



Testimony of Jonathan Selkowitz, Esq.
Pine Tree Legal Assistance, Inc.

In Favor of LD 2262 “An Act to Amend the Process for the Sale of Foreclosed Properties
Due to Nonpayment of Taxes”

Before the Committee on Taxation.
Date of Public Hearing: March 14, 2024

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 2262. I have been asked by Representative Hasenfus 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. For many years, Pine Tree has assisted low-income people in avoiding losing their homes to municipal tax foreclosures. 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.

Pine Tree greatly appreciates the thoughtful and thorough report of the Working Group to Study Equity in the Property Tax Foreclosure Process that resulted in this bill. We support the changes proposed in the bill with a few proposed amendments contained in the attached redline draft. These modest proposed changes are the result of analysis and consultation from homeowner advocates with particular experience and expertise in property tax foreclosures, including Maine Equal Justice, National Consumer Law Center, Legal Services for Maine Elders, and Pine Tree.

Nearly all the clients seeking Pine Tree’s help for tax foreclosures are elderly or disabled residents on a fixed income who own their property unencumbered by a mortgage. The forfeiture of a homeowner’s equity due to unpaid property taxes is not merely a violation of their State and Federal Constitutional rights, it directly contributes to the affordable housing crisis in Maine. The procedure for selling tax-foreclosed homes enacted last session helps to avoid exacerbating the housing crisis by protecting what is often substantial equity a homeowner can use for alternative

housing, and by also encouraging homeowners and municipalities to work together to redeem the property through repayment plans or other programs. Pine Tree, therefore, supports the recommendation to give municipalities the option to either sell a tax foreclosed property back to the prior owner or their heirs, or maximize the equity by selling the property on the market using a licensed real estate agent without requiring the former owner to opt into this process.

We recommend expanding the timeframe to complete a sale using a real estate agent from 6 to 12 months to maximize the amount of equity protected through liquidation and to account for various factors that could extend the time to achieve a fair purchase offer. Based on our experience, an auction sale process severely depresses purchase prices, and therefore an auction process should only be used after thoroughly exhausting efforts to allow the prior owner to redeem or sell the property through a real estate agent. For example, prior to the enactment of the mandatory sale procedures last session, Pine Tree assisted a disabled couple in rural Hancock County who lost their home to a foreclosure of a \$430 property tax lien. 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.

We also recommend amending 14 M.R.S. § 4422 to protect the excess proceeds of a tax foreclosure sale to the same extent those proceeds would be protected under the “homestead exemption,” so that the former owner can dedicate those proceeds to replacement housing. We feel our additional recommendations adequately balance the dual public interests of maintaining adequate municipal revenue and avoiding needless forfeiture of equity, which in turn often leads to additional public expenditures to house the people who are most commonly subject to tax foreclosures.

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

Attachment to Testimony of Jonathan Selkowitz: Proposed amendments to LD 2262: "An Act to Amend the Process for the Sale of Foreclosed Properties Due to Nonpayment of Taxes"

Section 1. §943-C. Sale of foreclosed properties

Notwithstanding any provision of law to the contrary, after the foreclosure process under sections 942 and 943 or sections 1281 and 1282 is completed and the right of redemption has expired, if a municipality chooses to sell to someone other than the former owner, the municipal officers or their designee shall ~~notify the former owner of the right to require the municipality to~~ use the sale process under subsection 3. For the purpose of this section, "former owner" means the owner or owners of record at the time of foreclosure or, if deceased, the former owner's heirs, devisees or personal representatives. ~~The notice must be sent by United States Postal Service certified mail, return receipt requested, and first class mail to the last known address of the former owner.~~ If the municipality agrees to sell the property back to the former owner, the alternative sale process under this section does not apply. If the sale to the former owner is not completed, the requirements of this section are reinstated.

1. Subject property. This section governs the sale of all real property tax-acquired through the tax lien mortgage foreclosure process under sections 942 and 943 or sections 1281 and 1282.

2. Notification; appeal. At least 90 days prior to listing property for sale, the municipal officers or their designee shall send a written notice to the last known address of the former owner, by United States Postal Service certified mail, return receipt requested, and first-class mail, of ~~their right to require use~~ the sale process described in subsection 3. The State Tax Assessor shall prepare ~~application forms, notices and instructions~~ that must be used by municipalities to inform former owners of ~~their right to apply for~~ the sale process provided under subsection 3.

3. Sale process requirements. ~~If the former owner submits a written demand within 90 days after the notification in subsection 2 that the sale process of this subsection be used~~ When selling a tax-acquired property, the municipal officers or their designee shall:

- A. List the property for sale with a real estate broker or agent licensed under Title 32, chapter 114 who does not hold an elected or appointed office in the municipality and is not employed by the municipality;

B. Sell the property via quitclaim deed to the successful buyer at the highest price at which the property is able to sell, ~~or the price at which the property is anticipated by the real estate broker to sell within 6-12 months after listing; and~~

C. Pay to the former owner any sale proceeds in excess of:

- (1) The sum of all taxes owed on the property;
- (2) Property taxes that would have been assessed on the property during the period following foreclosure when the property is owned by the municipality;
- (3) All accrued interest;
- (4) Fees, including advertising, mailing, recording, property listing and real estate broker or agent's fees to the extent that those costs are not covered in the broker or agent fee agreement;
- (5) Any other expenses incurred by the municipality in selling, ~~or maintaining, or improving~~ the property, including, but not limited to, an administrative fee equal to 10% of the property taxes owed and reasonable attorney's fees. Expenses for improving or maintaining the property shall be limited to those expenses necessary so that the property is in compliance with local building codes;
- (6) The cost to the municipality of the lien and foreclosure process, including, but not limited to, reasonable attorney's fees; and
- (7) Unpaid sewer, water or other utility charges and reasonable fees imposed by the municipality.

D. If the estate of a deceased former owner is not probated, a municipality shall allow an heir, devisee, or personal representative to receive any excess sale proceeds as calculated in subsection 3, paragraph C if they provide (a) a sworn affidavit or upon declaration under penalty of perjury that they are an heir, devisee, or personal representative 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 is not being has not been probated. In the case of multiple heirs, there is a presumption that an heir or heirs who have resided in the property have resided in the property as their primary residence for more than a year at the time of the sale or retention have authority to receive the excess sale proceeds on behalf of all heirs, in the absence of a written agreement between heirs or objection by a non-resident heir.

~~If the municipal officers are unable to list or sell the property under the requirements of paragraphs A and B, or if the property tax payer does not request that the property be sold according to the sale process in this subsection, the municipal officers may sell the property in any manner authorized by the municipality's legislative body, if the municipal officers pay the former owner any excess sale proceeds as calculated in paragraph C.~~

4. Effect of inability to contract or sell property. ~~If, after attempting to contract with at least 3 real estate brokers or agents who meet the requirements of subsection 3, paragraph A, a municipality is unable to contract with a real estate broker or agent for the sale of the property as described in subsection 3 or the broker or agent is unable to sell the property within 126 months after listing, the municipal officers may shall sell the property at a public sale with the property selling to the highest bidder unless they use the procedure to retain the property in section 4-A. The public sale shall be conducted through an auctioneer licensed with the state of Maine who may not hold an elected or appointed office in the municipality or be otherwise employed by the municipality. Notice of the date, time, and manner of the public sale shall be provided via first class and certified mail, return receipt requested, to the former owner at least 90 days before the sale. in any manner authorized by the municipality's legislative body, provided that T~~the municipality shall pay the former owner any excess sale proceeds as calculated in subsection 3, paragraph C.

4-A. Retention of tax-acquired property. ~~If a municipality chooses to retain a tax-acquired property for municipal use, the municipality must procure an appraisal report from an appraiser licensed to provide real estate appraisals in Maine showing the value of the tax-acquired property being retained. The appraiser, who shall be licensed to conduct business in the State of Maine, may not hold an elected or appointed office in the municipality or be otherwise employed by the municipality. The municipal officers must pay the former owner any excess sale proceeds as calculated in subsection 3, paragraph C, substituting the value of the property as shown in the appraisal report conducted within 90 days of the payment to the former owner, or the assessed value for the property, whichever is higher, for the selling price of the property.~~

5. Property in the unorganized territory. With regard to the sale of property acquired by the State through tax lien foreclosure in the unorganized territory, the State Tax Assessor has the obligations of a municipality under this section.

5-A. Pre-payment notice. ~~If after the sale of a tax-acquired property, there exist any excess sale proceeds as defined in subsection 3, paragraph C, then at least 30 days prior to disbursement of those excess sale proceeds to the former owner, the municipal officers must send written notice by first class mail and certified mail, return receipt requested, to the last known address of the former owner and the last known address of each record holder of an interest in the property, of the municipality's intent to pay the former owner the excess sale~~

proceeds. This notice does not limit the right of lienholders to pursue any claims to the excess sale proceeds against the former owner otherwise available by law.

5-B. Notice by publication. If the municipality is unable, after reasonable diligence, to locate the former owner of the property in order to send the notice required in subsection 5-A, the municipality shall place a notice, once a week for 3 consecutive weeks, in a newspaper of general circulation in the county in which the property is located. The notice must include the name of the former owner, a description of the real estate having been sold, the amount of the excess sale proceeds, and the date by which the excess sale proceeds must be claimed.

5-C. Retention of Unclaimed proceeds. If, after provision of notice under subsection 5-B, the former owner fails to claim the excess proceeds within 18030 days of the final published notice, the surplus value shall be transferred to the state unclaimed property program set forth at Title 33, Chp. 45. the former owner's rights to the excess sale proceeds are forfeited, and the municipality may retain and expend the proceeds in whatever manner the legislative body of the municipality deems appropriate.

6. Quitclaim deed and w **Waiver of former owner.** As a condition of disbursement of excess sale proceeds to the former owner under subsection 3, paragraph C, the municipal officers may require the former owner to execute a quitclaim deed without covenant conveying any interest of the former owner in the property to the municipality and to deliver that deed before conveyance by the municipality to the buyer. Receipt of such excess sale proceeds by the former owner pursuant to this section is deemed to be a waiver of any right of the former owner to commence any action pursuant to section 946-B. Failure of a municipality to file the notice required by subsection 7 does not nullify or otherwise affect the validity of the waiver under this subsection.

7. Notice of payment of proceeds. A municipality, within 10 days of payment of any excess sale proceeds to the former owner under this section, must record in the registry of deeds of the county or registry district where the property is located a notice signed by the municipal officers. The notice must include the name of the former owner to whom the excess sale proceeds were paid, the amount of the excess sale proceeds, the date on which the excess sale proceeds were paid to the former owner, and a description of the real estate having been sold. and statement that receipt of the excess sale proceeds by the former owner is deemed to be a waiver of their right to commence any action pursuant to section 946-B.

The State Tax Assessor shall prescribe the form of the notice to be used by municipalities under this subsection.

Section 2. 14 M.R.S.A 4422(1)(C) is amended as follows:

C. That portion of the proceeds from (1) any sale of property, or (2) any money returned to the former owner pursuant to provisions of 36 M.R.S.A. 943-C, that is exempt under this section is exempt for a period of 12 months from the date of receipt of such proceeds for purposes of reinvesting in a residence within that period.