



HOUSE OF REPRESENTATIVES

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Senator Carney, Representative Moonen, esteemed members of the Joint Standing Committee on the Judiciary. I am Rep. Jack Ducharme and I am a cosponsor of the LD 2240, An Act to Implement Protections Against Deed Fraud. For those that do not know, prior to my service in the Maine Legislature, I was Regional Vice President for Skowhegan Savings. During my 20+ year career, I was responsible for many mortgage loans and purchases of property in the area and have a real understanding of that process. Further, since my retirement, I have obtained my Associate Brokers license to sell real estate and do that in my spare time from the Legislature. I apologize that I was not able to testify in person as I am Republican Lead on Appropriations and we were in public hearing on the budget at the same time as your hearing.

Deed fraud is a problem across the United States and is becoming an ever-larger problem in Maine. The advent of widespread electronic filing systems for filing important documents with Maine’s registries of deeds has helped facilitate much of this activity.

Maine is a “race-notice” state, meaning that when property transfer documents are executed between a buyer and a seller, the documents must be recorded with a county Registry of Deeds office to be considered valid. “Race-Notice” means that the first documents filed are considered the prevailing document. Therefore, it is critical that, in most real estate transactions, that the documents be filed as soon after execution with the Registry of Deeds. This is accomplished using electronic filing systems in most counties and in many states.

What has been happening across the nation is that fraudsters have figured out that the Registry of Deeds has no ability to circumvent the rules or to vet the veracity of the documents nor do they have the time to investigate them. They must simply record the documents received in the order presented. That establishes the official ownership of the properties. Because most of the deed records are available electronically people can look up deed records online and see who owns specific properties. A person wishing to commit fraud on a property merely has to find a property that they like, have a new deed created conveying the property from the current owner to themselves, forge the signature

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of the current owner on the deed of conveyance and get it recorded at the registry of deeds in the county where the property is located. Owners may not even know that their property rights have been taken away unless they have occasion to research their deed or if someone shows up on their doorstep stating that they now own the property. Once that deed is recorded, it then becomes the responsibility of the prior owner to prove that the property conveyance was a forgery.

Registry officials have no way of knowing if the deed of conveyance was a forgery because they are being recorded by electronic means. As long as there is an official notarization affixed to the deed attesting to the signatures, the deed is recorded. Further, registry officials have no way of knowing or even figuring out if these transactions are fraudulent or not without extensive investigation, a process that they do not have the time, nor are they equipped to do. Their job is to get the document recorded. The advent of remote notarization has exacerbated this problem. When we have notaries from Maine attesting to documents, it is relatively easy to track them down. Out of state remote notarizations are significantly more difficult.

LD 2240 proposes to make it a Class B crime to record or attempt to record a false deed. This is a positive step toward helping Maine's Registrar's of Deeds in combating this problem. Current Maine law has a graduated class system based on the value of the instrument forged. This would make any deed fraud a Class B crime regardless of value. While a positive step, this still requires the Registrar to contact the local District Attorney, file the claim, have the claim investigated and await the adjudication of that claim. Given the current backlogs in the legal system, this could take months if not years. We must provide a better process to stop these things.

LD2240 also proposes a surety bond from Realtors to guarantee against fraudulent deed activity, particularly from out of state. I do NOT support this portion of the bill. The vast majority of Maine Realtors and even National Realtors are honest, trustworthy businesspeople. The issue of deed fraud is equally abhorrent to them as it is to the property owner. Placing the burden of obtaining a \$25,000 surety bond on them is merely window dressing to say we're doing something about this. It will NOT stop this activity from happening because most of this activity happens outside of the Realtor network.

The bill does not address title companies. Title companies handle most of the real estate transactions in Maine. These companies have offices in many areas and perhaps one or two lawyers reviewing all the deeds that they work on. Having worked as a closing agent for a local attorney as well as a lender in a local bank, I have seen many deeds that were not fraudulent but were just wrong and conveyed property not intended. Unless one fully researches the title, there is a chance that this can happen. Maine law does NOT require that a lawyer do a title search prior to the conveyance of property. Many properties are sold on a "back of the envelope" bill of sale and a deed drafted using copy and paste from the prior deed. If there is a problem, it may be years before it is uncovered. Title agents simply review ID's and attest that the person presenting the document

has an ID that says they are who they say they are. Many, perhaps even some on this committee can attest to the fact that ID's can be easily forged.

Deed fraud is a significant problem in the United States. As property values increase in Maine, it is becoming more of a problem here. Imagine owning a property for years and waking up some morning to find out that someone from another state recorded a deed on your property showing your signature, that conveyed that property to another. Then imagine that YOU have to do the work to "reclaim" your right to the property. Mainers can lose millions of dollars in property equity and spend thousands of dollars to prove their ownership. We must do something.

I believe that LD 2240 exposes the problem of deed fraud in Maine. I agreed to sponsor this bill because as a Realtor and a former lender, I know this is a problem. I do not believe that LD 2240 will fix the problem. I propose that this bill be converted to a Resolve to Implement Protections Against Deed Fraud". This issue is too important to pass new rules without doing a study of the issue and coming up with real solutions. Many states are looking at this and there is much available data to review. I urge you to convert LD 2240 to a Resolve and pass it to study the issue to come up with the right solution for Maine people. This study should be assigned to the Office of the Attorney General as this issue clearly deals with fraud and in most cases, interstate fraud.

Thank you,

Jack Ducharme

Rep. Jack Ducharme
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