

## Federal Court Breaks With Law Court on Admitting Payment Histories in Foreclosure

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It is well known that Maine’s Supreme Judicial Court (the “Law Court”) recently has reiterated its strict standard for admitting loan records from a prior servicer into evidence in a foreclosure action. See *Key Bank v. Quint*, 2017 ME 19 (refusing to admit prior servicer records when bank’s witness had knowledge of current servicer procedures only). Prior servicer records typically are offered to show the amount a borrower owes the lender. Interpreting the federal rules of evidence, however, the District Court of Maine isn’t going along with the Law Court.

In *U.S. Bank Trust, N.A. v. Jones*, the District Court held that the “integrated records” rule applied to foreclosure actions. 2018 WL 3132590 (D. Me. Jun. 26, 2018). Under the integrated records rule, federal courts generally admit a prior entity’s records where an organization incorporated the records of another entity into its own, relied upon those records in its day-to-day operations, and where there are other strong indicia of reliability. *Id.* at \*11. Meaning, a lender is able to use the business records exception to offer prior loan servicer records through its own employee witness. In contrast, the Law Court’s approach requires testimony of a witness with knowledge of the business practices of both the current and prior loan servicer.

The District Court explained it was “respectfully not persuaded” by the Law Court’s strict approach. The Court stated that admitting the payment history served the purpose of the rules of evidence and the interests of justice where “[t]here is no real question here...that Ms. Jones took out a loan from U.S. Bank’s predecessor and that she has not paid the loan in accordance with its terms.”

*U.S. Bank Trust, N.A. v. Jones* should be closely reviewed by foreclosing mortgagees and their counsel. Assuming jurisdictional requirements are met, there is a clear advantage for foreclosing mortgagees to file in federal court.

While not discussed here, it is noteworthy that U.S. Bank did not prevail on its foreclosure action due to a defective notice of default and right to cure letter. U.S. Bank did obtain a judgment for breach of the promissory note.