



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

Speaking in Support of LD 403 “An Act to Protect Holders of Distressed Mortgages from Fraud”
Before the Committee on Judiciary

Date of Public Hearing: February 24, 2025

Senator Carney, Representative Kuhn, and members of the Joint Standing Committee on Judiciary:

My name is Jonathan Selkowitz, and I am the Managing Attorney for Pine Tree Legal Assistance’s Consumer and Foreclosure Prevention Unit. Pine Tree was asked by Representative Daniel Ankeles to share our perspective on LD 403, and I am grateful for the opportunity share Pine Tree’s perspective on this bill. Pine Tree supports this bill with a substantial caveat explained below.

Why Foreclosure Prevention Is Important to Pine Tree Legal.

Pine Tree is a statewide nonprofit organization that provides free legal services to low-income people throughout Maine. Since 2006, Pine Tree has assisted over 2,600 Maine homeowners in their efforts to avoid foreclosure. Since I started at Pine Tree in 2016, I have assisted many hundreds of clients facing foreclosure, successfully argued important foreclosure-related cases before the Maine Supreme Court and federal court, and have been closely involved in legislative and administrative foreclosure prevention efforts. I also facilitate the Maine Housing Counselor Network, wherein I train and consult with the network of HUD-Certified housing counselors across the state who assist homeowners facing foreclosure. I have observed first-hand how crucial avoiding a home foreclosure is for the long-term financial and personal wellbeing of our clients. Almost every one of my clients who is facing foreclosure has experienced a financial hardship outside of their control. Because home ownership is the primary means for low- and middle-income families to build wealth, and because of the alarming affordable housing crisis facing the state, Pine Tree believes that our system should be designed to avoid all avoidable foreclosures of Mainers’ primary residences.

Warning Homeowners About Foreclosure Prevention Scams Is A Worthwhile Intervention.

Foreclosing on a residential mortgage is bad for the homeowner and the lender. Accordingly, most lenders have programs available to modify a delinquent loan to bring it current and sometimes provide the borrower a lower monthly payment if one is needed. Federally-backed mortgage loans, which make [up over 70% of all first lien mortgage loans](#), are subject to specific loan modification programs prescribed by federal agencies. The existence of these programs and similar portfolio-held modification programs provides scammers the opportunity to prey on

vulnerable homeowners. While these programs are free, and help to navigate these programs from HUD-Certified Housing Counselors is also free, scams have evolved to trick homeowners into paying to access these programs. Some scammers simply con borrowers into sending them money and promptly vanish. Frequently, the most egregious predators will “spoof” the phone number of a homeowner’s lender and offer a loan modification if the homeowner will send payments to an address belonging to the scammer. In the aftermath of the COVID emergency, I represented an elderly homeowner who was victimized by just such a scam. My client ended up sending about \$2,000 in gift cards to a scammer when he could have simply called his actual lender and immediately qualified for a loan modification program available to borrowers financially impacted by COVID.

The existence and prevalence of such scams are well documented. Information about the various forms of “Foreclosure Rescue” or “Foreclosure Relief” scams are published by several government agencies, e.g., [Federal Trade Commission](#), federal [Consumer Financial Protection Bureau](#), [Treasury Department](#), the [Maine Bureau of Consumer Credit Protection](#). Occasionally, such enterprises are [caught and punished](#). However, enforcement cannot catch all such scams, and vigilance by homeowners, advocates, and lenders is needed to avoid exploiting this already vulnerable population.

One of the two interventions proposed in LD 403 is to include a warning against mortgage rescue scams in the pre-foreclosure “Notice of Default and Right to Cure Letter” required by Maine law, 14 M.R.S. § 6111. Such letters must be sent to all homeowners before a foreclosure is filed. Pine Tree believes that the disclosure proposed in this Bill will provide homeowners with a helpful warning in a letter that is designed to draw the attention of the homeowner, and in Pine Tree’s experience succeeds in drawing such attention.

Requiring The Filing Of A Foreclosure Suit Within 90 Days Of The Notice of Default May Result In The Unnecessary And Costly Filing Of Lawsuits Or Updating Notices of Default.

Under the current law, 14 M.R.S. § 6111, a lender cannot file a foreclosure suit or accelerate a loan balance unless it has provided the borrower with a Notice of Default which gives the borrower 35 days to cure the default. LD 403 proposes to further require that a foreclosure suit must be filed within 90 days of the Notice of Default. By imposing this 90-day expiration of filing a foreclosure suit, this provision may ensure that a new, updated Notice of Default is issued if suit has not been filed within 90 days, but it may also push lenders to file suits that they would otherwise not have filed. There is always a large up-front cost to filing a foreclosure lawsuit, and there is often a similar cost to sending a Notice of Default. Both such costs are passed on to the borrower. One of the purposes of the Notice of Default, in addition to advising borrowers how to cure the default, is to notify the borrower how they can seek a loan workout (commonly a loan modification) to bring the loan current and avoid a foreclosure. By incentivizing the filing of suit within 90 days of the Notice of Default, the unintended consequence may be to increase the cost of curing or modifying the loan.

Also, two federal prohibitions to filing foreclosure suits may impact this 90-day deadline for filing suit. First, most lenders are prohibited from filing a foreclosure suit until a loan is 120 days or more delinquent. [12 C.F.R. § 1024.41\(f\)\(1\)](#). But they are not prohibited from sending a Notice of Default as soon as a loan enters default, which can be as soon as a payment is 10 or 15 days late. Also, a lender may not simultaneously review a homeowner for a loan modification or other default workout and file a foreclosure lawsuit—a practice referred to as “dual tracking.” [12 C.F.R. § 1024.41\(f\)\(2\)](#). The interaction between these federal timing rules and the 90-day deadline proposed in this Bill may likely lead to the issuance of multiple, updated Notices of Default, which can mean additional costs to the borrower. It is Pine Tree’s opinion that the benefits gained by requiring updated Notices of Default every 90 days will, in most instances, be outweighed by the costs of either a foreclosure suit filing or updated Notice of Default.

Our Request – Amend This Bill To Require Only The Foreclosure Rescue Scam Warning, Or To Expand the Deadline To File A Foreclosure Lawsuit, And Vote Ought To Pass.

Pine Tree supports the addition of a warning against foreclosure rescue scams in the Notice of Default. Pine Tree further believes that if a deadline to file a foreclosure suit is imposed, it should be much longer than 90 days after the Notice of Default is issued, and no sooner than 180 days. Pine Tree, therefore, asks that this committee amend LD 403 accordingly, and vote “ought to pass” the Bill as amended.

Thank you very much for your consideration, and please let me know if I can provide any additional information relating to this Bill.

Jonathan Selkowitz,

Pine Tree Legal Assistance