



Testimony of Jonathan Selkowitz, Esq.

Pine Tree Legal Assistance, Inc.

Speaking in Opposition to LD 1015 "Resolve, Establishing the Commission to Study the Foreclosure Process"
Before the Committee on Judiciary.

Date of Public Hearing: April 3, 2023

Senator Carney, Representative Moonen, 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 Senator Carney to share our perspective on LD 1015, and I am grateful for the opportunity explain why we oppose this proposed study as unnecessary and misplaced.

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 2,500 Maine homeowners in their efforts to avoid foreclosure. For over a decade, Pine Tree has had at least one full time attorney dedicated to defending consumers facing foreclosures. I have served in that role since 2016. I also facilitate the Maine Housing Counselor Network, wherein I train and consult with the network of HUD housing counselors across the state who assist homeowners facing foreclosure. Pine Tree's view on the Maine foreclosure process and how various factors impact outcomes is informed by this vast experience. Based on the many years of deep involvement in this crucial area of law and public policy, Pine Tree's view is that a study premised on the misapprehension that the Maine foreclosure process should be easier to complete or faster would be not only be duplicative of the 2014 commission study headed by then-Attorney General Janet Mills, but also lead to proposals that would harm homeowners.

Maine's Affordable Housing Crisis Is Detrimentally Impacting Homeowners Facing Financial Distress. Making Foreclosures Easier or Faster to Complete Will Exacerbate, Not Mitigate, that Crisis.

In this moment, Maine mortgage borrowers who are struggling financially are confronted with many elements of the affordable housing crisis. Pine Tree routinely represents families whose monthly mortgage payment for a 3-bedroom home is under \$1,500 and even under \$1,000—much lower than the market rent for a comparable home, or even a smaller apartment. I've lost

count of how many clients in recent years have told me, “I’ve been looking at rentals, and if I lose my house, we won’t have anywhere to go.” But by utilizing the mechanisms built into the foreclosure process to resolve a mortgage default, those families can ensure safe, affordable housing for many years, and even for future generations.

Further compounding this problem is the high interest-rate environment. The prevailing mortgage rates are much higher than what most borrowers have currently, which threatens borrowers struggling with their mortgage payments in two ways: First, it makes qualification for a traditional loan modification—the most common form of default workout—much less likely because historically loan modifications achieve payment relief by extending the term and lowering the interest rate to the current rate. Now, because the modified rates are higher than the borrower’s original rate, many borrowers won’t qualify without an alternative form of relief. Second, high rates contribute to the pre-existing problem of low and middle-income Mainers being priced out of homes in many areas of the state.

To the extent there is an argument that changing Maine’s process to make foreclosures faster or easier to complete will alleviate the housing crisis by creating more housing stock, the argument is based on a faulty premise. Creating an available home by foreclosing on the family who lives there will simply add one more family to the thousands struggling to find affordable housing, and likely make the property available only to a class of investors or purchasers who are not priced out of home buying.

Even when a property in foreclosure is vacant or the homeowner does not defend the case in court, this analysis does not change. First, the Legislature already enacted expedited foreclosure processes where the homeowner has not appeared in the case or consents to the expedited process, 14 M.R.S. § 6321-B, and where the property is abandoned, 14 M.R.S. § 6326. Despite the availability of these procedures, Pine Tree’s observation is that mortgage lenders rarely, if ever, use them. Moreover, Pine Tree frequently assists homeowners who have not defended their case for most of its duration because of a common misconception that there is no relief once they are sued for foreclosure.

The Foreclosure Process Is the Opportunity to Avoid Foreclosure

Expediting the foreclosure process will necessarily reduce the opportunities for homeowners to save their homes because the process presents those opportunities. Despite complaints from the mortgage industry of technical legal hoops and long timeframes to complete a foreclosure in Maine, the foreclosure process is quite easy and severely imbalanced in favor of the lender, especially when you consider what is at stake for the homeowner. If a Maine borrower becomes delinquent on their loan, the lender need only wait 85 days, give written notice of the borrower’s right to cure within 35 days, and then accelerate the entire loan balance and sue for foreclosure. The lender need only prove the borrower has not made every loan payment to date in order to win. Because of this imbalanced system, the Legislature has inserted processes to ensure homeowners get opportunities to avoid foreclosure. The notice of right to cure is the first. The

lawsuit itself is the second. Pine Tree's experience is that disputes homeowners have with their lenders are much more likely to be resolved in a lawsuit where the lender is represented by a Maine-based attorney, instead of trying to resolve it with phone calls and letters to the lender that get no traction. Third, the Court's Foreclosure Diversion Program ("FDP") mediation—enacted in 2009—has been monumentally successful in making lenders work directly with borrowers to see if they qualify for a loan workout like a modification. Even when home retention is not a feasible option, FDP mediation makes the parties discuss all options, including non-retention options, which can significantly expedite the process and avoid an evidentiary hearing.

There's no intervention (that has not already been enacted) to expedite or reduce the foreclosure process or timeline that will not reduce the opportunities for homeowners and lenders to work out a deal to avoid foreclosure. Because the foreclosure process has already been studied and no drastic changes were found to be necessary, because the Legislature already expedited the process for abandoned homes and uncontested cases, and because any further changes to the process to make foreclosures easier or quicker will necessarily harm homeowners, the proposed study is unnecessary and would be a waste of time and resources.

Any "Delay" is Largely Caused by National Banks and Servicers, Who Bring the Vast Majority of Foreclosure Suits.

Pine Tree does not accept the premise that foreclosures take longer than they should. Foreclosures are such a destabilizing force to families and communities that every effort should be made to avoid them. Maine's foreclosure process, to the extent it takes longer than other states, is designed to afford homeowners opportunities—albeit modest ones—to avoid the loss of their biggest asset and often only real wealth-building investment.

Pine Tree's experience, however, is that much of the delay is caused by the conduct of the national servicers and banks who bring most of the foreclosure suits. Based on data from the Maine Bureau of Consumer Credit Protection, since 2015 only about 11% of the mandatory pre-foreclosure notices sent to homeowners came from Maine chartered banks or credit unions. Another 5% were sent by federally chartered credit unions. The other roughly 84% of notices were sent by non-bank servicers, private label securitized trusts, federally chartered banks, and private lenders.

In Pine Tree's experience, the local banks and credit unions, who bring relatively few foreclosure suits, push their cases through the process swiftly because their lawyers and in-house staff are diligent, their documents are well-organized, and—most importantly—they opt to file summary judgment motions which avoid the need for a trial. For lots of reasons, and in various ways (which I'm happy to discuss if requested), the national mortgage servicers and banks that prosecute the bulk of foreclosures tend to take much more time to complete a foreclosure, including opting for a trial even where the homeowner is not contesting the case.

In short, mechanisms already exist to reduce the time to complete a foreclosure. Maine financial institutions typically do not experience the same timelines that the vast majority of lenders

experience because the Maine institutions utilize those mechanisms and avoid self-inflicted delays. A study will not shed any useful light on this dynamic, and the only useful proposal will be that the national servicers and banks could improve their internal systems for prosecuting foreclosures.

For these reasons I strongly urge this Committee to vote “ought not to pass” on LD 1015. Thank you for your consideration, and please let me know if I may provide any additional information that would assist the Committee.

Jonathan Selkowitz,
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