

LD 1841 – An Act to Modify the Process of Selling Tax-acquired Properties

Testimony of John Brautigam, Esq. for Legal Services for Maine Elders Joint Standing Committee on Taxation

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Senator Grohoski, Representative Cloutier, and members of the Joint Standing Committee on Taxation.

My name is John Brautigam, and I offer this testimony on behalf of Legal Services for Maine Elders. LSE provides free legal help for Mainers aged 60 and older when their basic human needs are at stake. We respectfully oppose LD 1841.

LD 1841 proposes to amend provisions governing municipal tax foreclosure found in Title 36, Section 943-C.

In the past two years, the issue of municipal tax foreclosure has been the subject of a major decision of the United States Supreme Court, a 2023 act of the Legislature, an extensive stakeholder process coordinated by Maine Revenue Services, and an equally extensive legislative process just one year ago. In addition, less than two months ago this Committee considered a bill on this subject – LD 745 – and voted unanimously ought not to pass. **This topic has been thoroughly considered and there is no reason to reverse course.** 

We would like to remind the committee of four important points regarding tax foreclosure sales:

- 1. The residual value of residential property belongs to the original owner who has a legal right to sale proceeds. *Tyler v. Hennepin County*, 598 U.S. 631 (2023).
- 2. If a municipality chooses to sell a foreclosed property, current law already entitles the municipality to recover all its expenses including compensation for staff time.
- 3. When a municipality decides to sell a foreclosed property, the sale process chosen matters. It should be designed to yield the full value of the property, and a conventional real estate sale is a far better mechanism than a sealed bid process to achieve that result.
- 4. The foreclosed homeowner almost always lacks legal counsel and is often distraught, financially destitute, and in a poor position to protect and preserve their rights.

With those points in mind, there are multiple reasons to reject LD 1841:

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First, Section 1 of the bill promotes the option for a former owner to walk away from their property by signing a deed in lieu of foreclosure. With a deed in lieu of foreclosure, the homeowner forfeits any claim to the property even though they may be entitled to a substantial payment as compensation for the excess value. A homeowner under duress and poorly informed about such matters may feel pressured to accept this quick and easy option. While a homeowner certainly has that right, it usually is against their own interests. Moreover, any such decision to relinquish their property right must be fully informed and consensual. We urge the committee to refrain from promoting a deed in lieu of foreclosure as a solution.

Second, Section 3 of the bill *reverses* the Committee's 2024 determination that the sealed bid process should not be available until a bona fide market sale has been given a full chance to yield results. Real estate prices in Maine remain high, and open market sales should be the first choice. Just one year ago – following extensive investigation of this issue – the Committee adopted the sale provisions in current law. We urge you not to roll back homeowner rights when the new law has barely taken effect.

Third, Section 3 would allow a municipality to establish and publicize a minimum bid equal to the municipality's expenses incurred. In many cases, the published minimum bid will be the maximum bid, or very close. The town is, in effect, signaling to the market that it has no interest in a higher bid since the minimum bid would recapture the amount that the town is entitled to. The town would have no motivation to seek more. **This would effectively strip all the equity from the foreclosed owner.** The Committee should also reject this aspect of Section 3.

Forth, **Section 6 is plainly unconstitutional.** The former owner has a constitutional property right in the surplus value following a sale. *Tyler v. Hennepin County*. Section 6 would violate that right by arbitrarily reducing the value received by the foreclosed owner by 90% in cases where the municipality retains the property for its own use or development. This cannot be squared with the Supreme Court's decision. We do not object to the municipality's ability to recoup their costs, including their staff time, as agreed upon in the 2024 legislative process and already reflected in statute. But there is no reason to effectively confiscate 90% of the foreclosed owner's property without compensation. This likely would be stricken by a court in short order.

For all these reasons and more, we urge the Committee to vote ONTP on LD 1841.