After or upon vacating the rental unit, a tenant may waive the tenant's rights pursuant to this section. If this waiver is oral, the landlord shall confirm this waiver in writing.
[PL 2011, c. 405, §7 (NEW).]

A lease or tenancy at will agreement may permit a landlord to dispose of property abandoned by a tenant without liability as long as the landlord complies with the notice provisions of this section. [PL 2011, c. 405, §8 (NEW).]

SECTION HISTORY

PL 1979, c. 327, §2 (NEW). PL 1981, c. 428, §7 (RPR). PL 1987, c. 249, §1 (AMD). PL 1987, c. 691, §1 (AMD). PL 1991, c. 265, §1 (AMD). PL 1997, c. 508, §A3 (AFF). PL 1997, c. 508, §B3 (AMD). PL 2003, c. 20, §T9 (AMD). PL 2003, c. 303, §1 (AMD). PL 2009, c. 566, §7 (RPR). RR 2011, c. 1, §20 (COR). PL 2011, c. 405, §§4-8 (AMD).

§6014. Remedies for illegal evictions

1. Illegal evictions. Except as permitted by Title 15, chapter 517 or Title 17, chapter 91, evictions that are effected without resort to the provisions of this chapter are illegal and against public policy. Illegal evictions include, but are not limited to, the following.

A. No landlord may willfully cause, directly or indirectly, the interruption or termination of any utility service being supplied to the tenant including, but not limited to, water, heat, light, electricity, gas, telephone, sewerage, elevator or refrigeration, whether or not the utility service is under the control of the landlord, except for such temporary interruption as may be necessary while actual repairs are in process or during temporary emergencies. [PL 1981, c. 428, §8 (NEW).]

B. No landlord may willfully seize, hold or otherwise directly or indirectly deny a tenant access to and possession of the tenant's rented or leased premises, other than through proper judicial process. [PL 1981, c. 428, §8 (NEW).]

C. No landlord may willfully seize, hold or otherwise directly or indirectly deny a tenant access to and possession of the tenant's property, other than by proper judicial process. [PL 1981, c. 428, §8 (NEW).]

[PL 1995, c. 66, §1 (AMD).]

2. Remedies. Upon a finding that an illegal eviction has occurred, the court shall find one or both of the following.

A. The tenant is entitled to recover actual damages or $250, whichever is greater. [PL 1991, c. 666 (AMD).]

B. The tenant is entitled to recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred on the tenant's behalf in connection with the prosecution or defense of such action, together with a reasonable amount for attorneys' fees. [PL 1991, c. 666 (AMD).]

[PL 1991, c. 666 (AMD).]

3. Good faith. A court may award attorneys' fees to the defendant if, upon motion and hearing, it is determined that an action filed pursuant to this section was not brought in good faith and was frivolous or intended for harassment only.

[PL 1981, c. 428, §8 (NEW).]

4. Nonexclusivity. The remedies provided in this section are in addition to any other rights and remedies conferred by law.

[PL 1981, c. 428, §8 (NEW).]

SECTION HISTORY

PL 1981, c. 428, §8 (NEW). PL 1991, c. 666 (AMD). PL 1995, c. 66, §1 (AMD).

§6015. Notice of rent increase

Rent charged for residential estates may be increased by the lessor only after providing at least 45 days' written notice to the tenant. A written or oral waiver of this requirement is against public policy and is void. Any person in violation of this section is liable for the return of any sums unlawfully obtained from the lessee, with interest, and reasonable attorney's fees and costs. [PL 2003, c. 259, §1 (AMD).]

SECTION HISTORY

PL 1981, c. 428, §8 (NEW). PL 1985, c. 293, §4 (AMD). PL 2003, c. 259, §1 (AMD).

§6016. Rent increase limitation

Rent charged for residential estates may not be increased if the dwelling unit is in violation of the warranty of habitability. Any violation caused by the tenant, his family, guests or invitees shall not bar a rent increase. A written or oral waiver of this requirement is against public policy and is void. Any person in violation of this section shall be liable for the return of any sums unlawfully obtained from the lessee, with interest and reasonable attorneys' fees and costs. [PL 1985, c. 293, §5 (AMD).]

SECTION HISTORY

PL 1981, c. 428, §8 (NEW). PL 1985, c. 293, §5 (AMD).

§6016-A. Sexual harassment prohibited; Maine Human Rights Act

A landlord or a landlord's agent may not subject a tenant to sexual harassment. [PL 2019, c. 351, §4 (NEW).]

Nothing in this subchapter limits the application of the Maine Human Rights Act. [PL 2019, c. 351, §4 (NEW).]

SECTION HISTORY

PL 2019, c. 351, §4 (NEW).

SUBCHAPTER 2

COMMERCIAL LANDLORDS AND TENANTS

§6017. Commercial leases

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

A. A "commercial tenancy" or "commercial lease" means a nonresidential tenancy of premises by a for-profit business entity. Nonprofit entities, charitable institutions and religious organizations who are tenants may not be construed to have commercial tenancies. [PL 1999, c. 192, §2 (NEW).]

[PL 1999, c. 192, §2 (NEW).]

2. Commercial lease relationship. Notwithstanding the provisions of subchapter I, commercial landlords and tenants are governed by the following provisions, and if any of the following provisions conflict with provisions in any other statutes governing the relationships between landlords and tenants, this section controls all commercial lease relationships, whether written or oral.

A. After termination of a commercial lease, and after a complaint for forcible entry and detainer is filed, the defendants shall, no later than the return date and as a condition of maintaining a defense, appear on the return day to pay the agreed-upon rent, including all arrears. If rent or arrears are disputed, the disputed rent, including all claimed arrears, must be paid to the court at the time of the hearing. In addition to deciding the right of possession, the District Court shall also decide the amount of rent owed, if disputed. In establishing the amount of rent owed, the District Court may consider offsetting claims to the extent appropriate. If undisputed, the rent and arrears must be paid to the court prior to the hearing. Upon final decision by the District Court, that court shall order such sums as it determines proper to be turned over by the clerk to either or both of the parties. Any order of the District Court for payment of rent, whether to the landlord or to the court, continues in effect through any appeal of the District Court's decision. The landlord may apply for turnover of rent money held by the court prior to final judgment by the District Court or prior to final decision on appeal by the Superior Court, upon a showing of hardship and reasonable likelihood of success on the merits. Failure of the tenant to pay rent to the court when due causes the writ of possession to issue immediately. [PL 1999, c. 192, §2 (NEW).]

[PL 1999, c. 192, §2 (NEW).]

3. Right of possession on bond for damages. When judgment is rendered for the plaintiff, a writ of possession may issue immediately in the District Court or from the Superior Court during appeal, if the plaintiff provides the defendant with a surety bond conditioned to pay all such damages and costs as may be suffered by the defendant if final judgment is rendered for the defendant. In setting the amount of the required surety bond, the court may consider any offsetting claims between the parties.

[PL 1999, c. 192, §2 (NEW).]

4. Arbitration. A commercial landlord and tenant may agree in their lease or in a separate agreement to arbitration of disputes as to termination, the right of possession arising under the lease between landlord and tenant and amounts owed for rent before an arbitrator or arbitrators chosen in advance pursuant to the lease or other written agreement. The decision of the arbitrator is final. If the arbitrator rules in favor of the landlord, the landlord may, by presentation of an attested copy of the arbitrator's decision, and after docketing of the arbitrator's decision by the Superior Court, immediately obtain a writ of possession from the clerk of the Superior Court. The arbitrator's decision may be stayed or appealed from only upon such grounds as generally lie for stay or appeal of an arbitration decision pursuant to the Uniform Arbitration Act, Title 14, section 5949.

[PL 1999, c. 192, §2 (NEW).]

5. Jury trial. A commercial landlord and tenant may agree in the commercial lease or in a separate agreement to waive jury trial of disputes arising under the lease.
[PL 1999, c. 192, §2 (NEW).]

6. Jurisdiction. The District Court has jurisdiction to hear, decide and award rent and arrears allegedly owing, regardless of the amount.
[PL 1999, c. 192, §2 (NEW).]

SECTION HISTORY

PL 1999, c. 192, §2 (NEW).

CHAPTER 710

RENTAL PROPERTY

§6021. Implied warranty and covenant of habitability

1. Definition. As used in this section, the term "dwelling unit" shall include mobile homes, apartments, buildings or other structures, including the common areas thereof, which are rented for human habitation.
[PL 1977, c. 401, §4 (NEW).]

2. Implied warranty of fitness for human habitation. In any written or oral agreement for rental of a dwelling unit, the landlord shall be deemed to covenant and warrant that the dwelling unit is fit for human habitation.
[PL 1977, c. 401, §4 (NEW).]

3. Complaints. If a condition exists in a dwelling unit which renders the dwelling unit unfit for human habitation, then a tenant may file a complaint against the landlord in the District Court or Superior Court. The complaint shall state that:

A. A condition, which shall be described, endangers or materially impairs the health or safety of the tenants; [PL 1977, c. 401, §4 (NEW).]

B. The condition was not caused by the tenant or another person acting under his control; [PL 1977, c. 401, §4 (NEW).]

C. Written notice of the condition without unreasonable delay, was given to the landlord or to the person who customarily collects rent on behalf of the landlord; [PL 1977, c. 401, §4 (NEW).]

D. The landlord unreasonably failed under the circumstances to take prompt, effective steps to repair or remedy the condition; and [PL 1977, c. 401, §4 (NEW).]

E. The tenant was current in rental payments owing to the landlord at the time written notice was given. [PL 1977, c. 401, §4 (NEW).]

The notice requirement of paragraph C may be satisfied by actual notice to the person who customarily collects rents on behalf of the landlord.
[PL 1977, c. 401, §4 (NEW).]

4. Remedies. If the court finds that the allegations in the complaint are true, the landlord shall be deemed to have breached the warranty of fitness for human habitation established by this section, as of the date when actual notice of the condition was given to the landlord. In addition to any other relief or remedies which may otherwise exist, the court may take one or more of the following actions.

A. The court may issue appropriate injunctions ordering the landlord to repair all conditions which endanger or materially impair the health or safety of the tenant; [PL 1977, c. 401, §4 (NEW).]

B. The court may determine the fair value of the use and occupancy of the dwelling unit by the tenant from the date when the landlord received actual notice of the condition until such time as the condition is repaired, and further declare what, if any, moneys the tenant owes the landlord or what, if any, rebate the landlord owes the tenant for rent paid in excess of the value of use and occupancy. In making this determination, there shall be a rebuttable presumption that the rental amount equals the fair value of the dwelling unit free from any condition rendering it unfit for human habitation. A written agreement whereby the tenant accepts specified conditions which may violate the warranty of fitness for human habitation in return for a stated reduction in rent or other specified fair consideration shall be binding on the tenant and the landlord. [PL 1977, c. 696, §164 (AMD).]

C. The court may authorize the tenant to temporarily vacate the dwelling unit if the unit must be vacant during necessary repairs. No use and occupation charge shall be incurred by a tenant until such time as the tenant resumes occupation of the dwelling unit. If the landlord offers reasonable, alternative housing accommodations, the court may not surcharge the landlord for alternate tenant housing during the period of necessary repairs. [PL 1981, c. 428, §9 (AMD).]

D. The court may enter such other orders as the court may deem necessary to accomplish the purposes of this section. The court may not award consequential damages for breach of the warranty of fitness for human habitation.

Upon the filing of a complaint under this section, the court shall enter such temporary restraining orders as may be necessary to protect the health or well-being of tenants or of the public. [PL 1977, c. 401, §4 (NEW).]

[PL 1981, c. 428, §9 (AMD).]

5. Waiver. A written agreement whereby the tenant accepts specified conditions which may violate the warranty of fitness for human habitation in return for a stated reduction in rent or other specified fair consideration shall be binding on the tenant and the landlord.

Any agreement, other than as provided in this subsection, by a tenant to waive any of the rights or benefits provided by this section shall be void.

[PL 1977, c. 401, §4 (NEW).]

6. Heating requirements. It is a breach of the implied warranty of fitness for human habitation when the landlord is obligated by agreement or lease to provide heat for a dwelling unit and:

A. The landlord maintains an indoor temperature which is so low as to be injurious to the health of occupants not suffering from abnormal medical conditions; [PL 1983, c. 764, §1 (NEW).]

B. The dwelling unit's heating facilities are not capable of maintaining a minimum temperature of at least 68 degrees Fahrenheit at a distance of 3 feet from the exterior walls, 5 feet above floor level at an outside temperature of minus 20 degrees Fahrenheit; or [PL 1983, c. 764, §1 (NEW).]

C. The heating facilities are not operated so as to protect the building equipment and systems from freezing. [PL 1983, c. 764, §1 (NEW).]

Municipalities of this State are empowered to adopt or retain more stringent standards by ordinances, laws or regulations provided in this section. Any less restrictive municipal ordinance, law or regulation establishing standards are invalid and of no force and suspended by this section.

[PL 1983, c. 764, §1 (NEW).]

6-A. Agreement regarding provision of heat. A landlord and tenant under a lease or a tenancy at will may enter into an agreement for the landlord to provide heat at less than 68 degrees Fahrenheit. The agreement must:

A. Be in a separate written document, apart from the lease, be set forth in a clear and conspicuous format, readable in plain English and in at least 12-point type, and be signed by both parties to the agreement; [PL 2009, c. 139, §1 (NEW).]

B. State that the agreement is revocable by either party upon reasonable notice under the circumstances; [PL 2009, c. 139, §1 (NEW).]

C. Specifically set a minimum temperature for heat, which may not be less than 62 degrees Fahrenheit; and [PL 2009, c. 139, §1 (NEW).]

D. Set forth a stated reduction in rent that must be fair and reasonable under the circumstances. [PL 2009, c. 139, §1 (NEW).]

An agreement under this subsection may not be entered into or maintained if a person over 65 years of age or under 5 years of age resides on the premises. A landlord is not responsible if a tenant who controls the temperature on the premises reduces the heat to an amount less than 68 degrees Fahrenheit as long as the landlord complies with subsection 6, paragraph B or if the tenant fails to inform the landlord that a person over 65 years of age or under 5 years of age resides on the premises.
[PL 2009, c. 139, §1 (NEW).]

7. Rights are supplemental.

[PL 1989, c. 484, §3 (NEW); MRSA T. 14 §6021, sub-§7 (RP).]

SECTION HISTORY

PL 1971, c. 270 (NEW). PL 1977, c. 401, §4 (RPR). PL 1977, c. 696, §164 (AMD). PL 1981, c. 428, §9 (AMD). PL 1983, c. 764, §1 (AMD). PL 1989, c. 484, §3 (AMD). PL 2009, c. 139, §1 (AMD).

§6021-A. Treatment of bedbug infestation

1. Definition. As used in this section, unless the context otherwise indicates, "pest control agent" means a commercial applicator of pesticides certified pursuant to Title 22, section 1471-D.
[PL 2009, c. 566, §8 (NEW).]

2. Landlord duties. A landlord has the following duties.

A. Upon written or oral notice from a tenant that a dwelling unit may have a bedbug infestation, the landlord shall within 5 days conduct an inspection of the unit for bedbugs. [PL 2009, c. 566, §8 (NEW).]

B. Upon a determination that an infestation of bedbugs does exist in a dwelling unit, the landlord shall within 10 days contact a pest control agent pursuant to paragraph C. [PL 2009, c. 566, §8 (NEW).]

C. A landlord shall take reasonable measures to effectively identify and treat the bedbug infestation as determined by a pest control agent. The landlord shall employ a pest control agent that carries current liability insurance to promptly treat the bedbug infestation. [PL 2009, c. 566, §8 (NEW).]

D. Before renting a dwelling unit, a landlord shall disclose to a prospective tenant if an adjacent unit or units are currently infested with or are being treated for bedbugs. Upon request from a tenant or prospective tenant, a landlord shall disclose the last date that the dwelling unit the landlord seeks to rent or an adjacent unit or units were inspected for a bedbug infestation and found to be free of a bedbug infestation. [PL 2009, c. 566, §8 (NEW).]

E. A landlord may not offer for rent a dwelling unit that the landlord knows or suspects is infested with bedbugs. [PL 2009, c. 566, §8 (NEW).]

F. A landlord shall offer to make reasonable assistance available to a tenant who is not able to comply with requested bedbug inspection or control measures under subsection 3, paragraph C.

The landlord shall disclose to the tenant what the cost may be for the tenant's compliance with the requested bedbug inspection or control measure. After making this disclosure, the landlord may provide financial assistance to the tenant to prepare the unit for bedbug treatment. A landlord may charge the tenant a reasonable amount for any such assistance, subject to a reasonable repayment schedule, not to exceed 6 months, unless an extension is otherwise agreed to by the landlord and the tenant. This paragraph may not be construed to require the landlord to provide the tenant with alternate lodging or to pay to replace the tenant's personal property. [PL 2011, c. 405, §9 (AMD).]

[PL 2011, c. 405, §9 (AMD).]

3. Tenant duties. A tenant has the following duties.

A. A tenant shall promptly notify a landlord when the tenant knows of or suspects an infestation of bedbugs in the tenant's dwelling unit. [PL 2009, c. 566, §8 (NEW).]

B. Upon receiving reasonable notice as set forth in section 6025, including reasons for and scope of the request for access to the premises, a tenant shall grant the landlord of the dwelling unit, the landlord's agent or the landlord's pest control agent and its employees access to the unit for purposes of an inspection for or control of the infestation of bedbugs. The initial inspection may include only a visual inspection and manual inspection of the tenant's bedding and upholstered furniture. Employees of the pest control agent may inspect items other than bedding and upholstered furniture when such an inspection is considered reasonable by the pest control agent. If the pest control agent finds bedbugs in the dwelling unit or in an adjoining unit, the pest control agent may have additional access to the tenant's personal belongings as determined reasonable by the pest control agent. [PL 2009, c. 566, §8 (NEW).]

C. Upon receiving reasonable notice as set forth in section 6025, a tenant shall comply with reasonable measures to eliminate and control a bedbug infestation as set forth by the landlord and the pest control agent. The tenant's unreasonable failure to completely comply with the pest control measures results in the tenant's being financially responsible for all pest control treatments of the dwelling unit arising from the tenant's failure to comply. [PL 2009, c. 566, §8 (NEW).]

[PL 2009, c. 566, §8 (NEW).]

4. Remedies. The following remedies are available.

A. The failure of a landlord to comply with the provisions of this section constitutes a finding that the landlord has unreasonably failed under the circumstances to take prompt, effective steps to repair or remedy a condition that endangers or materially impairs the health or safety of a tenant pursuant to section 6021, subsection 3. [PL 2009, c. 566, §8 (NEW).]

B. A landlord who fails to comply with the provisions of this section is liable for a penalty of $250 or actual damages, whichever is greater, plus reasonable attorney's fees. [PL 2009, c. 566, §8 (NEW).]

C. A landlord may commence an action in accordance with section 6030-A and obtain relief against a tenant who fails to provide reasonable access or comply with reasonable requests for inspection or treatment or otherwise unreasonably fails to comply with reasonable bedbug control measures as set forth in this section. For the purposes of section 6030-A and this section, if a court finds that a tenant has unreasonably failed to comply with this section, the court may issue a temporary order or interim relief pursuant to Title 5, section 4654 to carry out the provisions of this section, including but not limited to:

(1) Granting the landlord access to the premises for the purposes set forth in this section;

(2) Granting the landlord the right to engage in bedbug control measures; and

(3) Requiring the tenant to comply with specified bedbug control measures or assessing the tenant with costs and damages related to the tenant's noncompliance.

Any order granting the landlord access to the premises must be served upon the tenant at least 24 hours before the landlord enters the premises. [PL 2009, c. 566, §8 (NEW).]

D. In any action of forcible entry and detainer under section 6001, there is a rebuttable presumption that the action was commenced in retaliation against the tenant if, within 6 months before the commencement of the action, the tenant has asserted the tenant's rights pursuant to this section. The rebuttable presumption of retaliation does not apply unless the tenant asserted that tenant's rights pursuant to this section prior to being served with the eviction notice. There is no presumption of retaliation if the action for forcible entry and detainer is brought for failure to pay rent or for causing substantial damage to the premises. [PL 2011, c. 405, §10 (AMD).]

[PL 2011, c. 405, §10 (AMD).]

SECTION HISTORY

PL 2009, c. 566, §8 (NEW). PL 2011, c. 405, §§9, 10 (AMD).

§6022. Receipts for rent payments and security deposits

1. Rent receipts required. A landlord or his agent shall provide a written receipt, as required in subsection 2, for each rental payment and each security deposit payment received partially or fully in cash from any tenant. This receipt shall be delivered to the tenant at the time the cash payment is accepted. If either the rent or security deposit is accepted in more than one installment instead of a single payment, a separate receipt shall be provided for each payment. If the payment for rent and security deposit is received at the same time, a separate receipt, properly identified in accordance with subsection 2, shall be issued each for the rental payment and for the security deposit.

[PL 1979, c. 180 (NEW).]

2. Minimum information. The information contained in each receipt shall include, but is not limited to, the following: The date of the payment; the amount paid; the name of the party for whom the payment is made; the period for which the payment is being made; a statement that the payment is either for rent or for security deposit; the signature of the person receiving the payment; and the name of that person printed in a legible manner. A rent card retained by the tenant and containing the aforementioned information shall satisfy the requirements of this section.

[PL 1979, c. 180 (NEW).]

3. Exemption. This section shall not apply to any tenancy for a dwelling unit which is part of a structure containing no more than 5 dwelling units, one of which is occupied by the landlord.

[PL 1979, c. 180 (NEW).]

SECTION HISTORY

PL 1979, c. 180 (NEW).

§6023. Agency

Any person authorized to enter into a residential lease or tenancy at will agreement on behalf of the owner or owners of the premises is deemed to be the owner's agent for purposes of service of process and receiving and receipting for notices and demands. [PL 2009, c. 566, §9 (AMD).]

SECTION HISTORY

PL 1979, c. 180 (NEW). PL 2009, c. 566, §9 (AMD).

§6024. Heat and utilities in common areas

A landlord may not enter into a lease or tenancy at will agreement for a dwelling unit in a multi-unit residential building where the expense of furnishing heat or electricity or any other utility to the common areas or other area not within the unit is the sole responsibility of the tenant in that unit, unless both parties to the lease or tenancy at will agreement have agreed in writing that the tenant will pay for such costs in return for a stated reduction in rent or other specified fair consideration that approximates

the actual cost of providing heat or utilities to the common areas. "Common areas" includes, but is not limited to, hallways, stairwells, basements, attics, storage areas, fuel furnaces or water heaters used in common with other tenants. Except as provided in this section, a written or oral waiver of this requirement is against public policy and is void. Any person in violation of this section is liable to the tenant for actual damages or $250, whichever is greater, and reasonable attorneys' fees and costs. In any action brought pursuant to this section, there is a rebuttable presumption that the landlord is aware that the tenant has been furnishing heat or utility service to common areas or other units. If the landlord rebuts this presumption, the landlord is required to comply with this section but is only liable to the tenant for actual damages suffered by the tenant. [PL 2009, c. 566, §10 (AMD).]

SECTION HISTORY

PL 1981, c. 176 (NEW). PL 1981, c. 400 (NEW). PL 1983, c. 480, §A10 (RAL). PL 1985, c. 638, §5 (AMD). PL 2009, c. 566, §10 (AMD).

§6024-A. Landlord failure to pay for utility service

1. Deduct from rent. If a landlord fails to pay for utility service in the name of the landlord, the tenant, in accordance with Title 35-A, section 706, may pay for the utility service and deduct the amount paid from the rent due to the landlord.
[PL 2009, c. 566, §11 (NEW).]

2. Award damages. In addition to the remedy set forth in subsection 1, upon a finding by a court that a landlord has failed to pay for utility service in the name of the landlord, the court shall award to the tenant actual damages in the amount actually paid for utilities by the tenant or $100, whichever is greater, together with the aggregate amount of costs and expenses reasonably incurred in connection with the action. The court may also award to the tenant reasonable attorney's fees.
[PL 2009, c. 566, §11 (NEW).]

3. Presumption. In any action brought pursuant to subsection 2, there is a rebuttable presumption that the landlord knowingly failed to pay for the utility service. If the landlord rebuts this presumption, the landlord is liable to the tenant only for actual damages suffered by the tenant.
[PL 2009, c. 566, §11 (NEW).]

SECTION HISTORY

PL 1989, c. 87, §1 (NEW). PL 2009, c. 566, §11 (RPR).

§6025. Access to premises

1. Tenant obligations. A tenant may not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers or contractors.

A tenant may not change the lock to the dwelling unit without giving notice to the landlord and giving the landlord a duplicate key within 48 hours of the change. A victim may change the locks to the unit at the victim's expense. If the victim changes the locks to the unit, the victim shall provide the landlord with a duplicate key within 72 hours of changing the locks. For the purposes of this subsection, "victim" has the same meaning as in section 6000, subsection 4.
[PL 2015, c. 293, §11 (AMD).]

2. Landlord obligations. Except in the case of emergency or if it is impracticable to do so, the landlord shall give the tenant reasonable notice of his intent to enter and shall enter only at reasonable times. Twenty-four hours is presumed to be a reasonable notice in the absence of evidence to the contrary.
[PL 1981, c. 428, §10 (NEW).]

3. Remedy. If a landlord makes an entry in violation of this section, makes a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful that have the effect of harassing the tenant, the tenant may recover actual damages or $100, whichever is greater, and obtain injunctive relief to prevent recurrence of the conduct, and if the tenant obtains a judgment after a contested hearing, reasonable attorney's fees.

If a tenant changes the lock and does not provide the landlord with a duplicate key, in the case of emergency the landlord may gain admission through whatever reasonable means necessary and charge the tenant reasonable costs for any resulting damage. If a tenant changes the lock and refuses to provide the landlord with a duplicate key, the landlord may terminate the tenancy with a 7-day notice.
[PL 1999, c. 204, §1 (AMD).]

4. Waiver. Any agreement by a tenant to waive any of the rights or benefits provided by this section is against public policy and is void.
[PL 1981, c. 428, §10 (NEW).]

SECTION HISTORY

PL 1981, c. 428, §10 (NEW). PL 1999, c. 204, §1 (AMD). PL 2015, c. 293, §11 (AMD).

§6026. Dangerous conditions requiring minor repairs

1. Prohibition of dangerous conditions. A landlord who enters into a lease or tenancy at will agreement renting premises for human habitation may not maintain or permit to exist on those premises any condition that endangers or materially impairs the health or safety of the tenants.
[PL 2009, c. 566, §12 (AMD).]

2. Tenant action if landlord fails to act. If a landlord fails to maintain a rental unit in compliance with the standards of subsection 1 and the reasonable cost of compliance is less than $500 or an amount equal to 1/2 the monthly rent, whichever is greater, the tenant shall notify the landlord in writing of the tenant's intention to correct the condition at the landlord's expense. If the landlord fails to comply within 14 days after being notified by the tenant in writing by certified mail, return receipt requested, or as promptly as conditions require in case of emergency, the tenant may cause the work to be done with due professional care with the same quality of materials as are being repaired. Installation and servicing of electrical, oil burner or plumbing equipment must be by a professional licensed pursuant to Title 32. After submitting to the landlord an itemized statement, the tenant may deduct from the tenant's rent the actual and reasonable cost or the fair and reasonable value of the work, not exceeding the amount specified in this subsection. This subsection does not apply to repairs of damage caused by the tenant or the tenant's invitee.
[PL 2005, c. 78, §1 (AMD).]

3. Limitation on rights. No tenant may exercise his rights pursuant to this section if the condition was caused by the tenant, his guest or an invitee of the tenant, nor where the landlord is unreasonably denied access, nor where extreme weather conditions prevent the landlord from making the repair.
[PL 1981, c. 428, §10 (NEW).]

4. Limitation on reimbursement. No tenant may seek or receive reimbursement for labor provided by the tenant or any member of his immediate family pursuant to this section. Parts and materials purchased by the tenant are reimbursable.
[PL 1981, c. 428, §10 (NEW).]

5. Waiver. A provision in a lease or tenancy at will agreement in which the tenant waives either the tenant's rights under this section or the duty of the landlord to maintain the premises in compliance with the standards of fitness specified in this section or any other duly promulgated ordinance or regulation is void, except that a written agreement whereby the tenant accepts specified conditions that may violate the warranty of fitness for human habitation in return for a stated reduction in rent or other specified fair consideration is binding on the tenant and the landlord.

[PL 2009, c. 566, §13 (AMD).]

6. Rights are supplemental. The rights created by this section are supplemental to and in no way limit the rights of a tenant under section 6021.
[PL 1981, c. 428, §10 (NEW).]

7. Limitation on liability. Whenever repairs are undertaken by or on behalf of the tenant, the landlord shall be held free from liability for injury to that tenant or other persons injured thereby.
[PL 1981, c. 428, §10 (NEW).]

8. Application. This section does not apply to any tenancy for a dwelling unit which is part of a structure containing no more than 5 dwelling units, one of which is occupied by the landlord.
[PL 1981, c. 428, §10 (NEW).]

9. Lack of Heat. If the landlord fails to comply with the provisions of Title 14, section 6021, subsection 6, then the purchase of heating fuel by the tenant shall be deemed to be a "cost of compliance" within the meaning of subsection 2. For tenants on general assistance, municipalities shall have the rights of tenants under this subsection.
[PL 1983, c. 764, §2 (NEW).]

10. Foreclosure. For tenancies in buildings in which a foreclosure action brought pursuant to section 6203-A or 6321 has been filed and is currently pending, or in which a foreclosure judgment has been entered, if the landlord fails to maintain the premises in compliance with the standards in subsection 1, a tenant may exercise the tenant's rights pursuant to this section without regard to the cost of compliance limitations set forth in subsection 2, except that the reasonable costs of compliance may not be more than the equivalent of 2 months' rent. A tenant who exercises the tenant's rights under this subsection and who thereafter seeks assistance pursuant to Title 22, chapter 1161 may not have any amounts expended under this subsection counted as income pursuant to Title 22, section 4301, subsection 7.
[PL 2009, c. 566, §14 (NEW).]

SECTION HISTORY

PL 1981, c. 428, §10 (NEW). PL 1983, c. 764, §2 (AMD). PL 1993, c. 236, §1 (AMD). PL 2005, c. 78, §1 (AMD). PL 2009, c. 566, §§12 - 14 (AMD).

§6026-A. Municipal intervention to provide for basic necessities

In accordance with the procedures provided in this section, the municipal officers of any town or city or their designee may provide for basic necessities and any repair activities to ensure the continued habitability of any premises leased for human habitation. For the purposes of this section, "basic necessities" means those services, including but not limited to maintenance, repairs and provision of heat or utilities, that a landlord is otherwise responsible to provide under the terms of a lease, a tenancy at will agreement or applicable law. [PL 2009, c. 566, §15 (AMD).]

1. Imminent threat to habitability of leased premises exists. The leased premises must be in need of basic necessities such that the municipal officers or their designee can make a finding that an imminent threat to the continued habitability of the premises exists.
[PL 2009, c. 566, §15 (AMD).]

2. Attempt to contact landlord. The municipal officers or their designee must document a good faith attempt to contact the landlord of the premises under subsection 1 regarding:

A. The municipality's determination of the threat to habitability; [PL 2009, c. 135, §1 (NEW).]

B. The municipality's intention to provide for basic necessities; [PL 2009, c. 566, §15 (AMD).]

C. The municipality's intention to subsequently recover the municipality's direct and administrative costs from the landlord; and [PL 2009, c. 135, §1 (NEW).]

D. The landlord's ability to avert the municipality's actions by causing the provision of basic necessities by a time certain. [PL 2009, c. 566, §15 (AMD).]

This communication to the landlord must be either in person, by telephone or by certified mail as may be warranted considering the degree or imminence of the threat.
[PL 2009, c. 566, §15 (AMD).]

3. Municipality may provide for basic necessities. If the landlord cannot be contacted in a timely manner or if the landlord does not cause the provision of basic necessities by a deadline identified by the municipal officers or their designee, the municipality may provide for basic necessities and whatever attendant activities may be necessary to ensure the proper functioning of the leased premises.
[PL 2009, c. 566, §15 (AMD).]

4. Lien. The municipality has a lien against the landlord of the leased premises for the amount of money spent by the municipality to provide for basic necessities and attendant activities pursuant to this section, as well as all reasonably related administrative costs pursuant to subsection 5.
[PL 2009, c. 566, §15 (AMD).]

5. Filing of notice of lien; interest; costs. The municipal officers or their designee shall file a notice of the lien under subsection 4 with the register of deeds of the county in which the property is located within 30 days of providing for basic necessities. That filing secures the municipality's lien interest for an amount equal to the costs recoverable pursuant to this section. Not less than 10 days prior to the filing, the municipal officers or their designee shall send notification of the proposed action by certified mail, return receipt requested, to the owner of the real estate and any record holder of the mortgage. The lien notification must contain the title, address and telephone number of the municipal officer or officers who authorized the provision of basic necessities, an itemized list of the costs to be recovered by lien and the provisions of this subsection regarding interest rates and costs. The lien is effective until enforced by an action for equitable relief or until discharged. Interest on the amount of money secured by the lien may be charged by the municipality at a rate determined by the municipal officers but in no event may the rate exceed the maximum rate of interest allowed by the Treasurer of State pursuant to Title 36, section 186. Interest accrues from and including the date the lien is filed. The costs of securing and enforcing the lien are recoverable upon enforcement.
[PL 2009, c. 566, §15 (AMD).]

SECTION HISTORY

PL 2009, c. 135, §1 (NEW). PL 2009, c. 566, §15 (AMD).

§6027. Discrimination against families with children prohibited

(REPEALED)

SECTION HISTORY

PL 1983, c. 480, §A10 (RAL). PL 1987, c. 770, §§1-3 (AMD). PL 1989, c. 245, §6 (RP).

§6028. Penalties for late payment of rent

A landlord may assess a penalty against a residential tenant for late payment of rent for a residential dwelling unit according to this section. [PL 1987, c. 605 (AMD).]

1. Late payment. A payment of rent is late if it is not made within 15 days from the time the payment is due.
[PL 1987, c. 215 (NEW).]

2. Maximum penalty. A landlord may not assess a penalty for the late payment of rent which exceeds 4% of the amount due for one month.
[PL 1987, c. 215 (NEW).]

3. Notice in writing. A landlord may not assess a penalty for the late payment of rent unless the landlord gave the tenant written notice at the time they entered into the rental agreement that a penalty, up to 4% of one month's rent, may be charged for the late payment of rent.
[PL 1987, c. 215 (NEW).]

SECTION HISTORY

PL 1987, c. 215 (NEW). PL 1987, c. 605 (AMD).

§6029. Discrimination based on general assistance escrow accounts prohibited

(REPEALED)

SECTION HISTORY

PL 1989, c. 484, §4 (NEW). MRSA T. 14 §6029, sub-§3 (RP).

§6030. Unfair agreements

1. Illegal waiver of rights. It is an unfair and deceptive trade practice in violation of Title 5, section 207 for a landlord to require a tenant to enter into a lease or tenancy at will agreement for a dwelling unit, as defined in section 6021, in which the tenant agrees to a provision that has the effect of waiving a tenant right established in chapter 709, this chapter or chapter 710-A. This subsection does not apply when the law specifically allows the tenant to waive a statutory right during negotiations with the landlord.
[PL 2009, c. 566, §16 (AMD).]

2. Unenforceable provisions. The following lease or tenancy at will agreement or rule provisions for a dwelling unit, as defined in section 6021, are specifically declared to be unenforceable and in violation of Title 5, section 207:

A. Any provision that absolves the landlord from liability for the negligence of the landlord or the landlord's agent; [PL 1991, c. 361, §2 (NEW); PL 1991, c. 361, §3 (AFF).]

B. Any provision that requires the tenant to pay the landlord's legal fees in enforcing the lease or tenancy at will agreement; [PL 2009, c. 566, §16 (AMD).]

C. Any provision that requires the tenant to give a lien upon the tenant's property for the amount of any rent or other sums due the landlord; and [PL 1991, c. 361, §2 (NEW); PL 1991, c. 361, §3 (AFF).]

D. Any provision that requires the tenant to acknowledge that the provisions of the lease or tenancy at will agreement, including tenant rules, are fair and reasonable. [PL 2009, c. 566, §16 (AMD).]
[PL 2009, c. 566, §16 (AMD).]

3. Exception. Notwithstanding subsection 2, paragraph B, a lease or tenancy at will agreement or rule provision that provides for the award of attorney's fees to the prevailing party after a contested hearing to enforce the lease or tenancy at will agreement in cases of wanton disregard of the terms of the lease or tenancy at will agreement is not in violation of Title 5, section 207 and is enforceable.
[PL 2009, c. 566, §16 (AMD).]

SECTION HISTORY

PL 1991, c. 361, §2 (NEW). PL 1991, c. 361, §3 (AFF). PL 1991, c. 704 (AMD). PL 2009, c. 566, §16 (AMD).

§6030-A. Protection of rental property or tenants

1. Commencing action. A landlord may file a petition against a tenant, a guest or invitee of a tenant or the owner of a dangerous pet on the premises for the protection of rental property or tenants when the landlord, the landlord's employee or agent, the landlord's rental property or persons who are tenants of the landlord have experienced harm or have been threatened with harm by a tenant of the

landlord, a guest or invitee of a tenant or a dangerous pet on the premises. The landlord may file the petition in the landlord's own name or, when the landlord has written authority from a tenant to do so, may file the action on behalf of the aggrieved tenant, or both.
[PL 2003, c. 265, §1 (AMD).]

2. Procedures and relief. Actions under this section are governed by the procedural provisions of Title 5, chapter 337-A. In addition, a temporary order may be sought if the landlord's rental property is in an immediate and present danger of suffering substantial damage as a result of the defendant's actions, and additional injunctive relief may be granted enjoining the defendant from damaging the landlord's or aggrieved tenant's property or from threatening, assaulting, molesting, confronting or otherwise disturbing the peace of the landlord, the landlord's employee or agent or of any aggrieved tenant.
[PL 1995, c. 650, §8 (NEW).]

SECTION HISTORY

PL 1995, c. 650, §8 (NEW). PL 2003, c. 265, §1 (AMD).

§6030-B. Environmental lead hazards

1. Environmental lead hazard disclosure.
[PL 2011, c. 96, §1 (RP).]

2. Application.
[PL 2011, c. 96, §2 (RP).]

3. Notification of repairs. A landlord or other person who on behalf of a landlord enters into a lease or tenancy at will agreement for residential property who undertakes, or who engages someone else to undertake, any repair, renovation or remodeling activity in a residential building built before 1978 that includes one or more units that are rented for human habitation shall give notice of the activity and the risk of an environmental lead hazard pursuant to this subsection.

A. Notice must be given at least 30 days before the activity is commenced by:

(1) Posting a sign on the building's exterior entry doors; and

(2) A notice sent by certified mail to every unit in the building. [PL 2007, c. 238, §1 (NEW).]

B. Notwithstanding paragraph A, notice may be given less than 30 days before the activity is commenced by:

(1) Posting a sign on the building's exterior entry doors; and

(2) Obtaining from one adult tenant of each unit in the building a written waiver of the 30-day notice requirement and a written acknowledgment of receipt of notice for the particular activity. [PL 2007, c. 238, §1 (NEW).]

C. The waiver of the 30-day notice requirement pursuant to paragraph B must be in plain language, immediately precede the signature of the adult tenant, be printed in no less than 12-point boldface type and be in the following form or in a substantially similar form:

NOTICE: YOU ARE WAIVING YOUR RIGHT UNDER STATE LAW TO RECEIVE 30 DAYS' NOTICE PRIOR TO ANY REPAIR, RENOVATION OR REMODELING ACTIVITY TO A RESIDENCE BUILT BEFORE 1978. RESIDENCES BUILT BEFORE 1978 MAY CONTAIN LEAD PAINT SUFFICIENT TO POISON CHILDREN AND SOMETIMES ADULTS. WORKERS PERFORMING RENOVATIONS OR REPAIRS IN HOUSING BUILT BEFORE 1978 SHOULD USE LEAD-SAFE WORK PRACTICES THAT MINIMIZE AND CONTAIN LEAD DUST AND SHOULD CLEAN THE WORK AREA THOROUGHLY TO PREVENT LEAD POISONING. [PL 2007, c. 238, §1 (NEW).]

D. For purposes of this subsection, "repair, renovation or remodeling activity" means the repair, reconstruction, restoration, replacement, sanding or removal of any structural part of a residence that may disturb a surface coated with lead-based paint. [PL 2007, c. 238, §1 (NEW).]

E. For purposes of this subsection, "environmental lead hazard" means any condition that may cause exposure to lead from lead-contaminated dust or lead-based paint. [PL 2007, c. 238, §1 (NEW).]

F. Emergency repairs are exempt from the notification provisions of this subsection. For purposes of this paragraph, "emergency repairs" means repair, renovation or remodeling activities that were not planned but result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard or threatens equipment or property with significant damage. [PL 2007, c. 238, §1 (NEW).]

G. A person who violates this subsection commits a civil violation for which a fine of up to $500 per violation may be assessed. This paragraph is enforceable in either District Court or Superior Court. [PL 2007, c. 238, §1 (NEW).]

H. This subsection may not be construed to limit a tenant's rights, a landlord's duties or any other provisions under section 6026 or Title 22, chapter 252. [PL 2007, c. 238, §1 (NEW).]

[PL 2009, c. 566, §17 (AMD).]

SECTION HISTORY

PL 2005, c. 339, §1 (NEW). PL 2007, c. 238, §1 (AMD). PL 2009, c. 566, §17 (AMD). PL 2011, c. 96, §§1, 2 (AMD).

§6030-C. Residential energy efficiency disclosure statement

1. Energy efficiency disclosure. A prospective tenant who will be paying utility costs has the right to obtain from an energy supplier for the unit offered for rental the amount of consumption and the cost of that consumption for the prior 12-month period. A landlord or other person who on behalf of a landlord enters into a lease or tenancy at will agreement for residential property that will be used by a tenant or lessee as a primary residence shall provide to potential tenants or lessees who pay for an energy supply for the unit or upon request by a tenant or lessee a residential energy efficiency disclosure statement in accordance with Title 35-A, section 10117, subsection 1 that includes, but is not limited to, information about the energy efficiency of the property. Alternatively, the landlord may include in the application for the residential property the name of each supplier of energy that previously supplied the unit, if known, and the following statement: "You have the right to obtain a 12-month history of energy consumption and the cost of that consumption from the energy supplier."

[RR 2011, c. 1, §21 (COR).]

2. Provision of statement. A landlord or other person who on behalf of a landlord enters into a lease or tenancy at will agreement shall provide the residential energy efficiency disclosure statement required under subsection 1 in accordance with this subsection. The landlord or other person who on behalf of a landlord enters into a lease or tenancy at will agreement shall provide the statement to any person who requests the statement in person. Before a tenant or lessee enters into a contract or pays a deposit to rent or lease a property, the landlord or other person who on behalf of a landlord enters into a lease or tenancy at will agreement shall provide the statement to the tenant or lessee, obtain the tenant's or lessee's signature on the statement and sign the statement. The landlord or other person who on behalf of a landlord enters into a lease or tenancy at will agreement shall retain the signed statement for a minimum of 3 years.

[PL 2011, c. 405, §11 (AMD).]

SECTION HISTORY

PL 2005, c. 534, §1 (NEW). PL 2009, c. 566, §18 (AMD). PL 2009, c. 652, Pt. B, §2 (AMD). PL 2009, c. 652, Pt. B, §3 (AFF). RR 2011, c. 1, §21 (COR). PL 2011, c. 405, §11 (AMD).

§6030-D. Radon testing

1. Testing. By March 1, 2014, and, unless a mitigation system has been installed in that residential building, every 10 years thereafter when requested by a tenant, a landlord or other person who on behalf of a landlord enters into a lease or tenancy at will agreement for a residential building shall have the air of the residential building tested for the presence of radon. For a residential building constructed or that begins operation after March 1, 2014, a landlord or other person acting on behalf of a landlord shall have the air of the residential building tested for the presence of radon within 12 months of the occupancy of the building by a tenant. Except as provided in subsection 5, a test required to be performed under this section must be conducted by a person registered with the Department of Health and Human Services pursuant to Title 22, chapter 165.
[PL 2013, c. 324, §2 (AMD).]

1-A. Short-term rentals. As used in this section, "residential building" does not include a building used exclusively for rental under short-term leases of 100 days or less where no lease renewal or extension can occur.
[PL 2011, c. 96, §3 (NEW).]

2. Notification. Within 30 days of receiving results of a test with respect to existing tenants or before a tenant enters into a lease or tenancy at will agreement or pays a deposit to rent or lease a property, a landlord or other person who on behalf of a landlord enters into a lease or tenancy at will agreement for a residential building shall provide written notice, as prescribed by the Department of Health and Human Services, to a tenant regarding the presence of radon in the building, including the date and results of the most recent test conducted under subsection 1, 5 or 6, whether mitigation has been performed to reduce the level of radon, notice that the tenant has the right to conduct a test and the risk associated with radon. Upon request by a prospective tenant, a landlord or other person acting on behalf of a landlord shall provide oral notice regarding the presence of radon in a residential building as required by this subsection. The Department of Health and Human Services shall prepare a standard disclosure statement form for a landlord or other person who on behalf of a landlord enters into a lease or tenancy at will agreement for real property to use to disclose to a tenant information concerning radon. The form must include an acknowledgment that the tenant has received the disclosure statement required by this subsection. The department shall post and maintain the forms required by this subsection on its publicly accessible website in a format that is easily downloaded.
[PL 2013, c. 324, §2 (AMD).]

3. Mitigation.
[PL 2013, c. 324, §2 (RP).]

4. Penalty; breach of implied warranty. A person who violates this section commits a civil violation for which a fine of not more than $250 per violation may be assessed. The failure of a landlord or other person who on behalf of a landlord enters into a lease or tenancy at will agreement for a residential building to provide the notice required under subsection 2 or the falsification of a test or test results by the landlord or other person is a breach of the implied warranty of fitness for human habitation in accordance with section 6021.
[PL 2013, c. 324, §2 (AMD).]

5. Testing by landlords. A landlord or other person acting on behalf of a landlord may conduct a test required to be performed under this section on a residential building that, at a minimum, does not include an elevator shaft, an unsealed utility chase or open pathway, a forced hot air or central air system or private well water unless the water has been tested for radon by a person registered under Title 22, chapter 165 and the results show a radon level acceptable to the Department of Health and Human Services, or on a building otherwise defined in rules adopted by the Department of Health and

Human Services. A test or testing equipment used as permitted under this subsection must conform to any protocols identified in rules adopted by the Department of Health and Human Services.
[PL 2013, c. 324, §2 (NEW).]

6. Testing by tenants; disputed test results. A tenant may conduct a test for the presence of radon in the tenant's dwelling unit in a residential building in conformity with rules adopted by the Department of Health and Human Services or have a test conducted by a person registered with the Department of Health and Human Services pursuant to Title 22, chapter 165. After receiving notice of a radon test from a tenant indicating the presence of radon at or in excess of 4.0 picocuries per liter of air, either the landlord shall disclose those results as required by subsection 2 or the landlord or other person acting on behalf of the landlord shall have a test conducted by a person registered with the Department of Health and Human Services pursuant to Title 22, chapter 165 and shall disclose the results of that test to the tenant as required by subsection 2.
[PL 2013, c. 324, §2 (NEW).]

7. Reporting of test results. A landlord or a person registered with the Department of Health and Human Services pursuant to Title 22, chapter 165 who has conducted a test of a residential building as required by this section or accepted the results of a tenant-initiated test as set forth in subsection 6 shall report the results of the test to the Department of Health and Human Services within 30 days of receipt of the results in a form and manner required by the department.
[PL 2013, c. 324, §2 (NEW).]

8. Termination of lease or tenancy at will. If a test of a residential building under this section reveals a level of radon of 4.0 picocuries per liter of air or above, then either the landlord or the tenant may terminate the lease or tenancy at will with a minimum of 30 days' notice. Except as provided in section 6033, a landlord may not retain a security deposit or a portion of a security deposit for a lease or tenancy at will terminated as a result of a radon test in accordance with this subsection.
[PL 2013, c. 324, §2 (NEW).]

SECTION HISTORY

PL 2009, c. 278, §1 (NEW). PL 2009, c. 566, §19 (AMD). PL 2011, c. 96, §3 (AMD). PL 2011, c. 157, §1 (AMD). PL 2013, c. 324, §2 (AMD).

§6030-E. Smoking policy

1. Definition. For the purposes of this section, unless the context otherwise indicates, "smoking" means carrying or having in one's possession a lighted cigarette, cigar, pipe or other object giving off tobacco smoke.
[PL 2011, c. 199, §1 (NEW).]

2. Smoking policy disclosure. A landlord who or other person who on behalf of a landlord enters into a lease or tenancy at will agreement for residential premises that are used by a tenant or will be used by a potential tenant as a primary residence shall provide to the tenant or potential tenant a smoking policy disclosure that notifies tenants or potential tenants of the landlord's policy regarding smoking on the premises in accordance with subsection 3.
[PL 2011, c. 199, §1 (NEW).]

3. Notification. A landlord who or other person who on behalf of a landlord enters into a lease or tenancy at will agreement for residential premises shall provide written notice to a tenant or potential tenant regarding the allowance or prohibition of smoking on the premises.

A. The notice must state whether smoking is prohibited on the premises, allowed on the entire premises or allowed in limited areas of the premises. If the landlord allows smoking in limited areas on the premises, the notice must identify the areas on the premises where smoking is allowed.
[PL 2011, c. 199, §1 (NEW).]

B. A landlord or other person who acts on behalf of a landlord may notify a tenant or potential tenant of a smoking policy by:

(1) Disclosing the smoking policy in a written lease agreement; or

(2) Providing a separate written notice to a tenant or potential tenant entering into a tenancy at will agreement. [PL 2011, c. 199, §1 (NEW).]

C. Before a tenant or potential tenant enters into a contract or pays a deposit to rent or lease a property, the landlord or other person who acts on behalf of a landlord shall obtain a written acknowledgment of the notification of the smoking policy from the tenant or potential tenant. [PL 2011, c. 199, §1 (NEW).]

[PL 2011, c. 199, §1 (NEW).]

4. Construction. This subsection restricts private causes of action based on violations of this section or smoking policies provided to tenants or potential tenants pursuant to this section.

A. A tenant or potential tenant may not maintain a private cause of action against a landlord or other person who acts on behalf of a landlord on the sole basis that the landlord or other person who acts on behalf of a landlord failed to provide the smoking policy disclosure required by this section. [PL 2011, c. 199, §1 (NEW).]

B. A tenant or potential tenant may not use a violation of a smoking policy by another tenant as the basis for a private cause of action against a landlord or other person who acts on behalf of a landlord. [PL 2011, c. 199, §1 (NEW).]

[PL 2011, c. 199, §1 (NEW).]

SECTION HISTORY

PL 2011, c. 199, §1 (NEW).

§6030-F. Firearms in federally subsidized housing

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

A. "Firearm" has the same meaning as in Title 12, section 10001, subsection 21. [PL 2015, c. 455, §1 (NEW).]

B. "Rental agreement" means an agreement, written or oral, and valid rules and regulations embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises. [PL 2015, c. 455, §1 (NEW).]

C. "Subsidized apartment" means a rental unit for which the landlord receives rental assistance payments under a rental assistance agreement administered by the United States Department of Agriculture under the multifamily housing rental assistance program under Title V of the federal Housing Act of 1949 or receives housing assistance payments under a housing assistance payment contract administered by the United States Department of Housing and Urban Development under the housing choice voucher program, the new construction program, the substantial rehabilitation program or the moderate rehabilitation program under Section 8 of the United States Housing Act of 1937. "Subsidized apartment" does not include owner-occupied housing accommodations of 4 units or fewer. [PL 2015, c. 455, §1 (NEW).]

[PL 2015, c. 455, §1 (NEW).]

2. Prohibition or restriction on firearms prohibited. A rental agreement for a subsidized apartment may not contain a provision or impose a rule that requires a person to agree, as a condition of tenancy, to a prohibition or restriction on the lawful ownership, use or possession of a firearm, a firearm component or ammunition within the tenant's specific rental unit. A landlord may impose reasonable restrictions related to the possession, use or transport of a firearm, a firearm component or

ammunition within common areas as long as those restrictions do not circumvent the purpose of this subsection. A tenant shall exercise reasonable care in the storage of a firearm, a firearm component or ammunition.
[PL 2015, c. 455, §1 (NEW).]

3. Damages; attorney's fees. If a landlord brings an action to enforce a provision or rule prohibited under subsection 2, a tenant, tenant's household member or guest may recover actual damages sustained by that tenant, tenant's household member or guest and reasonable attorney's fees.
[PL 2015, c. 455, §1 (NEW).]

4. Immunity. Except in cases of willful, reckless or gross negligence, a landlord is not liable in a civil action for personal injury, death, property damage or other damages resulting from or arising out of an occurrence involving a firearm, a firearm component or ammunition that the landlord is required to allow on the property under this section.
[PL 2015, c. 455, §1 (NEW).]

5. Exception. This section does not apply to any prohibition or restriction that is required by federal or state law, rule or regulation.
[PL 2015, c. 455, §1 (NEW).]

SECTION HISTORY

PL 2015, c. 455, §1 (NEW). RR 2017, c. 1, §8 (COR).

§6030-G. Injuries or property damage involving an assistance animal

1. No liability. The owner, lessor, sublessor, managing agent or other person having the right to sell, rent, lease or manage a dwelling unit or any of their agents is not liable in a civil action for personal injury, death, property damage or other damages resulting from or arising out of an occurrence involving an assistance animal at the dwelling unit.
[PL 2017, c. 61, §1 (NEW).]

2. Exceptions. Subsection 1 does not limit the liability of the owner, lessor, sublessor, managing agent or other person having the right to sell, rent, lease or manage a dwelling unit or any of their agents:

A. In cases of gross negligence, recklessness or intentional misconduct on the part of the owner, lessor, sublessor, managing agent or other person having the right to sell, rent, lease or manage a dwelling unit or any of their agents; or [PL 2017, c. 61, §1 (NEW).]

B. When the assistance animal is owned by or in the care of the owner, lessor, sublessor, managing agent or other person having the right to sell, rent, lease or manage a dwelling unit or any of their agents. [PL 2017, c. 61, §1 (NEW).]

[PL 2017, c. 61, §1 (NEW).]

SECTION HISTORY

PL 2017, c. 61, §1 (NEW).

CHAPTER 710-A

SECURITY DEPOSITS ON RESIDENTIAL RENTAL UNITS

§6031. Definitions

As used in this Part, unless the context otherwise indicates, the following words shall have the following meanings. [PL 1977, c. 359 (NEW).]

1. Normal wear and tear. "Normal wear and tear" means the deterioration that occurs, based upon the use for which the rental unit is intended, without negligence, carelessness, accident or abuse of the premises or equipment or chattels by the tenant or members of the tenant's household or their invitees or guests. The term "normal wear and tear" does not include sums or labor expended by the landlord in removing from the rental unit articles abandoned by the tenant such as trash. If a rental unit was leased to the tenant in a habitable condition or if it was put in a habitable condition by the landlord during the term of the tenancy, normal wear and tear does not include sums required to be expended by the landlord to return the rental unit to a habitable condition, which may include costs for cleaning, unless expenditure of these sums was necessitated by actions of the landlord, events beyond the control of the tenant or actions of someone other than the tenant or members of the tenant's household or their invitees or guests.
[PL 1997, c. 261, §1 (AMD).]

2. Security deposit. "Security deposit" means any advance or deposit, regardless of its denomination, of money, the primary function of which is to secure the performance of a lease or tenancy at will agreement for residential premises or any part thereof.
[PL 2009, c. 566, §20 (AMD).]

3. Surety bond. "Surety bond" means a bond purchased by a tenant in lieu of making a security deposit when the function of the bond is to secure the performance of a lease or tenancy at will agreement for residential premises or any part of residential premises.
[PL 2009, c. 566, §21 (AMD).]

SECTION HISTORY

PL 1977, c. 359 (NEW). PL 1981, c. 428, §11 (AMD). PL 1997, c. 261, §1 (AMD). PL 2007, c. 370, §1 (AMD). PL 2009, c. 566, §§20, 21 (AMD).

§6032. Maximum security deposit

A lease or tenancy at will agreement for a dwelling intended for human habitation may not require a security deposit equivalent to more than the rent for 2 months. [PL 2009, c. 566, §22 (AMD).]

SECTION HISTORY

PL 1977, c. 359 (NEW). PL 2009, c. 566, §22 (AMD).

§6033. Return of the security deposit

1. Normal wear and tear. A security deposit or any portion of a security deposit shall not be retained for the purpose of paying for normal wear and tear.
[PL 1977, c. 359 (NEW).]

2. Return; time; retention. A landlord shall return to a tenant the full security deposit deposited with the landlord by the tenant or, if there is actual cause for retaining the security deposit or any portion of it, the landlord shall provide the tenant with a written statement itemizing the reasons for the retention of the security deposit or any portion of it:

A. In the case of a written rental agreement, within the time, not to exceed 30 days, stated in the agreement; and [PL 1977, c. 359 (NEW).]

B. In the case of a tenancy at will, within 21 days after the termination of the tenancy or the surrender and acceptance of the premises, whichever occurs later. [PL 1977, c. 359 (NEW).]

The written statement itemizing the reasons for the retention of any portion of the security deposit must be accompanied by a full payment of the difference between the security deposit and the amount retained.

Reasons for which a landlord may retain the security deposit or a portion of the security deposit include, but are not limited to, covering the costs of storing and disposing of unclaimed property, nonpayment of rent and nonpayment of utility charges that the tenant was required to pay directly to the landlord.

The landlord is deemed to have complied with this section by mailing the statement and any payment required to the last known address of the tenant.
[PL 1995, c. 52, §1 (AMD).]

3. Penalty. If a landlord fails to provide a written statement or to return the security deposit within the time specified in subsection 2, the landlord shall forfeit his right to withhold any portion of the security deposit.
[PL 1977, c. 359 (NEW).]

SECTION HISTORY

PL 1977, c. 359 (NEW). PL 1985, c. 264 (AMD). PL 1995, c. 52, §1 (AMD).

§6034. Wrongful retention; damages

1. Notice to landlord of intention to bring suit; presumption on failure to return deposit. If the landlord fails to return the security deposit and provide the itemized statement within the time periods in section 6033, the tenant shall give notice to the landlord of the tenant's intention to bring a legal action no less than 7 days prior to commencing the action. If the landlord fails to return the entire security deposit within the 7-day period, it is presumed that the landlord is wrongfully retaining the security deposit.
[PL 1995, c. 52, §2 (AMD).]

2. Double damages for wrongful retention. The wrongful retention of a security deposit in violation of this chapter renders a landlord liable for double the amount of that portion of the security deposit wrongfully withheld from the tenant, together with reasonable attorney's fees and court costs.
[PL 1995, c. 52, §2 (AMD).]

3. Burden of proof. In any court action brought by a tenant under this section, the landlord has the burden of proving that the landlord's withholding of the security deposit, or any portion of it, was not wrongful.
[PL 1995, c. 52, §2 (AMD).]

SECTION HISTORY

PL 1977, c. 359 (NEW). PL 1995, c. 52, §2 (AMD).

§6035. Transfer of security deposit

1. Landlord's termination of interests in dwelling unit. Upon termination of a landlord's interest in the dwelling unit, whether by sale, assignment, death, appointment of a receiver or otherwise, the person in possession of a security deposit, including, but not limited to, the landlord, the landlord's agent or the landlord's executor, shall, upon the transfer of the interest in the dwelling unit:

A. Provide to the landlord's successor in interest an accounting of the amount of each security deposit paid by each tenant and held by the person in possession of the security deposits, transfer the funds or any remainder after lawful deduction under this chapter to the landlord's successor in interest and provide to the tenant by mail:

(1) Notice of that transfer;

(2) Notice of the transferee's name and address; and

(3) A copy of the accounting of the amount of the security deposit transferred; or [PL 1999, c. 213, §1 (RPR).]

B. Return the funds or any remainder after lawful deductions under this section to the tenant. [PL 1999, c. 213, §1 (RPR).]

If the landlord's interest is terminated by sale, then the accounting and transfer of funds must occur no later than at the real estate closing. A person in possession of a security deposit, including, but not limited to, the landlord, the landlord's agent or the landlord's executor, shall provide written proof of the accounting and transfer of funds to the landlord's successor in interest at the real estate closing.
[PL 2007, c. 332, §1 (AMD).]

2. Release from liability following compliance. Upon compliance with this section, the person in possession of the security deposit shall be relieved of further liability, and the transferee, in relation to those funds, shall be deemed to have all of the rights and obligations of a landlord holding the funds as a security deposit.
[PL 1977, c. 359 (NEW).]

SECTION HISTORY

PL 1977, c. 359 (NEW). PL 1999, c. 213, §1 (AMD). PL 2007, c. 332, §1 (AMD).

§6036. Waiver of provisions

Any provision, whether oral or written, in or pertaining to a lease or tenancy at will agreement whereby any provision of this chapter for the benefit of a tenant or members of the tenant's household is waived is against public policy and is void. [PL 2009, c. 566, §23 (AMD).]

SECTION HISTORY

PL 1977, c. 359 (NEW). PL 2009, c. 566, §23 (AMD).

§6037. Exemptions

1. Federally guaranteed mortgages. Any of the provisions of this chapter relative to security deposits which may be in conflict with the terms of a mortgage guaranteed by the United States or any authority created under the laws thereof, shall not apply to security deposits held by a lessor who appears as the mortgagor in such a mortgage.
[PL 1977, c. 359 (NEW).]

2. Owner-occupied buildings of 5 or fewer units. This chapter shall not apply to any tenancy for a dwelling unit which is part of a structure containing no more than 5 dwelling units, one of which is occupied by the landlord.
[PL 1977, c. 359 (NEW).]

SECTION HISTORY

PL 1977, c. 359 (NEW).

§6038. Treatment of security deposit

1. Requirements. During the term of a tenancy, a security deposit given to a landlord as part of a residential rental agreement may not be treated as an asset to be commingled with the assets of the landlord or any other entity or person. All security deposits received after October 1, 1979 must be held in an account of a bank or other financial institution under terms that place the security deposit beyond the claim of creditors of the landlord or any other entity or person, including a foreclosing mortgagee or trustee in bankruptcy, and that provide for transfer of the security deposit to a subsequent owner of the dwelling unit or to the tenant in accordance with section 6035. Upon the transfer of the dwelling unit, the new owner shall assume all responsibility for maintaining and returning to tenants all security deposits accounted for and transferred pursuant to section 6035. Upon request by a tenant, a landlord shall disclose the name of the institution and the account number where the security deposit is being held. A landlord may use a single escrow account to hold security deposits from all of the tenants. A landlord may use a single escrow account to hold security deposits from tenants residing in

separate buildings if the buildings are owned by different entities as long as the different entities are substantially controlled or owned by a single landlord.
[PL 2009, c. 566, §24 (NEW).]

2. Remedies. Upon a finding by a court that a violation of this section has occurred, the tenant is entitled to recover from the landlord actual damages, $500 or the equivalent of one month's rent, whichever is greatest, together with the aggregate amount of costs and expenses reasonably incurred in connection with the action. The court may also award to the tenant reasonable attorney's fees.
[PL 2009, c. 566, §24 (NEW).]

3. Application. The provisions of subsection 2 apply to all security deposits collected by a landlord after June 1, 2010. As of October 1, 2010, the provisions of subsection 2 apply to all security deposits held by or on behalf of a landlord.
[PL 2009, c. 566, §24 (NEW).]

SECTION HISTORY

PL 1979, c. 315 (NEW). PL 1981, c. 428, §12 (AMD). PL 1999, c. 213, §2 (AMD). PL 2009, c. 566, §24 (RPR).

§6039. Surety bonds

The following terms apply to the purchase of surety bonds by tenants of residential dwellings. [PL 2007, c. 370, §2 (NEW).]

1. Landlord option. A residential landlord may offer a tenant the option of purchasing a surety bond in lieu of providing some or all of a security deposit, but a landlord may not require nor otherwise be required to consent to the purchase of a surety bond by a tenant.
[PL 2007, c. 370, §2 (NEW).]

2. Refund by surety. A surety shall refund to a tenant any premium or other charge paid by the tenant in connection with a surety bond if, after the tenant purchases a surety bond, the landlord refuses to accept the surety bond or the tenant does not enter into a rental agreement with the landlord.
[PL 2007, c. 370, §2 (NEW).]

3. Surety limitation; right of action. The amount of a surety bond purchased may not exceed 2 months' rent for the tenant's dwelling unit. If a tenant purchases a surety bond and provides a security deposit, the aggregate amount of both the surety bond and the security deposit may not exceed 2 months' rent for the dwelling unit. In the event a landlord consents to a surety bond but requires that the surety bond amount alone or in the aggregate with a security deposit exceed 2 months' rent, the tenant has a right of action against the landlord for wrongful assessment of surety bond subject to the following conditions.

A. The tenant shall give notice to the landlord of the tenant's intention to bring a legal action for wrongful assessment of surety bond no less than 7 days prior to commencing the action. If the landlord fails to return the excess assessment within the 7-day period, it is presumed that the landlord wrongfully assessed the surety bond requirement. [PL 2007, c. 370, §2 (NEW).]

B. In a successful action against the landlord, the tenant may recover up to 3 times the excess amount demanded of the surety bond by the landlord, plus reasonable attorney's fees and court costs. [PL 2007, c. 370, §2 (NEW).]

C. In any action brought under this subsection, the landlord has the burden of proving that the landlord's requirement of security was not wrongful. [PL 2007, c. 370, §2 (NEW).]
[PL 2007, c. 370, §2 (NEW).]

4. Notice of rights. The surety or landlord shall deliver to a tenant a copy of any agreements or documents signed by the tenant at the time of the tenant's purchase of the surety bond. The surety or landlord shall advise the tenant in writing of all of the tenant's rights under this section prior to the

purchase of a surety bond. This notice must conform to the requirements of Title 24-A, section 2441, subsection 1.
[PL 2007, c. 370, §2 (NEW).]

5. Notice of rights and responsibilities by surety. In addition to the requirements of subsection 4, before a tenant purchases a surety bond a surety shall conspicuously disclose to the tenant in writing the following rights and responsibilities of tenants:

A. The surety bond premium is nonrefundable except as provided in subsection 2; [PL 2007, c. 370, §2 (NEW).]

B. The surety bond is not insurance for the tenant; [PL 2007, c. 370, §2 (NEW).]

C. The surety bond is being purchased to protect the landlord against loss due to, but not limited to, the following: nonpayment of rent, nonpayment of utility charges that the tenant was required to pay directly to the landlord, breach of the rental agreement, storing and disposing of unclaimed property or damages caused by the tenant other than normal wear and tear; [PL 2007, c. 370, §2 (NEW).]

D. The tenant may be required to reimburse the surety for amounts the surety paid to the landlord; [PL 2007, c. 370, §2 (NEW).]

E. Even after a tenant purchases a surety bond, the tenant remains responsible for payment of:

(1) All unpaid rent;

(2) Damage due to breach of the rental agreement;

(3) Damage by the tenant or members of the tenant's household or their invitees or guests in excess of normal wear and tear to the leased premises, common areas, major appliances or furnishings owned by the landlord;

(4) Utility charges that the tenant was required to pay directly to the landlord; and

(5) The cost of storing and disposing of unclaimed property; [PL 2007, c. 370, §2 (NEW).]

F. The tenant has the right to pay the damages directly to the landlord or require the landlord to use the tenant's security deposit, if any, before the landlord makes a claim against the surety bond; and [PL 2007, c. 370, §2 (NEW).]

G. If the surety fails to comply with the requirements of this section, the surety forfeits the right to make any claim against the tenant under the surety bond. [PL 2007, c. 370, §2 (NEW).]

The notice required by this subsection must conform to the requirements of Title 24-A, section 2441, subsection 1.

The word "nonrefundable" must be conspicuously placed on the document and must be in a minimum of 16-point, bold-faced type. This word must appear on the first page of the disclosure and must be repeated immediately above the signature line for the tenant.
[PL 2007, c. 370, §2 (NEW).]

6. Use of surety bond. A surety bond does not represent liquidated damages and may not be used as payment to a landlord for breach of the rental agreement, except in the amount that the landlord is actually damaged by the breach consistent with the provisions of this section. Except as provided in this section, a surety may not, directly or indirectly, make any other payment to a landlord. A surety bond may be used to pay claims by a landlord for:

A. Unpaid rent; [PL 2007, c. 370, §2 (NEW).]

B. Damage due to breach of the rental agreement; [PL 2007, c. 370, §2 (NEW).]

C. Damage by the tenant or members of the tenant's household or their invitees or guests in excess of normal wear and tear to the leased premises, common areas, major appliances or furnishings owned by the landlord; [PL 2007, c. 370, §2 (NEW).]

D. Nonpayment of utility charges that the tenant was required to pay directly to the landlord; and [PL 2007, c. 370, §2 (NEW).]

E. The cost of storing and disposing of unclaimed property. [PL 2007, c. 370, §2 (NEW).]
[PL 2007, c. 370, §2 (NEW).]

7. Written list of damages. At least 10 days before a landlord makes a claim against a surety bond subject to this section, the landlord shall send to the tenant by first-class mail directed to the last known address of the tenant a written notice indicating the landlord's intent to make such claim and the tenant's right to dispute the claim and containing a list of the damages to be claimed and a statement of the costs actually incurred by the landlord related to the premises and as otherwise permitted by this section. This notice must further indicate the name and address of the surety and process for disputing a claim. In the case of a written rental agreement, the landlord shall mail such a written notice within the time specified in the agreement, not to exceed 30 days. In the case of a tenancy at will, the landlord shall mail the written notice 21 days after the termination of the tenancy or the surrender and acceptance of the premises, whichever occurs later. If a landlord fails to provide a written notice within the time required by this subsection, the landlord forfeits any right to make a claim against a surety bond or the tenant related to the premises.
[PL 2007, c. 370, §2 (NEW).]

8. Payment of damages by tenant. A tenant may pay any damages directly to the landlord or require the landlord to use the tenant's security deposit, if any, before the landlord makes a claim against the surety bond. If a tenant pays any damages directly to the landlord or requires the landlord to use the tenant's security deposit under this subsection and the payment or the security deposit fully satisfies the claim, the landlord forfeits the right to make a claim under the surety bond for any damages covered by the tenant's payment or the amount deducted from the tenant's security deposit in accordance with this subsection.
[PL 2007, c. 370, §2 (NEW).]

9. Dispute of claim. The tenant may dispute the landlord's claim to the surety by sending a written response by first-class mail to the surety within 10 days after receiving the notice described in subsection 7 of the landlord's claim on the surety. If the tenant disputes the claim, the surety may not report the claim to a credit reporting agency prior to obtaining a judgment for the claim against the tenant.
[PL 2007, c. 370, §2 (NEW).]

10. Action by surety against tenant. In any proceeding brought by the surety against the tenant on a surety bond under this section, the tenant retains all rights and defenses otherwise available in a proceeding between a tenant and a landlord. Damages may be awarded to the surety only to the extent that the tenant would have been liable to the landlord under this section. If a surety, in an action against the tenant, asserts a claim under the surety bond without having a reasonable basis to assert the claim, the court may grant the tenant damages of up to 3 times the amount claimed plus reasonable attorney's fees and court costs.
[PL 2007, c. 370, §2 (NEW).]

11. Loss of claim by surety. If a surety fails to comply with the requirements of this section, the surety forfeits the right to make any claim against the tenant under the surety bond.
[PL 2007, c. 370, §2 (NEW).]

12. Transfer of premises. If a landlord's interest in the rented premises is sold or transferred, the new landlord shall accept the tenant's surety bond and may not require an additional security deposit or surety bond from the tenant during the rental term that the premises is sold or transferred. At any

renewal of the rental agreement, the new landlord may not require a surety bond or a security deposit from the tenant that, in addition to any existing surety bond or security deposit, is in an aggregate amount in excess of 2 months' rent for the tenant's dwelling unit. If the aggregate amount described above is in excess of 2 months' rent, the tenant may bring an action for wrongful assessment of surety bond under subsection 3.
[PL 2007, c. 370, §2 (NEW).]

13. Licensed surety. A surety bond issued under this section may only be issued by an admitted carrier licensed by the Department of Professional and Financial Regulation, Bureau of Insurance.
[PL 2007, c. 370, §2 (NEW).]

SECTION HISTORY

PL 2007, c. 370, §2 (NEW).

CHAPTER 710-B

CABLE TELEVISION AND OVER-THE-AIR RECEPTION DEVICE INSTALLATION

§6041. Installation; consent of building owner required

1. Installation. A tenant in a multiple dwelling unit may subscribe to cable television service or use an over-the-air reception device, subject to the following provisions.

A. An operator who affixes or causes to be affixed cable television facilities or an over-the-air reception device to the dwelling of a tenant shall do so at no cost to the owner of the dwelling; shall indemnify the owner immediately for damages, if any, arising from the installation or the continued operation of the installation, or both; and may not interfere with the safety, functioning, appearance or use of the dwelling, nor interfere with the rules of the owner dealing with the day-to-day operations of the property, including the owner's reasonable access rules for soliciting business.

Nothing in this section may prohibit an owner from contracting with the operator for work in addition to standard installation. [PL 2007, c. 57, §1 (AMD).]

B. An operator may not enter into any agreement with persons owning, leasing, controlling or managing a building or perform any act that would directly or indirectly diminish or interfere with the rights of any tenant to use a master or individual antenna system. [PL 2007, c. 57, §1 (AMD).]

C. An operator must have the owner's written consent to affix cable television system facilities or an over-the-air reception device to a tenant's dwelling. The owner may refuse the installation of cable television facilities or an over-the-air reception device for good cause only. Good cause includes, but is not limited to:

(1) Failure to honor previous written contractual commitments; or

(2) Failure to repair damages caused by an operator during prior installation. [PL 2007, c. 57, §1 (AMD).]

D. In the absence of written consent, the consent required by paragraph C is considered to have been granted to an operator upon the operator's delivery to the owner, in person or by certified mail, return receipt requested by the addressee, the following:

(1) A copy of this section;

(2) A signed statement that the operator will be bound by the terms of this section to the owner of the property upon which the cable television system facilities or over-the-air reception device is to be affixed; and

(3) Notice to the owner in clear, understandable language that describes the owner's rights and responsibilities. [PL 2007, c. 57, §1 (AMD).]

E. If consent is obtained under paragraph D, the operator shall present and the owner and operator shall review, prior to any installation, plans and specifications for the installation, unless waived in writing by the owner. The operator shall abide by reasonable installation requests by the owner. In any legal action brought pursuant to this paragraph, the burden of proof relative to the reasonable nature of the owner's request is on the operator. The operator shall inspect the premises with the owner after installations to ensure conformance with the plans and specifications. The operator is responsible for maintenance of any equipment installed on the owner's premises and is entitled to reasonable access for that maintenance. Unless waived in writing by the owner, the operator, prior to any installation, shall provide the owner with a certificate of insurance covering all the employees or agents of the installer or operator, as well as all equipment of the operator, and must indemnify the owner from all liability arising from the operator's installation, maintenance and operation of cable television facilities or an over-the-air reception device. [PL 2007, c. 57, §1 (AMD).]

F. If consent is obtained under paragraph D and the owner of any such real estate intends to require the payment of any sum in excess of a nominal amount defined in this subsection as $1, in exchange for permitting the installation of cable television system facilities or an over-the-air reception device to the dwelling of the tenant, the owner shall notify the operator by certified mail, return receipt requested, within 20 days of the date on which the owner is notified that the operator intends to install cable television system facilities or an over-the-air reception device to the dwelling of a tenant of the owner's real estate. Without this notice, it will be conclusively presumed that the owner will not require payment in excess of the nominal amount mentioned in this section specified for such connection. If the owner gives notice, the owner, within 30 days after giving the notice, shall advise the operator in writing of the amount the owner claims as compensation for affixing cable television system facilities or an over-the-air reception device to the owner's real estate. If, within 30 days after receipt of the owner's claim for compensation, the operator has not agreed to accept the owner's demand, the owner may bring an action in the Superior Court to enforce the owner's claim for compensation. If the Superior Court decides in favor of the owner and orders the operator to pay the owner's claim for compensation, the operator shall reimburse the owner for reasonable attorney's fees incurred by the owner in litigation of this matter before the Superior Court. The action must be brought within 6 months of the date on which the owner first made demand upon the operator for compensation and not after that date.

It must be presumed that reasonable compensation is the nominal amount, but such presumption may be rebutted and overcome by evidence that the owner has a specific alternative use for the space occupied by cable television system facilities or equipment or an over-the-air reception device, the loss of which will result in a monetary loss to the owner, or that installation of cable television system facilities or equipment or an over-the-air reception device upon the multiple dwelling unit will otherwise substantially interfere with the use and occupancy of the unit or property to an extent that causes a decrease in the resale or rental value of the real estate. In determining the damages to any such real estate injured when no part of it is being taken, consideration is to be given only to such injury as is special and peculiar to the real estate and there must be deducted from the damages the amount of any benefit to the real estate by reason of the installation of cable television system facilities or an over-the-air reception device. [PL 2007, c. 57, §1 (AMD).]

G. None of the steps enumerated in paragraph F, to claim or enforce a demand for compensation in excess of the nominal amount, may impair or delay the right of the operator to install, maintain or remove cable television system facilities or an over-the-air reception device at a tenant's dwelling on the real estate. The Superior Court has original jurisdiction to enforce this paragraph. [PL 2007, c. 57, §1 (AMD).]

H. A person owning, leasing, controlling or managing any multiple dwelling unit served by a cable television system or an over-the-air reception device may not discriminate in rental or other charges between tenants who subscribe to these services and those who do not, or demand or accept payment in any form for the affixing of cable television system equipment or an over-the-air reception device on or under the real estate, except that the owner of the real estate may require, in exchange for permitting the installation of cable television system equipment or an over-the-air reception device within and upon the real estate, reasonable compensation to be paid by the operator. The compensation must be determined in accordance with this subsection. [PL 2007, c. 57, §1 (AMD).]

I. As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.

(1) "Operator" means any person, firm or corporation owning, controlling, operating, managing or leasing a cable television system, satellite system, wireless cable system or any other system involving the transmission and reception of a signal or any lawful agent appointed by any one of the persons or entities mentioned in this subparagraph.

(2) "Multiple dwelling unit" means any building or structure that contains 2 or more apartments or living units.

(2-A) "Over-the-air reception device" means a device used for receiving a signal that is transmitted over the air, including, but not limited to, a satellite dish apparatus, a television antenna and a wireless cable antenna.

(3) "Owner" means the person or persons possessing legal title to real estate or the lawful agent appointed by an owner.

(4) "Tenant" means one who has the temporary use and occupation of real property owned by another person. [PL 2007, c. 57, §1 (AMD).]

[PL 2007, c. 57, §1 (AMD).]

SECTION HISTORY

PL 1987, c. 294 (NEW). PL 2007, c. 57, §1 (AMD).

CHAPTER 710-C

DISCLOSURE OF RESIDENTIAL UTILITY COSTS

§6045. Disclosure of transmission and distribution utility costs

Upon request, a transmission and distribution utility, as defined in Title 35-A, section 102, shall provide free of charge to current or prospective customers, tenants or property owners residential electric energy consumption and cost information for a dwelling unit for the prior 12-month period or figures reflecting the highest and lowest electric energy consumption and cost for the previous 12 months. The cost must include and separately identify the cost of the transmission and distribution utility's services and the cost of electricity. If a unit has been occupied for a period of less than 12 months or for any other reasons the utility does not have information regarding electricity consumption or costs for a period of 12 months, the utility shall estimate the unit's annual kilowatt-hour consumption or cost. The estimated cost must be based on the applicable standard-offer service price or default service price established by the Public Utilities Commission. Provision of this information is neither a breach of customer confidentiality nor a guarantee or contract by the utility as to future consumption levels for or the cost of the provision of electricity to that unit. For purposes of this section, "dwelling unit" includes mobile homes, apartments, buildings or other structures used for human habitation. [PL 1999, c. 657, §6 (AMD).]

SECTION HISTORY

PL 1993, c. 183, §1 (NEW). PL 1999, c. 657, §6 (AMD).

§6046. Disclosure of natural gas pipeline utility costs

Upon request, a natural gas pipeline utility, as defined in Title 35-A, section 102, shall provide free of charge to current or prospective customers, tenants or property owners residential natural gas energy consumption and cost information for a dwelling unit for the prior 12-month period or figures reflecting the highest and lowest natural gas energy consumption and cost for the previous 12 months. If a unit has been occupied for a period of less than 12 months, the natural gas pipeline utility shall estimate the unit's annual consumption and cost. Provision of this information is neither a breach of customer confidentiality nor a guarantee or contract by the utility as to future consumption levels for that unit. For purposes of this section, "dwelling unit" includes mobile homes, apartments, buildings or other structures used for human habitation. [PL 1995, c. 11, §1 (NEW).]

SECTION HISTORY

PL 1995, c. 11, §1 (NEW).

CHAPTER 710-D

BUILDINGS ON LEASED LOTS

§6047. Application

1. Parties to agreement; purposes of agreement. This chapter applies to agreements between:

A. A person, referred to in this chapter as the "lessor," who owns land in territory under jurisdiction of the Maine Land Use Planning Commission; and [PL 2003, c. 510, Pt. A, §12 (RPR); PL 2011, c. 682, §38 (REV).]

B. A person, referred to in this chapter as the "lessee," who intends to construct or to occupy a building or buildings owned by that person on leased land in territory under jurisdiction of the Maine Land Use Planning Commission for recreational or residential purposes on a seasonal or year-round basis or to operate a business consisting of a commercial sporting camp, campground or retail store. [PL 2003, c. 510, Pt. A, §12 (RPR); PL 2011, c. 682, §38 (REV).]

[PL 2003, c. 510, Pt. A, §12 (RPR); PL 2011, c. 682, §38 (REV).]

2. Application. This chapter applies to agreements entered into or renewed on or after July 25, 2002.

[PL 2003, c. 510, Pt. A, §12 (RPR).]

SECTION HISTORY

PL 2001, c. 612, §1 (NEW). PL 2001, c. 653, §1 (NEW). PL 2003, c. 510, §A12 (RPR). PL 2011, c. 682, §38 (REV).

§6048. Written lease and description required

An agreement described in section 6047 must be made in the form of a written lease and must include at least a general description of the boundaries of the land to be leased. [PL 2003, c. 510, Pt. A, §12 (RPR).]

SECTION HISTORY

PL 2001, c. 612, §1 (NEW). PL 2001, c. 653, §1 (NEW). PL 2003, c. 510, §A12 (RPR).

§6049. Required notice

1. Required notice of change in terms. A lessor must give a lessee at least 30 days' notice of a change in the terms of a lease.
[PL 2003, c. 510, Pt. A, §12 (RPR).]

2. Required notice of termination. Unless the lease is terminated for cause, a lessor must give notice to a lessee of the intent to terminate the lease at least one year prior to the effective date of the termination. All terms of the lease remain in effect following the notice, except that:

A. Termination provisions of the lease to the extent inconsistent with this section are void, beginning on the date the notice is provided; [PL 2003, c. 510, Pt. A, §12 (RPR).]

B. The lessee may terminate the lease earlier than the effective date provided in the notice; and [PL 2003, c. 510, Pt. A, §12 (RPR).]

C. If the lessee violates the lease during the period between the giving of the notice and the termination date provided in the notice, this section no longer applies and the lessee has only the rights provided in the lease. [PL 2003, c. 510, Pt. A, §12 (RPR).]

For purposes of this subsection, "cause" means violation by a lessee of a term of a lease.
[PL 2003, c. 510, Pt. A, §12 (RPR).]

SECTION HISTORY

PL 2001, c. 612, §1 (NEW). PL 2001, c. 653, §1 (NEW). PL 2003, c. 510, §A12 (RPR).

§6050. Right of first refusal

A lessee of premises on which a structure owned by the lessee exists has the right of first refusal with regard to the leased premises if the lessor intends to sell or to offer to sell the leased premises as a separate parcel. Each lease subject to this chapter must make provision for a method of determining the sale price of the leased premises upon exercise of the right provided in this section. The lessor must give the lessee at least 90 days to accept the offer to purchase the lot. [PL 2003, c. 510, Pt. A, §12 (NEW).]

SECTION HISTORY

PL 2003, c. 510, §A12 (NEW).

CHAPTER 711

EQUITY PROCEEDINGS

§6051. Jurisdiction

The Superior Court shall have jurisdiction to grant appropriate equitable relief in the following cases:

1. Foreclosure of mortgages. For the foreclosure of mortgages of real and personal property and for redemption of estates mortgaged.

2. Forfeitures. For relief from forfeiture of penalties to the State, from forfeitures in civil contracts and obligations and in recognizances in criminal cases.

3. Specific performance of written contracts. To compel the specific performance of written contracts and to cancel and compel the discharge of written contracts, whether under seal or otherwise, when full performance or payment has been made to the contracting party.

4. Fraud, trust, accident or mistake. For relief in cases of fraud, trust, accident or mistake.

5. Nuisance and waste. In cases of nuisance and waste.

6. Trustees of railroads applying receipts. In cases arising out of the law providing for the application of receipts and expenditures of railroads by trustees in possession under mortgage.

7. Partnerships. In cases of partnership, and between partners or part owners of vessels and of other real and personal property to adjust all matters of the partnership and between such part owners, compel contribution, make final decrees and enforce their decrees by proper process in cases where all interested persons within the jurisdiction of the court are made parties.

8. Actions of interpleader. Of actions of interpleader notwithstanding the plaintiff is a common carrier and as such has a lien for carriage or storage upon the property which is described in the complaint. No plaintiff in interpleader shall be denied relief by reason of any interest in the fund or other subject matter in dispute.

9. Property matters between husband and wife.

[PL 1999, c. 731, Pt. ZZZ, §8 (RP); PL 1999, c. 731, Pt. ZZZ, §42 (AFF).]

10. Wills. To determine the construction of wills and whether an executor, not expressly appointed a trustee, becomes such from the provisions of a will; and in cases of doubt, the mode of executing a trust and the expediency of making changes and investments of property held in trust.

11. Redelivery of goods or chattels. In civil actions for redelivery of goods or chattels taken or detained from the owner and secreted or withheld so that the same cannot be replevied, and in civil actions, by creditors, to reach and apply in payment of a debt any property, right, title or interest, legal or equitable, of a debtor or debtors, which cannot be come at to be attached on writ or taken on execution in a civil action, and any property or interest conveyed in fraud of creditors.

12. Pledging credit of public corporation for purpose not authorized by law. When counties, cities, towns, school districts, School Administrative Districts, village or other public corporations, for a purpose not authorized by law, vote to pledge their credit or to raise money by taxation or to exempt property therefrom or to pay money from their treasury, or if any of their officers or agents attempt to pay out such money for such purpose, the court shall have jurisdiction on complaint filed by not less than 10 taxable inhabitants thereof, briefly setting forth the cause of complaint.

13. Equity jurisdiction. And have full equity jurisdiction, according to the usage and practice of courts of equity, in all other cases where there is not a plain, adequate and complete remedy at law.

SECTION HISTORY

PL 1995, c. 694, §D21 (AMD). PL 1995, c. 694, §E2 (AFF). PL 1999, c. 731, §ZZZ8 (AMD). PL 1999, c. 731, §ZZZ42 (AFF).

§6052. Partners and part owners

The court has jurisdiction of cases mentioned in section 6051, subsection 7, notwithstanding persons interested not within the jurisdiction of the court are not made parties; but, in such cases, no decree affects the right of any person not a party to the action, unless he voluntarily becomes a party before final decree, except as otherwise provided. In all such cases the court has jurisdiction, if the case requires it, over all property of the partnership or cotenancy within the State, and the other partners or cotenants, out of the jurisdiction, may protect their interests by coming in at any time as parties to the action; but, if there is no such property within the State, the jurisdiction of the court is limited to the adjustment of accounts and compelling contribution between the parties over whom the court has jurisdiction.

§6053. Property of debtor out of State or of uncertain value

The court has jurisdiction of cases mentioned in section 6051, subsection 11, notwithstanding the fact that the property sought to be reached and applied is in the hands, possession or control of the debtor independently of any other person, or that it is not within the State, or that it is of uncertain

value, provided the value can be ascertained by a sale or appraisal, or by any means within the ordinary procedure of the court, or that it cannot be reached and applied until a future time.

§6054. Interest of copartner applied in payment of plaintiff's debt

(REPEALED)

SECTION HISTORY

PL 1973, c. 377, §3 (RP).

CHAPTER 712

CIVIL LIABILITY FOR BAD CHECKS

§6071. Civil penalties for bad checks

1. Recovery of costs. In any action against a person liable for a dishonored check, the holder may recover the amount of the check, the court costs and the processing charges incurred by the holder, plus interest at the rate of 12% per annum from the date of dishonor if:

A. The holder gives notice pursuant to section 6073 for payment of the check; and [PL 1995, c. 288, §1 (AMD).]

B. The person liable fails to tender the amount of the check, plus bank fees and mailing costs, within 10 days of receiving the notice set forth in section 6073. [PL 1995, c. 288, §1 (AMD).]

[PL 1995, c. 288, §1 (AMD).]

2. Attorney's fees. If the person liable does not pay the amount of the check, plus costs and interest, before the hearing, then the court may award reasonable attorney's fees to the prevailing party. In addition, the court may award to the holder of the check a civil penalty, not to exceed $150, to be paid by the person liable for the check.

[PL 2009, c. 495, §1 (AMD).]

3. Written agreement. Nothing in this chapter supersedes the terms of a written agreement between the parties.

[PL 1995, c. 288, §1 (AMD).]

4. Check defined. As used in this chapter, "check" means a check, draft or order for the payment of money.

[PL 1995, c. 288, §1 (NEW).]

5. Second dishonored check. A person who intentionally issues or negotiates a 2nd check that is dishonored to the same payee within one year of issuing or negotiating the first dishonored check knowing that the check will not be honored by the maker or drawee is liable to the payee not only for the face amount of the check, the costs and attorney's fees pursuant to subsections 1 and 2, but also for additional liquidated damages if the check is dishonored and the drawer fails to pay the face amount of the check within 30 days of a written demand for payment by the payee.

A. If a check is not honored by the drawee bank because the drawer has no account with the bank, the additional liquidated damages are in an amount twice the face amount of the check or $750, whichever is less. [PL 2005, c. 365, §1 (NEW).]

B. If a check is not honored by the drawee bank because the drawer has insufficient funds on deposit with the bank, the additional liquidated damages are in an amount twice the face amount of the check or $400, whichever is less. [PL 2005, c. 365, §1 (NEW).]

For the purposes of this subsection, a check may be considered the 2nd dishonored check to the same payee if the first check to the same payee was not paid within 45 days of the issuance or negotiation of the first check.
[PL 2005, c. 365, §1 (NEW).]

SECTION HISTORY

PL 1989, c. 357 (NEW). PL 1989, c. 502, §D8 (AMD). PL 1995, c. 288, §1 (AMD). PL 2005, c. 365, §1 (AMD). PL 2009, c. 495, §1 (AMD).

§6072. Satisfaction of claim

(REPEALED)

SECTION HISTORY

PL 1989, c. 357 (NEW). PL 1995, c. 288, §2 (RP).

§6073. Notice for nonpayment

The notice must be in substantially the following form. [PL 1995, c. 288, §3 (AMD).]

"Your check, draft or order made payable to ..... in the amount of ..... has not been accepted for payment by ....., which is the drawee bank designated on your check. The check is dated ..... and it is numbered ..... [PL 1995, c. 288, §3 (AMD).]

You are CAUTIONED that unless you pay the amount of this check within 10 days after the date this letter is postmarked, you may have to pay the following additional costs: [PL 1989, c. 357 (NEW).]

1. Attorney's fees;
[PL 1995, c. 288, §3 (AMD).]

2. Service costs;
[PL 1995, c. 288, §3 (AMD).]

3. Processing charges;
[PL 1995, c. 288, §3 (AMD).]

4. Interest; and
[PL 1995, c. 288, §3 (AMD).]

5. A penalty not to exceed $150.
[PL 2009, c. 495, §2 (AMD).]

You are advised to make payment to ..... at the following address ..... ." [PL 1989, c. 357 (NEW).]

SECTION HISTORY

PL 1989, c. 357 (NEW). PL 1995, c. 288, §3 (AMD). PL 2009, c. 495, §2 (AMD).

CHAPTER 713

MISCELLANEOUS PROVISIONS RELATING TO FORECLOSURE OF REAL PROPERTY MORTGAGES

SUBCHAPTER 1

GENERAL PROVISIONS

§6101. Attorney's fees

For the foreclosure of a mortgage by any method authorized by this chapter, if the mortgagee prevails, the mortgagee or the person claiming under the mortgagee may charge a reasonable attorney's fee which is a lien on the mortgaged estate, and must be included with the expense of publication, service and recording in making up the sum to be tendered by the mortgagor or the person claiming under the mortgagor in order to be entitled to redeem, provided the sum has actually been paid in full or partial discharge of an attorney's fee. If the mortgagee does not prevail, or upon evidence that the action was not brought in good faith, the court may order the mortgagee to pay the mortgagor's reasonable court costs and attorney's fees incurred in defending against the foreclosure or any proceeding within the foreclosure action and deny in full or in part the award of attorney's fees and costs to the mortgagee. For purposes of this section, "does not prevail" does not mean a stipulation of dismissal entered into by the parties, an agreed-upon motion to dismiss without prejudice to facilitate settlement or successful mediation of the foreclosure action pursuant to section 6321-A. [PL 2011, c. 269, §1 (AMD).]

SECTION HISTORY

PL 1967, c. 424, §1 (AMD). PL 1981, c. 429, §1 (AMD). PL 2011, c. 269, §1 (AMD).

§6102. Mortgage as asset of decedent's estate

Lands mortgaged to secure the payment of debts or the performance of any collateral engagement, and the debts so secured are, on the death of the mortgagee or person claiming under him, assets in the hands of his executors or administrators. They shall have the control of them as of a personal pledge. When they recover seizin and possession thereof, it shall be for the use of the widow and heirs, or devisees or creditors of the deceased, as the case may be. When redeemed, they may receive the money, and give effectual discharges therefor, and releases of the mortgaged premises.

§6103. Judicial determination of breach of condition

In all cases where a debtor has mortgaged real and personal estate to secure the performance of a collateral agreement or undertaking, other than the payment of money, and proceedings have been commenced to foreclose said mortgage for alleged breach of the conditions thereof, but the time of redemption has not expired, any person having any claim against the mortgagor and having attached said mortgagor's interest in said estate on said claim may file a complaint in the Superior Court in the county where such agreement has to be performed, where the owner of such mortgage resides or where the property mortgaged is situated, alleging such facts and praying for relief. Said court may examine into the facts and ascertain whether there has been a breach of the conditions of said mortgage, and if such is found to be the fact, may assess the damages arising therefrom, and may make such orders and decrees in the premises as will secure the rights of said mortgagee or his assignee, so far as the same can be reasonably accomplished, and enable the creditor, by fulfilling such requirements as the court may impose, to hold said property, or such right or interest as may remain therein by virtue of such attachment, for the satisfaction of his claim. Such claim may include possession of the property by the mortgagee for such time as the court deems just and equitable. Pending such proceedings, the right of redemption shall not expire by any attempted foreclosure of such mortgage.

§6104. Limitation of action on undischarged mortgage

When the record title of real estate is encumbered by an undischarged mortgage, and the mortgagor and those having his estate in the premises have been in uninterrupted possession of such real estate for 20 years after the expiration of the time limited in the mortgage for the full performance of the conditions thereof, he or they, or any person having a freehold estate, vested or contingent in possession, reversion or remainder, in the land originally subject to the mortgage or in any undivided or any aliquot part thereof, or any interest therein which may eventually become a freehold estate, or any person who has conveyed such land or any such interest therein with covenants of title or warranty, may apply to

the Superior Court in the county where the whole or any part of the mortgaged premises is situated, by complaint setting forth the facts and asking for a decree as hereinafter provided. If after notice to all persons interested as provided in section 6107, no evidence is offered of any payment within said 20 years or of any other act within said time, in recognition of its existence as a valid mortgage, the Superior Court upon hearing may enter a decree setting forth such facts and its findings in relation thereto, which decree shall within 30 days be recorded in the registry of deeds where the mortgage is recorded. Thereafter no action shall be brought by any person to enforce a title under said mortgage.

§6105. Owners in severalty may join in complaint

Any 2 or more persons owning in severalty different portions or different interests of the character above described, in the whole or in different portions thereof, may join in one complaint. Two or more defects arising under different mortgages affecting one parcel of land may be set forth in the same complaint. In case of a contest the court shall make such order for separate issues as may be proper.

§6106. Limitation on undischarged mortgage to secure contingent liability

When the mortgagor of such an undischarged mortgage and those having his estate in the premises have been in uninterrupted possession of such real estate for 20 years from the date thereof, and it shall appear that such mortgage was not given to secure the payment of a sum of money or a debt, but to secure the mortgagee against some contingent liability assumed or undertaken by him, and that such conditional liability has ceased to exist and that the interests of no person will be prejudiced by the discharge of such mortgage, the mortgagor or those having his estate in the premises, or any of the persons to whom a similar remedy is granted in section 6104, may apply to the Superior Court in the county where the whole or any part of the mortgaged premises is situated, by complaint setting forth the facts and asking for a decree as hereinafter provided. If after notice to all persons interested as provided in section 6107, and upon hearing it shall appear that the liability on account of which such mortgage was given has ceased to exist and that such mortgage ought to be discharged, the Superior Court may enter a decree setting forth the facts proved and its findings in relation thereto, which decree shall within 30 days be recorded in the registry of deeds where the mortgage is recorded. Thereafter no action shall be brought to enforce a title under said mortgage.

§6107. Description of unknown mortgagees; service of complaint

When it is alleged under oath in the complaint that the mortgagees or persons claiming under them are unknown or that their names are unknown, they may be described generally as claiming by, through or under some person or persons named in the complaint. Service shall be made as in other actions on all known defendants residing either in the State or outside the State, and notice by publication to defendants whose identity or whereabouts are unknown shall be given as in other actions where publication is required.

§6108. Court has jurisdiction over all defendants

Upon the service of such notice in accordance with the order of the court, the court shall have jurisdiction of all persons made defendants in the manner provided, and shall upon due hearing make such decree upon the complaint and as to costs as it shall deem proper.

§6109. Decree bars claims

The decree of the court determining the validity, nature or extent of any such encumbrance shall operate directly on the land as a proceeding in rem, and shall be effectual to bar all the defendants from any claim thereunder contrary to such determination, and such decree so barring said defendants shall have the same force and effect as a release of such claims executed by the defendants in due form of law. The court may, in its discretion, appoint agents or guardians ad litem to represent minors or other defendants.

§6110. Tender to guardian of mortgagee; discharge

When the mortgagee or person holding under him is under guardianship, a tender may be made to the guardian and he shall receive the sum due on the mortgage; and upon receiving it, or on performance of such other condition as the case requires, he shall execute a discharge of the mortgage.

§6111. Notice of mortgagor's right to cure

1. Notice; payment. With respect to mortgages upon residential property located in this State when the mortgagor is occupying all or a portion of the property as the mortgagor's primary residence and the mortgage secures a loan for personal, family or household use, the mortgagee may not accelerate maturity of the unpaid balance of the obligation or otherwise enforce the mortgage because of a default consisting of the mortgagor's failure to make any required payment, tax payment or insurance premium payment, by any method authorized by this chapter until at least 35 days after the date that written notice pursuant to subsection 1-A is given by the mortgagee to the mortgagor and any cosigner against whom the mortgagee is enforcing the obligation secured by the mortgage at the last known addresses of the mortgagor and any cosigner that the mortgagor has the right to cure the default by full payment of all amounts that are due without acceleration, including reasonable interest and late charges specified in the mortgage or note as well as reasonable attorney's fees. If the mortgagor tenders payment of the amounts before the date specified in the notice, the mortgagor is restored to all rights under the mortgage deed as though the default had not occurred.
[PL 2009, c. 402, §10 (AMD).]

1-A. Contents of notice. A mortgagee shall include in the written notice under subsection 1 the following:

A. The mortgagor's right to cure the default as provided in subsection 1; [PL 2009, c. 402, §11 (NEW).]

B. An itemization of all past due amounts causing the loan to be in default and the total amount due to cure the default; [PL 2015, c. 36, §1 (AMD).]

C. An itemization of any other charges that must be paid in order to cure the default; [PL 2009, c. 476, Pt. B, §2 (AMD); PL 2009, c. 476, Pt. B, §9 (AFF).]

D. A statement that the mortgagor may have options available other than foreclosure, that the mortgagor may discuss available options with the mortgagee, the mortgage servicer or a counselor approved by the United States Department of Housing and Urban Development and that the mortgagor is encouraged to explore available options prior to the end of the right-to-cure period; [PL 2009, c. 402, §11 (NEW).]

E. The address, telephone number and other contact information for persons having authority to modify a mortgage loan with the mortgagor to avoid foreclosure, including, but not limited to, the mortgagee, the mortgage servicer and an agent of the mortgagee; [PL 2009, c. 402, §11 (NEW).]

F. The name, address, telephone number and other contact information for all counseling agencies approved by the United States Department of Housing and Urban Development operating to assist mortgagors in the State to avoid foreclosure; [PL 2015, c. 36, §1 (AMD).]

G. Where mediation is available as set forth in section 6321-A, a statement that a mortgagor may request mediation to explore options for avoiding foreclosure judgment; and [PL 2015, c. 36, §1 (AMD).]

H. A statement that the total amount due does not include any amounts that become due after the date of the notice. [PL 2015, c. 36, §2 (NEW).]
[PL 2015, c. 36, §§1, 2 (AMD).]

2. No application to supervised lender or supervised financial organization.

[PL 1995, c. 654, §2 (RP).]

2-A. Notice procedure. Notice by a mortgagee is governed by this subsection.

A. A mortgagee shall provide notice to a mortgagor and any cosigner under this section to the last known addresses of the mortgagor and cosigner by both:

(1) Certified mail, return receipt requested; and

(2) Ordinary first-class mail, postage prepaid. [PL 2019, c. 361, §1 (NEW).]

B. For purposes of this subsection, the time when the notice is given to the mortgagor or cosigner is the sooner of:

(1) The date the mortgagor or cosigner signs the receipt or, if the notice is undeliverable, the date the post office last attempts to deliver it under paragraph A, subparagraph (1); and

(2) The date the mortgagor or cosigner receives the notice under paragraph A, subparagraph (2).

A post office department certificate of mailing to the mortgagor or cosigner is conclusive proof of receipt on the 7th calendar day after mailing notice as provided under paragraph A, subparagraph (2). [PL 2019, c. 361, §1 (NEW).]

[PL 2019, c. 361, §1 (NEW).]

3. Notice procedure.

[PL 2019, c. 361, §2 (RP).]

3-A. Information; Bureau of Consumer Credit Protection. Within 3 days of providing written notice to the mortgagor as required by subsections 1 and 1-A, the mortgagee shall file with the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection, in electronic format as designated by the Bureau of Consumer Credit Protection, information including:

A. The name and address of the mortgagor and the date the written notice required by subsections 1 and 1-A was mailed to the mortgagor and the address to which the notice was sent; [PL 2009, c. 402, §12 (NEW).]

B. The address, telephone number and other contact information for persons having authority to modify a mortgage loan with the mortgagor to avoid foreclosure, including, but not limited to, the mortgagee, the mortgage servicer and an agent of the mortgagee; and [PL 2009, c. 402, §12 (NEW).]

C. Other information, as permitted by state and federal law, requested of the mortgagor by the Bureau of Consumer Credit Protection. [PL 2009, c. 402, §12 (NEW).]

[PL 2009, c. 402, §12 (NEW).]

3-B. Report. On a quarterly basis, the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall report to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters on the number of notices received pursuant to subsection 3-A. To the extent information is available, the report must also include information on the number of foreclosure filings based on data collected from the court and the Department of Professional and Financial Regulation, Bureau of Financial Institutions and on the types of lenders that are filing foreclosures.

[PL 2009, c. 402, §13 (NEW).]

4. Notice not required.

[PL 1997, c. 579, §3 (RP).]

4-A. Letter to mortgagor. Within 3 days of receiving electronic information from the mortgagee as set forth in subsection 3-A, the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall send a written notice to the mortgagor that includes a summary of the

mortgagor's rights and available resources, including information concerning the foreclosure mediation program as established in section 6321-A.
[PL 2009, c. 402, §14 (NEW).]

5. Exceptions.

[PL 2009, c. 476, Pt. A, §2 (RP).]

SECTION HISTORY

PL 1991, c. 707, §1 (NEW). PL 1993, c. 373, §1 (AMD). PL 1995, c. 654, §§1-4 (AMD). PL 1997, c. 579, §§1-4 (AMD). PL 2009, c. 402, §§10-14 (AMD). PL 2009, c. 476, Pt. A, §2 (AMD). PL 2009, c. 476, Pt. B, §2 (AMD). PL 2009, c. 476, Pt. B, §9 (AFF). PL 2015, c. 36, §§1, 2 (AMD). PL 2019, c. 361, §§1, 2 (AMD).

§6112. Statewide outreach

To the extent resources are available pursuant to subsection 4, the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall engage in the following activities.
[PL 2009, c. 402, §15 (NEW).]

1. Hotline. The Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall establish a statewide hotline to facilitate a mortgagor's communication with housing counselors approved by the United States Department of Housing and Urban Development for the purposes of discussing options to avoid foreclosure.
[PL 2009, c. 402, §15 (NEW).]

2. Outreach; housing counseling services. The Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection, in consultation with the Maine State Housing Authority, shall coordinate an outreach program to help families with their housing needs with the intent of expanding the outreach program statewide. The bureau shall use a portion of the funds received pursuant to subsection 4 for contracts with nonprofit organizations that provide housing counseling services and mortgage assistance.
[PL 2009, c. 402, §15 (NEW).]

3. Form. The Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection, after consultation with interested parties, shall develop for use by the Supreme Judicial Court a one-page form notice for making a request for mediation and making an answer to a foreclosure complaint as described in section 6321-A, subsection 2.
[PL 2009, c. 402, §15 (NEW).]

4. Funding. The Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall deposit revenues transferred from the Department of Administrative and Financial Services, Maine Revenue Services pursuant to Title 36, section 4641-B, subsection 6 and any funds received from any public or private source. The Bureau of Consumer Credit Protection shall use the funds to cover the costs of carrying out the duties in this section and section 6111, subsections 3-A, 3-B and 4-A, and the funds may not be used for any other purpose.
[PL 2019, c. 343, Pt. YYY, §1 (AMD).]

5. Report. Beginning January 1, 2010, the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall report every 6 months on the revenues received pursuant to subsection 4, the expenditures made to carry out the purposes of this section, any financial orders submitted by the bureau and any updated assumptions related to the bureau's revenues and expenditures in accordance with this section. The report must be submitted to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters.
[PL 2009, c. 402, §15 (NEW).]

SECTION HISTORY

PL 2009, c. 402, §15 (NEW). PL 2019, c. 343, Pt. YYY, §1 (AMD).

§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. Except as provided in subsection 5, "mortgage servicer" means a person that is responsible for:

(1) Receiving scheduled periodic payments from an obligor pursuant to the terms of a mortgage described in section 6111, subsection 1, including amounts for escrow accounts;

(2) Making or advancing payments to the owner of the loan or other 3rd parties with respect to the amounts received from the obligor pursuant to a loan servicing contract; and

(3) Evaluating obligors for loss mitigation or loan modification options. [PL 2019, c. 363, §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. [PL 2019, c. 363, §1 (NEW).]

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. Except as provided in subsection 5, "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 2019, c. 363, §1 (NEW).]

F. "Servicing" means any combination 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 obligation. [PL 2019, c. 363, §1 (NEW).]

[PL 2019, c. 363, §1 (NEW).]

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 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 2019, c. 363, §1 (NEW).]

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 servicer for all actual damages sustained by the homeowner or obligor. [PL 2019, c. 363, §1 (NEW).]

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 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 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 servicer of any consent judgments to which it is a party. [PL 2019, c. 363, §1 (NEW).]

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 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 servicer cures the violation; and

(2) The court shall order the 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 2019, c. 363, §1 (NEW).]

[PL 2019, c. 363, §1 (NEW).]

5. Exclusion. The terms "mortgage servicer" and "servicer" defined in subsection 1 do 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 2019, c. 363, §1 (NEW).]

SECTION HISTORY

PL 2019, c. 363, §1 (NEW).

SUBCHAPTER 2

STATE MORTGAGES

§6151. Discharge or foreclosure by treasurer

When a mortgage is made or assigned to the State, the Treasurer of State may demand and receive the money due thereon and discharge it by his deed of release. After breach of the condition, he may, in person or by his agent, make use of the like means for the purpose of foreclosure, which an individual mortgagee might, as prescribed in section 6321. [PL 1975, c. 552, §3 (AMD).]

All mortgages in the name of the State and made under the Revised Statutes of 1944, chapter 30 shall be collected, discharged or foreclosed in accordance with this section.

SECTION HISTORY

PL 1975, c. 552, §3 (AMD).

§6152. Civil action for redemption filed against State

If the Treasurer of State and the person applying to redeem any lands mortgaged to the State disagree as to the sum due thereon, such person may bring a civil action against the State for the redemption thereof in the Superior Court.

§6153. Notice and proceedings

The court shall order notice to be served on the Treasurer of State in the usual form, and shall hear the cause and decide what sum is due to the State on said mortgage, and award costs as it deems equitable. The treasurer shall accept the sum adjudged by the court to be due and discharge the mortgage.

SUBCHAPTER 3

FORECLOSURE PROCEEDING

§6201. Foreclosure by possession

(REPEALED)

SECTION HISTORY

PL 1981, c. 279, §7 (AMD). PL 1987, c. 736, §16 (AMD). PL 2007, c. 391, §1 (RP).

§6202. -- redemption in one year

(REPEALED)

SECTION HISTORY

PL 2007, c. 391, §2 (RP).

§6203. Foreclosure without possession

(REPEALED)

SECTION HISTORY

PL 1965, c. 116 (AMD). PL 1965, c. 513, §§28-A (AMD). PL 1969, c. 291, §§1,2 (AMD). PL 1973, c. 625, §84 (AMD). PL 1987, c. 667, §13 (AMD). PL 2007, c. 391, §3 (RP).

§6203-A. Power of sale; procedure; notice; form

1. Power of sale. Any holder of a mortgage on real estate that is granted by a corporation, partnership, including a limited partnership or a limited liability partnership, limited liability company or trustee of a trust and that contains a power of sale, as described in Title 33, section 501-A, or a person authorized by the power of sale, or an attorney duly authorized by a writing under seal, or a person acting in the name of the holder of such mortgage or any such authorized person, may, upon breach of condition and without action, do all the acts authorized or required by the power; except that a sale under the power is not effectual to foreclose a mortgage unless, previous to the sale, notice has been published once in each of 3 successive weeks, the first publication to be not less than 21 days before the day of the sale in a newspaper of general circulation in the town where the land lies and which notice must comply with the requirements of subsection 3. This provision is implied in every power of sale mortgage in which it is not expressly set forth. For mortgage deeds executed on or after October 1, 1993, the power of sale may be used only if the mortgage deed states that it is given primarily for one or more of the following purposes: business, commercial or agricultural. Any power of sale incorporated into a mortgage is not affected by the subsequent transfer of the mortgaged premises from the corporation, partnership, including a limited partnership or a limited liability partnership, limited liability company or trustee of the trust to any other type of organization or to an individual or individuals. The power of sale may not be used to foreclose a mortgage deed granted by a trustee of a trust if at the time the mortgage deed is given the real estate is used exclusively for residential purposes, the real estate has 4 or fewer residential units and one of the units is the principal residence of the owner of at least 1/2 of the beneficial interest in the trust. If the mortgage deed contains a statement that at the time the mortgage deed is given the real estate encumbered by the mortgage deed is not used exclusively for residential purposes, that the real estate has more than 4 residential units or that none of the residential units is the principal residence of the owner of at least 1/2 of the beneficial interest in the trust, the statement conclusively establishes these facts and the mortgage deed may be foreclosed by the power of sale. The method of foreclosure of real estate mortgages provided by this section is specifically subject to the rights of junior mortgagees set out in section 6205.
[PL 2015, c. 147, §1 (AMD).]

1-A. Notice to mortgagor and parties in interest; definition. At least 21 days before the date of the sale under the power in a mortgage, a copy of the foreclosure notice must be served on the mortgagor or its representative in interest, or may be sent by registered or certified mail addressed to the mortgagor or the mortgagor's representative at the mortgagor's last known address, or to the person and to the address as may be agreed upon in the mortgage or to the address as may be provided in writing by the mortgagor to the mortgagee. In addition, a copy of the foreclosure notice must be sent by first-class mail, postmarked at least 21 days prior to the public sale, to all other parties in interest, except for parties in interest having a superior priority to the foreclosing mortgagee, at the address, if any, listed in the instrument evidencing the interest, and, if none is listed, to the registered agent for the party in interest, or to any other address that may be readily available to the mortgagee. For the purposes of this section, "parties in interest" means those parties having a claim to the real estate whose claim is recorded in the registry of deeds as of the time of recording the notice of foreclosure. Failure to notify any party in interest, other than the mortgagor, does not invalidate the foreclosure as to other parties in interest who were given notice.
[PL 2015, c. 147, §1 (NEW).]

2. Notice to tenants; effect on title. In addition to the notices provided pursuant to subsections 1 and 1-A, the mortgagee shall provide a copy of the foreclosure notice to a residential tenant if the mortgagee knows or should know by exercise of due diligence that the property is occupied as a rental unit. Upon request from a mortgagee, the mortgagor or its representative in interest shall provide the name, address and other contact information for any residential tenant. Notice to a residential tenant may be served on the residential tenant by sheriff, may be sent by first class mail at the residential tenant's last known address or may be posted conspicuously at each entrance to the mortgaged premises. A residential tenant may not be evicted unless a mortgagee institutes an action for forcible entry and

detainer pursuant to section 6001 at least 21 days after a mortgagee has served the notice required by this subsection. This subsection may not be construed to prohibit an action for forcible entry and detainer in accordance with section 6001 for a reason that is not related to a foreclosure sale. The failure to provide the notice required by this subsection does not affect the validity of the foreclosure sale.
[PL 2015, c. 147, §1 (AMD).]

2-A. Recording foreclosure notice. At least 21 days before the date of a sale under the power in a mortgage, a copy of the foreclosure notice must be recorded in each registry of deeds in which the mortgage deed is or by law ought to be recorded in order to provide constructive notice.
[PL 2015, c. 147, §1 (NEW).]

3. Form of foreclosure notice. A foreclosure notice must identify the mortgagee, the mortgagor, the terms of the public sale, the location, date and time of the public sale, the street address, if any, of the real estate encumbered by the mortgage, a description of the real estate encumbered by the mortgage, which may be incorporated by reference to the book and page number of an instrument of record containing an adequate legal description of the real estate, and the book and page number, if any, of the mortgage. The following form of foreclosure notice may be used and may be altered as circumstances require; but nothing herein may be construed to prevent the use of other forms.

FORM

Mortgagee's sale of real estate

By virtue of and in execution of the Power of Sale contained in a certain Mortgage Deed given by ..... (Mortgagor) to ..... (Mortgagee) dated ..... and recorded in the ..... County Registry of Deeds, Book ....., Page ....., of which Mortgage the undersigned is the present holder, ... (if by assignment, or in any fiduciary capacity give reference) ....., for breach of the conditions of said Mortgage and for the purpose of foreclosing the same there will be sold at Public Sale at ..... o'clock, ... M. on the ..... day of ..... 20....., at ..... (Location of Public Sale), all and singular the premises described in said Mortgages, ..., (in case of partial releases state exceptions).

To wit: "(Description of the real estate encumbered by the Mortgage, which may be incorporated by reference to the book and page number of an instrument of record containing an adequate legal description of the real estate)".

Street Address: (Street address, if any, of the real estate encumbered by the Mortgage).

Terms of Sale: (State here the amount, if any, to be paid in cash by the purchaser at the time and place of the sale, and the time or times for payment of the balance or the whole as the case may be and any other terms or conditions relating to the sale).

Other terms to be announced at the sale.

Signed: .....

(Present holder of Mortgage)

..... 20.....

[PL 2015, c. 147, §1 (AMD).]

4. Notice of sale. A foreclosure notice published in accordance with this chapter or in accordance with the power in the mortgage together with such other or further notice, if any, as is required by the mortgage, along with notice to the mortgagor and parties in interest whose interest appears of record at the time that the foreclosure notice is recorded in the appropriate registry of deeds, is sufficient notice of the sale, and the premises are considered to have been sold free and clear of the interest of the mortgagor and of all other parties in interest who have been given notice in compliance with subsection

1-A, except for parties in interest having a superior priority to the foreclosing mortgagee. The deed thereunder must convey the premises subject to and with the benefit of all restrictions, easements, improvements, outstanding tax titles, municipal or other public taxes, assessments, liens or claims in the nature of liens and existing encumbrances of record created prior to the mortgage, whether or not reference to such restrictions, easements, improvements, liens or encumbrances is made in the deed or foreclosure notice. Any other party in interest having a claim to the real estate whose claim is not recorded in the registry of deeds as of the time of recording the foreclosure notice need not be given notice, and any such party has no claim against the real estate after completion of the public sale, in accordance with Title 33, section 501-A. The interests of parties in interest having a superior priority are not affected by the foreclosure.
[PL 2015, c. 147, §1 (AMD).]

5. Public sale. At the completion of a public sale pursuant to this section, the foreclosing mortgagee shall execute a purchase and sale agreement with the highest bidder. The purchase and sale agreement may be assigned by the purchaser. If the highest bidder fails to perform on the agreement, the foreclosing mortgagee may execute a purchase and sale agreement with the next highest bidder. If the foreclosing mortgagee is the highest bidder or becomes the highest bidder by failure of a bidder to perform a purchase and sale agreement, a purchase and sale agreement need not be executed. A mortgagee may bid and may purchase any real estate sold at such sale, as long as the mortgagee is the highest bidder. If the real estate is sold for an amount in excess of the outstanding balance of the mortgage together with all interest and costs, said excess must be used to satisfy the claims of parties in interest whose interests were extinguished by the foreclosure in the order of priority that existed prior to the foreclosure and, after all of those parties in interest are satisfied together with all interest and costs, any excess then remaining must be paid to the mortgagor. If the mortgagor or any such party in interest cannot be found after a diligent search, the money must be paid into the Superior Court in the county where the land lies for the benefit of the mortgagor or the holder of any such encumbrance.
[PL 2015, c. 147, §1 (AMD).]

6. Continuation of sale. A public sale pursuant to this section may be adjourned, for any time not exceeding 30 days and from time to time until a sale is made, by announcement to those present at each adjournment.
[PL 2015, c. 147, §1 (NEW).]

SECTION HISTORY

PL 1967, c. 396 (NEW). PL 1967, c. 424, §2 (NEW). PL 1967, c. 544, §37 (RP). PL 1971, c. 113 (AMD). PL 1987, c. 667, §14 (AMD). PL 1991, c. 134, §1 (AMD). PL 1991, c. 768, §§1,2 (AMD). PL 1993, c. 277, §§1,2 (AMD). PL 1993, c. 277, §5 (AFF). PL 1995, c. 106, §1 (AMD). PL 2009, c. 402, §16 (AMD). PL 2009, c. 476, Pt. B, §3 (RPR). PL 2009, c. 476, Pt. B, §9 (AFF). PL 2015, c. 147, §1 (AMD).

§6203-B. Copy of notice; affidavit; recording; evidence

The mortgagee or its agent shall, within 30 days after the date of the delivery of the deed to the purchaser or the purchaser's agent, cause an affidavit, fully and particularly stating the mortgagee's acts, or the acts of the mortgagee's agent, along with a copy of the foreclosure notice as published, to be recorded in the registry of deeds for the county where the land lies. The affidavit must identify the mortgagee and mortgagor and include the street address, if any, of the real estate encumbered by the mortgage; a description of the real estate encumbered by the mortgage, which may be incorporated by reference to the book and page number of an instrument of record containing an adequate legal description of the real estate; the book and page number, if any, of the mortgage; the dates of publication and the name of the publishing entity of the public notice required by section 6203-A, subsection 1; the recipients and mailing or service dates of notices provided pursuant to section 6203-A, subsections 1 and 1-A and section 6203-E; the final purchaser under the agreement described in section 6203-A,

subsection 5; and the date of delivery of the deed to the purchaser or the purchaser's agent. If the affidavit shows that the requirements of the power of sale and section 6203-A have in all respects been complied with, the affidavit or a certified copy of the record thereof must be admitted as evidence that the power of sale was duly executed. In case of an error or omission in the affidavit recorded as aforesaid, the mortgagee or its agent shall record an amended affidavit correcting the error or omission and the amended affidavit so recorded has the same effect and must be admitted in evidence, as if it had been recorded within said 30 days, but such subsequent affidavit does not prejudicially affect any title or interest in land that may have arisen or have been created between the recording of the original and of the subsequent affidavit. [PL 2015, c. 147, §2 (AMD).]

SECTION HISTORY

PL 1967, c. 424, §2 (NEW). PL 2009, c. 476, Pt. B, §4 (AMD). PL 2009, c. 476, Pt. B, §9 (AFF). PL 2015, c. 147, §2 (AMD).

§6203-C. Conveyance by mortgagor; effect

A sale or transfer by the mortgagor shall not impair or annul any right or power of attorney given in the mortgage to the mortgagee to sell or to transfer the land as attorney or agent of the mortgagor. [PL 1967, c. 424, §2 (NEW).]

SECTION HISTORY

PL 1967, c. 424, §2 (NEW).

§6203-D. Limitation of actions

Actions on mortgage notes, whether witnessed or not, or on other obligations to pay a debt secured by a mortgage of real estate, to recover judgments for deficiencies after foreclosure by sale under a power contained in the mortgage, and actions on such notes or other obligations that are subject to a prior mortgage, to recover the amount due thereon after the foreclosure sale of such prior mortgage under the power contained therein, must, except as otherwise provided, be commenced within 2 years after the date of delivery of the deed to the purchaser or the purchaser's agent or, if the principal of the note or other obligation does not become payable until after the date of delivery of the deed to the purchaser or the purchaser's agent, then within 2 years after the time when the cause of action for the principal accrues. [PL 2015, c. 147, §3 (AMD).]

SECTION HISTORY

PL 1967, c. 424, §2 (NEW). PL 2015, c. 147, §3 (AMD).

§6203-E. Liability for deficiency on sale; necessity of notice; form; affidavit

No action for a deficiency may be brought by the holder of the mortgage note or other obligation secured by mortgage of real estate after foreclosure by exercise of the power of sale, unless a notice in writing of the mortgagee's intention to foreclose the mortgage has been served on the mortgagor or its representative in interest or the same has been sent by registered or certified mail with return receipt requested at its last address then known to the mortgagee, to such address as may be agreed upon in the mortgage, together with a naming of liability for the deficiency, in substantially the form below, at least 21 days before the date of the sale under the power in the mortgage, and an affidavit has been signed and sworn to, within 30 days after the date of delivery of the deed to the purchaser or purchaser's agent, of the mailing of the notice. A notice mailed as aforesaid is a sufficient notice, and such an affidavit made within the time specified is prima facie evidence in such action of the mailing of such notice. [PL 2015, c. 147, §4 (AMD).]

The following form of notice and affidavit may be used and may be altered as circumstances require; but nothing herein may be construed to prevent the use of other forms:

FORM

Notice of Intention to Foreclose and of Liability for Deficiency After Foreclosure of Mortgage

To: A. B. of ..... Street, Town of ..... County of ..... and State of .....

You are hereby notified in accordance with the statute, of my intention, on ..... (date of sale), to foreclose by sale under the Power of Sale for breach of condition, the Mortgage held by me on property located on ..... Street, Town of ....., County of ..... and State of ..... dated ..... and recorded in the ..... County Registry of Deeds, Book ....., Page ....., to secure a note (or other obligation) signed by you, for the whole, or any part, of which you may be liable to me and in case of a deficiency in the proceeds of the Foreclosure Sale to hold you liable for the whole or any part thereof still remaining unpaid.

Very truly yours,

.....

(Name of holder of said Mortgage)

Affidavit

I hereby certify on oath that on the ..... day of ..... 20....., I mailed by registered or certified mail with return receipt requested, the notice a copy of which is hereinabove set forth, direct to such person or persons at the address therein named that was the last address of such person known to me at the time of mailing or to such person or persons at the address therein named that was the person and the address agreed upon in said Mortgage.

Subscribed and sworn to before me this ..... day of ..... 20.....
.

.....

Notary Public [PL 2015, c. 147, §4 (AMD).]

In the event that the mortgagee is the purchaser at the public sale, any deficiency is limited to the difference between the fair market value of the premises at the time of the sale, as established by an independent appraisal, and the sum due the mortgagee with interest plus the expenses incurred in making the sale. [PL 2015, c. 147, §4 (NEW).]

SECTION HISTORY

PL 1967, c. 424, §2 (NEW). PL 1987, c. 736, §17 (AMD). PL 2015, c. 147, §4 (AMD).

§6203-F. Foreclosure of bond for deed and contracts for sale of real estate

1. Foreclosure procedure. If the purchaser of real estate under a contract for the sale of real estate, including a bond for a deed, is in default of any of the terms of that contract, the seller or the seller's heirs or assigns may foreclose the rights of the purchaser in the contract not less than 30 days after giving the notice required by subsection 2 by any of the means provided by law for the foreclosure of mortgages, except that the redemption period is 60 days. Within the redemption period, the purchaser or a person claiming under the purchaser may apply to any Justice of the Supreme Judicial Court or Superior Court for an extension of time to redeem, and after such notice as the court may order, for good cause shown, the court may extend the redemption period to a maximum of one year. An

extension order is not binding against any person without actual notice of the order unless, within the 60-day period, a written notice describing the land, identifying the instrument under which foreclosure proceedings have been brought and setting forth the fact that application for extension of the redemption period has been made, is recorded in the registry of deeds in the county in which the land is located. This section may not be construed to extend the life of options with an ascertainable time of termination. The remedy afforded by this section supplements other legal remedies that may be available to the seller.
[PL 1991, c. 707, §2 (NEW).]

2. Notice of right to cure; application. Before foreclosing the rights of the purchaser described in subsection 1, the seller or the seller's heirs or assigns must give written notice to the purchaser at the last known address of the purchaser that the purchaser has 30 days to cure the default by full payment of all amounts past due including reasonable interest and late charges specified in the contract. If the purchaser tenders payment of the amount before the date specified in the notice, the purchaser is restored to all rights under the contract as though the default had not occurred.

A. A seller gives notice to the purchaser under this section by mailing the notice by certified mail, return receipt requested. If the notice is undeliverable by certified mail, the seller must send the notice to the purchaser by ordinary mail. The time when notice is given is the date the purchaser signs the receipt or, if the notice is undeliverable by certified mail, the date the notice was sent by ordinary mail. [PL 1991, c. 707, §2 (NEW).]

B. This subsection applies only to contracts for the sale of residential real estate located in this State, when the purchaser is in possession of the subject real estate. All other transactions are governed by the terms of the contract and applicable law. [PL 1991, c. 707, §2 (NEW).]

[PL 1991, c. 707, §2 (NEW).]

SECTION HISTORY

PL 1967, c. 544, §38 (NEW). PL 1991, c. 707, §2 (RPR).

§6203-G. Assignment of mortgage

The assignment of a mortgage by a foreclosing mortgagee at any time during the foreclosure process does not affect the validity of the foreclosure. Upon the recording of the assignment of mortgage in the registry of deeds where the land lies, the assignee of the mortgage may complete the foreclosure. [PL 2015, c. 147, §5 (NEW).]

SECTION HISTORY

PL 2015, c. 147, §5 (NEW).

§6204. Redemption in one year

(REPEALED)

SECTION HISTORY

PL 1967, c. 424, §3 (AMD). PL 1991, c. 134, §2 (AMD). PL 1993, c. 321, §1 (AMD). PL 2007, c. 391, §4 (RP).

§6204-A. Disposition of proceeds of foreclosure sale

(REPEALED)

SECTION HISTORY

PL 1975, c. 552, §4 (NEW). PL 1989, c. 829, §1 (RP).

§6204-B. Disposition of proceeds of sale after foreclosure

(REPEALED)

SECTION HISTORY

PL 1989, c. 829, §2 (NEW). PL 2007, c. 391, §5 (RP).

§6205. Rights of junior mortgagee

When proceedings for the foreclosure of any prior mortgage of real estate have been instituted by any method provided by law, the owner of any subsequent mortgage of the same real estate or of any part of the same real estate may, at any time before the right of redemption from such prior mortgage has expired, in writing, request the owner of such prior mortgage to assign the same and the debt thereby secured to him, upon his paying to the owner of such prior mortgage, the full amount, including all interest, costs of foreclosure and such other sums as the mortgagor or person redeeming would be required to pay in order to redeem. If the owner of such prior mortgage neglects or refuses to make such assignment within a reasonable time after such written request, the owner of such subsequent mortgage may bring a civil action in the Superior Court for the purpose of compelling the owner of such prior mortgage to assign the same and the debt thereby secured, to him, the owner of such subsequent mortgage, upon making payment. If the court, upon hearing, shall be of the opinion that the owner of such prior mortgage will not be injured or damaged in his property matters and rights by such assignment, and that such assignment will better protect the rights and interests of the owner of such subsequent mortgage, and that the rights and interests of any other person in and to the same real estate, or any part thereof, will not be prejudiced or endangered thereby, the court, in its discretion, may order and decree that such prior mortgage and the debt thereby secured shall be assigned by the owner thereof to the owner of such subsequent mortgage upon his making payment. The time within which and the place where such payment shall be made shall be fixed by the court, and if the parties are unable to agree upon the amount of such payment, the court shall fix and determine the amount. The court may issue all necessary and needful process or processes to enforce any order or decree made under this section. The owner of any prior mortgage assigned under the provisions hereof shall not be holden on nor liable for the debt secured by such mortgage unless he especially agrees in writing by him signed to be so holden or liable. An appeal from any final decree may be taken as in other civil actions.

§6206. Judgment where nothing due

If it appears that nothing is due on the mortgage, judgment shall be rendered for the defendant and for his costs, and he shall hold the land discharged of the mortgage.

§6207. Action by executor or administrator

When a mortgagee or person claiming under him is dead, the same proceedings to foreclose the mortgage may be had by his executor or administrator, declaring on the seizin of the deceased, as he might have had if living.

§6208. Proper party defendant

An action on a mortgage deed may be brought against a person in possession of the mortgaged premises. The mortgagor or person claiming under him may, in all cases, be joined with him as a cotenant, whether he then has any interest or not in the premises, but he is not liable for costs when he has no such interest and makes his disclaimer thereto upon the records of the court.

§6209. Real action against mortgagee in possession after mortgage paid

When the mortgagee or person claiming under him has taken possession of the mortgaged premises, and the debt secured by the mortgage is paid or released after condition broken and before foreclosure perfected, the mortgagor or person claiming under him may maintain a real action to recover possession of said premises, the same as if paid or released before condition broken.

SUBCHAPTER 4

ACTION FOR POSSESSION

§6251. Form of complaint

The mortgagee or person claiming under the mortgagee in an action for possession may declare on the mortgagee's own seizin, in a real action, without naming the mortgage or assignment. If it appears that the plaintiff is entitled to possession and that the condition had been broken when the action was commenced, the court shall, on motion of either party, award the conditional judgment, unless it appears that the tenant is not the mortgagor or a person claiming under the mortgagor, the plaintiff not consenting to such judgment. Unless such judgment is awarded, judgment is entered as at common law. [PL 2007, c. 391, §6 (AMD).]

SECTION HISTORY

PL 2007, c. 391, §6 (AMD).

§6252. Form of conditional judgment

The conditional judgment shall be that if the mortgagor, his heirs, executor or administrator pays the sum that the court adjudges to be due and payable, with interest, within 2 months from the time of judgment, and pays such other sums as the court adjudges to be thereafter payable, within 2 months from the time that they fall due, no writ of possession shall issue and the mortgage shall be void. Otherwise it shall issue in due form of law, upon the first failure to pay according to said judgment. If, after 3 years from the rendition of the judgment, the writ of possession has not been served or the judgment wholly satisfied, another conditional judgment may, on motion filed in the name of the mortgagee or assignee, be rendered, and a writ of possession issued as before provided. When the condition is for doing some other act than the payment of money, the court may vary the conditional judgment as the circumstances require. The writ of possession shall issue if the terms of the conditional judgment are not complied with within the 2 months.

SUBCHAPTER 5

REDEMPTION

§6301. Accounting required

Any mortgagor or other person having a right to redeem lands mortgaged may demand of the mortgagee or person claiming under the mortgagee a true account of the sum due on the mortgage, and of the rents and profits, and money expended in repairs and improvements, if any. If the mortgagee unreasonably refuses or neglects to render such an account in writing, or in any other way by default prevents the plaintiff from performing or tendering performance of the condition of the mortgage, the mortgagor may bring a civil action for the redemption of the mortgaged premises within the time limited in former section 6204, and therein offer to pay the sum found to be equitably due, or to perform any other condition, as the case may require. Such an offer has the same force as a tender of payment or performance before the commencement of the action. The action must be sustained without such a tender, and thereupon the mortgagor is entitled to judgment for redemption and costs. [PL 2007, c. 391, §7 (AMD).]

SECTION HISTORY

PL 2007, c. 391, §7 (AMD).

§6302. Death of mortgagee or successor

(REPEALED)

SECTION HISTORY

PL 1979, c. 540, §23 (RP).

§6303. Death of mortgagor or successor

If a person entitled to redeem a mortgaged estate or an equity of redemption that has been sold on execution, or the right to redeem such right, or the right to redeem lands set off on execution, dies without having made a tender for that purpose, a tender may be made and an action for redemption commenced and prosecuted by the person's personal representative, or by the person's heirs or devisees subject to the authority of the personal representative over the administration of the estate under Title 18-C, sections 3-709 and 3-711. If the plaintiff in such action dies pending the action, it may be prosecuted to final judgment by the plaintiff's personal representative, or by the plaintiff's heirs or devisees subject to the same authority of the personal representative. When a mortgagor resides out of the State, any person may, in the mortgagor's behalf, tender to the holder of the mortgage the amount due thereon. The tender is as effectual as if made by the mortgagor. [PL 2017, c. 402, Pt. C, §29 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 1979, c. 540, §24 (AMD). PL 2017, c. 402, Pt. C, §29 (AMD). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§6304. Effect of payment or tender

When the amount due on a mortgage has been paid or tendered to the mortgagee, or person claiming under him, by the mortgagor or the person claiming under him, within the time so limited, he may bring a civil action for the redemption of the mortgaged premises, and compel the mortgagee, or person claiming under him, by a decree of the Superior Court, to release to him all his right and title therein; although such mortgagee or his assignee has never had actual possession of the premises for breach of the condition; or, without having made a tender before the commencement of the action, he may bring a civil action in the manner prescribed in section 6301, and the cause shall be tried in the same manner.

§6305. Mortgagee out of State

When a civil action for redemption is brought before an actual entry for breach of the condition, and before payment or tender, if the mortgagee or person claiming under him is out of the State and has not had actual notice, the court shall order proper notice to be given him and continue the cause as long as necessary.

§6306. -- payment to clerk of court

When a mortgagee or person claiming under a mortgagee residing out of the State, or whose residence is unknown to the party entitled to redeem, has commenced proceedings in accordance with this chapter, or when such a mortgagee or claimant having no tenant, agent or attorney in possession on whom service can be made has commenced proceedings in accordance with this chapter, in either case the party entitled to redeem may bring the civil action, as prescribed in section 6301, and pay at the same time to the clerk of the court and sum due, which payment has the same effect as a tender before the action. The court shall order such a notice to be given of the pendency of the action, as it judges proper. [PL 2007, c. 391, §8 (AMD).]

SECTION HISTORY

PL 2007, c. 391, §8 (AMD).

§6307. Fraudulent mortgage

When a mortgage is alleged and proved to be fraudulent, in whole or in part, an innocent assignee of the mortgagor, for a valuable consideration, may bring his action within the time allowed to redeem and be allowed to redeem without a tender.

§6308. Notice by publication

When an amount due on a mortgage has been paid or tendered to the mortgagee or person claiming under him before foreclosure of the mortgage, and the mortgagee or his assignee is out of the State and the mortgage is undischarged on the record, the mortgagor or person claiming under him may maintain a civil action for the redemption of the mortgaged premises, as provided in section 6304, or for the discharge of the mortgage. On notice of the pendency of the action, given by publication in a newspaper of general circulation in the county where said premises are situated for 3 weeks successively, the last publication being 30 days before the time of hearing, or in such other way as the Superior Court orders, said court may decree a discharge of such mortgage. The record of such decree in the registry of deeds where said mortgage is recorded is evidence of such discharge. [PL 1987, c. 667, §15 (AMD).]

SECTION HISTORY

PL 1987, c. 667, §15 (AMD).

§6309. Limitation of civil action

No civil action shall be brought for redemption of mortgaged premises, founded on a tender of payment or performance of the condition made before commencement of the action, unless within one year after such tender.

§6310. Joinder of others as defendants; notice

In any action brought for the redemption of mortgaged premises, when it is necessary to the attainment of justice that any other person besides the defendant, claiming an interest in the premises, should be made a party with the original defendant, the court on motion may order him to be served with an attested copy of the complaint amended in such manner as it directs, and on his appearance, the cause shall proceed as though he had been originally joined.

§6311. Joint or several execution

The court, when a decree is made for the redemption of mortgaged lands, may award execution jointly or severally as the case requires, and for sums found due for rents and profits over and above the sums reasonably expended in repairing and increasing the value of the estate redeemed.

§6312. Deduction of rents and profits; statement of amount due

When money is brought into court in an action for redemption of mortgaged premises, the court may deduct therefrom such sum as the defendant is chargeable with on account of rents and profits by him received or costs awarded against him. The person to whom money is tendered to redeem such lands, if he receives a larger sum than he is entitled to retain, shall refund the excess. Any mortgagee or person holding under him when requested by an assignee in insolvency or trustee in bankruptcy to render a statement of the amount due on a mortgage given by the insolvent where there is an equity of redemption shall render a true statement to the assignee or trustee of the amount due on such mortgage. For any loss resulting to the insolvent estate from any misrepresentation of the amount due, the assignee or trustee shall have a right of action against such person to recover such loss.

§6313. Redemption of estate from purchaser of equity

If the purchaser of an equity of redemption, sold on execution, has satisfied and paid to the mortgagee or those claiming under him the sum due on the mortgage, the mortgagor or those claiming under him, having redeemed the equity of redemption within one year after such sale, may redeem such mortgaged estate from such purchaser or any person claiming under him within the time and in the manner that he might have redeemed it of the mortgagee if there had been no such sale made, and within such time only.

SUBCHAPTER 6

FORECLOSURE PROCEEDINGS BY CIVIL ACTION

§6321. Commencement of foreclosure by civil action

After breach of condition in a mortgage of first priority, the mortgagee or any person claiming under the mortgagee may proceed for the purpose of foreclosure by a civil action against all parties in interest in either the Superior Court or the District Court in the division in which the mortgaged premises or any part of the mortgaged premises is located, regardless of the amount of the mortgage claim. [PL 2007, c. 391, §9 (AMD).]

After breach of condition of any mortgage other than one of the first priority, the mortgagee or any person claiming under the mortgagee may proceed for the purpose of foreclosure by a civil action against all parties in interest, except for parties in interest having a superior priority to the foreclosing mortgagee, in either the Superior Court or the District Court in the division in which the mortgaged premises or any part of the mortgaged premises is located. Parties in interest having a superior priority may not be joined nor will their interests be affected by the proceedings, but the resulting sale under section 6323 is of the defendant or mortgagor's equity of redemption only. The plaintiff shall notify the priority parties in interest of the action by sending a copy of the complaint to the parties in interest by certified mail. [PL 2007, c. 391, §9 (AMD).]

The foreclosure must be commenced in accordance with the Maine Rules of Civil Procedure, and the mortgagee shall within 60 days of commencing the foreclosure also record a copy of the complaint or a clerk's certificate of the filing of the complaint in each registry of deeds in which the mortgage deed is or by law ought to be recorded and such a recording thereafter constitutes record notice of commencement of foreclosure. The mortgagee shall further certify and provide evidence that all steps mandated by law to provide notice to the mortgagor pursuant to section 6111 were strictly performed. In order to state a claim for foreclosure upon which relief can be granted, the complaint must contain a certification of proof of ownership of the mortgage note. The mortgagee shall certify proof of ownership of the mortgage note and produce evidence of the mortgage note, mortgage and all assignments and endorsements of the mortgage note and mortgage. The complaint must allege with specificity the plaintiff's claim by mortgage on such real estate, describe the mortgaged premises intelligibly, including the street address of the mortgaged premises, if any, which must be prominently stated on the first page of the complaint, state the book and page number of the mortgage, if any, state the existence of public utility easements, if any, that were recorded subsequent to the mortgage and prior to the commencement of the foreclosure proceeding and without mortgagee consent, state the amount due on the mortgage, state the condition broken and by reason of such breach demand a foreclosure and sale. If a clerk's certificate of the filing of the complaint is presented for recording pursuant to this section, the clerk’s certificate must bear the title "Clerk's Certificate of Foreclosure" and prominently state, immediately after the title, the street address of the mortgaged premises, if any, and the book and page number of the mortgage, if any. Service of process on all parties in interest and all proceedings must be in accordance with the Maine Rules of Civil Procedure. "Parties in interest" includes mortgagors, holders of fee interest, mortgagees, lessees pursuant to recorded leases or memoranda thereof, lienors and attaching creditors all as reflected by the indices in the registry of deeds and the documents referred to therein affecting the mortgaged premises, through the time of the recording of the complaint or the clerk's certificate. Failure to join any party in interest does not invalidate the action nor any subsequent proceedings as to those joined. Failure of the mortgagee to join, as a party in interest, the holder of any public utility easement recorded subsequent to the mortgage and prior to commencement of foreclosure proceedings is deemed consent by the mortgagee to that easement. Any other party having a claim to the real estate whose claim is not recorded in the registry of deeds as of the time of recording of the copy of the complaint or the clerk's certificate need not be joined in the foreclosure action, and any such party has no claim against the real estate after completion of the foreclosure sale, except that any such party may move to intervene in the action for the purpose of being added as a party in interest at any time prior to the entry of judgment. Within 10 days of submitting the complaint for filing with the court, the mortgagee shall provide a copy of the complaint or of the clerk's certificate as submitted to the court that prominently states, immediately after the title,

the street address of the mortgaged premises, if any, and the book and page number of the mortgage, if any, to the municipal tax assessor of the municipality in which the property is located and, if the mortgaged premises is manufactured housing as defined in Title 10, section 9002, subsection 7, to the owner of any land leased by the mortgagor. The failure to provide the notice required by this section does not affect the validity of the foreclosure sale. [PL 2015, c. 229, §1 (AMD).]

For purposes of this section, "public utility easements" means any easements held by public utilities, as defined in Title 35-A, section 102; sewer districts, as defined in Title 38, section 1032, subsection 3 or 4; or sanitary districts, as formed under Title 38, chapter 11. [PL 2013, c. 555, §2 (AMD).]

The acceptance, before the expiration of the right of redemption and after the commencement of foreclosure proceedings of any mortgage of real property, of anything of value to be applied on or to the mortgage indebtedness by the mortgagee or any person holding under the mortgagee constitutes a waiver of the foreclosure unless an agreement to the contrary in writing is signed by the person from whom the payment is accepted or unless the bank returns the payment to the mortgagor within 10 days of receipt. The receipt of income from the mortgaged premises by the mortgagee or the mortgagee's assigns while in possession of the premises does not constitute a waiver of the foreclosure proceedings of the mortgage on the premises. [PL 2007, c. 391, §9 (NEW).]

The mortgagee and the mortgagor may enter into an agreement to allow the mortgagor to bring the mortgage payments up to date with the foreclosure process being stayed as long as the mortgagor makes payments according to the agreement. If the mortgagor does not make payments according to the agreement, the mortgagee may, after notice to the mortgagor, resume the foreclosure process at the point at which it was stayed. [PL 2007, c. 391, §9 (NEW).]

SECTION HISTORY

PL 1975, c. 552, §5 (NEW). PL 1977, c. 564, §69 (AMD). PL 1981, c. 429, §§2,3 (AMD). PL 1983, c. 447, §2 (AMD). PL 1991, c. 744, §§1,2 (AMD). PL 2007, c. 391, §9 (AMD). PL 2009, c. 402, §17 (AMD). PL 2009, c. 476, Pt. B, §5 (AMD). PL 2009, c. 476, Pt. B, §9 (AFF). PL 2013, c. 555, §2 (AMD). PL 2015, c. 229, §1 (AMD).

§6321-A. Foreclosure mediation program

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

A. "Court" means the Supreme Judicial Court. [PL 2009, c. 402, §18 (NEW).]

B. "Program" means the foreclosure mediation program established pursuant to subsection 3. [PL 2009, c. 402, §18 (NEW).]

[PL 2009, c. 402, §18 (NEW).]

2. Notice; summons and complaint; foreclosure proceedings. When a plaintiff commences an action for the foreclosure of a mortgage on an owner-occupied residential real property of no more than 4 units that is the primary residence of the owner-occupant, the plaintiff shall attach to the front of the foreclosure complaint a one-page form notice to the defendant as developed by the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection in accordance with this subsection and section 6112, subsection 3. The form notice must be written in language that is plain and readily understandable by the general public.

At a minimum, the form notice must contain the following:

A. A statement that failure to answer the complaint will result in foreclosure of the property subject to the mortgage; [PL 2009, c. 402, §18 (NEW).]

B. A sample answer and an explanation that the defendant may fill out the form and return it to the court in the envelope provided as the answer to the complaint. If the debtor returns the form to the

court, the defendant does not need to file a more formal answer or responsive pleading and will be scheduled for mediation in accordance with this section; and [PL 2009, c. 402, §18 (NEW).]

C. A description of the program. [PL 2009, c. 402, §18 (NEW).]

[PL 2009, c. 402, §18 (NEW).]

3. Foreclosure mediation program established. Under the authority granted in Title 4, section 18-B, the court shall adopt rules to establish a foreclosure mediation program to provide mediation in actions for foreclosure of mortgages on owner-occupied residential property with no more than 4 units that is the primary residence of the owner-occupant. The program must address all issues of foreclosure, including but not limited to reinstatement of the mortgage, modification of the loan and restructuring of the mortgage debt. Mediations conducted pursuant to the program must use the calculations, assumptions and forms that are established by the Federal Deposit Insurance Corporation and published in the Federal Deposit Insurance Corporation Loan Modification Program Guide as set out on the Federal Deposit Insurance Corporation's publicly accessible website.

[PL 2009, c. 402, §18 (NEW).]

4. Financial information confidential. Except for financial information included as part of a foreclosure complaint or any answer filed with the court, any financial statement or information provided to the court or to the parties during the course of mediation in accordance with this section is confidential and is not available for public inspection. Any financial statement or information must be made available as necessary, to the court, the attorneys whose appearances are entered in the case and the parties to the mediation. Any financial statement or information designated as confidential under this subsection must be kept separate from other papers in the case and may not be used for purposes other than mediation.

[PL 2009, c. 402, §18 (NEW).]

5. No waiver of rights. The plaintiff's or defendant's rights in the foreclosure action are not waived by participating in the program.

[PL 2009, c. 402, §18 (NEW).]

6. Commencement of mediation. When a defendant returns the notice required under subsection 2 or otherwise requests mediation or makes an appearance in a foreclosure action, the court shall refer the plaintiff and defendant to mediation pursuant to this section.

[PL 2009, c. 402, §18 (NEW).]

7. Provisions of mediation services; filing and fees. The court shall:

A. Assign mediators, including active retired justices and judges pursuant to Title 4, sections 104 and 157-B, who:

(1) Are trained in mediation and relevant aspects of the law related to real estate, mortgage procedures, foreclosure or foreclosure prevention;

(2) Have knowledge of community-based resources that are available in the judicial districts in which they serve;

(3) Have knowledge of mortgage assistance programs;

(4) Are trained in using the relevant Federal Deposit Insurance Corporation forms and worksheets;

(5) Are knowledgeable in principal loss mitigation and mortgage loan servicing guidelines and regulations; and

(6) Are capable of facilitating and likely to facilitate identification of and compliance with principal loss mitigation and mortgage loan servicing guidelines and regulations.

The court may establish an orientation program for mediators and require that mediators receive such orientation prior to being appointed; [PL 2013, c. 521, Pt. F, §1 (AMD).]

B. Report annually to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters and the joint standing committee of the Legislature having jurisdiction over judiciary matters on:

(1) The performance of the program, including numbers of homeowners who are notified of mediation, who attend mediation and who receive legal counseling or legal assistance; and

(2) The results of the mediation process, including the number of loans restructured, number of principal write-downs, interest rate reductions and number of homeowners who default on mortgages within a year after restructuring, to the extent the court has available information; [PL 2009, c. 402, §18 (NEW).]

C. Notwithstanding subsection 10, establish a fee upon a foreclosure filing made on or after June 15, 2009 to support mediation services to be paid for by the plaintiff; and [PL 2009, c. 402, §18 (NEW).]

D. Make recommendations for any changes to the program to the Legislature. [PL 2009, c. 402, §18 (NEW).]

[PL 2013, c. 521, Pt. F, §1 (AMD).]

8. Referral to mortgage assistance programs. At any time during the mediation process, the mediator may refer the defendant to housing counseling or mortgage assistance programs.
[PL 2009, c. 402, §18 (NEW).]

9. No entry of judgment. For any foreclosure complaint filed after January 1, 2010 that is scheduled for mediation in accordance with this section, a final judgment may not issue until a mediator's report has been completed pursuant to subsection 13.
[PL 2009, c. 402, §18 (NEW).]

10. Application of mediation provisions to ongoing foreclosure proceedings. The requirements of this section apply to foreclosures filed after January 1, 2010. The court may in its discretion require mediation for an owner-occupied residential property that is the primary residence of the owner-occupant and that is in the foreclosure process but not scheduled for sale before January 1, 2010 and an owner-occupied residential property with no more than 4 units that is the primary residence of the owner-occupant and that is scheduled for sale before that date.
[PL 2009, c. 402, §18 (NEW).]

11. Parties to mediation. A mediator shall include in the mediation process under this section any person the mediator determines is necessary for effective mediation. Mediation and appearance in person are mandatory for:

A. The mortgagee, who has the authority to agree to a proposed settlement, loan modification or dismissal of the action, except that the mortgagee may participate by telephone or electronic means as long as that mortgagee is represented with authority to agree to a proposed settlement; [PL 2009, c. 476, Pt. B, §6 (AMD); PL 2009, c. 476, Pt. B, §9 (AFF).]

B. The defendant; [PL 2009, c. 402, §18 (NEW).]

C. Counsel for the plaintiff; and [PL 2009, c. 402, §18 (NEW).]

D. Counsel for the defendant, if represented. [PL 2009, c. 402, §18 (NEW).]

A mortgage servicer as defined in section 6113, subsection 1, paragraph B participating in the mediation process submits to the jurisdiction of the court with respect to the power of the court to sanction parties who fail to participate in the mediation process in good faith as required by section 6113, subsection 2.
[RR 2019, c. 1, Pt. A, §14 (COR).]

12. Good faith effort. Each party and each party's attorney, if any, must be present at mediation as required by this section and shall make a good faith effort to mediate all issues. If any party or attorney fails to attend or to make a good faith effort to mediate, the court may impose appropriate sanctions. A mortgage servicer as defined in section 6113, subsection 1, paragraph B participating in the mediation process shall participate in good faith as required by section 6113, subsection 2. In determining the nature and extent of appropriate sanctions, the court shall consider the need for deterrence of similar future conduct by the entity being sanctioned and by others and may take into account prior orders imposing sanctions upon the sanctioned party, whether in the same case or in other previous cases. The imposition of any sanction does not bar any independent action by a defendant to seek recovery with respect to the actions giving rise to the order of sanctions.
[PL 2019, c. 363, §3 (AMD).]

13. Report. A mediator must complete a report for each mediation conducted under this section. The mediator's report must indicate in a manner as determined by the court that the parties completed in full the Net Present Value Worksheet in the Federal Deposit Insurance Corporation Loan Modification Program Guide or other reasonable determination of net present value. If the mediation did not result in the settlement or dismissal of the action, the report must include the outcomes of the Net Present Value Worksheet or other determination of net present value. As part of the report, the mediator may notify the court if, in the mediator's opinion, either party failed to negotiate in good faith. The mediator's report must also include a statement of all agreements reached at mediation, with sufficient specificity to put all parties on notice of their obligations under agreements reached at mediation, including but not limited to a description of all documents that must be completed and provided pursuant to the agreements reached at mediation and the time frame during which all actions are required to be taken by the parties, including decisions and determinations of eligibility for all loss mitigation options. The mediator's report must identify the name of any mortgage servicer as defined in section 6113, subsection 1, paragraph B that participates in the mediation process, and any order of sanctions must likewise identify the name of the mortgage servicer.
[PL 2019, c. 363, §4 (AMD).]

14. Records. The court shall maintain records or other information relating to the program as necessary to meet the reporting requirements in subsection 7, paragraph B.
[PL 2009, c. 402, §18 (NEW).]

SECTION HISTORY

PL 2009, c. 402, §18 (NEW). PL 2009, c. 476, Pt. B, §§6, 7 (AMD). PL 2009, c. 476, Pt. B, §9 (AFF). PL 2013, c. 521, Pt. F, §§1, 2 (AMD). PL 2019, c. 363, §§2-4 (AMD). RR 2019, c. 1, Pt. A, §14 (COR).

§6321-B. Expedited final hearing in certain foreclosure cases

1. Request. The court shall schedule an expedited final hearing pursuant to section 6322 if a plaintiff in an action brought pursuant to section 6321 files with the clerk a request for an expedited final hearing on a form prescribed by the Supreme Judicial Court indicating:

A. That mediation conducted pursuant to section 6321-A did not result in the settlement or dismissal of the action and that all of the defendants and all of the parties in interest who have appeared in the action have consented to an expedited final hearing pursuant to section 6322; or [PL 2015, c. 243, §1 (NEW).]

B. That the defendant has not filed an answer to the complaint as provided by the Maine Rules of Civil Procedure and section 6321-A and that all of the parties who have filed an answer in the action have consented to an expedited final hearing. [PL 2015, c. 243, §1 (NEW).]

[PL 2015, c. 243, §1 (NEW).]

2. Consent. The request filed under subsection 1 must be accompanied by a consent form, as prescribed by the Supreme Judicial Court, that informs defendants that they may consult with an attorney or a housing counselor before consenting to an expedited hearing.

A. For a request filed under subsection 1, paragraph A, the consent form must be signed by all of the defendants and all of the parties in interest who have appeared in the action. [PL 2015, c. 243, §1 (NEW).]

B. For a request filed under subsection 1, paragraph B, the consent form must be signed by all of the parties who have appeared in the action and all of the parties who have filed an answer in the action. [PL 2015, c. 243, §1 (NEW).]

[PL 2015, c. 243, §1 (NEW).]

3. Scheduling. The court, upon receiving a request for an expedited final hearing filed in accordance with subsection 1, shall, as the interests of justice permit, set the expedited final hearing not less than 45 days after the request is filed.

[PL 2015, c. 243, §1 (NEW).]

4. Final hearing. An expedited final hearing held pursuant to this section must be conducted in accordance with section 6322 and this subsection.

A. Notwithstanding that a default may have been entered against the defendant by the clerk pursuant to the Maine Rules of Civil Procedure, Rule 55, the defendant may appear and defend at the expedited final hearing held pursuant to this section. [PL 2015, c. 243, §1 (NEW).]

B. The burden of proof and legal requirements for entry of a judgment of foreclosure are the same as in other actions pursuant to section 6321, including the requirement that a judgment of foreclosure specify the priority and those amounts, if any, that may be due to the parties in interest that have appeared in the action. [PL 2015, c. 243, §1 (NEW).]

C. After the expedited final hearing, the court shall issue a written judgment of foreclosure, dismissal with or without prejudice or judgment for the defendant as expeditiously as the interests of justice permit. [PL 2015, c. 243, §1 (NEW).]

[PL 2015, c. 243, §1 (NEW).]

SECTION HISTORY

PL 2015, c. 243, §1 (NEW).

§6322. Hearing and judgment

After hearing, the court shall determine whether there has been a breach of condition in the plaintiff's mortgage, the amount due thereon, including reasonable attorney's fees and court costs, the order of priority and those amounts, if any, that may be due to other parties that may appear and whether any public utility easements held by a party in interest survive the proceedings. For purposes of this section, "public utility easements" has the same meaning as set forth in section 6321. [PL 1991, c. 744, §3 (AMD).]

If the court determines that such a breach exists, a judgment of foreclosure and sale must issue providing that if the mortgagor or the mortgagor's successors, heirs and assigns do not pay the sum that the court adjudges to be due and payable, with interest within the period of redemption, the mortgagee shall proceed with a sale as provided. Notwithstanding section 6704, for property described in section 6111, a writ of possession may not issue until the expiration of the period of redemption provided for in this section, except that this section does not impair the right of a mortgagee to exercise rights set forth in the mortgage or security instrument to protect the mortgaged property. If the mortgagor or the mortgagor's successors, heirs and assigns pay to the mortgagee the sum that the court adjudges to be due and payable to the mortgagee with interest within the period of redemption, then the mortgagee

shall forthwith discharge the mortgage and file a dismissal of the action for foreclosure with the clerk of the court. [PL 2017, c. 133, §1 (AMD).]

On mortgages executed prior to October 1, 1975, unless the mortgage contains language to the contrary, the period of redemption shall be one year from the date of the judgment. On mortgages executed on or after October 1, 1975, the period of redemption shall be 90 days from the date of the judgment. In either case, the redemption period shall begin to run upon entry of the judgment of foreclosure, provided that no appeal is taken. [PL 1983, c. 447, §3 (AMD).]

SECTION HISTORY

PL 1975, c. 552, §5 (NEW). PL 1977, c. 618 (RPR). PL 1983, c. 447, §3 (AMD). PL 1991, c. 744, §3 (AMD). RR 2013, c. 2, §27 (COR). PL 2017, c. 133, §1 (AMD).

§6322-A. Notice to tenants of foreclosure judgment

The mortgagee shall, after entry of final judgment in favor of the mortgagee, provide a copy of the foreclosure judgment to any residential tenant of the premises. Upon request from a mortgagee, the mortgagor shall provide the name, address and other contact information for any residential tenant. A residential tenant who receives written notice under this section is not required to file any responsive pleadings and must receive written notice of all subsequent proceedings including all matters through and including sale of the property. The mortgagee shall provide written notice to the residential tenant if the mortgagee knows or should know by exercise of due diligence that the property is occupied as a residential rental unit. Notice may be provided to a residential tenant by first class mail and registered mail at the residential tenant's last known address only after the mortgagee has made 2 good faith efforts to provide written notice to the residential tenant in person. A residential tenant may not be evicted unless a mortgagee institutes an action for forcible entry and detainer pursuant to section 6001 after providing the notice required by this section and after the expiration of the redemption period. This section may not be construed to prohibit an action for forcible entry and detainer in accordance with section 6001 for a reason that is not related to a judicial foreclosure action. The failure to provide the notice required by this section does not affect the validity of the foreclosure sale. [PL 2009, c. 476, Pt. B, §8 (AMD); PL 2009, c. 476, Pt. B, §9 (AFF).]

SECTION HISTORY

PL 2009, c. 402, §19 (NEW). PL 2009, c. 476, Pt. B, §8 (AMD). PL 2009, c. 476, Pt. B, §9 (AFF).

§6323. Sale following expiration of period of redemption

1. Procedures for all civil actions. Upon expiration of the period of redemption, if the mortgagor or the mortgagor's successors, heirs or assigns have not redeemed the mortgage, any remaining rights of the mortgagor to possession terminate, and the mortgagee shall cause notice of a public sale of the premises stating the time, place and terms of the sale to be published once in each of 3 successive weeks in a newspaper of general circulation in the county in which the premises are located, the first publication to be made not more than 90 days after the expiration of the period of redemption. Except when otherwise required under 12 Code of Federal Regulations, Section 1024.41 or any successor provision, the public sale must be held not less than 30 days nor more than 45 days after the first date of that publication. Except for sales of premises that the court has determined to be abandoned pursuant to section 6326, the public sale may be adjourned, for any time not exceeding 60 days, by announcement to those present at any such adjournment. The court, upon motion of the mortgagee, filed before the deadline for sale and showing good cause, may grant such further extensions of the mortgagee's time to sell as it considers appropriate. For sales of premises that the court has determined to be abandoned pursuant to section 6326, the public sale may be adjourned once for any time not exceeding 7 days, except that the court may permit one additional adjournment for good cause shown. Adjournments may also be made in accordance with the requirements of 12 Code of Federal Regulations, Section

1024.41 or any successor provision. The mortgagee, in its sole discretion, may allow the mortgagor to redeem or reinstate the loan after the expiration of the period of redemption but before the public sale. The mortgagee shall convey the property to the mortgagor upon redemption or may execute a waiver of foreclosure in conjunction with a reinstatement only with the written consent of the mortgagor. A waiver of foreclosure and the consent of the mortgagor to the waiver must be included in a stipulation of dismissal of the foreclosure and signed by the mortgagee and mortgagor or their respective attorneys, and, upon the filing of the stipulation of dismissal with the court, all other rights of all other parties remain as if no foreclosure had been commenced. The mortgagee shall sell the premises to the highest bidder at the public sale and deliver a deed of that sale and any writ of possession that has been issued to the purchaser. The deed conveys the premises free and clear of all interests of the parties in interest joined in the action. The mortgagee or any other party in interest may bid at the public sale. If the mortgagee is the highest bidder at the public sale, there is no obligation to account for any surplus upon a subsequent sale by the mortgagee. Any rights of the mortgagee to a deficiency claim against the mortgagors are limited to the amount established as of the date of the public sale. The date of the public sale is the date on which bids are received to establish the sales price, no matter when the sale is completed by the delivery of the deed to the highest bidder. If the property is conveyed by deed pursuant to a public sale in accordance with this subsection, a copy of the judgment of foreclosure and evidence of compliance with the requirements of this subsection for the notice of public sale and the public sale itself must be attached to or included within the deed, or both, or otherwise be recorded in the registry of deeds.
[PL 2019, c. 408, §1 (AMD).]

2. Additional notice requirements for civil actions commenced on or after January 1, 1995. In foreclosures by civil action commenced on or after January 1, 1995, the mortgagee shall cause notice of the public sale to be mailed by ordinary mail to all parties who appeared in the foreclosure action or to their attorneys of record. The notice must be mailed no less than 30 calendar days before the date of sale. Failure to provide notice of the public sale to any party who appeared does not affect the validity of the sale.
[PL 1993, c. 544, §1 (NEW).]

3. Extension of deadline. Upon a showing of good cause, the court may extend a deadline established by this section for the publication of the notice of sale or conducting the public sale.
[PL 2009, c. 402, §20 (NEW).]

SECTION HISTORY

PL 1975, c. 552, §5 (NEW). PL 1983, c. 447, §4 (RPR). PL 1993, c. 373, §2 (AMD). PL 1993, c. 544, §1 (RPR). PL 2005, c. 291, §1 (AMD). PL 2007, c. 103, §1 (AMD). PL 2009, c. 402, §20 (AMD). PL 2013, c. 521, Pt. C, §1 (AMD). PL 2019, c. 408, §1 (AMD).

§6324. Proceeds of sale

After first deducting the expenses incurred in making the sale, the mortgagee shall disburse the remaining proceeds in accordance with the provisions of the judgment. The mortgagee shall file a report of the sale and the disbursement of the proceeds therefrom with the court and shall mail a copy to the mortgagor at the mortgagor's last known address. This report need not be accepted or approved by the court, provided that the mortgagor or any other party in interest may contest the accounting by motion filed within 30 days of receipt of the report, but any such challenge may be for money only and does not affect the title to the real estate purchased by the highest bidder at the public sale. Any deficiency must be assessed against the mortgagor and an execution must be issued by the court therefor. In the event the mortgagee has been the purchaser at the public sale, any deficiency is limited to the difference between the fair market value of the premises at the time of the public sale, as established by an independent appraisal, and the sum due the mortgagee as established by the court with interest plus the expenses incurred in making the sale. Any surplus must be paid to the mortgagor,

the mortgagor's successors, heirs or assigns in the proceeding. If the mortgagor has not appeared personally or by an attorney, the surplus must be paid to the clerk of courts, who shall hold the surplus in escrow for 6 months for the benefit of the mortgagor, the mortgagor's successors, heirs or assigns and, if the surplus remains unclaimed after 6 months, the clerk shall pay the surplus to the Treasurer of State to be credited to the General Fund until it becomes unclaimed under the Maine Revised Unclaimed Property Act, and report and pay it to the State in accordance with that Act. [PL 2019, c. 498, §11 (AMD).]

The report of sale required by this section must be filed with the court within the earlier of 90 days after the public sale and 45 days after the mortgagee's delivery of the deed conveying the mortgaged property to the purchaser at the mortgage sale. Upon a showing of good cause by the mortgagee, made by motion filed before the expiration of the deadline, the court may extend the deadline for the filing of the report of sale for an additional period of time as the court considers appropriate. In the event that the mortgagee fails to timely file the report of sale, the mortgagee has no right to seek a deficiency judgment. [PL 2019, c. 408, §2 (NEW).]

SECTION HISTORY

PL 1975, c. 552, §5 (NEW). PL 1983, c. 447, §5 (AMD). PL 1987, c. 691, §2 (AMD). PL 1997, c. 508, §A3 (AFF). PL 1997, c. 508, §B4 (AMD). PL 2003, c. 20, §T10 (AMD). PL 2019, c. 408, §2 (AMD). PL 2019, c. 498, §11 (AMD).

§6325. Exceptions

The method of foreclosure set forth in sections 6321 to 6324 may be used for the foreclosure of all real property mortgages, except for railroad mortgages, so called, or for indentures or deeds of trust securing bond issues of corporations wherein the method of foreclosure or sale is provided in the indenture or deed of trust or any similar instrument; provided that any such railroad mortgage, corporate indenture, deed of trust or similar instrument executed subsequent to January 1, 1976, shall be subject to this subchapter unless the applicability of this chapter is expressly negated in such instrument. The method of foreclosure set forth in sections 6321 to 6324 shall not apply to tax lien mortgages created under Title 36. [PL 1981, c. 698, §87 (AMD).]

SECTION HISTORY

PL 1975, c. 552, §5 (NEW). PL 1977, c. 564, §70 (AMD). PL 1981, c. 698, §87 (AMD).

§6326. Order of abandonment for residential properties in foreclosure

1. Plaintiff request. The plaintiff in a judicial foreclosure action may present evidence of abandonment as described in subsection 2 and may request a determination pursuant to subsection 3 that the mortgaged premises have been abandoned if:

A. More than 50% of the mortgaged premises is used for residential purposes; and [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

B. The mortgaged premises are the subject of an uncontested foreclosure action or an uncontested foreclosure judgment has been issued with respect to the premises and a foreclosure sale with respect to the premises is pending pursuant to this subchapter. An action or judgment is uncontested if:

(1) The mortgagor has not appeared in the action to defend against foreclosure;

(2) There has been no communication from or on behalf of the mortgagor to the plaintiff for at least 90 days showing any intent of the mortgagor to continue to occupy the premises or there is a document of conveyance or other written statement, signed by the mortgagor, that indicates a clear intent to abandon the premises; and

(3) Either all mortgagees with interests that are junior to the interests of the plaintiff have waived any right of redemption pursuant to section 6322 or the plaintiff has obtained or has moved to obtain a default judgment against such junior mortgagees. [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

[PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

2. Evidence of abandonment. For the purposes of this section, evidence of abandonment showing that the mortgaged premises are vacant and the occupant has no intent to return may include, but is not limited to, the following:

A. Doors and windows on the mortgaged premises are continuously boarded up, broken or left unlocked; [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

B. Rubbish, trash or debris has observably accumulated on the mortgaged premises; [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

C. Furnishings and personal property are absent from the mortgaged premises; [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

D. The mortgaged premises are deteriorating so as to constitute a threat to public health or safety; [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

E. A mortgagee has changed the locks on the mortgaged premises and neither the mortgagor nor anyone on the mortgagor's behalf has requested entrance to, or taken other steps to gain entrance to, the mortgaged premises; [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

F. Reports of trespassers, vandalism or other illegal acts being committed on the mortgaged premises have been made to local law enforcement authorities; [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

G. A code enforcement officer or other public official has made a determination or finding that the mortgaged premises are abandoned or unfit for occupancy; [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

H. The mortgagor is deceased and there is no evidence that an heir or personal representative has taken possession of the mortgaged premises; and [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

I. Other reasonable indicia of abandonment. [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

[PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

3. Court determination of abandonment; vacation of order. The plaintiff may at any time after commencement of a foreclosure action under section 6321 file with the court a motion to determine that the mortgaged premises have been abandoned.

A. If the court finds by clear and convincing evidence, based on testimony or reliable hearsay, including affidavits by public officials and other neutral nonparties, that the mortgaged premises have been abandoned, the court may issue an order granting the motion and determining that the premises are abandoned. [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

B. The court may not grant the motion if the mortgagor or a lawful occupant of the mortgaged premises appears and objects to the motion. [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

C. The court shall vacate the order under paragraph A if the mortgagor or a lawful occupant of the mortgaged premises appears in the action and objects to the order prior to the entry of judgment. [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

[PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

4. Effect of court determination of abandonment. Upon the issuance of an order of abandonment under subsection 3 determining that the mortgaged premises are abandoned:

A. The foreclosure action may be advanced on the docket and receive priority over other cases as the interests of justice require; [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

B. The period of redemption provided for in section 6322 is shortened to 45 days from the later of the issuance of the judgment of foreclosure and the order of abandonment; [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

C. If the mortgaged premises include dwelling units occupied by tenants as their primary residence, the plaintiff shall assume the duties of landlord for the rental units as required by chapter 709 upon the later of the issuance of the judgment of foreclosure and the order of abandonment; and [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

D. The plaintiff shall notify the municipality in which the premises are located and shall record the order of abandonment in the appropriate registry of deeds within 30 days from the later of the issuance of the judgment of foreclosure and the order of abandonment. [PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

[PL 2013, c. 521, Pt. B, §1 (NEW); PL 2013, c. 521, Pt. B, §2 (AFF).]

SECTION HISTORY

PL 2013, c. 521, Pt. B, §1 (NEW). PL 2013, c. 521, Pt. B, §2 (AFF).

CHAPTER 715

INTERPLEADER COMPACT

SUBCHAPTER 1

COMPACT

§6351. Purpose -- Article I

The aims of this compact are to promote comity and judicial cooperation among the states party thereto; and to relieve from undue risk and uncertainty, a person who may be subject to double or multiple liability because of the existence of adverse claimants, one or more of whom in the absence of this compact may not be subject to the jurisdiction of the adjudicating court, when such person makes all reasonable efforts to secure judicial determination and discharge of his liability.

§6352. Definitions -- Article II

For the purpose of this compact the following definitions shall apply:

1. State. A state shall mean

A. A state of the United States or any territory or possession of the United States and the District of Columbia acting under Article I, section 10, clause 3, of the Constitution of the United States in entering this compact with an American or a foreign jurisdiction, or

B. A state of the community of nations and any component governmental unit of such a state which under the laws thereof may validly become party to this compact.

2. Person. A person shall include any entity capable of suing or being sued in the state in which the interpleader is pending.

3. Interpleader. Interpleader shall mean a judicial procedure by which 2 or more persons who have adverse claims against a 3rd person may be required to litigate these claims in one proceeding.

§6353. Service of process -- Article III

1. Personal jurisdiction. Service of process sufficient to acquire personal jurisdiction may be made within a state party to this compact, by a person who institutes an interpleader proceeding or interpleader part of a proceeding in another state, party to this compact, provided that such service shall fulfill the requirements for service of process of the state in which the service is made and provided further that such service shall meet the minimum standards for service of the jurisdiction where the proceeding is pending.

2. Validity. No such service of process shall be valid unless either:

A. The subject matter of the proceeding is specific real property or tangible personal property situated within the state in which the proceeding is pending; or

B. One or more of the claimants shall be either a permanent resident or domiciliary of the state in which the proceeding is pending; or

C. A significant portion of the transaction out of which the proceeding shall have arisen shall have taken place in the state in which the proceeding is pending; or

D. One of the claimants shall have initiated the action.

§6354. Scope of interpleader unaffected -- Article IV

Nothing in this compact shall be construed to change any requirement or limitation on the scope of interpleader of the state in which the interpleader proceeding is pending except in relation to acquisition of personal jurisdiction.

§6355. Finality of judgment -- Article V

No judgment obtained against any person in any proceeding to which he had become a party by reason of service of process effected pursuant to the provisions of this compact shall be subject to attack on the ground that the adjudicating court did not have personal jurisdiction over such person.

§6356. Enactment -- Article VI

1. Effective date. This compact shall enter into force and effect as to a state one year from the date it has taken whatever action may be necessary pursuant to its required processes to make this compact part of the laws of such state and the appropriate authority of such state shall have deposited a duly authenticated copy of its statute, proclamation, order or similar official pronouncement having the force of law and embodying this compact as law with the appropriate officer or agency of each of the states party thereto. In the statute, proclamation, order or similar act by which a state adopts this compact, it shall specify the officer or agency with whom the documents referred to in this Article shall be deposited.

2. Applicability. Unless the statute, proclamation, order or similar act by which a state adopts this compact shall specify otherwise, and name the states with which the state intends to compact, such adoption shall apply to all other states then party to or who may subsequently become party to this compact. In the event that a state shall enter this compact with some states but not with others, the deposit of documents required by subsection 1 shall be effected only with those states to which the adopting state specifies an intention to be bound.

§6357. Withdrawal -- Article VII

1. Notice. This compact shall continue in force and remain binding on a party state until such state shall withdraw therefrom. To be valid and effective, any withdrawal must be preceded by a formal notice in writing of one year from the appropriate authority of that state. Such notice shall be communicated to the same officer or agency in each party state with which the notice of adoption was deposited pursuant to Article VI. In the event that a state wishes to withdraw with respect to one or more states, but wishes to remain a party to this compact with other states party thereto, its notice of withdrawal shall be communicated only to those states with respect to which withdrawal is contemplated.

2. Service of process. Withdrawal shall not be effective as to service of process accomplished pursuant to this compact prior to the actual date of withdrawal.

3. Adoption. Any state receiving a notice of adoption from another state may by action of its executive head within a year from the receipt of such notice in the manner provided for withdrawal in subsection 1 specify its intention not to be bound to the state depositing such notice and such adoption thereupon shall not be binding upon the state so acting.

§6358. Severability and construction -- Article VIII

The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state, or in the case of a component governmental unit, to the constitution of the state of which it is a part, or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held invalid or contrary to the constitution of any government participating therein the compact shall remain in full force and effect as to the remaining governments and in full force and effect as to the government affected as to all severable matters. It is the intent that the provisions of this compact shall be reasonably and liberally construed.

SUBCHAPTER 2

PROVISIONS RELATING TO COMPACT

§6401. Ratification

The Interpleader Compact is approved, ratified, adopted and entered into by this State as a party state to take effect between this State and any other state or states as defined in said compact when entered into in accordance with the terms of said compact by said other state or states and not disapproved by the Governor of this State under Article VII, subsection 3, of such compact.

§6402. Secretary of State as receiving officer

The Secretary of State is hereby designated as the officer to receive all documents deposited pursuant to Articles VI and VII. The Secretary of State is directed to act as the repository for all such documents and to keep and make available upon request a complete list of the states with which this State is party to the Interpleader Compact, together with such other information as may be in his possession concerning the status of such compact in respect to enactment and withdrawals therefrom.

§6403. Duties of Governor

As used in Article VII, subsection 3, of the Interpleader Compact, the phrase "executive head" shall mean the Governor of this State. In the event that the Governor shall take any action pursuant to Article VII, subsection 3, of such Interpleader Compact, he shall promptly notify the Secretary of State and shall deposit with him copies of any and all official communications and documents relating to such

action. The Governor shall take appropriate action pursuant to Article VII, subsection 3, of the Interpleader Compact so as not to become party thereto with any state not recognized by the United States of America or with any state the features of whose legal system make the equitable operation of said compact impracticable.

CHAPTER 717

NATURALIZATION AND CITIZENSHIP

§6451. Jurisdiction; applications for naturalization

The Superior Court shall have jurisdiction of applications for naturalization. No other court established by this State shall entertain any primary or final declaration or application made by or in behalf of an alien to become a citizen of the United States or entertain jurisdiction of the naturalization of aliens.

§6452. -- petitions for declaration of citizenship

The Superior Court shall have jurisdiction to hear and determine complaints of persons alleging themselves to be citizens, resident and domiciled inhabitants of this State and praying a judicial declaration of such citizenship, residence and domicile. Such complaints shall set forth the grounds upon which the application is based, shall be supported by such evidence as the court shall deem necessary and shall be filed, heard and determined in the county in which the plaintiff claims residence. If such plaintiff desires a jury trial upon his complaint, he may indorse a request therefor upon the complaint at the time of entry and shall thereupon be entitled to the same.

§6453. Notice to Attorney General

Notice of said complaint shall be given to the Attorney General by causing an attested copy of the same to be served upon him by an officer qualified to serve civil process, and the Attorney General may appear and be heard thereon. [PL 1971, c. 544, §48 (AMD).]

SECTION HISTORY

PL 1971, c. 544, §48 (AMD).

§6454. Change of residence

In the event of a subsequent change of residence on the part of any person so declared to be a citizen of this State, said court shall have jurisdiction and authority upon complaint therefor and like proceedings had to make a judicial declaration of such change of residence, and decree that the former judgment entered in such case shall thereafter be of no force and effect.

CHAPTER 719

PARTITION OF REAL ESTATE

§6501. Civil action

Persons seized or having a right of entry into real estate in fee simple or for life, as tenants in common or joint tenants, may be compelled to divide the same by a civil action for partition.

§6502. Form

Persons entitled as provided in section 6501, and those in possession or having a right of entry for a term of years, as tenants in common, may commence an action for partition in the Superior Court or District Court held in the county where such estate is by a complaint, clearly describing it and stating

whether it is a fee simple, for life or for years, and the proportion claimed by them, the names of the other tenants in common and their places of residence, if known, and whether any or all of them are unknown. [PL 1989, c. 392, §3 (AMD).]

SECTION HISTORY

PL 1989, c. 392, §3 (AMD).

§6503. Service of process; publication

Service of process shall be made as in other civil actions and notice by publication to tenants whose identity or whereabouts are unknown shall be given as in other actions where publication is required.

§6504. Persons not notified; pleadings

A person interested and not named in the complaint, or out of the State, and not so notified as to enable him to appear earlier, may, in the discretion of the court, be permitted to appear and defend at any time before final judgment on such terms as may be imposed. Any defendant may, jointly with others or separately, allege in his answer any matter tending to show that partition ought not to be made as prayed for.

§6505. Guardians and agents

When an infant or mentally ill person, living in the State, has no guardian and appears to be interested, the court shall appoint a guardian ad litem for him and shall appoint an agent for persons interested who had been out of the State for one year before the action was commenced and do not return before judgment for the partition is to be made and have no actual notice of the actions.

§6506. Tenants in common of sawmills

Tenants in common of a sawmill may have a division of the time during which each may occupy according to his interest, as partition is made of an estate. The court may make all necessary decrees in relation thereto.

§6507. Defendant claiming part; separate trial

When it appears from the pleadings that one or more defendants claim to be seized of the whole of a specific parcel of the premises of which partition is prayed, there may first be a separate trial of that question only, at the discretion of the presiding justice. When it appears on trial that any defendant has no interest in the estate, he shall be heard no further and the plaintiff shall recover of him the costs of the trial.

§6508. Costs

When a plaintiff is found to own a less share than is claimed in his complaint, he shall have partition of such share, but the defendant recovers costs. When found entitled to have partition of the share claimed, he recovers costs of the defendant. In such cases or on default, a judgment that partition be made shall be entered. In all other cases, including default of the defendant or defendants, when judgment for partition is given, the court, after notice to all parties in interest, may, in the discretion of the presiding justice, apportion the costs between the plaintiff and defendant or defendants or allow the plaintiff to recover costs of the proceedings against the defendant or defendants to be taxed the same as in a civil action, and execution may be issued therefor.

§6509. Joinder or severance; death or conveyance

The owners may join or sever in their complaints. When they join and one dies or conveys his share, or when a several plaintiff dies or conveys his share, the complaint, by leave of court, may be amended by erasing his name and inserting the names of his heirs, devisees or grantees, and they may proceed with the action for their respective shares.

§6510. Death of defendant

The action is not abated by the death of a party defendant. His heirs or devisees or, if the estate is for a term of years, his executor or administrator may be cited to appear, and upon service on them, they shall become parties to the proceedings. The court may order such judgment, and with such costs, as the law and facts require.

§6511. Commissioners; appointment

After judgment that partition be made, the court shall appoint 3 or 5 disinterested persons as commissioners to make partition and set off to each his share, which shall be expressed in the warrant. Their shares may be set off together or in one tract, or the share of each may be assigned to him, at his election.

§6512. Oath

Before proceeding to discharge their duty, the commissioners shall be sworn to the faithful and impartial performance of it. The dedimus justice before whom they are sworn shall make his certificate thereof on the back of their warrant. [PL 1987, c. 736, §18 (AMD).]

SECTION HISTORY

PL 1987, c. 736, §18 (AMD).

§6513. Notice; majority report

The commissioners shall give reasonable notice of the time and place for making partition to all concerned who are known and within the State. They must all be present at the performance of their duties but the report of a majority is valid.

§6514. Exclusive possession of part; improvements

When one of the tenants in common, by mutual consent, has had the exclusive possession of a part of the estate and made improvements thereon, his share shall be assigned from or including such part. The value of the improvements made by a tenant in common shall be considered and the assignment of shares be made in conformity therewith. When any person shall have heretofore made or shall hereafter make improvements upon a part of any real estate with the consent of the owners thereof, or any of them, and such person shall have thereafter become a tenant in common of such real estate, his share shall be assigned from or including such part, and the value of the improvements so made shall be considered and the assignment of shares made in conformity therewith.

§6515. Parcel of greater value than share

When any parcel of the estate to be divided is of greater value than either party's share and cannot be divided without great inconvenience, it may be assigned to one party by his paying the sum of money awarded to the parties who have less than their shares, but the report shall not be accepted until the sums so awarded are paid or secured to the satisfaction of the parties entitled thereto.

§6516. Expenses apportioned

An account of all the charges and expenses attending the partition shall, on request of any plaintiff, be presented to the court, and the presiding justice shall determine, after notice to all concerned, the equitable proportion thereof to be paid by the several owners in the lands of which partition has been made, and execution therefor may be issued against any owner neglecting to pay.

§6517. New partition; excessive share or value

If a share larger than his real interest or more than equal in value to his proportion is set off to a part owner, an aggrieved part owner, who at the time of partition was out of the State and was not notified in season to prevent it, his heirs or assigns, may within 3 years thereafter apply to the court that made the partition and it shall cause a new partition to be made.

§6518. -- persons out of State

When a person to whom a share was left was out of the State when the partition was made and was not notified in season to prevent it, he may, within 3 years after final judgment, apply to the same court for a new partition. If it appears that the share left for him was less than he was entitled to, or that it was not equal in value to his proportion of the premises, the court may order a new partition as provided in section 6520.

§6519. -- persons evicted of share

When a person to whom a share has been assigned or left is evicted by an elder and better title than that of the parties to the judgment, he is entitled to a new partition of the residue, as if no partition had been made.

§6520. -- excess removed

In such new partition, so much shall be taken from any share as the same shall be adjudged to be in excess of its just proportion of the whole, estimated as in the condition when first divided, and no more. If improvements have been made on the part taken off, reasonable satisfaction therefor, to be estimated by the commissioners, shall be made to him who made the improvements, by him to whose share they are added. The court may issue execution therefor and for costs of the new partition.

§6521. Report and judgment

Commissioners in all cases shall make and sign a written return of their proceedings, and make return thereof with their warrant to the court from which it issued. Their report may be confirmed, recommitted or set aside, and new proceedings be had as before. When confirmed, judgment must be entered accordingly and recorded by the clerk and by the register of deeds of the district where the estate is. [PL 2005, c. 683, Pt. A, §19 (AMD).]

Such judgment is conclusive on all rights of property and possession of all parties and privies to the judgment, including all persons who might have appeared and answered, except as provided.

SECTION HISTORY

PL 2005, c. 683, §A19 (AMD).

§6522. Claimant not a party; judgment ineffective

When a person not a party to the proceedings claims to hold the premises described or any part thereof, in severalty, he is not precluded by the judgment for partition, but may bring his action therefor as if no such judgment had been rendered.

§6523. Rights of nonparties to action

When a person, not a party to the proceedings, claims a share assigned to or left for a part owner, he is concluded so far as it respects the assignment of the share, but he is not prevented from maintaining an action within the time in which it might have been brought if no judgment for partition had been rendered, for the share claimed, against the tenant in possession, the same as if the plaintiff had claimed the piece demanded, instead of an undivided part of the whole.

§6524. Part owners receiving no share

When a person, not a party to the proceedings, to whom no share was assigned or left, claims to have been a part owner of the estate, he is concluded so far as it respects the partition, but not from maintaining an action against each person holding a share, for his proportion of each share as owned before partition was made.

§6525. Rights of mortgagees or lienors

A person having a mortgage, attachment or other lien on the share in common of a part owner shall be concluded by the judgment, so far as it respects the partition, but his mortgage or lien remains in force on the part assigned or left to such part owner.

CHAPTER 721

PENAL BONDS

§6601. Actions on bonds and recognizances; jury to assess damages

In actions on bond or contract in a penal sum for the performance of covenants or agreements or on a recognizance to prosecute an appeal, when the jury finds the condition broken, they shall estimate the plaintiff's damages and judgment shall be entered for the penal sum, and execution shall issue for such damages and costs.

§6602. Sureties on official bond may defend

Sureties upon official bonds may appear and defend in actions against their principal whenever such sureties may ultimately be liable upon such bonds.

CHAPTER 723

PROCEEDINGS TO QUIET TITLE

§6651. Summary proceedings

A person in possession of real property, claiming an estate of freehold therein or an unexpired term of not less than 10 years, or a person who has conveyed such property or any interest therein with covenants of title or warranty, upon which he may be liable, may, if he or those under whom he claims or those claiming under him have been in uninterrupted possession of such property for 4 years or more, bring an action in the Superior Court, or in the District Court in the county or district respectively in which said real property lies, setting forth his estate, stating the source of his title, describing the premises, and averring that an apprehension exists that persons named in the complaint, or persons unknown claiming as heirs, devisees or assigns, or in any other way, by, through or under a person or persons named in the complaint, claim or may claim some right, title or interest in the premises adverse to his said estate; and that such apprehension creates a cloud upon the title and depreciates the market value of the property; and praying that such persons be summoned to show cause why they should not bring an action to try their title to the described premises. If any such supposed claimants are unknown, the plaintiff or his attorney shall so allege under oath, but the truth of the allegation shall not after decree has been filed be denied for the purpose of defeating the title established thereby. A person in the enjoyment of an easement is in possession of real property within the meaning and for the purposes of this section. [PL 1971, c. 117, §2 (AMD).]

SECTION HISTORY

PL 1971, c. 117, §2 (AMD).

§6652. Petition to remove easement

A person in possession of real property, claiming an estate of freehold therein or an unexpired term of not less than 10 years, or a person who has conveyed such property or any interest therein with covenants of title or warranty, upon which he may be liable, may, if he or those under whom he claims or those claiming under him have been in uninterrupted possession of such property for 4 years or more, bring an action in the Superior Court, or in the District Court in the county or district respectively in which said real property lies, by complaint setting forth his estate, describing the premises and averring that an apprehension exists that persons named in the complaint, or persons unknown, claim by continued and uninterrupted use for 20 years or more, by grant, prescription, custom or in any other way, an easement through or on such real property adverse to the estate of the said plaintiff and that such apprehension creates a cloud upon the title and depreciates the market value of such property; and

praying that such persons be summoned to show cause why they should not bring an action to determine their legal rights in and to such easement over or upon said real estate. If such supposed claimants are unknown, the plaintiff or his attorney shall so allege under oath, but the truth of the allegation shall not after the decree has been filed be denied for the purpose of defeating the title established thereby. [PL 1971, c. 117, §3 (AMD).]

SECTION HISTORY

PL 1971, c. 117, §3 (AMD).

§6653. Complaint; grantee as party

An action under either section 6651 or 6652 shall be brought in the county or district respectively in which the real estate lies. Service in such action shall be made as in other actions on all supposed known claimants residing either in the State or outside the State, and notice to persons who are unascertained, not in being or unknown shall be given by publication as in other actions where publication is required, unless the court on motion permits posting in such public places as the court may direct in lieu of all or part of the publication ordinarily required. Upon the filing of the complaint the clerk of courts in the county, or the clerk of the District Court in the district respectively where such proceedings are pending shall file a certificate in the registry of deeds in the county or district where said land is situated, setting forth the names of the parties, the date of the complaint and the filing thereof and the description of the real estate as given in the complaint, which said certificate shall be recorded by the register of deeds, who shall receive therefor the same fee as for recording a deed. The action shall not be abated by the death of any party thereto, nor by the conveyance of the premises by deed recorded after said certificate is recorded. The grantee of any defendant named or described in the complaint, or any person claiming under such grantee, may voluntarily appear and become a party, and make any defense that would have been open to the defendant under whom he claims. If any person who becomes such grantee by conveyance recorded after the filing of the certificate does not voluntarily appear, no such conveyance by the defendant shall be given in evidence, either in the proceedings on the complaint or in any action brought thereunder to try title to the premises as provided in section 6654, and the issue shall be determined as though no such conveyance were made. [PL 1971, c. 117, §4 (AMD).]

SECTION HISTORY

PL 1971, c. 117, §4 (AMD).

§6654. Appearance of interested parties

If any person so summoned appears and claims title or an easement in the premises, or voluntarily appears as aforesaid and claims title or such easement, he shall by answer show cause why he should not be required to bring an action and try such title, or his title to such easement. The court shall make such decree respecting the bringing and prosecuting of such action as seems equitable and just. If any person so summoned appears and disclaims all right and title adverse to the plaintiff, he recovers his costs. If the court upon hearing finds that the allegations of the complaint are true and that notice by publication has been given as ordered, it shall make and enter a decree that all persons named in the complaint and all persons alleged to be unknown claiming by, through or under persons so named, and all persons named as grantees in any deed given by the defendant and recorded after the filing of the certificate, and all persons claiming under such grantee who have not so appeared, or who, having appeared, have disclaimed all right and title adverse to the plaintiff, or who, having appeared, shall disobey the order of the court to bring an action and try their title, shall be forever debarred and estopped from having or claiming any right or title adverse to the plaintiff in the premises described in the complaint; which decree shall within 30 days after it is finally granted be recorded in the registry of deeds for the county or district where the land lies, and shall be effectual to bar all right, title and interest, and all easements, of all persons, whether adults or minors, upon whom notice has been served, personally or by publication, and all persons named as grantees in any deed given by the defendant and

recorded after the filing of said certificate and all persons claiming under such grantees. The court may in its discretion appoint agents or guardians ad litem to represent minors or other supposed claimants. If any person appears and claims an easement, however acquired, in such premises, he may bring an action to try the title thereto, alleging in his complaint how said easement was acquired and issue shall be framed accordingly. Any party may at his option assert such title or such easement by counterclaim in the plaintiff's action, but he shall not be required to do so. Trial of any action brought pursuant to a decree hereunder or of any counterclaim asserting such title or such easement shall be by jury, if brought in the Superior Court, unless waived. [PL 1971, c. 117, §5 (AMD).]

SECTION HISTORY

PL 1971, c. 117, §5 (AMD).

§6655. Description of unknown persons

If, in an action to quiet or establish the title to land situated in this State or to remove a cloud from the title thereto, the plaintiff, or those under whom he claims, has been in uninterrupted possession of the land described in the complaint for 4 years or more, claiming an estate of freehold therein, and seeks to determine the claims or rights of any persons who are unascertained, not in being, unknown or out of the State, or who cannot be actually served with process and made personally amenable to the decree of the court, such persons may be made defendants and, if they are unascertained, not in being or unknown, they may be described generally as the heirs or legal representatives of A.B., or such persons as shall become heirs, devisees or appointees of C.D., a living person, or persons claiming under A.B. It shall not be necessary for the maintenance of such action that the defendants shall have a claim or the possibility of a claim resting upon an instrument, the cancellation or surrender of which would afford the relief desired; but it shall be sufficient that they claim or may claim by purchase, descent or otherwise, some right, title, interest or estate in the land which is the subject of the action and that their claim depends upon the construction of a written instrument or cannot be met by the plaintiffs without the production of evidence. Two or more persons who claim to own separate and distinct parcels of land in the same county by titles derived from a common source, or 2 or more persons who have separate and distinct interests in the same parcel, may join as plaintiffs in any action brought under this section.

§6656. Service on missing defendant; agent; expenses

Service in such action shall be as provided in section 6653. Notice given under this section shall be constructive service on all the defendants. If, after notice has been given or served as ordered by the court and the time limited in such notice for the appearance of the defendants has expired, the court finds that there are or may be defendants who have not been actually served with process and who have not appeared in the action, it may of its own motion, or on the representation of any party, appoint an agent, guardian ad litem or next friend for any such defendant, and if any such defendants have or may have conflicting interests, it may appoint different agents, guardians ad litem or next friends to represent them. The cost of appearance of any such agent, guardian ad litem or next friend, including the compensation of his counsel, shall be determined by the court and paid by the plaintiff, against whom execution may issue therefor in the name of the agent, guardian ad litem or next friend.

§6657. Proceedings in court

After all the defendants have been served with process or notified as provided in section 6656, and after the appointment of an agent, guardian ad litem or next friend, if such appointment has been made, the court may proceed as though all the defendants had been actually served with process. Such action shall be a proceeding in rem against the land, and a decree establishing or declaring the validity, nature or extent of the plaintiff's title may be entered, and shall operate directly on the land and shall have the force of a release made by or on behalf of all defendants of all claims inconsistent with the title established or declared thereby. This section and sections 6655 and 6656 shall not prevent the court

from exercising jurisdiction in personam against the defendants who have been actually served with process and who are personally amenable to its decrees.

§6658. Action by owners of wild land

Any person or persons claiming an estate of freehold in wild lands or in an interest in common and undivided therein, if the plaintiff and those under whom he claims has for 4 years next prior to the filing of the complaint held such open, exclusive, peaceable, continuous and adverse possession thereof as comports with the ordinary management of wild lands in this State, may maintain an action to quiet or establish the title thereto or to remove a cloud from the title thereto, as provided in sections 6655 to 6657.

§6659. Action by abutters of discontinued road or way

Any person or persons claiming an estate of freehold in a discontinued road or way, or in a portion thereof, or an interest in common and undivided therein, may maintain an action as provided in sections 6651 to 6654, or as provided in sections 6655 to 6657 in regard to said discontinued road or way, or portion thereof, without the need or necessity of showing 4 years of possession next prior to the filing of the complaint, provided that the claim of said person or persons to the discontinued road or way, or portion thereof, is based upon fee simple ownership of the land immediately adjoining said discontinued road or way. [PL 1971, c. 577 (NEW).]

SECTION HISTORY

PL 1971, c. 577 (NEW).

§6660. Burden of proof

In the trial of any action regarding title to a discontinued road or way, or portion thereof, brought pursuant to a decree under section 6654 or pursuant to sections 6655 to 6657, or of a counterclaim asserted pursuant to section 6654, the burden of proof concerning the construction of any deed or conveyance shall be borne by the party which is adverse to the party so owning said land immediately adjoining the discontinued road or way. [PL 1971, c. 577 (NEW).]

SECTION HISTORY

PL 1971, c. 577 (NEW).

§6661. Application

Sections 6659 and 6660 apply only in built-up areas as defined in Title 29-A, section 2074, subsection 2 in such cities and towns whose population exceeds 5,000 according to the last Federal Decennial Census. [PL 1995, c. 65, Pt. A, §42 (AMD); PL 1995, c. 65, Pt. A, §153 (AFF); PL 1995, c. 65, Pt. C, §15 (AFF).]

SECTION HISTORY

PL 1971, c. 577 (NEW). PL 1977, c. 78, §112 (AMD). PL 1995, c. 65, §A42 (AMD). PL 1995, c. 65, §§A153,C15 (AFF).

§6662. Extinguishment of mineral rights

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

A. "Mineral" means all naturally occurring mineral deposits, including hydrocarbons and peat, but excluding sand, gravel and water. [PL 1983, c. 189 (NEW).]

B. "Mineral interest" means the interest in minerals which is created by an instrument transferring by grant, assignment, lease or otherwise, any interest in any mineral. [PL 1983, c. 189 (NEW).]

C. "Use of the mineral interest" means:

(1) Payment of rents or royalties for the option or exercise of mineral rights;

(2) Payment of any excise tax under Title 36, sections 2851 to 2865;

(3) Extraction of minerals from the ground in quantities in excess of that necessary to conduct exploratory activity; or

(4) Filing of a statement of claim under subsection 3. [PL 1983, c. 189 (NEW).]

[PL 1983, c. 189 (NEW).]

2. Claim. A person claiming an estate in a mineral interest may maintain an action, as provided in sections 6651 to 6654 or sections 6655 to 6657, without the necessity of showing 4 years of possession next prior to filing of that complaint, provided that the person is the fee simple owner of the land which is subject to that interest.

[PL 1983, c. 189 (NEW).]

3. Assertion of claim. An owner, assignee or lessee of a mineral interest may file a statement of claim with the registrar of deeds of the county in which the land subject to the mineral interest is located. The claim shall contain his name and address, a description of the land that is subject to that interest and a legal description of the mineral interest.

[PL 1983, c. 189 (NEW).]

4. Court; finding. The court, in an action brought under subsection 2, shall find that the mineral interest is extinguished and shall order that title to the mineral interest is in the complainant if:

A. The owner, assignee or lessee of the mineral interest has failed to make use of the mineral interest during a period of 50 consecutive years next prior to the filing of the complaint; and [PL 1983, c. 189 (NEW).]

B. Two years have passed since notice of the complaint under subsection 2 was served and the owner, assignee or lessee of the mineral interest has not filed a statement of claim under subsection 3 during that period. [PL 1983, c. 189 (NEW).]

[PL 1983, c. 189 (NEW).]

SECTION HISTORY

PL 1983, c. 189 (NEW).

§6663. Claim of prescriptive easement over abandoned way

(REPEALED)

SECTION HISTORY

PL 1993, c. 677, §1 (NEW). PL 1995, c. 244, §1 (RP).

CHAPTER 725

REAL ACTIONS

SUBCHAPTER 1

GENERAL PROVISIONS

§6701. Recovery of estates by real action

Any estate in fee simple, in fee tail, for life or for any term of years may be recovered by a real action.

§6702. Plaintiff must have right of entry

No such action shall be maintained unless, at the time of commencing it, the plaintiff had such right of entry. No descent or discontinuance shall defeat any right of entry for the recovery of real estate.

§6703. Recovery of specific or undivided part

The plaintiff may recover a specific part or undivided portion of the premises to which he proves a title, although less than he demanded.

§6704. Writs of possession; judgment conclusive

If the plaintiff recovers judgment in any such case, the court may order one or more writs of possession to issue, as may be necessary, against all such as have been so notified, whether they appeared and defended or not; and such judgment is conclusive on them.

Within 30 days after the judgment is recovered, the clerk of the court from which the judgment issues shall forward to the registry of deeds in the county where the real estate is situated a true copy of the property described in the judgment, together with the names of the parties, the date of judgment and the term of court in which the judgment was rendered, and the register of deeds receiving such copy shall forthwith file the same, minuting thereon the time of the reception thereof, and record in the same manner as a deed of real estate, and the fee of the clerk of the court for preparing the copy shall be $1 and the register of deeds shall be paid the fee set in Title 33, section 751 for entering and recording the same. Such sums shall be paid by the plaintiff. [PL 1981, c. 279, §8 (AMD).]

SECTION HISTORY

PL 1981, c. 279, §8 (AMD).

§6705. Election by plaintiff to abandon

Judgment on such verdict shall not be entered for 10 days or such further time as the court may order, during which time the plaintiff may make his election on record to abandon the premises to the defendant at the value estimated by the jury and file with the clerk for the use of the defendant a bond in the penal sum of 3 times the estimated value of the premises, with sureties approved by the court, conditioned to refund such estimated value, with interest, to the defendant, his heirs or assigns, if they are evicted from the land within 20 years by a title better than that of the plaintiff. If such election is made and bond filed, judgment shall be rendered against the defendant for the sum so estimated by the jury, and costs.

§6706. Installment payments by defendant

At the end of one year, execution may issue for such sum with one year's interest thereon and costs, unless the defendant shall have deposited with the clerk of the court for the plaintiff's use, one year's interest on said sum, and 1/3 of the principal sum, and all the costs, if taxed and filed, and in that case no execution shall issue at the time.

If within 2 years after the rendition of judgment, the defendant pays one year's interest on the balance of the judgment due and 1/3 of the original judgment, execution shall be further stayed. Otherwise it may issue for 2/3 of the original amount of the judgment and interest thereon.

If the defendant, within 3 years after judgment, pays into the clerk's office the remaining 1/3 and interest thereon, having made the other payments, execution shall never issue. Otherwise, it may issue for the 1/3 and one year's interest thereon. The premises shall be held as security for the amount of the judgment, liable to be taken in execution for the amount and interest, until 60 days after an execution might have issued, notwithstanding any intermediate conveyance, attachment or seizure upon execution; and such execution may be extended on said land or any part of it; or it may be sold on execution like an equity of redemption; in either case, subject to the right of redemption as in those cases. An execution or writ of possession may issue at any time within 3 months after default of

payment by the defendant, in cases mentioned in this section, although it is more than a year after the rendition of judgment.

§6707. Defendant's remedy if evicted

If the defendant or his heirs are evicted by a better title from the land so abandoned to him, and they had notified the plaintiff or his heirs to aid them in their defense against such title, they, their executors or administrators may recover back the money so paid, with lawful interest, of said plaintiff or his representatives; but if no notice was given, the defendant, in an action against the original plaintiff to recover the price paid for the premises, may show that he was evicted by a title better than that of the plaintiff.

§6708. Commitment of waste after judgment prohibited

No defendant, after judgment is entered against him for the appraised value of the premises, shall unnecessarily cut wood, take away timber or make any strip or waste on the land until the amount of such judgment is satisfied.

§6709. Disqualification of juror interested in similar questions

No person who, as proprietor or occupant, is interested in a similar question shall sit as juror in the trial of a cause when the value of buildings and improvements made on the demanded premises, and the value of the premises, are to be estimated.

§6710. View by jury

Either party may have a view by the jury of the place in question, if in the opinion of the court it is necessary to a just decision. The party moving for it shall advance to the jury such sum as the court orders, to be taxed against the adverse party if the cause is decided against him on the merits or through his default.

§6711. Demand for life estate

If the plaintiff claims an estate for life only in the premises and pays a sum allowed to the defendant for improvements, he or his executor or administrator, at the termination of his estate, is entitled to receive of the remainderman or reversioner the value of such improvements as they then exist; and shall have a lien therefor on the premises as if they had been mortgaged for its payment, and may keep possession until it is paid. If the parties cannot agree on the existing value, it may be settled as in case of the redemption of mortgaged real estate.

§6712. Impeachment of plaintiff's title deeds

In all actions respecting lands or any interest therein, a title deed offered in evidence may be impeached by the defendant as obtained by fraud, where the grantor, if a party, could impeach it, if the defendant has been in the open, peaceable and adverse possession of the premises for 20 years.

SUBCHAPTER 2

PARTIES

§6751. Joinder of plaintiffs

Persons claiming as tenants in common or joint tenants may all, or any 2 or more, join in an action for recovery of lands, or one may sue alone.

§6752. Guardians for minors

In such case, if any heir is a minor, the court shall order notice to the guardian, and may appoint a guardian ad litem, if necessary, and direct all necessary amendments in the forms of proceeding.

SUBCHAPTER 3

DISSEIZORS

§6801. Disseizor defined

Every person alleged to be in possession of the premises demanded in such action, claiming any freehold therein, may be considered a disseizor for the purpose of trying the right.

§6802. Defendant ousting plaintiff deemed disseizor

If the person in possession has actually ousted the plaintiff or withheld the possession, he may, at the plaintiff's election, be considered a disseizor for the purpose of trying the right, although he claims an estate therein less than a freehold.

SUBCHAPTER 4

SURVEYORS

§6851. Court may appoint and protect surveyors

The court may appoint a surveyor to run lines and make plans of lands demanded in a real or mixed action, or in an action in which the title to land is involved, as shown by the pleadings filed, on motion of either party. If he is prevented by force, menaces or fear from performing the duties assigned him, the court may issue a warrant to the sheriff, commanding him with suitable aid to prevent such opposition. In the execution of such warrant, he may exercise all the power pertaining to his office. All persons refusing their aid when called for by him are liable to the same penalties as in like cases.

§6852. Fees of surveyor; determination of amount paid by parties

The amount of the fees and necessary expenses of the surveyor shall be fixed and determined by the court upon the acceptance of the report, and shall be paid as follows: After notice to all parties and a hearing held thereon, the court may fix and determine the amount to be paid by the parties to the action, or by either of the parties, and the amount determined to be due from the parties, or by either of the parties, shall have the force and effect of a judgment in favor of the surveyor against the parties or either of the parties and any execution upon the judgment may run against the body of the party or of either of the parties. [PL 1983, c. 191 (AMD).]

SECTION HISTORY

PL 1977, c. 72 (AMD). PL 1983, c. 191 (AMD).

SUBCHAPTER 5

PROOF

§6901. Proof of seizin

The plaintiff need not prove an actual entry under his title; but proof that he is entitled to an estate in the premises and that he has a right of entry therein is sufficient proof of his seizin.

§6902. Degree of proof to recover

If the plaintiff proves that he is entitled to an estate in the premises and had a right of entry therein when he commenced his action, he shall recover the premises, unless the defendant proves a better title in himself.

SUBCHAPTER 6

RENTS, PROFITS AND IMPROVEMENTS

§6951. Meaning of possession and improvement

A possession and improvement of land by a defendant are within the meaning of this chapter, although a portion of it is woodland and uncultivated, and although not wholly surrounded by a fence or rendered inaccessible by other obstructions, if they have been open, notorious, exclusive and comporting with the usual management and improvement of a farm by its owner.

§6952. Determination of rents and profits

The rents and profits for which the defendant is liable are the clear annual value of the premises while he was in possession, after deducting all lawful taxes paid by him and the necessary and ordinary expenses of repairs, cultivation of the land or collection of the rents and profits.

§6953. Allowance for improvements

In estimating the rents and profits, the value of the use by the defendant of improvements made by himself or by those under whom he claims shall not be allowed to the plaintiff.

§6954. Defendant not liable for over 6 years' rents

The defendant is not liable for the rents and profits for more than 6 years, nor for waste or other damage committed before that time, unless the rents and profits are allowed as an offset to his claim for improvements.

§6955. Recovery of damages against other persons

Nothing herein contained shall prevent the plaintiff from maintaining an action for mesne profits or for damage to the premises against any person, except the defendant in a real action who has had possession of the premises or is otherwise liable to such action.

§6956. Betterments allowed after 6 years' possession

When the demanded premises have been in the actual possession of the defendant or of those under whom he claims for 6 successive years or more before commencement of the action, such defendant shall be allowed a compensation for the value of any buildings and improvements on the premises made by him or by those under him whom he claims, to be ascertained and adjusted as provided.

§6957. Tenant ousted after 6 years may recover for improvements

When a person makes entry into lands or tenements of which the tenant in possession, or those under whom he claims, have been in actual possession for 6 years or more, and withholds from such tenant the possession thereof, the tenant may recover of the person so entering, or of his executor or administrator, the increased value of the premises by reason of the buildings and improvements made by the tenant or by those under whom he claims, to be ascertained by the principles hereinbefore provided. These provisions extend to the grantee or assignee of the tenant in dower and of any other life estate. A lien is created on the premises in favor of such claim, to be enforced by an action commenced within 3 years after such entry. It is no bar to such action if the tenant, to avoid cost, yields to the superior title.

§6958. Defendant may have betterments

The defendant shall have the benefit of this chapter as to the increased value of premises when the cause, including all real actions brought by a reversioner or remainderman, or his assigns, after the termination of a tenancy in dower, or any other life estate, against the assignee or grantee of the tenant of the life estate, or against his heirs or legal representatives, is determined in favor of the plaintiff.

§6959. Request of either party for appraisal of improvements

The responsive pleading of the defendant shall state as a counterclaim any claim which he has to compensation for buildings and improvements on the premises and may request an estimation by the jury of the increased value of the premises by reason thereof. The plaintiff may file a request, in writing, that the jury would estimate what would have been the value of the premises at the time of trial, if no buildings had been erected, improvements made or waste committed. Both these estimates they shall make and state in their verdict. The jury shall allow for no buildings or improvements, except those that they find were made by the defendant, his grantor or assignor, and were judicious and proper under the circumstances.

§6960. Valuation of betterments

If the defendant, so claiming, alleges and proves that he and those under whom he claims have had the premises in actual possession for more than 20 years prior to the commencement of the action, the jury may find that fact. In estimating the value of the premises, if no buildings had been erected or improvements made thereon, they shall find and state in their verdict what was the value of the premises when the defendant or those under whom he claims first entered thereon. The sum so found shall be deemed the estimated value of the premises. In estimating the increased value by reason of the buildings and improvements, the jury shall find and state in their verdict the value of the premises at the time of the trial, above their value when the defendant or those under whom he claims first entered thereon. The sum so found and stated shall be taken for the buildings and improvements.

§6961. No abandonment; payment for improvements

When the plaintiff does not elect so to abandon the premises, no writ of possession shall issue on his judgment, nor a new action be sustained for the land unless, within one year from the rendition thereof, he pays to the clerk or to such person as the court appoints for the use of the defendant, the sum assessed for the buildings and improvements, with interest thereon.

§6962. Restriction of right to betterments

Nothing contained in this chapter concerning rents and profits, or the estimate and allowance of the value of the buildings and improvements, shall extend to any action between a mortgagor and mortgagee, their heirs and assigns, or to any case where the defendant or the person under whom he claims entered into possession of the premises and occupied under a contract with the owner, which was known to the defendant when he entered.

§6963. Agreement on reference as to value of improvements

When the parties agree that the value of the buildings and improvements on the land demanded, and the value of the land, shall be ascertained by persons named on the record for that purpose, their estimate, as reported by them and recorded, is equal in its effect to a verdict.

§6964. Proposal of value for premises and betterments by defendant; effect

When the defendant, at any stage of such action, files a statement in open court consenting to a sum at which the buildings and improvements and the value of the demanded premises may be estimated, if the plaintiff consents thereto, judgment shall be rendered accordingly, as if such sums had been found by verdict; but if the plaintiff does not consent, and the jury does not reduce the value of the buildings and improvements below the sum offered, nor increase the value of the premises above the sum offered, he shall recover no costs after such offer; but the defendant shall recover his costs after such offer and have judgment and execution therefor, subject to section 6965.

§6965. Setoff of costs against improvements

In all cases where the plaintiff does not abandon the premises to the defendant, the court may, on written application of either party during the term when judgment is entered, order the costs recovered by the plaintiff to be setoff against the appraised value of the buildings and improvements on the land.

A record of this order shall be made, and the court shall thereupon enter judgment according as the balance is in favor of one party or the other.

SUBCHAPTER 7

COSTS

§7051. Allowance and execution

Execution shall issue as in other cases for such damages as have been recovered and for full costs to the prevailing party. The court may order execution for costs to be issued against the goods and estate of a deceased party in the hands of his executor or administrator, or otherwise, according to the legal rights and liabilities of the parties.

§7052. Prevailing defendant entitled to costs

A defendant who by answer defends for a part only and succeeds in his defense as to all of such part shall be entitled to all costs accruing from the time of the answer.

§7053. No costs to plaintiff where 40 years' possession

In all real and mixed actions in which the defendant proves that he and those under whom he claims have been in the open, notorious, adverse and exclusive possession of the demanded premises, claiming in fee simple, for 40 years preceding the commencement of the action, and the jury so finds, the plaintiff recovers no costs.

CHAPTER 726

ALTERNATIVE ACTION FOR THE RECOVERY OF PERSONAL PROPERTY

§7071. Actions to recover personal property

1. Action to resolve dispute. If 2 or more persons claim a right in, title to or possession of personal property, a claimant may bring a civil action in District Court to resolve a dispute among the claimants. The plaintiff may bring the action by way of summary proceeding under subsection 2 or plenary proceeding under subsection 9.
[PL 2009, c. 245, §6 (NEW).]

2. Summary proceeding. If an action in subsection 1 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 against the action without filing a responsive pleading. The action may not be joined with any other action or claim and a defendant may not file a counterclaim. The action may not be removed to Superior Court. At the hearing on the action, the plaintiff must support its claim of an interest in or other right to possession of the personal property at issue by a preponderance of the evidence.
[PL 2009, c. 245, §6 (NEW).]

3. Discovery. In a summary proceeding, the court may for cause shown allow discovery, which may be on an expedited schedule.
[PL 2009, c. 245, §6 (NEW).]

4. Venue. An action under this section may be brought in accordance with Title 4, section 155. Relocation of the personal property may not be a basis for a change of venue.

[PL 2009, c. 245, §6 (NEW).]

5. Court authority. The court has equitable power to make an appropriate order in relation to the personal property and the parties to the action and to compel obedience to its judgment and orders. A court order under this subsection may include an order regarding the location to which the personal property must be brought or kept or a turnover order under section 3131, subsection 1.
[PL 2009, c. 245, §6 (NEW).]

6. Judgment; issuance of writ of possession. When the defendant defaults or the plaintiff is otherwise entitled to judgment, the court shall render judgment concerning the possession of the personal property in favor of the plaintiff. The judgment must order the turnover of the personal property to the plaintiff on such terms as the court directs. The court may also grant preliminary, interim or other equitable relief upon a sufficient showing that the preliminary, interim or other equitable relief is justified.

Seven calendar days after the judgment is entered, the court shall upon request of the plaintiff issue a writ of possession requiring the sheriff or constable to put the plaintiff into possession of the plaintiff's personal property. This subsection does not preclude the court from granting preliminary, interim or other equitable relief.
[PL 2009, c. 245, §6 (NEW).]

7. Service and return of writ of possession; contempt. A writ of possession is returnable within 3 years from the date of issuance. The writ may be served by a sheriff or a constable. When a writ of possession has been served on the defendant by a constable or sheriff, the defendant must put the sheriff or constable into possession of the property within 2 days of the date on which the writ is served upon that defendant or the plaintiff may file a motion to have the defendant held in contempt. A proceeding upon a motion for contempt under this subsection is subject to the Maine Rules of Civil Procedure, Rule 66(d) and for the purposes of this proceeding the entry of the judgment against the defendant creates a rebuttable presumption that the defendant has the ability to put the sheriff or constable into possession of the property. This presumption shifts the burden of production of evidence to the defendant, but the burden of persuasion remains upon the plaintiff in any contempt proceeding.
[RR 2015, c. 1, §9 (COR).]

8. Appeal. An appeal of a judgment or order under this section is governed by Title 4, section 57 and the Maine Rules of Appellate Procedure, except that any issue triable by right by a jury may be appealed to a trial de novo in Superior Court. A request to District Court for a stay pending appeal is governed by the Maine Rules of Civil Procedure, Rule 62(d).
[PL 2009, c. 245, §6 (NEW).]

9. Plenary proceeding. If an action under this section is brought as a plenary proceeding, the Maine Rules of Civil Procedure apply, except that the action may not be joined with any other action or claim and a defendant may not file a counterclaim and the action may not be removed to Superior Court.
[PL 2009, c. 245, §6 (NEW).]

10. Equitable Remedy. The remedy provided in this section is a remedy in equity and is in addition to and not in lieu of another remedy.
[PL 2009, c. 245, §6 (NEW).]

SECTION HISTORY

PL 2009, c. 245, §6 (NEW). RR 2015, c. 1, §9 (COR).

CHAPTER 727

RECOVERY OF COLLECTION PAYMENTS FROM ATTORNEYS

§7101. Summary proceedings authorized

If an attorney-at-law receives money or any valuable thing on a claim left with him for collection or settlement and fails to account for and pay over the same to the claimant for 10 days after demand, he is guilty of a breach of duty as an attorney. Such claimant may file in the office of the clerk of the Superior Court in the county where such attorney resides, a motion in writing under oath setting forth the facts. Thereupon any Justice of the Superior Court shall issue an order requiring the attorney to appear on a day fixed and show cause why he should not so account and pay, and to abide the order of such justice in the premises, which shall be served by copy in hand at least 5 days before the return day.

§7102. Procedure

If such attorney then appears, he shall file an answer to such motion under oath and such justice may examine the parties and other evidence pertinent thereto. If he does not appear and answer, the facts set forth in the motion shall be taken as confessed. In either case such justice shall render such decree as equity requires.

§7103. Appeals

Either party may appeal from any ruling or decree of such justice to the law court as in any civil action.

§7104. Contempt for failure to comply

If the attorney does not perform the decree of such justice, he shall be committed for contempt until he does or is otherwise lawfully discharged, and his name shall be struck from the roll of attorneys.

§7105. Claimant may sue at common law; disclosure

The claimant may have his suit at common law against such attorney before filing such motion or after an adverse decision thereon. If judgment is recovered against the attorney in either mode, the fact shall be noted on the margin of the execution issued thereon. When the debtor is arrested thereon, he shall be committed to jail and no citation to disclose shall be issued until he has been there for 90 days.

CHAPTER 729

RECOVERY OF FORFEITED PROPERTY

§7151. Seizure of forfeited personal property

When personal property is forfeited for an offense and no special mode is prescribed for recovering it, any person entitled to the whole or part thereof may seize and keep it until final judgment unless restored on the bond as provided.

§7152. Restoration to claimant on giving bond

If the person claiming it for himself or another gives bond to the party seizing, with sufficient surety, to pay the appraised value when it is decreed forfeited, it shall be restored to him.

§7153. Appraisal

The value shall be ascertained by the appraisement of 3 disinterested persons mutually chosen by the parties, or, if they cannot agree, by a justice of the peace in the county. [PL 1987, c. 736, §19 (AMD).]

SECTION HISTORY

PL 1981, c. 456, §A56 (AMD). PL 1987, c. 736, §19 (AMD).

§7154. Inventory and appraisal if no claimant

If no person claims the property after such seizure, the party seizing shall cause an inventory and appraisement thereof to be made by 3 disinterested persons, under oath, appointed by a justice of the peace in the county. [PL 1967, c. 544, §39 (AMD).]

SECTION HISTORY

PL 1967, c. 544, §39 (AMD).

§7155. Libel in Superior Court; notice

The party seizing, within 20 days, shall file a complaint in the clerk's office of the Superior Court in the county where the offense was committed, stating the cause of seizure and praying for an order of forfeiture. The clerk shall thereupon make out a notice to all persons to appear at such court at the time appointed to show cause why such order should not be passed, which notice shall be published in some newspaper printed in the county, if any, if not, in the state paper, at least 14 days before the time of trial. [PL 1967, c. 544, §40 (AMD).]

SECTION HISTORY

PL 1967, c. 544, §40 (AMD).

§7156. Bond on seizure

When there is a claimant, the court may order the party seizing to give bond to him with sufficient surety for the safekeeping of the property seized, compliance with the order of court for restoration, and the payment of costs and damages, if not forfeited, and may hear and determine the cause by a jury, or without, if the parties agree, and may allow costs against the claimant. If there is no claimant, the court shall order the forfeiture and disposal of the property according to law, and a sale and distribution of the proceeds, after deducting all proper charges.

§7157. Complaint not supported; property restored with damages

If the complaint is not supported or is discontinued, the court shall order a restoration of the property, with costs. If the jury or court finds the seizure without probable cause, reasonable damages shall be ordered for the claimant.

§7158. Appeals

(REPEALED)

SECTION HISTORY

PL 1967, c. 544, §41 (RP).

CHAPTER 731

RECOVERY OF LAND GRANTS

§7201. Breach of condition

Where lands have been granted by the Colony or Province of Massachusetts Bay, the Commonwealth of Massachusetts or by this State, or are hereafter granted, on certain conditions alleged to have been violated, and the State claims to be revested therein, the following proceedings shall be had.

§7202. Filing of information

When the Legislature or Governor and Council direct, the Attorney General shall file an information in the Superior Court in the county where the lands lie stating the grant and conditions, the breaches and the claims of the State.

§7203. State may maintain action; service

The State may maintain an action against the person stated as holding the lands under such grant, returnable to said court, which shall be served 30 days before the return day.

§7204. Judgment on default

If the defendant does not appear and answer to such information, judgment shall be rendered that the State be reseized of its lands.

§7205. Disclaimer by defendant

If the defendant appears and disclaims holding said lands or any part thereof, the Attorney General shall take nothing by his information so far as respects the lands disclaimed. The defendant, and all subsequently claiming under him, shall be estopped from claiming or holding such disclaimed lands.

§7206. Claim of title by defendant

If the defendant claims all or any part of the lands under such grant and traverses the breaches, the cause shall be tried by jury, and if the issue is found in favor of the State, judgment shall be rendered that the State be reseized of said estate and for costs; but if the issue is found for the defendant, he shall have judgment for his costs to be paid from the State Treasury.

§7207. Defendant holding land exceeding grant

If the only alleged breach of condition is that the defendant holds more land than he has a right to hold under the grant, and it is so found by the jury or the defendant's admission, the court shall assign to him by metes and bounds so much of the land held by him as is equal in quantity to what he has a right to hold under the grant, and in such part thereof as is adjudged reasonable by the court.

§7208. Location by direction of court

Such part shall be located by persons appointed by the court at the expense of the defendant and a plan thereof returned to the court. If confirmed by the court, it shall order an attested copy of the location and plan to be filed in the office of the Director of the Bureau of Forestry, and judgment shall be rendered that the State be reseized of the residue and for costs. [PL 1973, c. 460, §18 (AMD); PL 2011, c. 657, Pt. W, §7 (REV); PL 2013, c. 405, Pt. A, §23 (REV).]

SECTION HISTORY

PL 1973, c. 460, §18 (AMD). PL 2011, c. 657, Pt. W, §7 (REV). PL 2013, c. 405, Pt. A, §23 (REV).

§7209. Information; notice

In all other cases where an inquest is necessary, the Attorney General, without order of the Legislature, may file an information in said court describing the estate claimed and stating the title asserted thereto by the State. Notice shall be given as before mentioned if there is any tenant in possession; if not, the notice shall be given as the court orders at least 90 days before the sitting of the court to which it is returnable.

§7210. Proceedings, judgment and costs

If no person appears and answers to the information, or if a verdict is found that the State has good title to such estate, judgment shall be rendered that the State be seized thereof and recover costs, but if the verdict is in favor of the defendant, he shall recover his costs to be paid from the State Treasury.

§7211. Information to recover escheats

The Attorney General may file an information for recovering seizin by the State for any real estate supposed to have escheated to the State for want of legal heirs. The court shall order such notice thereon as it judges proper.

§7212. Tenant not to set up title of alien

In such case, the defendant shall not avail himself of the title of an alien, or of a subject of another nation or sovereign, or of any other person, unless he shows that he is his tenant or agent.

§7213. Prevailing defendant entitled to costs

If on trial the defendant proves that he is such tenant or agent, or the legal owner of such estate, he shall recover his costs to be paid as aforesaid.

§7214. Defendant may prevail by title subsequently acquired

If it is found that the defendant was not the legal owner of such estate nor had any right as tenant or agent when the process was commenced against him, but afterward acquired a good title, or became tenant or agent, the Attorney General shall cease further to prosecute the action; but when the defendant proves no such title to the estate as owner or interest therein as tenant or agent, judgment shall be rendered that the State be seized thereof, and recover rents and profits as in a civil action between private persons.

§7215. Judgment that State reseized

When judgment on information is rendered that the State be reseized or seized of any lands, the State shall be deemed in law to be so seized, and any judgment so rendered shall conclude all privies and parties and those claiming under them, so long as it remains in force, subject to section 7216.

§7216. Tenant under State to have betterments

If a person appears and proves himself to have a legal title to such estate and recovers it against the State or its grantee or tenant, the estate shall be liable for all expenses of improvements thereon over and above the rents and profits thereof, although the tenant and those claiming under the State had not been in possession during 6 years.

§7217. Determination of amount of betterments

For the purpose of ascertaining the amount of such improvements, the Attorney General or the tenant or grantee of the estate may file a complaint in the Superior Court for recovering the same. Proceedings shall be had thereon as in other civil actions to ascertain and adjust the amount.

§7218. Levy of execution

The sheriff, by virtue of such execution, shall sell at public auction so much of said land as is sufficient to satisfy the execution and charges unless otherwise paid.

CHAPTER 733

RECOVERY OF PENALTIES

§7251. Civil action for penalties

Penalties may be recovered by civil action.

CHAPTER 735

REPLEVIN

SUBCHAPTER 1

GOODS

§7301. Unlawful detention

When goods, unlawfully taken or detained from the owner or person entitled to the possession thereof, or attached on mesne process, or taken on execution, are claimed by any person other than the defendant in the action in which they are so attached or taken, such owner or person may cause them to be replevied.

§7302. Venue

Except as provided in section 509 and in Title 4, section 155, subsection 3-A, an action for replevin may be brought in either District Court or Superior Court in the county or division where a plaintiff or defendant resides or where any of the personal property sought to be replevied is located. [PL 2009, c. 245, §7 (RPR).]

SECTION HISTORY

PL 2009, c. 245, §7 (RPR).

§7303. Bond; additional security

Before serving the writ, the officer shall take from the plaintiff, or someone in his behalf, a bond to the defendant, with sufficient sureties or with a surety company authorized to do business in this State as surety, in double the value of the goods to be replevied, conditioned as in the prescribed form of the writ, to be returned with the writ to the court from which the writ issued, for the use of the defendant, and new sureties or surety company may be required thereon as provided in section 7403.

§7304. Writ of return where defendant prevails; judgment when property held as security

If it appears that the defendant is entitled to a return of the goods, he shall have judgment and a writ of return accordingly, with damages for the taking and costs. If the plaintiff claims the property replevied as security for a debt, his claim shall be discharged by payment or tender thereof, with interest and costs; and judgment shall be for a return without costs, unless his title has become absolute by a legal foreclosure.

§7305. Judgment for return of property attached or taken on execution; damages

If the goods, when replevied, had been taken in execution or were under attachment and judgment is afterwards rendered for the attaching creditor, and if, in either case, the service of the execution is delayed by the replevin, the damages on a judgment for a return shall not be less than at the rate of 12% a year on the value of the goods while the service of the execution is so delayed.

§7306. Disposal of money recovered for goods attached or taken on execution

All sums recovered by an officer in an action of replevin on account of goods attached or taken in execution by him or recovered in a civil action upon the replevin bond shall be applied:

1. Fees, charges, expenses. To pay the lawful fees and charges of the officer, and the reasonable expenses of the replevin action, and of the action on the bond, so far as they are not reimbursed by the costs recovered;

2. Payment to creditor. To pay the creditor, in whose action the goods were attached or taken on execution, the sum, if any, recovered by him in that action or what remains unpaid, with interest at the rate of 12% a year for the time that the money was withheld from the creditor or the service of his execution was delayed by reason of the replevin;

3. Application of balance or if creditor does not recover judgment. If the attaching creditor in such case does not recover judgment in his action, or if any balance remains of the money so recovered by the officer after paying the creditor his due, such balance or the whole amount, as the case may be, shall be applied as the surplus of the proceeds of sale should have been applied if such goods had been sold on execution.

§7307. Appropriation of money received by creditor

All sums received by such creditor from the sale of goods attached or taken in execution and afterwards returned, all sums received for the value of any of such goods as are not returned and all sums recovered from the officer for insufficiency of the bond shall be applied in discharge of the creditor's judgment, but all sums received as interest or damages for delay of his execution shall be retained to his own use and not go in discharge of the judgment.

§7308. Judgment if plaintiff recovers

If it appears that the goods were taken, attached or detained unlawfully, the plaintiff shall have judgment for his damages caused thereby and for his costs.

§7309. Continuance of attachment, if goods replevied

If the goods replevied had been attached, they shall, in case of judgment for a return, be held by the attachment until 60 days after judgment in the action in which they were attached has become final as provided in section 4601. If such final judgment is rendered before the return of the goods or if the goods when replevied had been seized on execution, they shall be held by the same attachment or seizure for 60 days after the return and may be taken and disposed of as if they had not been replevied.

§7310. Writ of reprisal

When the officer, in the service of the writ of return and restitution, is not able to find in his precinct the beast or other property directed to be returned in his precept, he shall certify that fact in his return. The court whence it issued, upon notice, may grant a writ of reprisal, in the form prescribed by law, against the plaintiff in replevin, to take his goods or beasts not exempt from attachment, of the full value, to be delivered to the defendant, to be held and disposed of by him according to law, until the plaintiff restores the beast or other property replevied by him.

§7311. Defendant's remedy on replevin bond

The foregoing provisions shall not preclude the defendant from resorting to his remedy on the replevin bond, or to his remedy against the officer for insufficiency of the bond, to recover the value of the goods together with the damage or loss occasioned by the replevin thereof, notwithstanding he has endeavored to recover the same by the writs of return and of reprisal.

§7312. Limitation of surety's liability on replevin bond

No action shall be maintained against any surety on a replevin bond unless it is commenced within one year after final judgment in replevin or, if the complaint in replevin is not filed with the court by the plaintiff within one year after the replevin of the goods.

SUBCHAPTER 2

PERSONS

§7351. Availability of writ; court of issue

If any person is imprisoned, restrained of his liberty or held in duress, unless by a lawful writ, warrant or other process, civil or criminal, he may have the writ for replevying the person, on complaint filed by himself or anyone in his behalf in the Superior Court, at the discretion of the court and not otherwise.

§7352. Issuance and service

The writ described in this chapter shall issue from and be returnable to the Superior Court in the county where the plaintiff is confined, and be directed to a proper officer and served as soon as may be, 14 days at least before the return day.

§7353. Form of writ

The form of the writ shall be as follows:

"STATE OF MAINE.

[L.S.]"...., ss. To the sheriff of our County of ...., or his deputy, Greeting.

"We command you, that without delay you cause to be replevied, C.D., who, as it is said, is taken and detained in a place called N., in our said County of ...., by the duress of G.H., that he may appear at our Superior Court, next to be held at ...., within and for the County of ...., on the .... day of .... next, then and there in our said court to demand right and justice against said G.H. for the duress and imprisonment aforesaid, and to prosecute his replevin, as the law directs; provided that the said C.D.," (the plaintiff,) "before his deliverance, gives bond to the defendant, in such sum as you judge reasonable, with two sufficient sureties, with condition to appear at said court to prosecute his replevin against the defendant, and to have his body there to be redelivered, if thereto ordered by the court, and to pay all such damages and costs as are awarded against him; and if the plaintiff is delivered by you at a day before the sitting of said court, you shall summon the defendant to appear at said court.

"Witness J.S., Esquire, our ...., at ...., the .... day of ...., in the year of our Lord nineteen hundred and ....

L.M., Clerk."

§7354. Bond before writ issues

No person shall be delivered by such writ described in this chapter until a bond is given by the plaintiff or person suing in his behalf, to be returned to the court with the writ, for the sufficiency of which the officer shall be answerable, as in case of bail in civil actions.

§7355. Judgment

If the plaintiff maintains his action, he shall be discharged and recover his costs; but if not, the defendant shall recover his costs and such damages as the jury assess; or if the defendant is defaulted or the parties consent, the court may assess the damages.

§7356. Defendant entitled to custody of plaintiff

If it appears that the defendant is bail for the plaintiff or that, as his child, ward, apprentice or otherwise, he is entitled to his custody, he shall have judgment for a redelivery of his body, to be held or disposed of according to law.

§7357. Plaintiff eloigned; defendant arrested; bail

If it appears that the defendant has eloigned the plaintiff's body so that the officer cannot deliver him, the court, on motion, shall issue a writ of reprisal to take the defendant's body and him safely keep so that he may be at the next term of the court, to traverse the return of said writ for replevying the plaintiff. He may be discharged by giving bail for his appearance at court, with 2 sufficient sureties, in such sum as the officer requires.

§7358. Defendant imprisoned; writ of reprisal; suggestion of plaintiff's death

The defendant may traverse the return on the writ for replevying the plaintiff and if it appears that he is not guilty of eloigning the plaintiff, he shall be discharged and recover costs; but if he does not traverse it, or if on such traverse it appears that the defendant did eloign the plaintiff, an alias writ of reprisal shall issue, substantially in the form heretofore established and used in the State, on which he shall be committed to jail to remain irrepleviable until he produces the body of the plaintiff or proves

his death. He may suggest the plaintiff's death and the court shall impanel a jury to try the fact at the defendant's expense; and if the death is proved, he shall be discharged.

§7359. Production of plaintiff; release of defendant

If the defendant, after the return of eloignment, produces the body of the plaintiff in court, the court shall deliver him from imprisonment, upon his giving the defendant such bond as hereinbefore in this chapter directed to be taken by the officer when the plaintiff is delivered by him; and for want thereof, he shall be committed to abide the judgment on the writ for replevying the plaintiff; and, in either case, the action shall be tried as aforesaid.

SUBCHAPTER 3

ANIMALS

§7401. Replevy of distrained beasts

Any person, whose beasts are distrained to obtain satisfaction for damages alleged to be done by them, may maintain a writ of replevin therefor against the distrainer before any District Court in the county, in the form prescribed by law or, if the value of the beasts distrained is more than $20, in the Superior Court.

§7402. Writ; service and return

The writ shall be sued out, served and returned and the cause heard and determined like other civil actions before the District Court, except as otherwise prescribed.

§7403. Bond; additional sureties

The writ shall not be served unless the plaintiff or someone in his behalf executes and delivers to the officer a bond to the defendant, with sufficient sureties to be approved by the officer, or with a surety company authorized to do business in this State as surety, in a penalty double the actual value of the property to be replevied, conditioned as in the prescribed form of the writ and to be returned with the writ for the use of the defendant. If it afterwards becomes insufficient, the court may require additional surety or sureties to be furnished, who shall be held as if they had been original parties thereto. If not so furnished, it may dismiss the action and order a return of the property replevied or make such other order as is deemed reasonable.

§7404. Judgment; distraint lawful

If it appears that the beasts were lawfully taken or distrained, the defendant shall have judgment for the sum found due from the plaintiff for the damages for which the beasts were distrained, with legal fees, costs and expenses occasioned by the distress and costs of the replevin action; or, instead thereof, the court may enter judgment for a return of the beasts to the defendant, to be held by him for the original purpose, irrepleviable by the plaintiff, and for the defendant's damages and costs in the replevin action.

§7405. -- distraint unlawful

If it appears that the beasts were taken or distrained without justifiable cause, the plaintiff shall have judgment for his damages and costs.

§7406. Appeals

Either party may appeal as in other civil actions.

CHAPTER 737

SMALL CLAIMS

§7451. Definitions

(REPEALED)

SECTION HISTORY

PL 1971, c. 206, §1 (AMD). PL 1975, c. 171 (AMD). PL 1979, c. 700, §3 (RP).

§7452. Procedure

(REPEALED)

SECTION HISTORY

PL 1977, c. 564, §71 (AMD). PL 1977, c. 593, §2 (AMD). PL 1979, c. 700, §3 (RP).

§7453. Process

(REPEALED)

SECTION HISTORY

PL 1965, c. 19, §4 (AMD). PL 1971, c. 206, §§2,3 (AMD). PL 1971, c. 622, §56 (AMD). PL 1977, c. 593, §§3,4 (AMD). PL 1979, c. 700, §3 (RP).

§7454. Notice to defendant

(REPEALED)

SECTION HISTORY

PL 1979, c. 700, §3 (RP).

§7455. Judgment

(REPEALED)

SECTION HISTORY

PL 1971, c. 206, §4 (AMD). PL 1979, c. 700, §3 (RP).

§7456. Proceedings after judgment

(REPEALED)

SECTION HISTORY

PL 1979, c. 700, §3 (RP).

§7457. Effect of judgment

(REPEALED)

SECTION HISTORY

PL 1969, c. 367, §2 (NEW). PL 1979, c. 700, §3 (RP).

CHAPTER 738

SMALL CLAIMS

§7461. Purpose

(REPEALED)

SECTION HISTORY

PL 1979, c. 700, §4 (NEW). PL 1981, c. 667, §1 (RP).

§7462. Definitions

(REPEALED)

SECTION HISTORY

PL 1979, c. 700, §4 (NEW). PL 1981, c. 667, §1 (RP).

§7463. Representation

(REPEALED)

SECTION HISTORY

PL 1979, c. 700, §4 (NEW). PL 1981, c. 667, §1 (RP).

§7464. Bringing a claim

(REPEALED)

SECTION HISTORY

PL 1979, c. 700, §4 (NEW). PL 1981, c. 667, §1 (RP).

§7465. Filing without fee.

(REPEALED)

SECTION HISTORY

PL 1979, c. 700, §4 (NEW). PL 1981, c. 667, §1 (RP).

§7466. Notice

(REPEALED)

SECTION HISTORY

PL 1979, c. 700, §4 (NEW). PL 1981, c. 667, §1 (RP).

§7467. Continuances

(REPEALED)

SECTION HISTORY

PL 1979, c. 700, §4 (NEW). PL 1981, c. 667, §1 (RP).

§7468. Removal and transfer

(REPEALED)

SECTION HISTORY

PL 1979, c. 700, §4 (NEW). PL 1981, c. 667, §1 (RP).

§7469. Mediation

(REPEALED)

SECTION HISTORY

PL 1979, c. 700, §4 (NEW). PL 1981, c. 667, §1 (RP).

§7470. Evidence

(REPEALED)

SECTION HISTORY

PL 1979, c. 700, §4 (NEW). PL 1981, c. 667, §1 (RP).

§7471. Judgment

(REPEALED)

SECTION HISTORY

PL 1979, c. 700, §4 (NEW). PL 1981, c. 667, §1 (RP).

§7472. Satisfaction and disclosure

(REPEALED)

SECTION HISTORY

PL 1979, c. 700, §4 (NEW). PL 1981, c. 667, §1 (RP).

§7473. Disclosure notice

(REPEALED)

SECTION HISTORY

PL 1979, c. 700, §4 (NEW). PL 1981, c. 667, §1 (RP).

§7474. Appeal

(REPEALED)

SECTION HISTORY

PL 1979, c. 700, §4 (NEW). PL 1981, c. 667, §1 (RP).

§7475. Effect of judgment

(REPEALED)

SECTION HISTORY

PL 1979, c. 700, §4 (NEW). PL 1981, c. 667, §1 (RP).

§7481. Small Claims Act; jurisdiction

There is established a small claims proceeding for the purpose of providing a simple, speedy and informal court procedure for the resolution of small claims. It shall be an alternative, not an exclusive, proceeding. The District Court shall have jurisdiction of small claims actions. The District Court shall have the power to grant monetary and equitable relief in these actions. Equitable relief is limited to orders to return, reform, refund, repair or rescind. [PL 1981, c. 667, §2 (NEW).]

SECTION HISTORY

PL 1981, c. 667, §2 (NEW).

§7482. Definition of a small claim

Notwithstanding the total amount of a debt or contract, a "small claim" means a right of action cognizable by a court if the debt or damage does not exceed $6,000 exclusive of interest and costs. It does not include an action involving the title to real estate. [PL 2009, c. 428, §1 (AMD).]

Effective July 1, 1997 and every 4 years after that date, the joint standing committee of the Legislature having jurisdiction over judiciary matters shall review the monetary limit on small claims actions and the Judicial Department shall periodically provide information and comments on the monetary limit on small claims actions to that committee. [PL 1993, c. 401, §3 (NEW).]

SECTION HISTORY

PL 1981, c. 667, §2 (NEW). PL 1983, c. 678 (AMD). PL 1993, c. 401, §3 (AMD). PL 1997, c. 23, §1 (AMD). PL 2009, c. 428, §1 (AMD).

§7483. Venue

A small claim shall be brought in the division of the District Court where the transaction occurred, where the defendant resides, where the defendant has a place of business or, if the defendant is a corporation or partnership, where its registered agent resides. [PL 1981, c. 667, §2 (NEW).]

SECTION HISTORY

PL 1981, c. 667, §2 (NEW).

§7484. Procedures

(REPEALED)

SECTION HISTORY

PL 1981, c. 667, §2 (NEW). PL 1985, c. 750, §2 (AMD). PL 1989, c. 88, §1 (AMD). PL 1989, c. 378, §§1,2 (AMD). PL 1989, c. 702, §E7 (AMD). PL 1991, c. 9, §E11 (RP).

§7484-A. Procedures

1. Rules by Supreme Judicial Court. The procedures with respect to the commencement of the action, the fee, the notice to the parties, the settlement or hearing, the judgment, appeal and postjudgment proceedings must be set forth in rules of procedure adopted by the Supreme Judicial Court. Rules adopted under this section may not restrict the number of claims that may be filed in any given period.
[PL 1991, c. 604, §1 (AMD).]

2. Services of statement of claim and notice of disclosure.

[PL 1991, c. 604, §2 (RP).]

3. Validation of debt in certain circumstances. If the plaintiff has purchased the debt being collected in the proceeding under this chapter, the plaintiff shall include with the filing of the complaint a statement listing the name and address of the original creditor.
[PL 2009, c. 428, §2 (NEW).]

SECTION HISTORY

PL 1991, c. 9, §E12 (NEW). PL 1991, c. 604, §§1,2 (AMD). PL 2009, c. 428, §2 (AMD).

§7485. Effect of judgment

Any fact found or issue adjudicated in a proceeding under this chapter may not be deemed found or adjudicated for the purpose of any other cause of action. The judgment obtained is res judicata as to the amount in controversy. If a plaintiff has reduced the amount of a claim or contract to meet the jurisdictional limits of this chapter, the judgment obtained is res judicata as to the full amount of the debt or contract in controversy. The only recourse from an adverse decision is by appeal. [PL 2009, c. 428, §3 (AMD).]

SECTION HISTORY

PL 1981, c. 667, §2 (NEW). PL 2009, c. 428, §3 (AMD).

§7486. Enforcement of money judgments in small claims actions; minimum monthly installment

(REPEALED)

SECTION HISTORY

PL 1989, c. 88, §2 (NEW). PL 1999, c. 587, §10 (RP).

§7487. Interest

A person who is awarded a money judgment in a small claims action is entitled to post-judgment interest in accordance with section 1602-C. [PL 2003, c. 460, §7 (AMD).]

SECTION HISTORY

PL 1999, c. 109, §1 (NEW). PL 2003, c. 460, §7 (AMD).

CHAPTER 739

WASTE AND TRESPASS TO REAL ESTATE

SUBCHAPTER 1

WASTE

§7501. Remedy if tenant commits waste

If a tenant in dower, by curtesy, for life or for years commits or suffers any waste on the premises, the person having the next immediate estate of inheritance may recover the place wasted and the damages done to the premises in an action against him. An heir may recover in the same action for waste done in his own time and in the time of his ancestor.

§7502. Damages

Any issue of fact shall be tried by a jury, with or without a view of the premises, as the court orders. The jury that inquires of the waste shall assess the damages.

§7503. Action by remainderman or reversioner

The remainderman or reversioner for life or for years only or in fee simple or fee tail, after an intervening estate for life, may maintain such action and recover the damages which he has suffered by the waste.

§7504. Death of tenant

Such action may be originally commenced against the executors or administrators of the tenant, or if commenced against him, it may be prosecuted against them after his death.

§7505. No waste by part owner without notice

If any joint tenant or tenant in common of undivided lands cuts down, destroys or carries away trees, timber, wood or underwood, standing or lying on such lands, or digs up or carries away ore, stone or other valuable thing found thereon, or commits strip or waste, without first giving 30 days' notice in writing under his hand to all other persons or to their agents or attorneys, and to mortgagors and mortgagees if any there are interested therein, of his intention to enter upon and improve the land; which notice to such persons interested as are unknown, or whose residence is unknown or who are out of the State may be published in the state paper 3 times, the first publication to be 40 days before such entry; or if he does any such acts pending a process for partition of the premises, he shall forfeit 3 times the amount of damages. Any one or more of the cotenants, without naming the others, may sue for and recover their proportion of such damages.

§7506. Single damages only

If the jury finds that the defendant in such action has good reason to believe himself the owner of the land in severalty, or that he and those under whom he claims had been in exclusive possession

thereof, claiming it as their own, for 3 years next before the acts complained of were committed, only single damages shall be recovered.

§7507. Injunctions

If a defendant in an action to recover possession of real estate or a person whose real estate is attached in a civil action commits any act of waste thereon, or threatens or makes preparations to do so, the Superior Court may issue an injunction to stay such waste; but notice shall first be given to the adverse party to appear and answer, unless the applicant files a bond with sufficient sureties to respond to all damages and costs. The court may enforce obedience by such process as may be employed in other cases and dissolve it when deemed proper.

SUBCHAPTER 2

TRESPASS

§7551. Treble damages for waste pending action

If, during the pendency of an action for the recovery of land, the tenant commits strip or waste by cutting, felling or destroying wood, timber, trees or poles standing thereon, he shall pay to the aggrieved party treble damages, to be recovered in a civil action.

§7551-A. Definitions

(REPEALED)

SECTION HISTORY

PL 1983, c. 362, §1 (NEW). PL 1995, c. 450, §1 (RP).

§7551-B. Trespass damages

1. Prohibition. A person who intentionally enters the land of another without permission and causes damage to property is liable to the owner in a civil action if the person:

A. Damages or throws down any fence, bar or gate; leaves a gate open; breaks glass; damages any road, drainage ditch, culvert, bridge, sign or paint marking; or does other damage to any structure on property not that person's own; or [PL 1995, c. 585, §1 (NEW).]

B. Throws, drops, deposits, discards, dumps or otherwise disposes of litter, as defined in Title 17, section 2263, subsection 2, in any manner or amount, on property not that person's own. [PL 1995, c. 585, §1 (NEW).]

[PL 1995, c. 585, §1 (NEW).]

2. Liability. If the damage to the property is caused intentionally, the person is liable to the owner for 2 times the owner's actual damages plus any additional costs recoverable under subsection 3, paragraphs B and C. If the damage to the property is not caused intentionally, the person is liable to the owner for the owner's actual damages plus any additional costs recoverable under subsection 3, paragraphs B and C.

[PL 1995, c. 585, §1 (NEW).]

3. Damages recoverable. The owner's damages include:

A. Actual damages, as measured by subsection 4; [PL 1995, c. 585, §1 (NEW).]

B. Costs the owner may incur if the damage results in a violation of any federal, state or local law or ordinance and, as a result, the owner becomes the subject of an enforcement proceeding. These costs include attorney's fees, costs and the value of the owner's time spent on involvement in the enforcement proceeding; and [PL 1995, c. 585, §1 (NEW).]

C. Reasonable attorney's fees for preparing the claim and bringing the court action under this section plus costs. [PL 1995, c. 585, §1 (NEW).]

[PL 1995, c. 585, §1 (NEW).]

4. Measure of damages. For damage to property under subsection 1, paragraph A, the owner's damages may be measured either by the replacement value of the damaged property or by the cost of repairing the damaged property. For damages for disposing of litter, the owner's damages include the direct costs associated with properly disposing of the litter, including obtaining permits, and the costs associated with any site remediation work undertaken as a result of the litter.

[PL 1995, c. 585, §1 (NEW).]

5. Other actions barred. A recovery from a defendant under this section bars an action to recover damages under section 7552 from that defendant for the same specific damage.

[PL 1995, c. 585, §1 (NEW).]

SECTION HISTORY

PL 1995, c. 585, §1 (NEW).

§7552. Injury to land, forest products or agricultural products

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

A. "Agricultural product" means crops produced and livestock raised as a result of cultivating the soil and harvesting. Agricultural products include, but are not limited to, vegetables, fruit, forages, grain, nuts, berries, flowers, ornamental plants, nursery crops, milk, dairy products, eggs, domestic livestock and other products in varying degrees of preparation. Agricultural products also include the soil amendments and by-products that are used in cultivation. [PL 1995, c. 450, §2 (NEW).]

B. "Christmas tree" and "evergreen boughs" have the same meanings as provided in Title 12, section 8841. [PL 1995, c. 450, §2 (NEW).]

C. "Forest products" means logs, pulpwood, veneer, bolt wood, wood chips, stud wood, poles, pilings, biomass, fuel wood, Christmas trees, maple syrup, nursery products used for ornamental purposes, wreaths, evergreen boughs or cones or other seed products. [PL 1995, c. 450, §2 (NEW).]

D. When there is damage to public property, the term "owner" may include a suitable official authorized to act on behalf of the public entity.

For damage to a monument or mark under subsection 2, paragraph C, "owner" may include the entity for whose benefit the monument or mark is maintained. [PL 1995, c. 450, §2 (NEW).]

E. "Professional services" may include:

(1) The damage estimate of a licensed professional forester;

(2) A boundary survey;

(3) A title opinion; and

(4) Attorney's fees for preparing the claim and bringing a court action. [PL 1995, c. 450, §2 (NEW).]

[PL 1995, c. 450, §2 (NEW).]

2. Prohibitions. Without permission of the owner a person may not:

A. Cut down, destroy, damage or carry away any forest product, ornamental or fruit tree, agricultural product, stones, gravel, ore, goods or property of any kind from land not that person's own; or [PL 1995, c. 585, §3 (AMD).]

B. [PL 1995, c. 585, §3 (RP).]

C. Disturb, remove or destroy any lawfully established transit point, reference point, stake, plug, hub, guardstake, bench mark, pipe, iron, concrete post, stone post or other monument of any railroad, highway, public utility or other engineering location or survey or any such monument marking the bounds of public or private property. [PL 1995, c. 450, §2 (NEW).]

[PL 1995, c. 585, §3 (AMD).]

3. Measure of damages. This subsection governs the measurement of damages resulting from a violation of subsection 2.

A. When agricultural or forest products have been destroyed or carried away, the owner may recover as damages either the value of the lost products themselves or the diminution in value of the real estate as a whole resulting from the violation, whichever is greater. [PL 1997, c. 214, §1 (AMD).]

B. For lost trees the owner may choose to claim:

(1) The market value of the lost trees;

(2) The diminution in value of the real estate as a whole resulting from the violation;

(3) The forfeiture amounts determined in Title 17, section 2510, subsections 2 and 3;

(4) If the lost trees are ornamental or fruit trees, the costs of replacing, replanting and restoring the trees with trees of comparable size and the same or equivalent species and the actual costs for cleanup of damage caused during the cutting; or

(5) If the lost trees are located within 400 feet of a dwelling, the costs of replacing, replanting and restoring the trees with trees of comparable size and the same or equivalent species and the actual costs for cleanup of damage caused during the cutting.

In addition, the owner's damages for lost trees that are not ornamental or fruit trees or trees located within 400 feet of a dwelling may include the costs for regeneration of the stand in accordance with Title 12, section 8869.

The court may reduce the damages awarded for good cause shown when the cutting of trees was done negligently or without fault.

Public utilities, as defined in Title 35-A, section 102, and contractors performing work for public utilities are not liable for damages under this paragraph for lost trees the trimming or removal of which is necessary to provide safe and reliable service to the customers of the public utilities. [PL 2019, c. 195, §1 (AMD).]

B-1. [PL 2019, c. 195, §2 (RP).]

C. When a monument or marker has been disturbed, removed or destroyed as prohibited in subsection 2, paragraph C, the owner's damages may include the cost of engineering and surveyor services necessary to reestablish a monument or marker and its proper location. [PL 1997, c. 214, §1 (AMD).]

[PL 2019, c. 195, §§1, 2 (AMD).]

4. Damages recoverable. Damages are recoverable as follows.

A. A person who negligently or without fault violates subsection 2 is liable to the owner for 2 times the owner's damages as measured under subsection 3 or $250, whichever is greater. [PL 1995, c. 585, §3 (AMD).]

B. A person who intentionally or knowingly violates subsection 2 is liable to the owner for 3 times the owner's damages as measured under subsection 3 or $500, whichever is greater. [PL 1995, c. 585, §3 (AMD).]

C. In addition to the damages recoverable under paragraphs A and B, a person who violates subsection 2 is also liable to the owner for the costs the owner may incur if the violation results in a violation of any federal, state or local law or ordinance and, as a result, the owner becomes the subject of an enforcement proceeding. These costs include attorney's fees, costs and the value of the owner's time spent on involvement in the enforcement proceeding. [PL 1995, c. 585, §3 (NEW).]

D. A person who with malice violates subsection 2 is subject to punitive damages in addition to the damages under paragraphs A, B and C. [PL 2015, c. 241, §3 (NEW).]

[PL 2015, c. 241, §3 (AMD).]

5. Costs and fees. In addition to damages, interest and costs, the owner may also recover from the person who violates subsection 2 the reasonable costs of professional services necessary for determining damages and proving the claim as long as the person first has written notice or actual knowledge that a claim is being asserted.

[PL 2015, c. 241, §4 (AMD).]

6. Offer of settlement. At any time after the violation but more than 10 days before trial begins, the person who violated subsection 2 may make a written offer to settle the owner's claim.

A. For such an offer to be valid, it must by its terms remain open for at least 10 days and the owner must first be provided with liability and damage information that is:

(1) Available to the person and not reasonably available to the owner; and

(2) Necessary or pertinent to an evaluation of the owner's claim. [PL 1995, c. 450, §2 (NEW).]

B. Notwithstanding the Maine Rules of Civil Procedure, Rule 68, any offer not paid within 10 days of its acceptance is void for purposes of this subsection but may be specifically enforced by the owner, if the owner so elects. [PL 1995, c. 450, §2 (NEW).]

C. If the owner does not accept the offer, the owner may not recover any interest, costs or professional fees incurred following the date of the offer unless the owner later proves that the value of the claim, at the time the offer was made, exceeded the amount of the offer. [PL 1995, c. 450, §2 (NEW).]

[PL 1995, c. 450, §2 (NEW).]

7. Issues of fact. The court sitting without a jury shall resolve issues of fact arising under subsections 5 and 6.

[PL 1995, c. 450, §2 (NEW).]

8. Other actions barred. A recovery from a defendant under this section bars an action to recover damages under section 7551-B from that defendant for the same specific damage.

[PL 1995, c. 585, §4 (NEW).]

SECTION HISTORY

PL 1977, c. 313, §1 (AMD). PL 1983, c. 362, §2 (AMD). PL 1983, c. 507, §7 (AMD). PL 1983, c. 816, §A5 (RPR). PL 1989, c. 555, §13 (AMD). PL 1995, c. 450, §2 (RPR). PL 1995, c. 585, §§2-4 (AMD). PL 1997, c. 214, §1 (AMD). PL 1999, c. 339, §1 (AMD). PL 2015, c. 241, §§1-4 (AMD). PL 2019, c. 195, §§1, 2 (AMD).

§7552-A. Land on which 10 acres or more of wood is to be cut

Any person who authorizes the cutting of timber or wood on the person's own property, when the cutting involves an area of 10 or more acres, shall clearly mark any property lines that are within 200 feet of the area to be cut. If any such person fails to clearly mark such property lines and if the person or persons who are authorized to cut then cut timber or wood on abutting land without the authorization

of the owner of that land, the person who failed to mark the person's property lines is liable in a civil action, in double damages, to that owner of the abutting land. These damages are in addition to any damages to which the owner of the abutting land may be entitled under section 7552. [PL 1995, c. 450, §3 (AMD).]

SECTION HISTORY

PL 1975, c. 253 (NEW). PL 1977, c. 313, §2 (RPR). PL 1995, c. 450, §3 (AMD).

§7553. Municipal lands and property

(REPEALED)

SECTION HISTORY

PL 1995, c. 450, §4 (RP).

§7554. Negligent interference, removal or destruction of monuments

(REPEALED)

SECTION HISTORY

PL 1995, c. 450, §4 (RP).

§7554-A. Removal or destruction of landmark boundaries by state departments

In the event that a proposed public improvement could cause removal, destruction or obliteration of any landmark set on the boundary of public or private real estate, the state department or agency initiating the public improvement shall be governed as follows. [PL 1973, c. 81 (NEW).]

1. Records. The appropriate department shall maintain records that describe the landmark and its location. The records shall be sufficient to permit reestablishment of the point of former location. The department concerned shall, upon request of the property owners, reestablish the point of former landmark location.
[PL 1973, c. 81 (NEW).]

2. Payment. The appropriate department may make reasonable payment to affected property owners for the cost of reestablishing the landmark location.
[PL 1991, c. 102 (AMD).]

3. Rules. The appropriate department shall make such rules, regulations, policies and procedures as it may determine necessary to effectuate the intent and purposes of this section. Property owners whose landmarks are affected by public improvements shall be notified of these provisions by the state department or agency concerned.
[PL 1973, c. 81 (NEW).]

SECTION HISTORY

PL 1973, c. 81 (NEW). PL 1991, c. 102 (AMD).

§7555. Improved or ornamental lands

(REPEALED)

SECTION HISTORY

PL 1995, c. 450, §4 (RP).

§7556. Salt water islands

Whoever, after notice by the owner, occupant or lessee in any of the ways provided in section 7557, trespasses upon any island within salt waters, for the purpose of shooting or hunting thereon, is liable to such owner, occupant or lessee in exemplary damages to an amount not less than $20 nor more than $50, in addition to all actual damage sustained by said owner, occupant or lessee, and shall forfeit to

said owner, occupant or lessee $5 for each bird of any kind shot, caught, taken or killed on such island, all to be recovered in a civil action. The possession of guns, decoys or other implements of shooting or hunting shall be presumptive evidence that the purpose of the trespass was shooting or hunting.

§7557. Notices; injury to signboards

Notices referred to in section 7556 shall be given by erecting and maintaining signboards at least one foot square in at least 2 conspicuous places on the premises, one of them near one of the usual landing places on said island, reading as follows: "All persons are forbidden to shoot or hunt on this island", with the name of the owner, occupant or lessee; or such notice may be given verbally or in writing by the owner, occupant or lessee of the island to any person and shall be binding on the person so notified, whether the signboards herein named are erected and maintained or not. Whoever tears down or in any way defaces or injures any such signboard forfeits $100, to be recovered by the owner, occupant or lessee of such island in a civil action.

§7558. Damages and penalties

Actions to recover any of the sums or penalties named in sections 7556 and 7557 may be brought in the Superior Court or the District Court.

§7559. Imprisonment for nonpayment

Failure to pay a penalty imposed under section 7556 or 7557 is a Class E crime. [PL 1991, c. 797, §1 (RPR).]

SECTION HISTORY

PL 1991, c. 797, §1 (RPR).

§7560. Lands of deceased insolvent

If an heir or devisee of a person deceased, after the estate of the decedent is represented insolvent and before sale of the real estate for payment of debts or before all the debts are paid, removes or injures any building or any trees, except such trees as are needed for fuel or repairs, or commits any strip or waste on such estate, he shall forfeit treble the amount of damages, to be recovered by the executor or administrator in a civil action.

§7561. Liability of executors or administrators

If such executor or administrator, being heir or devisee, commits such trespass or waste, on proof thereof before the judge of probate, he shall be liable to the same extent as the heirs or devisees. In both cases, the damages, when recovered by the executor or administrator or adjudged against him by the judge of probate, shall be accounted for in the administration account.

CHAPTER 740

UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT

§8001. Short title

This Act may be cited as the Uniform Enforcement of Foreign Judgments Act. [PL 1975, c. 335 (NEW).]

SECTION HISTORY

PL 1975, c. 335 (NEW).

§8002. Definition

In this Act "foreign judgment" means any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this State. [PL 1975, c. 335 (NEW).]

SECTION HISTORY

PL 1975, c. 335 (NEW).

§8003. Filing and status of foreign judgments

A copy of any foreign judgment authenticated in accordance with the Act of Congress or the statutes of this State may be filed in the office of the clerk of any District Court or of any Superior Court of this State. The clerk shall treat the foreign judgment in the same manner as a judgment of the District Court or Superior Court of this State. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a judgment of the District Court or the Superior Court of this State and may be enforced or satisfied in like manner. [PL 1975, c. 335 (NEW).]

SECTION HISTORY

PL 1975, c. 335 (NEW).

§8004. Notice of filing

1. Affidavit to be filed; contents. At the time of the filing of the foreign judgment, the judgment creditor or his lawyer shall make and file with the clerk an affidavit setting forth the name and last known post office address of the judgment debtor and the judgment creditor.
[PL 1975, c. 335 (NEW).]

2. Notification of judgment debtor by clerk. Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post office address of the judgment creditor and the judgment creditor's lawyer, if any, in this State. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not effect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.
[PL 1975, c. 335 (NEW).]

3. Thirty day waiting period. No execution or other process for enforcement of a foreign judgment filed hereunder shall issue until 30 days after the date the judgment is filed.
[PL 1975, c. 335 (NEW).]

4. Foreign protection orders. Subsections 2 and 3 do not apply if the foreign judgment is an order that qualifies as a protection order as defined by 18 United States Code, Section 2266 or is the equivalent of a protection from abuse order under Title 19-A, Part 4 or a protection from harassment order under Title 5, chapter 337-A.
[PL 2009, c. 202, §1 (NEW).]

SECTION HISTORY

PL 1975, c. 335 (NEW). PL 2009, c. 202, §1 (AMD).

§8005. Stay

1. Appeal or stay granted in foreign jurisdiction. If the judgment debtor shows the District Court or the Superior Court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the State in which it was rendered.
[PL 1975, c. 335 (NEW).]

2. Other grounds for stay. If the judgment debtor shows the District Court or the Superior Court any ground upon which enforcement of a judgment of any District Court or Superior Court of this State would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in this State.
[PL 1975, c. 335 (NEW).]

SECTION HISTORY

PL 1975, c. 335 (NEW).

§8006. Fees

1. Filing a foreign judgment. Except as provided in subsection 2, a person filing a foreign judgment shall pay to the clerk of courts the fee then provided for the entry of an action. Fees for docketing, transcription or other enforcement proceedings are as provided for judgments of the District Court or Superior Court.
[PL 2009, c. 202, §2 (NEW).]

2. Exception. A fee may not be charged for the registration, docketing, transcription or other enforcement proceedings of a foreign judgment or order that qualifies as a protection order as defined by 18 United States Code, Section 2266 or is the equivalent of a protection from abuse order under Title 19-A, Part 4 or a protection from harassment order under Title 5, chapter 337-A.
[PL 2009, c. 202, §2 (NEW).]

SECTION HISTORY

PL 1975, c. 335 (NEW).

§8007. Optional procedure

The right of a judgment creditor to bring an action to enforce his judgment instead of proceeding under this Act remains unimpaired. [PL 1975, c. 335 (NEW).]

SECTION HISTORY

PL 1975, c. 335 (NEW).

§8008. Uniformity of interpretation

This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. [PL 1975, c. 335 (NEW).]

SECTION HISTORY

PL 1975, c. 335 (NEW).

CHAPTER 741

TORT CLAIMS

§8101. Title

This chapter shall be known and may be cited as the "Maine Tort Claims Act." [PL 1977, c. 2, §2 (NEW).]

SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §5 (AMD).

§8102. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings. [PL 1977, c. 2, §2 (NEW).]

1. Employee. "Employee" means a person acting on behalf of a governmental entity in any official capacity, whether temporarily or permanently, and whether with or without compensation from local, state or federal funds, including elected or appointed officials; volunteer firefighters as defined in Title 30-A, section 3151; emergency medical service personnel; members and staff of the Consumer Advisory Board pursuant to Title 34-B, section 1216; members of the Maine National Guard but only while performing state active service pursuant to Title 37-B; sheriffs' deputies as defined in Title 30-A, section 381 when they are serving orders pursuant to section 3135; and persons while performing a search and rescue activity when requested by a state, county or local governmental entity, but the term "employee" does not mean a person or other legal entity acting in the capacity of an independent contractor under contract to the governmental entity.
[PL 2003, c. 489, §1 (AMD).]

1-A. Emergency medical service. "Emergency medical service" means:

A. A nonprofit, incorporated ambulance service or nontransporting emergency medical service licensed under Title 32, chapter 2-B, receiving full or partial financial support from or officially recognized by the State, a municipality or county or an entity created under Title 30-A, chapter 115 or 119, except when the emergency medical service is acting outside the scope of activities expressly authorized by the State, municipality, county or entity created under Title 30-A, chapter 115 or 119; and [PL 2005, c. 398, §1 (NEW).]

B. A for-profit, incorporated ambulance service or nontransporting emergency medical service licensed under Title 32, chapter 2-B only when the emergency medical service is acting within the scope of emergency response activities expressly authorized by a contract between the emergency medical service and the State, municipality, county or entity created under Title 30-A, chapter 115 or 119. [PL 2005, c. 398, §1 (NEW).]
[PL 2005, c. 398, §1 (RPR).]

2. Governmental entity. "Governmental entity" means and includes the State and political subdivisions as defined in subsection 3.
[PL 1977, c. 2, §2 (NEW).]

2-A. Permitted by this chapter or permitted under this chapter. "Permitted by this chapter" or "permitted under this chapter," as applied to claims or actions against a governmental entity or its employees, shall be construed to include all claims or actions expressly authorized by this Act against a governmental entity and all common law claims or actions against employees for which immunity is not expressly provided by this Act.
[PL 1985, c. 599, §§1, 4 (NEW).]

3. Political subdivision. "Political subdivision" means any city, town, plantation, county, administrative entity or instrumentality created pursuant to Title 30-A, chapters 115 and 119, incorporated fire-fighting unit that is organized under Title 13-B and is officially recognized by any authority created by statute, quasi-municipal corporation and special purpose district, including, but not limited to, any water district, sanitary district, hospital district, school district of any type, an airport authority established pursuant to Title 6, chapter 10, any volunteer fire association as defined in Title 30-A, section 3151, a transit district as defined in Title 30-A, section 3501, subsection 1, a regional transportation corporation as defined in Title 30-A, section 3501, subsection 2, a transit district or regional transportation corporation formed under the laws of another state that would qualify as a transit district or regional transportation corporation under Title 30-A, chapter 163 if formed under the laws of this State and any emergency medical service.
[PL 2011, c. 520, §1 (AMD).]

4. State. "State" means the State of Maine or any office, department, agency, authority, commission, board, institution, hospital or other instrumentality of the State, including the Maine Turnpike Authority, the Maine Port Authority, the Northern New England Passenger Rail Authority, the Maine Community College System, the Maine Veterans' Homes, the Maine Public Employees Retirement System, the Maine Military Authority and all such other state entities.
[PL 2001, c. 374, §5 (AMD); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF); PL 2007, c. 58, §3 (REV).]

SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 591, §6 (AMD). PL 1977, c. 696, §165 (AMD). PL 1979, c. 68, §5 (AMD). PL 1985, c. 599, §§1,4 (AMD). PL 1985, c. 695, §9 (AMD). PL 1985, c. 765, §3 (AMD). PL 1987, c. 11, §1 (AMD). PL 1987, c. 218, §1 (AMD). PL 1987, c. 386, §§1-3 (AMD). PL 1987, c. 737, §§C27,C28, C106 (AMD). PL 1987, c. 769, §A52 (AMD). PL 1989, c. 6 (AMD). PL 1989, c. 9, §2 (AMD). PL 1989, c. 104, §§C8,C10 (AMD). PL 1989, c. 233 (AMD). PL 1989, c. 349, §1 (AMD). PL 1989, c. 443, §21 (AMD). PL 1989, c. 878, §A42 (AMD). PL 1993, c. 410, §L44 (AMD). PL 1995, c. 161, §1 (AMD). PL 1995, c. 196, §D1 (AMD). PL 1995, c. 543, §1 (AMD). PL 1997, c. 234, §1 (AMD). PL 2001, c. 374, §5 (AMD). PL 2003, c. 20, §OO2 (AMD). PL 2003, c. 20, §OO4 (AFF). PL 2003, c. 489, §1 (AMD). PL 2005, c. 398, §1 (AMD). PL 2005, c. 399, §1 (AMD). PL 2007, c. 58, §3 (REV). PL 2007, c. 563, §2 (AMD). PL 2011, c. 520, §1 (AMD).

§8103. Immunity from suit

1. Immunity. Except as otherwise expressly provided by statute, all governmental entities shall be immune from suit on any and all tort claims seeking recovery of damages. When immunity is removed by this chapter, any claim for damages shall be brought in accordance with the terms of this chapter.
[PL 1977, c. 578, §1 (RPR).]

2. Examples.

[PL 1987, c. 740, §1 (RP).]

3. Personal liability; employee of a governmental entity.

[PL 1987, c. 740, §2 (RP).]

SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 578, §1 (RPR). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §5 (AMD). PL 1985, c. 569, §§3,4 (AMD). PL 1985, c. 599, §2 (AMD). PL 1985, c. 758, §2 (AMD). PL 1987, c. 110 (AMD). PL 1987, c. 218, §2 (AMD). PL 1987, c. 402, §A103 (AMD). PL 1987, c. 740, §§1,2 (AMD).

§8104. Exceptions to immunity

(REPEALED)

SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 578, §2 (RPR). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §§1,5 (AMD). PL 1979, c. 663, §§82,82-A (AMD). PL 1985, c. 569, §5 (AMD). PL 1987, c. 740, §3 (RP).

§8104-A. Exceptions to immunity

Except as specified in section 8104-B, a governmental entity is liable for property damage, bodily injury or death in the following instances. [PL 1987, c. 740, §4 (NEW).]

1. Ownership; maintenance or use of vehicles, machinery and equipment. A governmental entity is liable for its negligent acts or omissions in its ownership, maintenance or use of any:

A. Motor vehicle, as defined in Title 29-A, section 101, subsection 42; [PL 1995, c. 65, Pt. A, §43 (AMD); PL 1995, c. 65, Pt. A, §153 (AFF); PL 1995, c. 65, Pt. C, §15 (AFF).]

B. Special mobile equipment, as defined in Title 29-A, section 101, subsection 70; [PL 1995, c. 65, Pt. A, §43 (AMD); PL 1995, c. 65, Pt. A, §153 (AFF); PL 1995, c. 65, Pt. C, §15 (AFF).]

C. Trailers, as defined in Title 29-A, section 101, subsection 86; [PL 1995, c. 65, Pt. A, §43 (AMD); PL 1995, c. 65, Pt. A, §153 (AFF); PL 1995, c. 65, Pt. C, §15 (AFF).]

D. Aircraft, as defined in Title 6, section 3, subsection 5; [PL 1987, c. 740, §4 (NEW).]

E. Watercraft, as defined in Title 12, section 1872, subsection 14; [PL 1997, c. 678, §18 (AMD).]

F. Snowmobiles, as defined in Title 12, section 13001, subsection 25; and [PL 2003, c. 414, Pt. B, §27 (AMD); PL 2003, c. 614, §9 (AFF).]

G. Other machinery or equipment, whether mobile or stationary. [PL 1987, c. 740, §4 (NEW).]

The provisions of this section do not apply to the sales of motor vehicles and equipment at auction by a governmental entity.
[PL 2003, c. 414, Pt. B, §27 (AMD); PL 2003, c. 614, §9 (AFF).]

2. Public buildings. A governmental entity is liable for its negligent acts or omissions in the construction, operation or maintenance of any public building or the appurtenances to any public building. Notwithstanding this subsection, a governmental entity is not liable for any claim which results from:

A. The construction, ownership, maintenance or use of:

(1) Unimproved land;

(2) Historic sites, including, but not limited to, memorials, as defined in Title 12, section 1801, subsection 5;

(3) Land, buildings, structures, facilities or equipment designed for use primarily by the public in connection with public outdoor recreation; or

(4) Dams; [PL 1997, c. 678, §19 (AMD).]

B. The ownership, maintenance or use of any building acquired by a governmental entity for reasons of tax delinquency, from the date of foreclosure and until actual possession by the delinquent taxpayer or the taxpayer's lessee or licensee has ceased for a period of 60 days; or [PL 1987, c. 740, §4 (NEW).]

C. The ownership, maintenance or use of any building acquired by a governmental entity by eminent domain or by condemnation until actual possession by the former owner or the owner's lessee or licensee has ceased for a period of 60 days; [PL 1987, c. 740, §4 (NEW).]
[PL 1997, c. 678, §19 (AMD).]

3. Discharge of pollutants. A governmental entity is liable for its negligent acts or omissions in the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalines, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water, but only to the extent that the discharge, dispersal, release or escape complained of is sudden and accidental.
[PL 1987, c. 740, §4 (NEW).]

4. Road construction, street cleaning or repair. A governmental entity is liable for its negligent acts or omissions arising out of and occurring during the performance of construction, street cleaning or repair operations on any highway, town way, sidewalk, parking area, causeway, bridge, airport

runway or taxiway, including appurtenances necessary for the control of those ways including, but not limited to, street signs, traffic lights, parking meters and guardrails. A governmental entity is not liable for any defect, lack of repair or lack of sufficient railing in any highway, town way, sidewalk, parking area, causeway, bridge, airport runway or taxiway or in any appurtenance thereto.
[PL 1987, c. 740, §4 (NEW).]

SECTION HISTORY

PL 1987, c. 740, §4 (NEW). PL 1995, c. 65, §A43 (AMD). PL 1995, c. 65, §§A153,C15 (AFF). PL 1995, c. 630, §1 (AMD). PL 1997, c. 678, §§18,19 (AMD). PL 2003, c. 414, §B27 (AMD). PL 2003, c. 414, §D7 (AFF). PL 2003, c. 614, §9 (AFF).

§8104-B. Immunity notwithstanding waiver

Notwithstanding section 8104-A, a governmental entity is not liable for any claim which results from: [PL 1987, c. 740, §4 (NEW).]

1. Undertaking of legislative act. Undertaking or failing to undertake any legislative or quasi-legislative act, including, but not limited to, the adoption or failure to adopt any statute, charter, ordinance, order, rule, policy, resolution or resolve;
[PL 1987, c. 740, §4 (NEW).]

2. Undertaking of judicial act. Undertaking or failing to undertake any judicial or quasi-judicial act, including, but not limited to, the granting, granting with conditions, refusal to grant or revocation of any license, permit, order or other administrative approval or denial;
[PL 1987, c. 740, §4 (NEW).]

3. Performing discretionary function. Performing or failing to perform a discretionary function or duty, whether or not the discretion is abused and whether or not any statute, charter, ordinance, order, resolution or policy under which the discretionary function or duty is performed is valid or invalid, except that if the discretionary function involves the operation of a motor vehicle, as defined in Title 29-A, section 101, subsection 42, this section does not provide immunity for the governmental entity for an employee's negligent operation of the motor vehicle resulting in a collision, regardless of whether the employee has immunity under this chapter;
[PL 2005, c. 448, §1 (AMD).]

4. Performing prosecutorial function. Performing or failing to perform any prosecutorial function involving civil, criminal or administrative enforcement;
[PL 1987, c. 740, §4 (NEW).]

5. Activities of state military forces. The activities of the state military forces when on duty pursuant to Title 37-B or 32 United States Code;
[PL 1995, c. 196, Pt. D, §2 (AMD).]

6. Leasing of governmental property. The leasing of governmental property, including buildings, to other organizations;
[PL 1999, c. 456, §1 (AMD).]

7. Certain services. A decision not to provide communications, heat, light, water, electricity or solid or liquid waste collection, disposal or treatment services; and
[PL 1999, c. 456, §1 (AMD).]

8. Failure or malfunction of computer. The direct or indirect failure or malfunction of computer hardware, computer software or any device containing a computer processor or chip that fails to accurately or properly recognize, calculate, display, sort or otherwise process dates or times as a result of the Year 2000 problem. This provision applies to failures or malfunctions occurring before January 2, 2001.

For purposes of this section, the "Year 2000 problem" means complications associated with using a 2-digit field to represent a year and its result on the year change from 1999 to 2000. These complications may include, but are not limited to:

A. Erroneous date calculations; [PL 1999, c. 456, §2 (NEW).]

B. An ambiguous interpretation of the term "00"; [PL 1999, c. 456, §2 (NEW).]

C. The failure to recognize the year 2000 as a leap year; [PL 1999, c. 456, §2 (NEW).]

D. The use of algorithms that use the term "99" or "00" as a flag for another function; [PL 1999, c. 456, §2 (NEW).]

E. Problems arising from the use of applications, software or hardware that are date sensitive; and [PL 1999, c. 456, §2 (NEW).]

F. The inability to distinguish between centuries. [PL 1999, c. 456, §2 (NEW).]

[PL 1999, c. 456, §2 (NEW).]

SECTION HISTORY

PL 1987, c. 740, §4 (NEW). PL 1995, c. 196, §D2 (AMD). PL 1999, c. 456, §§1,2 (AMD). PL 2005, c. 448, §1 (AMD).

§8104-C. Wrongful death action

Subject to any immunity provided by this chapter or otherwise provided by law, actions for the death of a person brought by the personal representatives of the deceased person against a governmental entity or employee must be brought in the same manner that is provided for similar actions in Title 18-C, section 2-807, and amounts recovered must be disposed of as required in that section, except that the limitations of sections 8104-D and 8105 apply. [PL 2017, c. 402, Pt. C, §30 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

SECTION HISTORY

PL 1987, c. 740, §4 (NEW). PL 2017, c. 402, Pt. C, §30 (AMD). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

§8104-D. Personal liability of employees of a governmental entity

Except as otherwise expressly provided by section 8111 or by any other law, and notwithstanding the common law, the personal liability of an employee of a governmental entity for negligent acts or omissions within the course and scope of employment shall be subject to a limit of $10,000 for any such claims arising out of a single occurrence and the employee is not liable for any amount in excess of that limit on any such claims. [PL 1987, c. 740, §4 (NEW).]

SECTION HISTORY

PL 1987, c. 740, §4 (NEW).

§8105. Limitation on damages

1. Limit established. In any claim or cause of action permitted by this chapter, the award of damages, including costs, against either a governmental entity or its employees, or both, may not exceed $400,000 for any and all claims arising out of a single occurrence.
[PL 1999, c. 460, §1 (AMD); PL 1999, c. 460, §2 (AFF).]

1-A. Limit established for out-of-state transit district or regional transportation corporation. [PL 2011, c. 520, §2 (NEW); MRSA T. 14 §8105, sub-§1-A (RP).]

2. Costs. Court costs, prejudgment interest and all other costs that a court may assess must be included within the damage limit specified by this section. Accrued post-judgment interest may not be included within the damage limit.

[PL 1995, c. 61, §1 (AMD).]

3. Claims in excess of limit. When a claimant or several claimants believe they may have a claim against the State in excess of the limit established in subsection 1, or for a claim for which the State is immune, they may apply to the Legislature for special authorization to proceed within another specified limit.
[PL 1977, c. 2, §2 (NEW).]

4. Apportionment of claims. When the amount awarded to or settled for multiple claimants exceeds the limit imposed by this section, any party may apply to the Superior Court for the county in which the governmental entity is located to allocate to each claimant his equitable share of the total, limited as required by this section.

A. Any award by the court in excess of the maximum liability limit specified by subsection 1 shall be automatically abated by operation of this section to the maximum limit of liability. [PL 1977, c. 2, §2 (NEW).]

[PL 1977, c. 2, §2 (NEW).]

5. Exclusion from judgment or award. No judgment or award against a governmental entity shall include punitive or exemplary damages.
[PL 1977, c. 2, §2 (NEW).]

SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 78, §113 (AMD). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §5 (AMD). PL 1987, c. 740, §5 (AMD). PL 1995, c. 61, §1 (AMD). PL 1999, c. 460, §1 (AMD). PL 1999, c. 460, §2 (AFF). PL 2011, c. 520, §2 (AMD).

§8106. Jurisdiction of the court

1. Original jurisdiction. The Superior Court shall have original jurisdiction over all claims permitted under this chapter and not settled in accordance with section 8109.
[PL 1977, c. 78, §114 (AMD).]

2. Appeals.

A. Copies of each notice of appeal filed in an action arising under this chapter shall be served on the Attorney General at the same time as such notice is served upon the parties to the action. [PL 1977, c. 2, §2 (NEW).]

B. The Attorney General shall have the right to appear before the Supreme Judicial Court by brief and oral argument as a friend of the court in any appeal in an action arising under this chapter where the Attorney General is not appearing representing a party to the action. [PL 1977, c. 2, §2 (NEW).]

[PL 1977, c. 2, §2 (NEW).]

SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 78, §114 (AMD). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §5 (AMD).

§8107. Notice to governmental entity

1. Notice requirements for filing. Within 365 days after any claim or cause of action permitted by this chapter accrues, or at a later time within the limits of section 8110, when a claimant shows good cause why notice could not have reasonably been filed within the 365-day limit, a claimant or a claimant's personal representative or attorney shall file a written notice containing:

A. The name and address of the claimant, and the name and address of the claimant's attorney or other representative, if any; [PL 1989, c. 327 (AMD).]

B. A concise statement of the basis of the claim, including the date, time, place and circumstances of the act, omission or occurrence complained of; [PL 1977, c. 2, §2 (NEW).]

C. The name and address of any governmental employee involved, if known; [PL 1977, c. 2, §2 (NEW).]

D. A concise statement of the nature and extent of the injury claimed to have been suffered; and [PL 1977, c. 2, §2 (NEW).]

E. A statement of the amount of monetary damages claimed. [PL 1977, c. 2, §2 (NEW).]
[PL 2019, c. 214, §1 (AMD).]

2. Incapacity. If the claimant is incapacitated and thereby prevented from presenting and filing the claim within the time prescribed or if the claimant is a minor, the claim may be presented and filed on behalf of the claimant by any relative, attorney or agent representing the claimant. If the claimant is a minor when the cause of action accrues, the notice may be presented within 365 days of the minor's attaining 18 years of age.
[PL 2019, c. 214, §2 (AMD).]

3. Notices.

A. If the claim is against the State or an employee thereof, copies of the notice shall be addressed to and filed with the state department, board, agency, commission or authority whose act or omission is said to have caused the injury and the Attorney General. [PL 1977, c. 2, §2 (NEW).]

B. Notice of claims against any political subdivision or an employee thereof shall be addressed to and filed with one of the persons upon whom a summons and complaint could be served under the Maine Rules of Civil Procedure, Rule 4, in a civil action against a political subdivision. [PL 1977, c. 578, §3 (AMD).]
[PL 1979, c. 578, §3 (AMD).]

4. Substantial notice compliance required. No claim or action shall be commenced against a governmental entity or employee in the Superior Court unless the foregoing notice provisions are substantially complied with. A claim filed under this section shall not be held invalid or insufficient by reason of an inaccuracy in stating the time, place, nature or cause of the claim, or otherwise, unless it is shown that the governmental entity was in fact prejudiced thereby. A claim filed under this section shall not be held invalid solely because a claim based on the same facts was filed under a different statutory procedure and was disallowed.
[PL 1977, c. 591, §3 (AMD).]

5. Definition of good cause. "Good cause" as used in subsection 1 includes but is not limited to any cases in which any official of the governmental entity whose duties and authority include the settlement of tort claims or any tort liability insurer of the governmental entity makes direct oral or written contacts with the claimant or the claimant's personal representative or attorney, including payments to or on behalf of the claimant, that contain or imply a promise of coverage sufficient to cause a reasonable person to believe that the losses for which no timely notice claim is filed would be covered.

If oral or written contact is limited to coverage for specific injuries or damage, a claimant is not excused from filing the notice required by this section in relation to other claims or causes of action permitted by this chapter that arise out of the same incident or event.

Nothing in this subsection prevents the injured party and an agent or insurer of the governmental entity from entering into a consensual agreement pursuant to which the injured party releases the governmental entity from any further liability in exchange for an agreed upon consideration.
[PL 1991, c. 460 (NEW).]

This section shall not apply to such claims as may be asserted under the Rules of Civil Procedure by a 3rd party complaint, crossclaim or counterclaim. [PL 1977, c. 2, §2 (NEW).]

SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 578, §3 (AMD). PL 1977, c. 591, §§3,6 (AMD). PL 1979, c. 68, §5 (AMD). PL 1987, c. 740, §6 (AMD). PL 1989, c. 327 (AMD). PL 1991, c. 460 (AMD). PL 2001, c. 249, §1 (AMD). PL 2019, c. 214, §§1, 2 (AMD).

§8108. Time for allowance or denial of claims

Within 120 days after the filing of the claim with the governmental entity, the governmental entity shall act thereon and notify the claimant in writing of its approval or denial of the monetary damages claimed. A claim shall be deemed to have been denied if at the end of the 120-day period the governmental entity has failed to approve or deny the claim. [PL 1977, c. 2, §2 (NEW).]

SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §5 (AMD).

§8109. Compromise and settlement

1. Procedures for State. The State has authority to settle claims filed against it pursuant to sections 8104-A, 8104-B, 8104-C and 8104-D in accordance with the following procedures.

A. Any agency may settle any claim for an amount of $1,500 or less when such settlement is approved by the appropriate department or agency head in accordance with rules adopted by the Commissioner of Administrative and Financial Services. [PL 1991, c. 780, Pt. Y, §114 (AMD).]

B. Any other claim may be settled when such settlement is approved by the head of the department or agency against which the claim is filed, the Commissioner of Administrative and Financial Services and the Attorney General. [PL 1991, c. 780, Pt. Y, §114 (AMD).]

[PL 2009, c. 652, Pt. B, §4 (AMD).]

2. Procedures for political subdivisions. Any political subdivision may settle claims filed against it pursuant to sections 8104-A, 8104-B, 8104-C and 8104-D in accordance with procedures duly promulgated by its governing body.

[PL 2009, c. 652, Pt. B, §5 (AMD).]

3. Limitations on payment under settlement. When the State or a political subdivision becomes obligated to pay a claim as a result of a settlement, the limitations on payment provided by sections 8105 and 8115 shall apply in the same manner as if the State or political subdivision in question became obligated to pay the funds as a result of a judgment of the court.

[PL 1977, c. 2, §2 (NEW).]

4. Release. The acceptance by a claimant of any settlement under this section shall be final and conclusive on the claimant and shall constitute a complete release of any further claims against the governmental entity and against any employees of the governmental entity whose acts or omissions gave rise to the claim.

[PL 1987, c. 740, §7 (NEW).]

5. Settlement agreement public record. Except for information that is designated confidential by statute or that is not a public record under Title 1, section 402, subsection 3, a settlement agreement entered into by a governmental entity under this section, including a payment by an insurer of the governmental entity, is a public record.

[PL 2019, c. 215, §1 (NEW).]

SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 78, §§115,116 (AMD). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §5 (AMD). PL 1985, c. 81 (AMD). PL 1985, c. 785, §§A88,89 (AMD). PL 1987, c. 402, §§A104,A105 (AMD). PL 1987, c. 740, §7 (AMD). PL 1991, c. 780, §Y114 (AMD). PL 2009, c. 652, Pt. B, §§4, 5 (AMD). PL 2019, c. 215, §1 (AMD).

§8110. Limitation of actions

Every claim against a governmental entity or its employees permitted under this chapter is forever barred from the courts of this State, unless an action therein is begun within 2 years after the cause of action accrues, except that, if the claimant is a minor when the cause of action accrues, the action may be brought within 2 years of the minor's attaining 18 years of age. [PL 2001, c. 249, §2 (AMD).]

SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §5 (AMD). PL 2001, c. 249, §2 (AMD).

§8111. Personal immunity for employees; procedure

1. Immunity. Notwithstanding any liability that may have existed at common law, employees of governmental entities shall be absolutely immune from personal civil liability for the following:

A. Undertaking or failing to undertake any legislative or quasi-legislative act, including, but not limited to, the adoption or failure to adopt any statute, charter, ordinance, order, rule, policy, resolution or resolve; [PL 1987, c. 740, §8 (RPR).]

B. Undertaking or failing to undertake any judicial or quasi-judicial act, including, but not limited to, the granting, granting with conditions, refusal to grant or revocation of any license, permit, order or other administrative approval or denial; [PL 1987, c. 740, §8 (RPR).]

C. Performing or failing to perform any discretionary function or duty, whether or not the discretion is abused; and whether or not any statute, charter, ordinance, order, resolution, rule or resolve under which the discretionary function or duty is performed is valid; [PL 1987, c. 740, §8 (RPR).]

D. Performing or failing to perform any prosecutorial function involving civil, criminal or administrative enforcement; [PL 2001, c. 662, §7 (AMD).]

E. Any intentional act or omission within the course and scope of employment; provided that such immunity does not exist in any case in which an employee's actions are found to have been in bad faith; or [PL 2001, c. 662, §8 (AMD).]

F. Any act by a member of the Maine National Guard within the course and scope of employment; except that immunity does not exist when an employee's actions are in bad faith or in violation of military orders while the employee is performing active state service pursuant to Title 37-B. [PL 2001, c. 662, §9 (NEW).]

The absolute immunity provided by paragraph C shall be applicable whenever a discretionary act is reasonably encompassed by the duties of the governmental employee in question, regardless of whether the exercise of discretion is specifically authorized by statute, charter, ordinance, order, resolution, rule or resolve and shall be available to all governmental employees, including police officers and governmental employees involved in child welfare cases, who are required to exercise judgment or discretion in performing their official duties.
[PL 2001, c. 662, §§7-9 (AMD).]

2. Attachment and trustee process. Attachment, pursuant to Rule 4A, Maine Rules of Civil Procedure, and trustee process, pursuant to Rule 4B, Maine Rules of Civil Procedure, shall not be used in connection with the commencement of a civil action against an employee of a governmental entity based on any act or omission of the employee in the course and scope of employment.
[PL 1987, c. 740, §9 (AMD).]

SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §5 (AMD). PL 1987, c. 427, §§1,2 (AMD). PL 1987, c. 740, §§8,9 (AMD). PL 1989, c. 502, §A40 (AMD). PL 2001, c. 662, §§7-9 (AMD).

§8112. Defense and indemnification of employees

1. When a governmental entity is not liable. A governmental entity, with the consent of the employee, shall assume the defense of and, in its discretion, may indemnify any employee against a claim which arises out of an act or omission occuring within the course and scope of employment and for which the governmental entity is not liable. Except as otherwise provided herein, in lieu of assuming the defense of an employee, a governmental entity may pay the reasonable attorneys' fees and court costs of the employee. If the defense of its employee creates a conflict of interest between the governmental entity and the employee, the governmental entity shall pay the reasonable attorneys' fees and court costs of the employee.

A governmental entity is not liable for the attorneys' fees and defense costs of its employee under this subsection in the event that the employee is determined to be criminally liable for the acts or omissions in question. In addition, after the litigation against the employee is concluded, a governmental entity may recoup any attorneys' fees and costs paid to outside counsel on behalf of the employee if the governmental entity proves that the employee acted in bad faith.

This subsection does not apply if the employee settles the claim without the consent of the governmental entity.

This subsection does not apply if notice is not required to have been filed as provided in section 8107 or if the employee does not notify the governmental entity within 30 days after receiving actual written notice of the claim or within 15 days after the service of a summons and complaint, if the governmental entity is prejudiced by the lack of such notice.
[PL 1987, c. 740, §10 (RPR).]

2. When the governmental entity is liable. A governmental entity shall, with the consent of the employee, assume the defense of and shall indemnify any employee against a claim which arises out of an act or omission occurring within the course and scope of employment and for which sovereign immunity has been waived under section 8104-A, under another law or by legislative authorization. Except as otherwise provided herein, in lieu of assuming the defense of an employee, the governmental entity may pay the reasonable attorneys' fees and court costs of the employee. If the defense of its employee creates a conflict of interest between the governmental entity and the employee, the governmental entity shall pay the reasonable attorneys' fees and court costs of the employee.

A governmental entity shall not be required to indemnify its employee and is not liable for the attorneys' fees and court costs of its employee under this subsection in the event that the employee is determined to be criminally liable for the acts or omissions in question. In addition, after the litigation against the employee is concluded, a governmental entity shall be relieved of any obligation to indemnify the employee for punitive damages and may recoup any attorneys' fees and costs paid to outside counsel if the governmental entity proves that the employee acted in bad faith.

This subsection does not apply if the employee settles the claim without the consent of the governmental entity.

This subsection does not apply if notice is not required to have been filed as provided in section 8107 or if the employee does not notify the governmental entity within 30 days after receiving actual written notice of the claim or within 15 days after the service of a summons and complaint if the governmental entity is prejudiced by the lack of such notice.
[PL 1987, c. 740, §11 (RPR).]

2-A. Suits against employees under federal law. A governmental entity, with the consent of the employee, shall assume the defense of and, in its discretion, may indemnify any employee against any claim that is brought against the employee under any federal law and that arises out of an act or omission occurring within the course and scope of employment. Except as otherwise provided herein, in lieu of assuming the defense of an employee, the governmental entity may pay the reasonable attorneys' fees

and court costs of the employee. If the defense of its employee creates a conflict of interest between the governmental entity and the employee, the governmental entity shall pay the reasonable attorneys' fees and court costs of the employee.

A governmental entity is not liable for the attorneys' fees and court costs of its employee under this subsection in the event that the employee is determined to be criminally liable for the acts or omission in question. In addition, after the litigation against the employee is concluded, a governmental entity may recoup any attorneys' fees and costs paid to outside counsel if the governmental entity proves the employee acted in bad faith.

This subsection does not apply if the employee settles the claim without the consent of the governmental entity.

This subsection does not apply if the employee does not notify the governmental entity within 15 days after the service of a summons and complaint if the governmental entity is prejudiced by the lack of such notice.
[PL 1987, c. 740, §12 (NEW).]

3. Act or omission outside course or scope of employment. In cases when a governmental entity is obligated to indemnify an employee under subsection 2, the governmental entity may refuse to indemnify its employee if a court determines that the act or omission of the employee occurred outside the course and scope of that employment.
[PL 1987, c. 740, §13 (AMD).]

4. Conditions under which discontinuation prohibited.

[PL 1987, c. 427, §5 (RP).]

5. Consent to suit; limit on recovery from employee. In any action on a claim against the State:

A. Which is in excess of the limit established in section 8105, subsection 1 and for which the Legislature has granted special authorization to proceed within a specified limit; or [PL 1977, c. 578, §4 (NEW).]

B. For which the State is immune and for which the Legislature has granted special authorization to proceed within a specified limit; [PL 1977, c. 578, §4 (NEW).]

the award of damages, including costs, against both the State and its employee shall not exceed the limit established by the Legislature. If, however, it is found that the act or omission occurred outside the course or scope of employment, the award of damages against that employee may exceed the limit specified by the Legislature.
[PL 1977, c. 578, §4 (NEW).]

6. This action shall not in any way impair, limit or modify the rights and obligations of any insurer under any policy of insurance.
[PL 1977, c. 578, §4 (NEW).]

7. Independent contractors; leases. A governmental entity may, in its discretion, assume the defense of and may indemnify any person who is providing services to the governmental entity pursuant to a written contract or with whom the governmental entity has entered into an agreement for the lease of premises.
[PL 1977, c. 578, §4 (NEW).]

8. Liability under section 8104-D. A governmental entity shall purchase insurance or self-insure on behalf of its employees to insure them against their personal liability to the limit of their liability under section 8104-D and, to the extent that insurance coverage is not available, shall assume the defense of and indemnify those employees to the limit of their liability under section 8104-D.
[PL 1987, c. 740, §14 (NEW).]

9. Certain suits arising out of use of motor vehicles. A governmental entity is not required to assume the defense of or to indemnify an employee of that governmental entity who uses a privately owned vehicle, while acting in the course and scope of employment, to the extent that applicable liability insurance coverage exists other than that of the governmental entity. In such cases, the employee of the governmental entity and the owner of the privately owned vehicle may be held liable for the negligent operation or use of the vehicle but only to the extent of any applicable liability insurance, which constitutes the primary coverage of any liability of the employee and owner and of the governmental entity. To the extent that liability insurance other than that of the governmental entity does not provide coverage up to the limit contained in section 8105, the governmental entity remains responsible for any liability up to that limit.
[PL 1995, c. 462, Pt. C, §1 (REEN); PL 1995, c. 462, Pt. C, §§2,3 (AFF).]

SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 578, §4 (RPR). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §5 (AMD). PL 1987, c. 427, §§3-5 (AMD). PL 1987, c. 740, §§10-14 (AMD). PL 1993, c. 707, §§G7,8 (AMD). PL 1993, c. 707, §G9 (AFF). PL 1995, c. 462, §C1 (AMD). PL 1995, c. 462, §§C2,3 (AFF).

§8113. Liability not expanded, other remedies are exclusive

1. Liability not expanded unless chapter expressly provides. Except as expressly provided herein, nothing in this chapter shall enlarge or otherwise adversely affect the liability of an employee or a governmental entity. Any immunity or other bar to a civil lawsuit under Maine or federal law shall, where applicable, remain in effect.
[PL 1977, c. 2, §2 (NEW).]

2. Effect of other statutes concerning immunity. When any other statute expressly provides a waiver of governmental, sovereign or official immunity, the provisions of that statute shall be the exclusive method for any recovery of funds in any fact situation to which that statute applies.
[PL 1977, c. 2, §2 (NEW).]

SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §5 (AMD).

§8114. Judgment against governmental entity or employee; effect

1. Separate action against governmental employee. Any judgment against a governmental entity shall constitute a complete bar to a separate action for damages by the claimant, by reason of the same subject matter, against any public employee whose act or omission gave rise to the claim.
[PL 1977, c. 2, §2 (NEW).]

2. Separate action against governmental entity. Any judgment against any public employee whose act or omission gave rise to the claim shall constitute a complete bar to a separate action for injury by the claimant, by reason of the same subject matter, against a governmental entity.
[PL 1977, c. 2, §2 (NEW).]

3. Joinder. Nothing contained in this section shall be construed as preventing the joinder of any governmental entity or employee of such governmental entity in the same action.
[PL 1977, c. 2, §2 (NEW).]

SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §5 (AMD).

§8115. Payment of claims or judgments when no insurance

1. Payment from next appropriation. In the event no insurance has been procured by the State to pay a claim or judgment arising under this chapter, and no appropriated funds are reasonably

available, as determined by the Commissioner of Administrative and Financial Services, the claim or judgment must be paid from the next appropriation to the state instrumentality whose action or omission, or the action or omission of whose employee, gave rise to the claim.
[PL 1991, c. 780, Pt. Y, §115 (AMD).]

2. Subdivision's plan for payment. In the event that a political subdivision has not procured insurance, the trial judge may accept a reasonable plan for the payment of the amount of the judgment. A payment plan may not exceed 5 years and may include interest at the rate provided in section 1602-C.
[PL 2003, c. 460, §8 (AMD).]

SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §5 (AMD). PL 1985, c. 785, §A90 (AMD). PL 1987, c. 402, §A106 (AMD). PL 1991, c. 780, §Y115 (AMD). PL 2003, c. 460, §8 (AMD).

§8116. Liability insurance

The legislative or executive body or any department of the State or any political subdivision may procure insurance against liability for any claim against it or its employees for which immunity is waived under this chapter or under any other law. If the insurance provides protection in excess of the limit of liability imposed by section 8105, then the limits provided in the insurance policy shall replace the limit imposed by section 8105. If the insurance provides coverage in areas where the governmental entity is immune, the governmental entity shall be liable in those substantive areas but only to the limits of the insurance coverage. Reserve funds, excess insurance or reinsurance contracts maintained by a governmental entity, by an insurer providing liability insurance or by a public self-funded pool to meet obligations imposed by this Act shall not increase the limits of liability imposed by section 8105. [PL 1987, c. 740, §15 (AMD).]

A governmental entity or a public self-funded pool, which self-insures against the obligations and liabilities imposed by this Act, shall designate funds set aside to meet such obligations and liabilities as self-insurance funds. Any such governmental entity which self-insures under this Act or any entity that is a member of a public self-funded pool shall maintain as part of its public records a written statement which shall include a provision setting forth the financial limits of liability assumed by the governmental entity, those limits to be no less than the limits imposed in this Act, and a provision setting forth the scope of the liability assumed by the governmental entity, or the pool, that scope to be no less than that imposed in this Act. [PL 1985, c. 713, §2 (AMD).]

A governmental entity may purchase insurance or may self-insure on behalf of its employees to insure them against any personal liability for which a governmental entity is obligated or entitled to provide defense or indemnity under section 8112. [PL 1987, c. 740, §16 (RPR).]

Any insurance purchased by the State under this section must be purchased through the Department of Administrative and Financial Services, Risk Management Division.

SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 578, §§5,5-A (AMD). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §5 (AMD). PL 1981, c. 602, §§1,2 (AMD). PL 1985, c. 599, §3 (AMD). PL 1985, c. 713, §§1,2 (AMD). PL 1987, c. 740, §§15,16,17 (AMD). PL 2007, c. 466, Pt. A, §37 (AMD).

§8117. Prior claims

This chapter does not apply to any claim against any governmental entity or employee arising before its effective date. Any such claim may be presented and enforced to the same extent and be subject to the same defenses and limitations on recovery as if this chapter had not been adopted and as though any statute repealed by this chapter had remained in effect, and as though the doctrines of

sovereign, governmental and official immunity had remained in full force and effect. Nothing herein shall be construed as denying a governmental entity the right or authority to defend or settle any claim either against it or against any of its employees pending at the time of the effective date of this chapter. [PL 1977, c. 2, §2 (NEW).]

SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §5 (AMD).

§8118. Eleventh amendment

Nothing in this chapter or any other provision of state law shall be construed to waive the rights and protections of the State under the Eleventh Amendment of the United States Constitution, except where such waiver is explicitly stated by law and actions against the State for damages shall only be brought in the courts of the State in accordance with this chapter. [PL 1977, c. 2, §2 (NEW).]

SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §5 (AMD).

CHAPTER 743

WRONGFUL IMPRISONMENT

§8201. Wrongful imprisonment

(REPEALED)

SECTION HISTORY

PL 1985, c. 436, §§1,3 (NEW).

§8202. Limitation on damages

(REPEALED)

SECTION HISTORY

PL 1985, c. 436, §§1,3 (NEW).

§8203. Jurisdiction

(REPEALED)

SECTION HISTORY

PL 1985, c. 436, §§1,3 (NEW).

§8204. Limitation of action

(REPEALED)

SECTION HISTORY

PL 1985, c. 436, §§1,3 (NEW).

CHAPTER 747

WRONGFUL IMPRISONMENT

§8241. Wrongful imprisonment

1. Exceptions to immunity. Notwithstanding any immunity of the State from suit, including the Maine Tort Claims Act, chapter 741, the State is liable for the wrongful imprisonment of a person.
[PL 1993, c. 480, §1 (NEW).]

2. Action. The State is liable for damages for wrongful imprisonment of a person if that person alleges and proves the following by clear and convincing evidence:

A. That the person was convicted of a criminal offense under the laws of this State; [PL 1993, c. 480, §1 (NEW).]

B. That as a result of that conviction, the person was sentenced to a period of incarceration and was actually incarcerated; [PL 1993, c. 480, §1 (NEW).]

C. That subsequent to the conviction and as a condition precedent to suit, the person received a full and free pardon pursuant to the Constitution of Maine, Article V, Part First, Section 11, which is accompanied by a written finding by the Governor who grants the pardon that the person is innocent of the crime for which that person was convicted; and [PL 1993, c. 480, §1 (NEW).]

D. That the court finds that the person is innocent of the crime for which the person was convicted. [PL 1993, c. 480, §1 (NEW).]

[PL 1993, c. 480, §1 (NEW).]

3. Scope of law. For purposes of this chapter, a person is deemed to have committed a criminal offense notwithstanding a finding by a state or federal court that the law under which the person was convicted is violative of the Constitution of Maine or the United States Constitution.
[PL 1993, c. 480, §1 (NEW).]

4. Governor's denial of request. A Governor's failure to issue a written finding that the person is innocent of the crime for which the person was convicted is final and not subject to judicial view.
[PL 1993, c. 480, §1 (NEW).]

5. Settlement. After commencement of an action under subsection 2, the Attorney General may compromise or settle any claim under this chapter.
[PL 1993, c. 480, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 480, §1 (NEW).

§8242. Limitation on damages

1. Damages; limitation. In any action for damages permitted by this chapter, the claim for and award of damages, including costs, against the State may not exceed $300,000 for all claims arising as a result of a single conviction.
[PL 1993, c. 480, §1 (NEW).]

2. Costs. Court costs, interest and all other costs that a court may assess are included within the damages limitation specified by this section.
[PL 1993, c. 480, §1 (NEW).]

3. Exclusion from judgment or award. A judgment or award against the State pursuant to this chapter may not include punitive or exemplary damages.
[PL 1993, c. 480, §1 (NEW).]

4. Payable from General Fund. Any judgment or award of damages permitted by this chapter must be paid from the General Fund.
[PL 1993, c. 480, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 480, §1 (NEW).

§8243. Jurisdiction

The Superior Court has original jurisdiction over all claims permitted under this chapter. [PL 1993, c. 480, §1 (NEW).]

SECTION HISTORY

PL 1993, c. 480, §1 (NEW).

§8244. Limitation of action

Every claim for wrongful imprisonment permitted under this chapter is forever barred from the courts of this State unless an action is begun in the courts within 2 years after the date of the full and free pardon of the conviction on which the claim is based. [PL 1993, c. 480, §1 (NEW); PL 1993, c. 480, §2 (AFF).]

SECTION HISTORY

PL 1993, c. 480, §1 (NEW). PL 1993, c. 480, §2 (AFF).

CHAPTER 749

CIVIL RECOVERY FOR RETAIL THEFT

§8301. Short title

This chapter may be known and cited as the "Maine Civil Recovery for Retail Theft Act." [PL 1995, c. 288, §4 (NEW).]

SECTION HISTORY

PL 1995, c. 288, §4 (NEW).

§8302. Civil recovery

1. Liability. Any person who unlawfully takes or attempts to take merchandise from a merchant is liable to the merchant in accordance with provisions of this chapter.
[PL 1995, c. 288, §4 (NEW).]

2. No limitation. The provisions of this chapter may not be construed to prohibit or limit any other cause of action that a merchant may have against a person who unlawfully takes merchandise from the merchant.
[PL 1995, c. 288, §4 (NEW).]

3. Civil recovery. Any person who unlawfully takes or attempts to take merchandise from a merchant is civilly liable to the merchant in an amount consisting of:

A. Damages equal to the retail price of the merchandise if the item is not returned in a merchantable condition; and [PL 1995, c. 288, §4 (NEW).]

B. A civil penalty equal to 3 times the retail price of the merchandise, but not less than $50 or more than $500. [PL 1995, c. 288, §4 (NEW).]
[PL 1995, c. 288, §4 (NEW).]

4. Written demand. The fact that an action may be brought against an individual as provided in this chapter does not limit the right of a merchant to make a written demand that a person who is liable for damages and penalties under this chapter remit the damages and penalties prior to the commencement of any legal action.

A. If a person to whom demand is made complies with the demand, that person incurs no further civil liability for that specific act of retail theft. [PL 1995, c. 288, §4 (NEW).]

B. Any demand under this section must be accompanied by a copy of this chapter. [PL 1995, c. 288, §4 (NEW).]

[PL 1995, c. 288, §4 (NEW).]

5. Criminal prosecution. A criminal prosecution under Title 17-A, chapter 15 is not a prerequisite to an action under this chapter and such a criminal prosecution does not bar civil action. An action under this chapter does not bar a criminal prosecution under Title 17-A, chapter 15.

[PL 1995, c. 288, §4 (NEW).]

6. Failure to prosecute. If a merchant files suit to recover damages and penalties pursuant to this chapter, and the merchant fails to appear at a hearing in such proceedings without excuse from the court, the court shall dismiss the suit without prejudice and award costs to the defendant.

[PL 1995, c. 288, §4 (NEW).]

7. Fraudulent prosecution. Any person who knowingly uses provisions of this chapter to demand or extract money from a person who is not legally obligated to pay a penalty may be punished by a fine of not more than $1,000 or by imprisonment for not more than one year or by both.

[PL 1995, c. 288, §4 (NEW).]

SECTION HISTORY

PL 1995, c. 288, §4 (NEW).

CHAPTER 753

UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT

§8501. Short title

This Act may be cited as the Uniform Foreign Money-judgments Recognition Act. [PL 1999, c. 285, §1 (NEW).]

SECTION HISTORY

PL 1999, c. 285, §1 (NEW).

§8502. Definitions

As used in this Act, unless the context otherwise indicates, the following terms have the following meanings. [PL 1999, c. 285, §1 (NEW).]

1. Foreign state. "Foreign state" means any governmental unit other than the United States; any state, district, commonwealth, territory, insular possession of the United States; the Panama Canal Zone; the Trust Territory of the Pacific Islands; or the Ryukyu Islands.

[PL 1999, c. 285, §1 (NEW).]

2. Foreign judgment. "Foreign judgment" means any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty or a judgment for support in matrimonial or family matters.

[PL 1999, c. 285, §1 (NEW).]

SECTION HISTORY

PL 1999, c. 285, §1 (NEW).

§8503. Applicability

This Act applies to any foreign judgment that is final, conclusive and enforceable where rendered even though the judgment is being appealed or is subject to appeal. [PL 1999, c. 285, §1 (NEW).]

SECTION HISTORY

PL 1999, c. 285, §1 (NEW).

§8504. Recognition and enforcement

Except as provided in section 8505, a foreign judgment meeting the requirements of section 8503 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. The foreign judgment is enforceable in the same manner as the judgment of a sister state that is entitled to full faith and credit. [PL 1999, c. 285, §1 (NEW).]

SECTION HISTORY

PL 1999, c. 285, §1 (NEW).

§8505. Grounds for nonrecognition

1. Foreign judgment not conclusive. A foreign judgment is not conclusive if:

A. The judgment was rendered under a system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law; [PL 1999, c. 285, §1 (NEW).]

B. The foreign court did not have personal jurisdiction over the defendant; or [PL 1999, c. 285, §1 (NEW).]

C. The foreign court did not have jurisdiction over the subject matter. [PL 1999, c. 285, §1 (NEW).]

[PL 1999, c. 285, §1 (NEW).]

2. Foreign judgment not recognized. A foreign judgment need not be recognized if:

A. The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable the defendant to defend; [PL 1999, c. 285, §1 (NEW).]

B. The judgment was obtained by fraud; [PL 1999, c. 285, §1 (NEW).]

C. The cause of action or claim for relief on which the judgment is based is repugnant to the public policy of this State; [PL 1999, c. 285, §1 (NEW).]

D. The judgment conflicts with another final and conclusive judgment; [PL 1999, c. 285, §1 (NEW).]

E. The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court; [PL 1999, c. 285, §1 (NEW).]

F. In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action; or [PL 1999, c. 285, §1 (NEW).]

G. The foreign court rendering the judgment would not recognize a comparable judgment of this State. [PL 1999, c. 285, §1 (NEW).]

[PL 1999, c. 285, §1 (NEW).]

SECTION HISTORY

PL 1999, c. 285, §1 (NEW).

§8506. Personal jurisdiction

1. Foreign judgment not refused recognition for lack of personal jurisdiction. The foreign judgment may not be refused recognition for lack of personal jurisdiction if:

A. The defendant was served personally in the foreign state; [PL 1999, c. 285, §1 (NEW).]

B. The defendant voluntarily appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over the defendant; [PL 1999, c. 285, §1 (NEW).]

C. The defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved; [PL 1999, c. 285, §1 (NEW).]

D. The defendant was domiciled in the foreign state when the proceedings were instituted or, being a body corporate, had its principal place of business, was incorporated or had otherwise acquired corporate status in the foreign state; [PL 1999, c. 285, §1 (NEW).]

E. The defendant had a business office in the foreign state and the proceedings in the foreign court involved a cause of action or claim for relief arising out of business done by the defendant through that office in the foreign state; or [PL 1999, c. 285, §1 (NEW).]

F. The defendant operated a motor vehicle or airplane in the foreign state and the proceedings involved a cause of action or claim for relief arising out of that operation. [PL 1999, c. 285, §1 (NEW).]

[PL 1999, c. 285, §1 (NEW).]

2. Foreign judgment recognized on other bases of jurisdiction. The courts of this State may recognize other bases of jurisdiction.

[PL 1999, c. 285, §1 (NEW).]

SECTION HISTORY

PL 1999, c. 285, §1 (NEW).

§8507. Stay in case of appeal

If the defendant satisfies the court either that an appeal is pending or that the defendant is entitled and intends to appeal from the foreign judgment, the court may stay the proceedings until the appeal has been determined or until the expiration of a period of time sufficient to enable the defendant to prosecute the appeal. [PL 1999, c. 285, §1 (NEW).]

SECTION HISTORY

PL 1999, c. 285, §1 (NEW).

§8508. Saving clause

This Act does not prevent the recognition of a foreign judgment in situations not covered by this Act. [PL 1999, c. 285, §1 (NEW).]

SECTION HISTORY

PL 1999, c. 285, §1 (NEW).

§8509. Uniformity of interpretation

This Act must be so construed as to effectuate its general purpose to make uniform the law of those states that enact it. [PL 1999, c. 285, §1 (NEW).]

SECTION HISTORY

PL 1999, c. 285, §1 (NEW).

CHAPTER 755

ACTIONS FOR FILING FALSE RECORDABLE INSTRUMENTS AGAINST PUBLIC EMPLOYEES AND PUBLIC OFFICIALS

§8601. Actions by public employees and public officials for recordable instruments filed without a legal basis

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

A. "Public employee" means a person employed by the State, a county, a municipality or any entity identified in statute as a public instrumentality. [PL 2013, c. 160, §1 (NEW).]

B. "Public official" means a person elected or appointed to a public office. [PL 2013, c. 160, §1 (NEW).]

C. "Recordable instrument" means any lien or encumbrance, the false filing of which is identified as a crime under Title 17-A, section 706-A. [PL 2013, c. 160, §1 (NEW).]

[PL 2013, c. 160, §1 (NEW).]

2. Expedited process for a court to review the filing of recordable instruments. This subsection governs the procedure by which a public employee or public official may dispute the filing of a recordable instrument at a registry of deeds.

A. A public employee or public official who asserts that a recordable instrument was filed against property of the public employee or public official by a person who knows the recordable instrument is without a legal basis or was filed or presented for filing with the intent that the instrument be used to harass or hinder the public employee or public official in the exercise of the employee's or official's duties may file, at any time, a motion for a judicial declaration that the recordable instrument is without a legal basis. The motion may be filed in the Superior Court in the county where the public employee or public official resides. The motion must be supported by a signed and notarized affidavit of the moving party setting forth a concise statement of the facts upon which the claim for relief is based. [PL 2013, c. 160, §1 (NEW).]

B. The clerk of the court may not collect a filing fee for filing a motion under this subsection. [PL 2013, c. 160, §1 (NEW).]

C. The court's finding may be made solely on a review of the documentation attached to the motion and the responses, if any, and without hearing any oral testimony if none is offered. The court's review may be made only upon not less than 20 days' notice to each secured party or creditor named in the recordable instrument. Each secured party or creditor named in the recordable instrument may respond to the motion based on pleadings, depositions, admissions and affidavits. The court's review of the pleadings, depositions, admissions and affidavits may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require. [PL 2013, c. 160, §1 (NEW).]

D. The court shall enter judgment in favor of the moving party only if the pleadings, depositions, admissions and affidavits on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. [PL 2013, c. 160, §1 (NEW).]

E. After review, the court shall enter an appropriate finding of fact and conclusion of law, an attested copy of which must be filed and indexed under the moving party's name in the registry of deeds where the original recordable instrument was filed. The copy must be sent within 7 days following the date that the finding of fact and conclusion of law are issued by the court. A secured party or creditor may appeal the finding of fact and conclusion of law as provided in the Maine Rules of Appellate Procedure. In addition to the notice requirements of the Maine Rules of Appellate Procedure, the secured party or creditor shall give notice of the appeal to the registry of deeds where the original recordable instrument was filed. [PL 2013, c. 160, §1 (NEW).]

This subsection is cumulative of other law under which a person may obtain judicial relief with respect to any filed or recorded document.

[PL 2013, c. 160, §1 (NEW).]

3. Civil penalty and injunction. A person who violates this subsection is subject to civil penalties and other relief as provided in this subsection.

A. A person may not knowingly file, attempt to file or cause to be filed in a registry of deeds a recordable instrument against the real or personal property of a public employee or a public official that the person knows:

(1) Is without a legal basis; or

(2) Was filed or presented for filing with the intent that the instrument be used to harass or hinder the public employee or public official in the exercise of the employee's or official's duties. [PL 2013, c. 160, §1 (NEW).]

B. A person who violates this subsection is liable to each public employee or public official under paragraph A for:

(1) The greater of:

(a) Ten thousand dollars; and

(b) Damages equal to the amount of the recordable instrument that was filed or attempted to be filed;

(2) Court costs;

(3) Reasonable attorney's fees;

(4) Related expenses of bringing the action, including investigative expenses; and

(5) Punitive damages in an amount determined by the court. [PL 2013, c. 160, §1 (NEW).]

C. The following persons may bring an action to enjoin a violation of this subsection or to recover damages under this subsection:

(1) The public employee or public official; and

(2) The Attorney General. [PL 2013, c. 160, §1 (NEW).]

D. An action under this subsection may be brought in any court in Kennebec County or in a county where any of the persons named in the cause of action under this subsection reside. [PL 2013, c. 160, §1 (NEW).]

E. The fee for filing an action under this subsection is $25. The plaintiff must pay the fee to the clerk of the court in which the action is filed. The plaintiff may not be assessed any other fee, cost, charge or expense by the clerk of the court. [PL 2013, c. 160, §1 (NEW).]

F. A plaintiff who is unable to pay the filing fee and any fee for service of notice may follow the court procedures to waive such fees. [PL 2013, c. 160, §1 (NEW).]

G. If the fee imposed under paragraph E is less than the filing fee the court imposes for filing other similar actions and the plaintiff prevails in the action, the court may order a defendant to pay to the court the difference between the fee paid under paragraph E and the filing fee the court imposes for filing other similar actions. [PL 2013, c. 160, §1 (NEW).]

This subsection is cumulative of other law under which a person may obtain judicial relief with respect to any filed or recorded document. This subsection is not intended to be an exclusive remedy. [PL 2013, c. 160, §1 (NEW).]

SECTION HISTORY

PL 2013, c. 160, §1 (NEW).

CHAPTER 757

ACTIONS FOR BAD FAITH ASSERTION OF PATENT INFRINGEMENT

§8701. Actions for bad faith assertion of patent infringement

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

A. "Demand letter" means a letter, an e-mail or other written communication asserting that a target has engaged in patent infringement. [PL 2013, c. 543, §1 (NEW).]

B. "Person" means a natural person, corporation, trust, partnership, incorporated or unincorporated association or any other legal entity. [PL 2013, c. 543, §1 (NEW).]

C. "Target" means a person:

(1) Who has received a demand letter;

(2) Against whom a lawsuit has been filed alleging patent infringement; or

(3) Whose customers have received a demand letter asserting that the person's product, service or technology has infringed a patent. [PL 2013, c. 543, §1 (NEW).]

[PL 2013, c. 543, §1 (NEW).]

2. Prohibition. A person may not make a bad faith assertion of patent infringement against another person.

[PL 2013, c. 543, §1 (NEW).]

3. Civil action. A target may bring a civil action in Superior Court against a person who has made a bad faith assertion of patent infringement against the target. In determining whether a person made a bad faith assertion of patent infringement:

A. The court may consider the following factors as evidence that the person made a bad faith assertion of patent infringement:

(1) The demand letter does not contain:

(a) The patent number;

(b) The name and address of the patent owner or owners and assignee or assignees, if any; or

(c) Factual allegations concerning the specific areas in which the target's products, services or technology infringed the patent or are covered by the claims in the patent;

(2) The demand letter does not contain the information described in subparagraph (1), the target requested the information and the person did not provide the information within a reasonable period of time;

(3) Prior to sending the demand letter, the person failed to conduct an analysis comparing the claims in the patent to the target's products, services or technology or an analysis was done but does not identify specific areas in which the products, services or technology are covered by the claims in the patent;

(4) The demand letter includes a demand for payment of a license fee or a response within an unreasonably short period of time;

(5) The person offered to license the patent for an amount that is not based on a reasonable estimate of the value of the license;

(6) The person knew or should have known that the assertion of patent infringement is meritless;

(7) The assertion of patent infringement is deceptive; and

(8) The person or a subsidiary or affiliate of the person previously filed or threatened to file a lawsuit based on the same or similar claim of patent infringement and:

(a) Those threats or lawsuits lacked the information described in subparagraph (1); or

(b) The person attempted to enforce the claim of patent infringement in litigation and a court found the claim to be meritless; and [PL 2013, c. 543, §1 (NEW).]

B. The court may consider the following factors as evidence that the person did not make a bad faith assertion of patent infringement:

(1) The demand letter contains the information described in paragraph A, subparagraph (1);

(2) The demand letter does not contain the information described in paragraph A, subparagraph (1), the target requested the information and the person provided the information within a reasonable period of time;

(3) The person engaged in a good faith effort to establish that the target infringed the patent and to negotiate an appropriate remedy;

(4) The person made a substantial investment in the use of the patent or in the production or sale of a product or item covered by the patent;

(5) The person is:

(a) The inventor or joint inventor of the patent or, in the case of a patent filed by and awarded to an assignee of the original inventor or joint inventor, is the original assignee; or

(b) An institution of higher education or a technology transfer organization whose primary purpose is to facilitate the commercialization of technologies developed by an institution of higher education that is owned by or affiliated with an institution of higher education; and

(6) The person demonstrated good faith business practices in previous efforts to enforce the patent or a substantially similar patent or successfully enforced the patent or a substantially similar patent through litigation. [PL 2013, c. 543, §1 (NEW).]

[PL 2013, c. 543, §1 (NEW).]

4. Remedies. The court may award the following remedies to a target who prevails in an action brought pursuant to this section:

A. Equitable relief; [PL 2013, c. 543, §1 (NEW).]

B. Damages; [PL 2013, c. 543, §1 (NEW).]

C. Costs and fees, including reasonable attorney's fees; and [PL 2013, c. 543, §1 (NEW).]

D. Punitive damages in an amount equal to $50,000 or 3 times the total damages, costs and fees, whichever is greater. [PL 2013, c. 543, §1 (NEW).]

[RR 2013, c. 2, §28 (COR).]

5. Action by Attorney General. The Attorney General may bring an action to enjoin a violation of this chapter. Any violation of this chapter is a violation of the Maine Unfair Trade Practices Act. [PL 2013, c. 543, §1 (NEW).]

6. Bond. When a target reasonably believes a person made a bad faith assertion of patent infringement against the target, the target may file a motion with the court to require the person to post

a bond. If the court finds the target has established a reasonable likelihood that the person made a bad faith assertion of patent infringement, the court shall require the person to post a bond in an amount equal to a good faith estimate of the target's costs to litigate the claim and amounts reasonably likely to be recovered under subsection 4. The court shall hold a hearing if requested by either party. A bond ordered pursuant to this subsection may not exceed $250,000. The court may waive the bond requirement if it finds the person has available assets equal to the amount of the proposed bond or for other good cause shown.
[PL 2013, c. 543, §1 (NEW).]

7. Exemption. This section does not apply to a demand letter or assertion of patent infringement that includes a claim for relief arising under 35 United States Code, Section 271(e)(2) or 42 United States Code, Section 262.
[PL 2013, c. 543, §1 (NEW).]

SECTION HISTORY

RR 2013, c. 2, §28 (COR). PL 2013, c. 543, §1 (NEW).

§8702. Rules

The Attorney General shall adopt rules implementing this chapter. Evidence of a violation of a rule adopted by the Attorney General constitutes prima facie evidence of a bad faith assertion of patent infringement in any action brought under this chapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2013, c. 543, §1 (NEW).]

SECTION HISTORY

PL 2013, c. 543, §1 (NEW).

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