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Federal Court Asks for Guidance on Notice to Cure

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The District Court of Maine has asked for briefing in a foreclosure action to determine whether Fannie Mae's statutory notice to cure is defective. *Federal National Mortgage Association v. Wilson*, 2019 WL 1915618 (D. Me. Apr. 30, 2019). The issue came up at the same time Fannie Mae moved to amend its foreclosure complaint because the case caption did not include the property address. The Court decided to wait on whether to allow Fannie Mae to fix the problem so it could hear more from the parties on the statutory notice to cure.

The statutory notice to cure (14 M.R.S. § 6111) requires that reasonable interest and late charges be itemized. The Court pointed out that Fannie Mae's notice did not include itemized interest owed. Rather, interest was lumped into another category. The Court observed that there is no way for the mortgagor to calculate the amount of interest, as oppose to the principal.

While the Court is awaiting further briefing by the parties, it appears likely the Court will deny Fannie Mae's motion to amend because it would be futile. Meaning, there is no reason to allow the amendment because Fannie Mae would lose on the notice to cure issue. This case appears to be another example of mortgagees having trouble with the requirements of the statutory notice to cure and, as a result, being unable to foreclose the mortgage.