

BUSINESS RECORDS EXCEPTION USED TO ATTACK FORECLOSURE ACTION IN MAINE SUPREME COURT

The Maine Supreme Court, using a recent interpretation of the business records exception to the hearsay rule under Maine law, has raised questions regarding mortgage loan servicers' ability to foreclose on defaulted borrowers. An essential element of proof in any Maine judicial foreclosure action includes evidence of default, and in [*Key Bank Nat'l Ass'n v. Estate of Quint*](#), the Court affirmed exclusion of a prior servicer's screenshots submitted to demonstrate the amount a borrower owed, costs incurred and the outstanding principal balance in pursuit of a judicial foreclosure action. The current servicer's witness testified to establish default on review of the prior servicer's business records and under exception to hearsay, but the trial judge concluded that the witness had not established the hearsay exception with regard to records of the prior servicer.

The Maine Supreme Court cited [*Beneficial Mortgage v. Carter*](#) for the proposition that **records from one business, integrated into another business (typical to service transfers on mortgage loans), requires foundational evidence to demonstrate that the receiving entity's employee/witness had "sufficient knowledge of both businesses' regular practices to demonstrate the reliability and trustworthiness of the information."** The servicer's witness in *Quint* was not qualified to lay foundation for the admission of screenshots from the servicer's computer system purporting to show the amount owed on the loan because the servicer's records had integrated the records of the prior servicer, and the witness provided no testimony about the regular business records of the prior servicer.

Although the witness testified about the procedures employed by the current servicer to check for accuracy when boarding loans from prior servicers in connection with foundational evidence, the Court concluded his testimony was insufficient to establish the prior loan servicers' business practices to overcome hearsay. On review of this decision, practitioners pursuing judicial foreclosures in Maine should ensure that all prior servicers are identified in the record and that proper foundation is established for any servicer's witness to testify as to the servicing and boarding procedures of the prior servicers. **A judicial foreclosure action may very well require more than one witness if there is a gap between the present servicer's records and prior servicers' records.**