



# Maine Equal Justice

## People Policy Solutions

126 Sewall Street  
Augusta, ME 04330-6822  
TTY/Voice: (207) 626-7058  
Fax: (207) 621-8148  
www.mejp.org

**Frank D'Alessandro**  
Legal Services Director  
(207) 626-7058, ext. 202  
frank@mejp.org

**Testimony of Frank D'Alessandro,  
Maine Equal Justice  
In Opposition of LD 1015  
“Establishing the Commission to Study the Foreclosure Process”  
April 3, 2023**

Good morning, Senator Carney, Representative Moonen, and distinguished members of the Committee on Judiciary. My name is Frank D'Alessandro, and I am the Legal Services Director of Maine Equal Justice. We are a civil legal services organization, and we work with and for people with low income seeking solutions to poverty through policy, education, and legal representation. Thank you for the opportunity to offer testimony in opposition to LD 1015.

### **Why Maine Equal Justice Opposes LD 1015**

Maine Equal Justice opposes LD 1015 because there is no evidence that Maine's Foreclosure Process is a broken system in need of repair.

### **Since the Foreclosure Crisis the Foreclosure Process has been the Subject Repeated Legislative Action and a Comprehensive Foreclosure Study Conducted in 2014 Chaired by then Attorney General Janet Mills**

Maine was at the center of the “robo signing scandal” whereby Plaintiffs in foreclosure cases relied upon falsified affidavits in support of motions for summary judgments in foreclosure cases. *See FNMA v. Bradbury*, 2011 ME 120, ¶16-17, 32 A.3d 1014, 1018-19. As noted by the Law Court: “the dishonesty associated with the preparation and notarization of Stephan's affidavit [the affidavit submitted by the Plaintiff] was severe.” *Id.* at ¶ 17.

In response to the foreclosure crisis of the 2007-2009, the Maine Legislature has been intimately involved in the foreclosure process and has enacted numerous changes to the

statutes that govern the foreclosure process in the State of Maine. These changes to the foreclosure process made by the legislature include:

- Imposed heightened pleading and proof standards, *see* 2009 Me. Legis. Serv. Ch. 402, Sec. 17 (H.P. 994) (L.D. 1418) *and* 2015 Me. Legis. Serv. Ch. 229, Sec. 1 (H.P. 267) (L.D. 401) (amending 14 M.R.S. § 6321);
- Required greater financial details in pre-foreclosure notices of default and right to cure, 2009 Me. Legis. Serv. Ch. 402, Sec. 11-14 (amending 14 M.R.S. § 6111);
- Created a special process to prosecute cases where the home is abandoned, 2013 Me. Legis. Serv. Ch. 521, Sec. B-1 (H.P. 992) (L.D. 1389) (enacting 14 M.R.S. § 6326), or where the homeowner has failed to appear, 2015 Me. Legis. Serv. Ch. 243 (H.P. 580) (L.D. 846) (enacting 14 M.R.S. § 6321-B); and
- Created a mandatory foreclosure mediation program, 2009 Me. Legis. Serv. Ch. 402, Sec. 18 (enacting 14 M.R.S. § 6321-A).
- Implemented changes to the Notice Procedure to be employed in serving the Notice of mortgagor's right to cure, 2019 Me. Legis. Serv. Ch. 361 (amending 14 M.R.S. § 6111)
- Implemented a duty of good faith upon Mortgage Loan Servicers in Dealings with Homeowners, 2019 Me. Legis. Serv. Ch. 363 which it amended in 2021, 2021 Me. Legis. Serv. Ch. 203 (enacting and amending 14 M.R.S. § 6113)
- Set forth specific limits preventing repeated postponement of the sale of foreclosed properties, 2019 Me. Legis. Serv. Ch. 408 (amending 14 M.R.S. § 6323).

As a result of a legislative resolve a foreclosure study was conducted in 2014 and chaired by then Attorney General Janet Mills. As noted by the report generated by that study, Maine has all the elements in place for a good system and there was no need to radically change what is in place. (Report, p. 22). One of the recommendations of the report was to speed up the process when it could be done without infringing on homeowner protections.

To that end there are numerous sections of Maine's foreclosure statutes that provide opportunities for foreclosing plaintiffs to expedite the foreclosure process. Even prior to the foreclosure study was conducted Maine had adopted a law that allowed foreclosure plaintiffs speed up the process in cases in which the property had been abandoned. (14 M.R.S. § 6326, PL 2013, C. 521, Pt. B). Shortly after the foreclosure study the legislature adopted a statute allowing foreclosing parties to request an expedited hearing in a foreclosure case where the homeowner had not filed an answer. (14 M.R.S. § 6321-B PL 2015, C. 243, C.1). Again, in 2019 the legislature further amended the foreclosure process to provide an expedited process when necessary to abate a nuisance or for preservation of the property being foreclosed upon. (14 M.R.S. § 6327, PL 2019, C 647 §1).

Despite the existence of these statutes, they are rarely used by foreclosing parties, which begs the question of why another study is needed.

## **The Maine Court System is Still Trying to Recover the Effects of the COVID Pandemic**

The pandemic has had an unprecedented impact on the Maine court system. In 2018, 2,467 foreclosure cases were filed in the State of Maine Courts. This number dropped to 391 cases in 2021.<sup>1</sup> Dealing with the aftermath of the pandemic has left the Maine Court System in uncharted territory and it may take until 2028 for the court system to deal with its backlog of cases.<sup>2</sup> Any study conducted at this point would rely upon unrepresentative data that should not form the basis of any solution.

### **Foreclosure has a Disproportionate effect on Communities of Color**

Maintaining the foreclosure protections contained in Maine law are necessary to stave off preventable foreclosures.

Communities of color in the United States, especially Black and Latinx communities, are particularly hard hit by the COVID-19 pandemic, from higher rates of illness and death to greater rates of unemployment, mortgage default and eviction risk. These challenges have exacerbated the loss of wealth due to predatory lending, foreclosure, and the economic crisis of the Great Recession a decade ago.

Early data indicate that disproportionately high percentages of African American and Latinx homeowners have faced economic hardship and sought assistance from their mortgage companies. Consistent with these developments and even more concerning, the U.S. Census Bureau's Household Pulse Survey shows that among households who have fallen behind on their mortgage payments Black and Latinx households are much less likely than white homeowners in the same position to access potentially home-saving relief.

This disparity is greatest for Black families. Black communities have yet to recover from the rampant foreclosure of the Great Recession. As of the first quarter of 2020, the Black homeownership rate is 44% compared to 74% for whites. This is a slight increase from the last quarter where the rate sunk to 40.6% a level not seen since the 1960s. The looming foreclosure crisis threatens to decimate Black homeownership and destroy wealth for generations.

Homeowners of color, particularly Black and Latinx homeowners, will face disproportionately high foreclosure rates in the coming months and years unless substantial foreclosure prevention measures are adopted immediately. Targeted data collection and reporting requirements also must be instituted to provide transparency and accountability and to promote sustainable policy development.

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<sup>1</sup> <https://www.courts.maine.gov/about/stats/statewide.pdf>

<sup>2</sup> <https://www.newscentermaine.com/article/news/local/maine-courts-backlog-cases-2028-valerie-stanfill-chief-justice/97-08531fa3-8464-445b-b329-4fef03352bf1>

Our nation must not repeat the tragic consequences of the previous housing crisis that destabilized communities burdened by redlining, discrimination, and disinvestment.<sup>3</sup>

## **CONCLUSION**

There is no evidence to support the need to reform the foreclosure process in order to make it easier to remove people from their homes. This is especially true given the recent foreclosure study conducted in 2014 and the numerous legislative actions taken by the Maine legislature to address the foreclosure process. Rather, it is critical that the foreclosure protections provided in Maine law remain in place to protect homeowners from unnecessary foreclosures.

Thank you for the opportunity to testify and I am happy to answer any questions.

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<sup>3</sup> <https://www.nclc.org/resources/a-looming-crisis-black-communities-at-greatest-risk/>