

## Trial Court Rules Notice of Default Must Be Sent By Lender

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The Androscoggin County Superior Court has ruled loan servicers are not authorized to issue Maine’s statutory notice of default. *Ventures Trust v. Needham et al.*, Me. Super. Docket No. AUBSC-RE-17-03 (Jul. 9, 2018). Though not binding on other trial courts, *Needham* offers perhaps the most strict interpretation of the foreclosure statute in recent memory and rejects the long accepted practice of agents - such as loan servicers - from issuing default notices on behalf of a lender.

14 M.R.S. § 6111 requires a notice of default and right to cure prior to acceleration: “the mortgagee may not accelerate maturity of the unpaid balance...until at least 35 days after the date that written notice...is given by the mortgagee to the mortgagor...” In *Needham*, the loan servicer sent the default notice. Finding the notice non-compliant, the trial court explained that § 6111 plainly requires notice to be “given by the mortgagee,” and that the Legislature has not designated loan servicers as entities that may send default notices.

Absent from *Needham* is a discussion of agency law which authorizes an agent (i.e. a loan servicer) to act on behalf of a principal (i.e. a mortgagee). *Needham* is believed to be pending appeal to the Law Court. There are no known trial court decisions following *Needham*.