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**"An Act to Amend the Process for the Sale of Foreclosed Properties Due to Nonpayment of Taxes" (HP1452)(LD2262)**

**Written Testimony  
To Maine Legislature Joint Standing Committee on Taxation re:  
LD 2262, An Act to Amend the Process for the Sale of Foreclosed Properties Due to  
Nonpayment of Taxes**

**March 14, 2024**

Dear Chairs Grohoski and Perry and members of the Joint Standing Committee on Taxation:

Thank you for the opportunity to offer testimony on behalf of NCLC in favor of LD 2262, An Act to Amend the Process for the Sale of Foreclosed Properties Due to Nonpayment of Taxes with certain proposed amendments. My name is Andrea Bopp Stark. I grew up in Portland and now live in Saco, Maine. I am a staff attorney at the National Consumer Law Center (NCLC), a nonprofit organization located in Boston that uses its expertise in consumer law to work for consumer justice and economic security for low-income and other disadvantaged people in the U.S.

Our Housing Unit works on preserving homeownership and inter-generational wealth, particularly among vulnerable populations such as people with lower incomes, older adults, and people of color. For at least fifteen years, we have advocated for stronger preventative protections for homeowners in the property tax foreclosure process. In 2012 [John Rao](#) from NCLC published [The Other Foreclosure Crisis: Property Tax Lien Sales](#)<sup>1</sup> which analyzed ways in which local governments can assist homeowners who have payment problems, without also increasing the cost of collection or limiting tax revenues.

During the COVID-19 pandemic, many homeowners struggled to keep up financially on their daily necessities, let alone their property taxes. In addition, housing values have soared causing property taxes in many cities and towns to increase. In May, 2023, the Supreme Court issued its decision in [Tyler v. Hennepin County, Minnesota](#)<sup>2</sup> which found that it is unconstitutional to retain any excess value in a home above the tax debt owed after a property is sold at a tax sale. Knowing that many states would need to reexamine their tax sale statutes in light of the decision,

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<sup>1</sup> John Rao, The Other Foreclosure Crisis: Property Tax Lien Sales, National Consumer Law Center, (July 1, 2012): <https://www.nclc.org/resources/the-other-foreclosure-crisis-property-tax-lien-sales/>

<sup>2</sup> [https://www.supremecourt.gov/opinions/22pdf/22-166\\_8n59.pdf](https://www.supremecourt.gov/opinions/22pdf/22-166_8n59.pdf)

NCLC began to take another close look at ways to prevent property tax foreclosures and preserve homeownership. See NCLC's [What States can do to Reduce Property Tax Foreclosures.](#)<sup>3</sup>

One particularly vulnerable population in the tax foreclosure process are heirs who inherit property that is passed down informally among family members, most often without a will and without going through probate. Because the estate does not go through probate, the heirs are not on the deed and do not have "record title." They are often ineligible for certain relief programs because they cannot provide a deed in their name to show ownership. Yet, they are the owners of the property under Maine law and should be entitled to the same rights as the deceased former owner had. In research conducted by [Professor Heather Way](#) and the Housing Policy Clinic at The University of Texas School of Law, they found in certain counties, 52% of property tax foreclosure sales were heirs properties. Older adults are also disproportionately impacted by heirs property challenges. The majority of heirs are over age 50 when they inherit property, and a quarter are over age 61 at the time of inheritance.<sup>4</sup> As the oldest state in the nation, Maine property tax foreclosure policies should protect homeownership for older adults and preserve this intergenerational wealth.

The Report of the Working Group to Study Equity in the Property Tax Foreclosure Process submitted to this Committee on January 15, 2024 is an important start to providing policies that protect Maine homeowners and their hard-earned equity. A subgroup of advocates from Legal Services for the Elderly, Pine Tree Legal Assistance, Maine Equal Justice, and the National Consumer Law Center convened after the Working Group submitted the Report to review and analyze the suggestions.

We support the recommendation to require municipalities to engage in the alternative sale process for all sales of tax-acquired properties instead of placing an undue burden on homeowners to respond to a notice with a written demand for an alternative sale. Homeowners facing the inability to pay their property taxes and the threat of losing their home may not have the capacity or ability to process a notice from the municipality and draft and deliver a written demand letter within a short window of time. This is particularly true for older adults who may be technologically or physically unable to do so.

The subgroup recommends certain amendments to the proposed language that are attached in a redlined version to this testimony. Defining a "former owner" to include a deceased former owner's heirs, devisees or personal representatives in the current statute is very helpful to ensure heirs receive notices of their rights. To ensure that heirs indeed have access to excess sale proceeds, we recommend language to clarify that heirs are entitled to the excess proceeds and to specify how they can access such proceeds, including documentation that will be accepted to

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<sup>3</sup>[https://library.nclc.org/sites/default/files/field\\_media\\_file/2023-10/What-States-Can-Do\\_Property-Tax-Foreclosures.pdf](https://library.nclc.org/sites/default/files/field_media_file/2023-10/What-States-Can-Do_Property-Tax-Foreclosures.pdf)

<sup>4</sup> Tanza Loudenback, "The Typical American Heir is Now a Middle Class 50-something Who Puts the Money Towards Retirement," Business Insider (Nov. 21, 2019), <https://www.businessinsider.com/personal-finance/older-americans-get-more-inheritances-use-forretirement-2019-11>; See also Nkethiah Berko, Sarah Bolling Mancini, Keeping it in the Family: Legal Strategies to Address the Challenge of Heirs Property and Prevent Home Loss, National Consumer Law Center, (Jan. 2024): <https://www.nclc.org/resources/keeping-it-in-the-family-legal-strategies-to-address-the-challenge-of-heirs-property-and-prevent-home-loss/>

prove ownership. Acceptable documentation should include: (a) a sworn affidavit or upon declaration under penalty of perjury that they are an heir of the deceased former owner; (b) a copy of the former owner's death certificate; (c) if one exists, a copy of the former owner's will; and (d) a statement that the estate has not been probated. Without this clarification language, heirs may face difficulties accessing excess proceeds to which they are entitled. Where there are multiple heirs with an ownership interest, we propose that there be a presumption that an heir or heirs who have resided in the property as their primary residence for more than a year at the time of a sale or retention have authority to receive the sale proceeds on behalf of all heirs, in the absence of a written agreement between heirs or objection by a non-resident heir. This would address the issue of having multiple heirs with ownership rights who may not reside in the property or whose whereabouts may not even be known.

We recommend that, if the property does sell on the open market through the alternative sale process, the municipality be required to sell the property through a public sale to the highest bidder, unless they retain the property. If left to the discretion of the municipality, the property could be sold for insignificant amounts, much lower than its actual value. This may not be considered "just compensation" under the Takings Clause of the Fifth Amendment. Conducting a proper public sale, with adequate notice and procedures to eliminate bias as we recommend, is one way to encourage a sale price that is more in line with the actual value of the property and preserve some of the equity in the property.

We recommend that the provision allowing for "an administrative fee equal to 10% of the property taxes owed" be removed. The municipality will be made whole after the sale by receiving the taxes owed, plus interest, plus "any other expenses incurred by the municipality in selling, or maintaining, or improving the property, including, but not limited to, reasonable attorney's fees." This provision encompasses any administrative costs incurred by the municipality. There is no need to provide an extra 10% of the taxes owed from the homeowner's equity to the municipality. It would enable the municipality to make a profit on each sale at the expense of a homeowner who just lost their home and in essence, create a punitive penalty to be incurred by the homeowner.

We also recommend that excess proceeds that are not claimed be transferred to Maine's unclaimed property program. Just as with other property and monies that remain unclaimed by Maine residents, the excess surplus proceeds would be available for an additional time for the rightful owner to claim. The excess proceeds should not be treated differently than other unclaimed property in Maine.

Thank you for your consideration of this testimony. Please feel free to contact me at [astark@nclc.org](mailto:astark@nclc.org) if you have any questions.

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