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Maine Law Court Overturns Foreclosure Based on Default Notice Issued by Attorney

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MAINE BANKERS Association

In its most recent opinion on residential foreclosures, Maine's Supreme Judicial Court (sitting as the "Law Court") vacated a foreclosure judgment finding the notice of default and right to cure – drafted by the bank's attorney – never should have been admitted into evidence. *Deutsche Bank Nat'l Trust Co. v. Eddins, Jr.*, 2018 ME 17.

In April 2014, Eddins fell behind on mortgage payments. In May 2015, the Shechtman Halperin Savage law firm, on behalf of the bank, issued the notice of default and right to cure required under 14 M.R.S. § 6111. In order to obtain a foreclosure judgment, a mortgagee must show the notice issued. At trial, the bank offered the notice into evidence through the testimony of a bank representative who had no personal knowledge of Shechtman's business practices or who mailed the notice. The bank also did not have a certified mail return receipt or proof of mailing.

In December 2017, the Law Court issued *Key Bank v. Estate of Quint*. 2017 ME 237. In *Quint*, the Law Court reinforced longstanding precedent that to offer a business record (i.e. notice of default) from another entity into evidence, the witness must demonstrate sufficient knowledge of the other entity's regular business practices to overcome the hearsay rule. Here, the Law Court explained the bank witness had no knowledge of the Shechtman firm's regular practices and therefore the notice should not have been admitted.

The consequences are dire as the bank is barred from attempting a second foreclosure. *Federal Home Loan Mortgage Assoc. v. Deschaine*, 2017 ME 190. The original certified mail return receipt and proof of mailing along with a copy of the letter should have been offered at trial through a witness from the law firm with personal knowledge of its own practices. This would have avoided any concern over the *Quint* requirements that the witness have knowledge of both the bank and law firm's regular business practices.