

MAINE BANKERS

Association

Testimony of William S. Kany of the Maine Bankers Association
in Support of
LD 1015

RESOLVE, ESTABLISHING THE COMMISSION TO STUDY THE FORECLOSURE PROCESS

Good afternoon, Senator Carney, Representative Moonen, and members of the Judiciary Committee. My name is William Kany. I live in Saco. I am a Senior Vice President and the in-house attorney for Saco and Biddeford Savings Institution. I have been a Maine licensed attorney since 1984 and I have handled foreclosures throughout my career. In fact, I still handle Saco and Biddeford Savings' foreclosures. I am also the chair the Maine Bankers Association's Legislative Committee and I previously chaired the MBA's Collection Committee. As a result I have been before legislative committees discussing foreclosures for over 12 years now. I am here today testifying in support of LD 1015.

It is no secret that the foreclosure process in Maine can take longer than most states in this country. When I started doing foreclosures almost 40 years ago, a foreclosure from beginning to end would take about 9 months including auctioning off the property. Today, the Consumer Finance Protection Bureau (CFPB) has mandated that we cannot even file a foreclosure in court on a mortgage on a primary residence until 120 days after the customer goes into default. We must send a borrower who is in default a 35 day notice telling them what they need to pay to bring their loan current before we can file. That letter can be sent during the CFPB's 120 day waiting period.

Once we file the foreclosure we must serve the borrower with the complaint at which time they have 20 days to file an answer. Serving someone who does not want to be served can take a long time. In most cases we then have to schedule a mediation in an attempt to try to reach some form of resolution short of an actual foreclosure judgment. Please understand that our bank, and most of the banks that are in the Maine Bankers Association, have already made many attempts to work things out with our borrowers well before a foreclosure action is commenced. However, the current foreclosure law requires mediation. Mediation follows a court date which is an informational session in which the Court informs defendants about the foreclosure process which information session may occur on the same day as the scheduled mediation or before that date.

Both the borrower and the lender are supposed to exchange financial information before mediation. Frequently, the borrower fails or refuses to provide that information prior to mediation and many mediators will require a second mediation because that information was not available. Again, lenders usually know whether their customers are capable of paying their mortgage obligations or not long before they attend mediation. It is not unusual for the parties to be required to attend 2-3 mediation sessions in an attempt to resolve a case. While court statistics assert that 70% of cases are resolved at mediation that figure does not indicate how many of those resolutions are actually agreed upon judgments for the lender. Most mediations are held at the courthouse and they are subject to mediator schedules and the availability of space at the courthouse for such sessions.

If mediation is not successful the case is placed back on the docket. The lender can then file a motion for summary judgment arguing the facts are not in dispute, and the lender is entitled to judgment as a matter

of law. Given the backlog of civil cases, it is not unusual for such motions to sit for months without a determination from the Court regardless of whether the borrower files an opposition or not, and regardless of whether or not the borrower has even answered the complaint or filed an appearance in the case.

In cases in which there are or may be factual disputes, an actual trial may be required. At that point the parties are at the mercy of the extremely heavy and backlogged court dockets. As a result it is not unusual to wait for over a year for a court date. The trials generally take less than a day, after which the judge or justice must render of judgment which, again, can take a lengthy period of time if the judge or justice has other more pressing docket matters.

If a judgment is rendered in favor of the lender then the borrower has 90 days to “redeem” the property, meaning they have 90 days to pay off the entire amount of the judgment. Statistically, I would estimate that less than 1 in a 1,000 foreclosure defendants are able to redeem the property. After the 90 day period, the lender can then advertise to auction the property. The lender must advertise the auction 3 successive weeks in a newspaper and cannot hold the auction until 30 days after the first ad and not more than 45 after that first ad with some exceptions for sale adjournments. Those ads are expensive and not optional.

After the auction occurs the purchase and sale contract usually has a term of 45 days if there is a third party buyer. In addition, at the time of the auction the borrower may or may not have vacated the property. The foreclosure judgment usually includes the court issuing a writ of possession to require the borrower to vacate the property after the redemption period expires, but then the lender has to arrange to have the borrower served with the writ to leave the property.

If you add up the time for each of these steps in the process you can see that foreclosures can take years. In the last 10 years a cottage industry of attorneys representing borrowers in an attempt to fend off foreclosures or to acquire a “free house” has sprung up. Let’s face it, if you do not pay your mortgage for months or years you should have the funds needed to hire an attorney. These attorneys, including a group called MASH, Maine Attorneys Savings Homes, can prolong foreclosures for extensive periods of time.

Banks lend out their customers’ money in order to generate income with which to pay interest on their customers’ deposits. When we are not repaid we place the return to our depositors at risk. When our recovery in a foreclosure is delayed for months or years the risk presented to a lender is magnified. At the same time, most borrowers who are being foreclosed upon realize that they will not be in that home forever so they stop maintaining their property to the detriment of the value of our collateral (the source of repayment of our depositors’ money), and that lack of maintenance can be a blight on the neighborhood. Furthermore, many properties in foreclosures are eventually abandoned by the borrowers, but we are required to complete the foreclosure process. Abandoned properties are not maintained, can freeze up in Maine, and again serve to negatively affect their whole neighborhood. Furthermore, those abandoned homes are not part of the available housing stock which we all know we need here in Maine.

I have not filed a foreclosure action for my bank since March of 2019, and we are very proud of our ability to work things out with our customers. However, when we cannot work things out for whatever reason, the prospect of taking over a year to complete a foreclosure is not good for our customers, our neighborhoods or for our housing stock. Unfortunately, however, many borrowers know about the costs and delays we will incur in going through a foreclosure, and they attempt to use that to their advantage.

The prospect of creating a commission to come up with ways to make our foreclosure process more efficient and timely is encouraging and we welcome the opportunity to participate in such a commission.