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Testimony of Frank D'Alessandro, Esq.
For Pine Tree Legal Assistance
In Support of LD 1629

Before the Joint Standing Committee on Taxation
regarding testimony provided to the Committee on January 25, 2018

Good afternoon Senator Dow, Representative Tipping and members of the Joint Standing Committee on Taxation. I am the Regional Directing Attorney for Southern Maine for Pine Tree Legal Assistance. A substantial portion of my caseload involves foreclosure and consumer cases, including municipal tax foreclosures, and I am grateful for the opportunity to share my comments in support of LD 1629.

I have been asked to share the expertise of Pine Tree Legal Assistance on these issues and I am speaking today on behalf of Pine Tree Legal Assistance. Since 1967, Pine Tree Legal Assistance has provided free legal services to low-income people throughout the State of Maine. In 2017, Pine Tree Legal Assistance provided legal services to Maine families and individuals in 7,735 cases, of which 253 cases involved representation of clients in foreclosure cases. In many of these cases a Mainer's inability to make their mortgage payments stems from the municipal real estate property tax burden. In addition to these foreclosure case, in 2017, Pine Tree Legal Assistance represented 58 homeowner households in cases involving municipal real estate taxes.

Introduction

Pine Tree Legal Assistance is a nonprofit organization with offices in Portland, Lewiston, Augusta, Bangor, Machias and Presque Isle. Since 1967, Pine Tree Legal Assistance has provided representation to homeowners in foreclosure cases. Pine Tree Legal Assistance has particular expertise in the area of residential mortgage and municipal tax foreclosure law.

Since 2008, Pine Tree Legal Assistance has dramatically increased its representation of homeowners in foreclosure cases. In addition to representing homeowners before the Maine Superior and District Courts throughout the State of Maine, Attorneys at Pine Tree Legal Assistance have represented homeowners before the Maine Law Court and the Federal District Court.

Pine Tree Legal Assistance also provides trainings and resources for private attorneys through its sponsorship of the Maine Attorneys Saving Homes (MASH) program and provides quarterly trainings to housing counselors. Pine Tree also maintains detailed self-help foreclosure

information for the public on its popular website, www.ptla.org. Pine Tree Legal Assistance has also participated in the Maine Court Commission that resulted in the creation of the Foreclosure Diversion Program and participated in the Attorney General's Foreclosure Task Force.

One of the most urgent foreclosure issues facing our low income Maine residents today is the threat of an automatic property tax foreclosure. This threat is real for any homeowner but is particularly serious for those who have paid off their mortgages and own their home free of any debt. In Maine, when a homeowners fails to pay back taxes within 18 months of the recording of the property tax lien, the home is automatically foreclosed upon and becomes the property of the town. There is no court hearing. The town takes the home and its entire value – whether the home is worth \$50,000 or \$150,000 - regardless of the amount of taxes owed. The town can then legally keep any amount that the house sells for, regardless of how much is owed in taxes. This is true if the homeowner owes \$200 or \$2,000 in back taxes.

In one case handled by Pine Tree Legal Assistance, a homeowner fell behind on taxes and owed approximately \$8,000 to the town. The home was worth about \$60,000. The town foreclosed. Pine Tree attempted to negotiate with the town to allow the sale of the home through a real estate broker. The town refused and sold the home for the amount owed in taxes—to a neighbor. The client's total income was just \$735 a month. The entire equity in the home of approximately \$50,000 was stripped away. In this case, the homeowner would have paid the taxes in full from the sale of the home and could have kept \$50,000 to find safe, affordable housing. Instead, she was left with nothing but \$735 in monthly income.

In Maine the median home value is \$177,500 and the median property tax bill on that home is currently \$1,936 per year, according to <http://www.tax-rates.org/maine/property-tax> For Mainers who are over 65 years of age, their median annual income is \$36,246. (<https://www.incomebyzipcode.com/maine>) Unfortunately, many of our Maine senior citizens live on far less than the median income and rely upon social security to meet all of their living and household expenses. For elderly low-income Mainers, the burden imposed by their property tax obligations can be extreme.

Pine Tree Legal Assistance has a long history of representing low-income homeowners concerning issues involving municipal real estate taxes, including cases before the Maine Supreme Court: *Macaro v. Town of Windham* 468 A2d 604 (1983); *Dodge v. Town of Norridgewock* 577 A2d 346 (1990); *Mason v. Town of Readfield* 1998 ME 201; *Sager v. Town of Bowdoinham* 2004 ME 40; *Hustus v. Town of Medway* 2004 ME 4; *Stoops v. Nelson* 2013 ME 27.

Why We Support LD 1629

We support this bill because it takes reasonable steps to ensure:

1. That elderly homeowners who are unable to pay their property taxes will not lose their homes.

2. That a homeowner will not lose all of the equity that they have built up over a lifetime in their primary residence because they fall behind in their municipal property taxes.
3. The prevention of homelessness, and all of its attendant costs to individuals and their communities.

This Bill Ensures that Elderly Homeowners Will be considered for an Abatement for Real Estate Taxes Based Upon Inability to Pay

Currently, Maine law provides for an automatic municipal tax foreclosure process. Municipal real estate taxes are often unaffordable to elderly homeowners. While there is a process for a poverty based tax abatement, our experience is that these applications are routinely denied by municipalities and that this process is not being uniformly enforced.

Homeowners have repeatedly reported to us that they have applied for a poverty tax abatement only to be told by the municipality "that we don't do that". Other homeowners are advised that the municipality will not consider a poverty tax abatement until the property is in imminent danger of foreclosure.

Homeowners, especially elderly homeowners, often take municipal officers at their word and do not pursue the poverty tax abatement process or wait until the last minute to apply for a poverty tax abatement. When this happens and the municipality denies relief, the homeowner effectively loses their ability to challenge that action in court. That is because the automatic foreclosure process is completed before the Superior Court can consider the homeowner's appeal of the municipality's action. Even in cases in which the homeowner has received a written decision from a municipality in a timely manner, the decision often fails to advise the homeowner of their right to file an appeal.

By requiring that the municipality reach out to the elderly homeowner and evaluate the homeowner for a poverty tax abatement before the automatic tax foreclosure process can be completed, Section 3A and 3B of this bill will help ensure that elderly homeowners who are financially unable to pay their taxes will not lose their homes.

This Bill Ensures that Homeowners Will Not Lose the Equity they have Built up in their Homes

In an automatic tax foreclosure, a homeowner can lose a home worth more than \$100,000 as the result of failing to pay a few thousand dollars in taxes.

Once the municipality gains title to the real estate through the automatic foreclosure process, the municipality has no obligation to return any sale proceeds in excess of the unpaid property taxes back to the former homeowner. See: *City of Auburn v. Mandarelli*, 320 A.2d 22, 32 (Me. 1974). In addition, there is no requirement that the municipality sell the real estate for its fair market value, in an arms-length transaction, or to sell the property in a commercially reasonable manner.

We have seen cases in which municipalities sell the real estate for its full market value and then keep the windfall from the sale. We have also seen cases in which municipalities sell the property for a fraction of its value. In these latter cases, the former homeowners often complain that the sale has been made to a friend or relative of a selectman or town counselor.

This bill sets forth the process by which the municipality must sell tax-acquired property. This process requires that the sale be made with the assistance of a real estate broker in a commercially reasonable manner and that any proceeds from sale that exceed the amount of unpaid property taxes and other costs be returned to the former homeowner. This is simple fairness. The current process is simply not just.

This requirement - that a municipality refund to the homeowner their equity in the home - already applies to commercial lenders who foreclose upon homeowners (14 M.R.S. § 6323). Certainly, it is reasonable to hold municipalities (who exist to promote the public interest) to the same standard that is required of commercial lenders.

This bill helps achieve the important public interest to protect the equity that an elderly homeowner has built up in their primary residence over the course of their lifetime, while ensuring that the municipality gets the unpaid taxes owed to it.

This Bill Will Prevent Homelessness

This bill requires that a Municipality offer elderly homeowners a reasonable re-payment plan before it can remove a homeowner from their property. This bill also prevents a Municipality from removing an elderly homeowner from their home until the amount owed to the Municipality exceeds 50% of the municipal assessed value of the property.

One service offered by commercial lenders is a reverse mortgage whereby the lender makes a cash payment to a homeowner out of the equity in the property. A reverse mortgage offers an opportunity to allow homeowners, who otherwise could not afford to do so, to remain in their homes. The amount of the payout pursuant to a reverse mortgage to the homeowner is based upon the interest rate and equity in the home. At a *five percent* interest rate, a 62-year-old can borrow against 52.4 percent of her home equity, while a 75-year-old can borrow against 61.4 percent of her property value. Thus, a reverse mortgage puts a commercial lender at greater financial risk than the proposed requirement in this bill preventing a municipality from removing a homeowner until the amount owed exceeds 50% of the assessed value of the property. Again, it is entirely reasonable to hold municipalities (who exist to promote the public interest) to the same standard that is required of commercial lenders.

Finally, this bill also requires that municipal employees or officials refer homeowners who they believe to have a medical condition that interferes with the homeowner's ability to manage their affairs to the Department of Health and Human Services for help. In my experience, the lack of access to needed medical services is a major reason that elderly and disabled homeowners are unable to successfully maintain a residence. By encouraging the municipality to help elderly homeowners to get the services they need to maintain housing, this bill helps elderly homeowners, their communities, and the State as a whole.

As we are all aware, there is an affordable housing crisis in many parts of the State. Given the lack of decent, safe and affordable housing in many communities, it is critical that the statutes affecting tax-acquired property be carefully tailored to promote continued homeownership wherever possible.

The consequences of homelessness are severe, both to the family and to society. They include the exacerbation of problems which may have caused homelessness. Homeless people have less access to housing, jobs, health care, and basic needs like food and clothing. Isolation and lack of social support are well-documented aspects of homelessness, particularly for people living with mental health or substance abuse disorders. Homeless women and men have significantly less family support and this often limits opportunities for recovery and prevention. Once an individual becomes homeless, it is likely that she will need additional government assistance to return to stable housing. This is especially true for elderly citizens.

The provisions of this bill can prevent these problems for many homeowners and their communities.