Testimony of Jonathan Selkowitz, Esq.

Pine Tree Legal Assistance, Inc.

Speaking in Support of LD 101 "An Act To Return to the Former Owner Any Excess Funds Remaining After the Sale of Foreclosed Property"
Before the Committee on Taxation.

Date of Public Hearing: February 7, 2023

Senator Grohoski, Representative Perry, and members of the Joint Standing Committee on Taxation:

My name is Jonathan Selkowitz. I am the Managing Attorney for Pine Tree Legal Assistance's (Pine Tree) Consumer and Foreclosure Prevention Unit. I am grateful for the opportunity to offer testimony regarding LD 101, and I apologize that a court-conflict prevents me from testifying in person today.

I have been asked by Representative Perkins to share Pine Tree's perspective on this bill and I am speaking today on behalf of Pine Tree.

Pine Tree is a statewide nonprofit organization that provides free legal services to low-income people throughout Maine. Representing homeowners to avoid losing their homes to municipal tax foreclosures has long been an area of focus for Pine Tree. Pine Tree handles approximately 50 cases per year involving municipal tax delinquency and foreclosure, including representing homeowners in abatement applications, challenging the validity of tax foreclosures, and counseling clients. Based on this deep and broad experience, Pine Tree views Maine's current municipal tax enforcement regime as overly harsh, particularly to elderly and poor residents, and likely in violation of the Maine and United States Constitution.

THE CURRENT PROPERTY TAX FORECLOSURE LAWS ARE UNNECESSARILY SEVERE, STRIP POOR HOMEOWNERS OF THEIR MOST VALUABLE ASSET, AND LACK EFFECTIVE SAFETY VALVES.

Under Maine's current property tax foreclosure process, a municipality automatically becomes the owner of the property when an unpaid tax bill is not paid in full within 18 months after the bill has been turned into a lien; the process takes about 24-30 months from the bill being issued to the town automatically foreclosing the lien. Once the municipality automatically forecloses, it owns the property outright and can do with it as it pleases. There's no obligation under state law to sell the property, there's no process by which a sale must be conducted, and there's no requirement to compensate the homeowner for the amount of equity they have built up in their home above what is owed for taxes and foreclosure costs.

This stripping of equity can be a draconian penalty for a modest debt. This past fall, two Pine Tree clients from rural Hancock County who are disabled and cared for their elderly parent were subject to a property tax lien foreclosure that had a lien balance of around $430. The total tax debt at the time was around $2,630. The town valued the property at $41,100 but sold it at a poorly publicized auction for $5,860—only $718 over the minimum bid amount. The clients were then summarily evicted by the purchaser.

Not all tax lien foreclosures end this way. Many towns will allow homeowners to redeem the property post-foreclosure, although there is no right to such redemption. Some homeowners are granted poverty abatements. However, towns possess nearly absolute discretion whether to grant or deny a poverty abatement. Pine Tree has been advise by a few towns that they "never grant abatements."

Though there have been recent interventions to avoid a homeowner's dramatic loss of their equity through this process, particularly for elderly homeowners, those interventions do not go far enough. The 2017 amendments to the tax foreclosure process created an option to sell elderly Mainer's foreclosed homes through a broker with surplus funds going to the former owners. But this process requires opt-in by the elderly owners, who frequently struggle to satisfy technical legal processes like this. A town may also revert back to the traditional process if they cannot quickly find a broker or sell the property. The recently implemented State Property Tax Deferral Program provides some relief, but does not help the most vulnerable homeowners because that program requires that the taxes are current. Most Maine homeowners with property tax liens are in a perpetual cycle of tax delinquency, and therefore will never qualify for those programs.

Finally, actual tax foreclosures in Maine almost always impact low income homeowners who are either elderly and/or disabled and who own their homes unencumbered by other large liens. If a homeowner has a mortgage, the mortgage company often escrows the tax payments and advances those payments if a homeowner falls behind on their mortgage. In Pine Tree's experience, clients seeking assistance with property tax liens almost always own their homes outright and are on low, fixed incomes due to retirement or disability. This reality means that if a homeowner loses their home due to tax foreclosure, their alternative is to find rental housing that is subsidized by taxpayers. Not only does this process result in a long-term financial burden on taxpayers, it adds unnecessary pressure on the ongoing housing crisis in Maine. It makes far more sense to keep these people in their homes paying what they can afford for property taxes than to expend taxpayer resources to find alternative rental housing for the indefinite future.

MAINE'S TAX FORECLOSURE PROCESS MAY BE UNCONSTITUTIONAL

Though many states have similar tax foreclosure processes, the United States Supreme Court is currently considering whether such a process is an unconstitutional taking without just compensation under the 5th Amendment and an excessive fine under 8th Amendment. *See Tyler* *v. Hennepin County*, No. 22-166 (U.S. S.Ct.), *Certiorari Granted*. The Maine Constitution has comparable provisions.

The theory is straight forward: if a town takes a $50,000 or $100,000 property to repay itself a $2,000 tax debt, it has taken the person's home equity without anything close to fair compensation. The Town has also levied an excessive fine that is not reasonably related to the town's actual costs or reasonably proportional to the legal deviation by the homeowner.

This committee may want to tailor any legislative amendments to Maine's tax foreclosure process to the ultimate decision in *Tyler v. Hennepin County*.

LD 101 IS A NECESSARY STARTING POINT IN REFORMING THE TAX FORECLOSURE PROCESS

Pine Tree supports LD 101's premise of promoting fair compensation for the often-substantial equity a homeowner loses in a tax foreclosure. But the reforms need to go further.

First, instead of surplus sale funds being given to the former homeowner, towns should compensate the former owner for the difference between the fair market value of the property and the taxes owed plus costs. Without such a protection, municipalities will continue to sell foreclosed properties for the amount of the taxes owed. One way to achieve this would be to expand and improve the process available to senior citizens under 36 M.R.S. § 943-C. Another way would be to make a presumption that the most recent tax assessed value is the fair market value.

Second, municipalities should retain the flexibility they have now to work out various kinds of arrangements with delinquent taxpayers. The provision in LD 101 requiring compensation to homeowners at 180 days after the tax foreclosure may disincentivize towns from allowing homeowners to redeem post-foreclosure through payment plans. One easy way to avoid such a disincentive would be to have the compensation obligation only be triggered when a municipality opts to sell a foreclosed property or seeks to evict or eject the homeowner-occupant.

Thank you for your consideration, and please let me know if I may provide any additional information that would assist the Committee.

Jonathan Selkowitz,

Pine Tree Legal Assistance

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LD 101

I unfortunately have a court-conflict and cannot appear in-person to provide my testimony. I submit written testimony in lieu of in-person testimony. Thank you.