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Written Testimony
To Maine Legislature Joint Standing Committee on Taxation in opposition to LD 399, An Act to Amend the Laws Regarding the Retention of Proceeds from Municipal Foreclosures

March 4, 2025

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

Thank you for the opportunity to offer testimony on behalf of the National Consumer Law Center in opposition to LD 399, An Act to Amend the Laws Regarding the Retention of Proceeds from Municipal Foreclosures. My name is Andrea Bopp Stark, a proud Maine resident with deep roots in Portland and Saco, and a senior attorney at NCLC, where we are dedicated to advancing economic justice for vulnerable populations across the nation.

For over fifteen years, NCLC has engaged in rigorous advocacy and scholarship concerning the property tax foreclosure process, recognizing its profound impact on intergenerational wealth and community stability. Our publications, including John Rao's seminal work on property tax lien sales[1] and my co-authored analysis of heirs property foreclosures[2], have consistently underscored the need for preventative measures and equitable outcomes. NCLC has published extensive articles, issue briefs, and reports on helping homeowners facing property tax foreclosures and heirs property issues that can be found on our digital library in the Housing Toolkit.[3]

LD 2262, a product of extensive stakeholder engagement and compromise, emerged from the Maine Revenue Services working group's thorough examination of equity issues in the wake of the U.S. Supreme Court case *Tyler v. Hennepin County*.[4] The Court 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.

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[1] 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/

[2] Andrea Bopp Stark, Odette Williamson, Property Tax Foreclosures On Heirs Property: The Devastating Consequences And Recommendations For Prevention. https://library.nclc.org/sites/default/files/field_media_file/2023-08/202308_Property-Tax-Foreclosures-on-Heirs-Property.pdf

[3] https://library.nclc.org/housing-toolkit

[4] Tyler v. Hennepin County is 598 U.S. 631, 143 S. Ct. 1369 (2023).

This landmark decision affirmed the fundamental principle that the retention of surplus equity by municipalities constitutes an unconstitutional taking. LD 2262 addressed this in part by adding a provision that, if, after the required notice was provided, a former owner fails to claim the excess sale proceeds within 30 days of the final published notice, the municipality shall transfer the excess sale proceeds to the Maine Unclaimed Property Fund. This provision was agreed upon by both sides and ensures a transparent and accessible mechanism for rightful owners to recover their assets.

LD 399, in its attempt to repeal this carefully negotiated provision, represents a significant regression in our commitment to constitutional principles and wealth preservation. The assertion that the current process is unduly cumbersome lacks empirical support and fails to acknowledge that LD 2262 was passed not even one year ago. The proposed amendment would suggest that administrative inconvenience justifies the forfeiture of constitutionally protected property rights.

Furthermore, LD 399 disregards the inherent vulnerabilities of specific homeowners. Seniors who may be temporarily displaced due to health crises, heirs entangled in the complexities of informal property transfers, and low-income families relying on home equity as a financial lifeline are disproportionately impacted by this legislation. The proposed amendment not only undermines their financial security but also perpetuates systemic inequities by effectively transferring wealth from vulnerable homeowners to the municipalities.

In the *Tyler v. Hennepin* matter, Mrs. Tyler had moved into an assisted living facility and was no longer living in her home when the town sold her home and retained the surplus equity. This could often be the case in Maine, the oldest state in the United States based on median age. Owners may temporarily live in assisted living, rehabilitation facilities, or nursing homes and not be aware of the property tax foreclosure on their property. By the time they do become aware, if the money has transferred to the municipality, they would have lost all of the hard-earned equity they built up living in the home for many years. This could be the source of funds they counted on to pay for assisted living or nursing care that has now been ceded to the town and is inaccessible to them. The current process prevents exactly this type of scenario from occurring by providing access to the surplus fund for former owners indefinitely.

Heirs who inherit the property without a will are also at risk of losing the surplus equity if it is retained by the municipality. Heirs property is a 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. Research conducted by Professor Heather Way and the Housing Policy Clinic at The University of Texas School of Law found that in certain counties, 52% of property tax foreclosure sales were heirs properties.[5] In one recent study, the Housing Assistance Council found that 616 properties they identified as heirs property in Maine had a total assessed value of $55 million.[6] Older adults are also disproportionately impacted

[5] Heather Way, The Intersection of Residential Heirs' Property and Property Tax Foreclosure, The University of Texas School of Law Center of Excellence for Housing and Community Development Policy Research (Nov. 2024) https://law.utexas.edu/faculty/uploads/publication_files/way-final-hud-project-report-heirs-property-and-tax-foreclosures.pdf

[6] A Methodological Approach to Estimate Residential Heirs' Property in the United States, The Housing Assistance Council (December 2023) https://www.fanniemae.com/sites/g/files/koqyhd191/files/2024-04/heirs-property-research-report.pdf

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.[7] The transfer of unclaimed surplus to the Unclaimed Property Fund, as mandated by LD 2262, ensures that these funds remain accessible to rightful owners, regardless of their immediate circumstances, thereby mitigating the risk of inadvertent forfeiture and preserving intergenerational wealth.

The process of cutting off the former owner's access to the surplus fund may also cause another constitutional issue. The surplus equity after a sale belongs to the former homeowner; it is equity that they built in their home and are legally entitled to retain after the tax debt and related charges are paid. This money does not belong to the municipality and should be made available to the former owner, or their heirs to ensure their constitutional rights are preserved. Maine's former law that enabled the municipality to retain the excess equity after a property tax foreclosure sale was unconstitutional in light of *Tyler*. LD 2262 remedied this by requiring the surplus to be returned to the former owner, and remain accessible through the Unclaimed Property Fund. To now take a step back and deviate from this established framework, without compelling evidence of systemic failure, is both unwarranted and potentially unconstitutional.

In conclusion, we urge the committee to reject LD 399 because it not only undermines the carefully crafted protections of LD 2262 but also places Maine's most vulnerable residents at risk of loss of their hard earned equity and raises serious constitutional concerns.

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

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[7] 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-propert y-and-prevent-home-loss/