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Testimony of Emma Halas-O'Connor, Pine Tree Legal Assistance in OPPOSITION to LD 1015, Resolve, Establishing the Commission to Study the Foreclosure Process

April 3, 2023

Senator Carney, Representative Moonen, and Honorable Members of the Joint Standing Committee on Judiciary,

My name is Emma Halas-O'Connor and I am the Homeowner Assistance Fund, or HAF, Foreclosure Prevention Attorney at Pine Tree Legal Assistance. I am testifying today in opposition to LD 1015.

Pine Tree Legal Assistance is a nonprofit legal services provider with offices in Portland, Lewiston, Augusta, Bangor, Machias, and Presque Isle. Since 1967, Pine Tree has represented low-income Mainers in a wide variety of civil legal matters including foreclosure cases. During the national foreclosure crisis in 2009, Pine Tree worked closely with legislators and the Maine courts as Maine developed its Foreclosure Diversion Program (FDP), which helps homeowners explore alternatives to losing their homes to foreclosure.

A major focus of my work at Pine Tree involves helping homeowners who are at risk of foreclosure to access newly-available funds called the Homeowner Assistance Fund or HAF. HAF was established by the 2021 federal American Rescue Plan Act and implemented by the U.S. Treasury. Maine received approximately 42 million dollars to provide to homeowners impacted by Covid-19 who are struggling with payments. The program is administered at the state level by Maine State Housing Authority and provides grants of up to \$50,000 to eligible households to get caught up on mortgage payments, property tax arrears, and utility assistance.¹

It is both because of the continued success of the FDP program, and the emergence of HAF as a new option to swiftly resolve a foreclosure case, that I believe an additional study commission to review Maine's foreclosure process is unnecessary at this time.

FDP has been highly successful at resolutions of cases that keep homeowners in their homes while restoring their loans to a performing status, according to the annual data submitted to this Committee from the Maine Judicial Branch.² The FDP is only available where the property in

¹ See haf.mainehousing.org for details about the HAF program.

² For the most recent annual report, see State of Maine Judicial Branch, Foreclosure Diversion Program Report to the Joint Standing Committee on Health Coverage, Insurance and Financial Services and the Joint

foreclosure is the homeowner's primary residence; it is not available in cases involving abandoned properties. Contrary to any notion that altering FDP could increase the supply of affordable housing by bringing more properties to the market, FDP plays an important role in keeping homeowners affordably housed.

FDP connects homeowners to resources that help them navigate the complex options available to homeowners who fall behind on a mortgage. The homeowner meets with a HUD-certified housing counselor who provides valuable information about the different workout solutions available, while FDP also connects homeowners with legal or other professional assistance. Demand for the program has held steady since its inception in 2010.³ In 2022, mediation was requested in 32% of the 1,035 new foreclosure cases filed, which is consistent with FDP's use in pre-pandemic years.⁴

The data collected shows that those cases that utilized FDP result in positive outcomes for both homeowner and lender. Between 2010 and 2018, 62% of cases in the FDP concluded in dismissal.⁵ In 2019, the Maine judiciary analyzed the basis for dismissal in all cases in mediation and found that 84% of those cases dismissed were resolved by a workout option that allowed the homeowner to stay housed and the loan to be restored to performing status, whether through a loan modification, paying off the arrears, or a repayment plan.⁶ There is no indication that FDP is the source of any significant delay in resolution of foreclosure cases. To the contrary, FDP provides mechanisms to hold all parties accountable to deadlines for exchanging information necessary to efficiently evaluate workout options; if a homeowner is unresponsive to these deadlines, FDP can be terminated and the case restored to the docket.

As I mentioned, one important workout option still relatively new to homeowners at risk of foreclosure is the Homeowner Assistance Fund, or HAF program. I agree with those who have pointed out that the current snapshot of foreclosure case timelines is skewed by the pandemic-caused backlog that has impacted nearly all types of civil matters. The HAF program, which has only begun to be fully onboarded in Maine in the past month, is also changing the foreclosure landscape.

HAF can provide an especially speedy resolution in foreclosure cases. I have seen mortgage lenders receive HAF funds in just three weeks from the time the homeowner initially applies.

Standing Committee on Judiciary, 131st Legislature (February 10, 2023), available at: <https://legislature.maine.gov/doc/9720>.

³ See State of Maine Judicial Branch, Foreclosure Diversion Program Report to the Joint Standing Committee on Health Coverage, Insurance and Financial Services and the Joint Standing Committee on Judiciary, 129th Legislature (February 14, 2020), available at: <https://www.courts.maine.gov/about/reports/fdp-report-2019.pdf>.

⁴ See 2022 FDP Report, footnote 1, at p. 4; for an annual percentage of cases where FDP was requested, see 2019 FDP Report, footnote 2, at 3.

⁵ See State of Maine Judicial Branch, Foreclosure Diversion Program Report to the Joint Standing Committee on Health Coverage, Insurance and Financial Services and the Joint Standing Committee on Judiciary, 129th Legislature, at 5 (February 14, 2020), available at: <https://www.courts.maine.gov/about/reports/fdp-report-2019.pdf>.

⁶ *Id.*

Lately, most of the HAF program's delays that I have observed are caused by servicers failing to timely submit information to the HAF administrator necessary to process payment.

HAF has quickly become one of the most important tools to bring homeowners' loans current while also preserving their affordability. That is because in the current environment of rapidly rising mortgage interest rates, it has become more difficult for homeowners to get caught up on their mortgages using the workout options that servicers have traditionally provided. Those options, called loan modifications, often result in higher monthly mortgage payments because the modified loan comes with the current, usually higher, interest rate. With HAF, a homeowner who is less than \$50,000 in arrears can get funds to pay off the whole back balance all at once, bringing the homeowner fully current while preserving the homeowner's existing monthly payment.

It is likely that with HAF fully operating now, the timelines of many foreclosure cases will shorten, and many cases will resolve before the parties reach the FDP stage. It is important to remember that HAF is a temporary program: in several states that implemented HAF more quickly than Maine did, funding has already run out. If LD 1015 passes, any changes proposed by a new study commission based on the current environment will be of limited utility because it would be viewing how foreclosure cases work under a temporary funding program with an unknown duration.

Because Maine's Foreclosure Diversion Program has a proven track record of achieving positive outcomes for all parties in foreclosure cases, and with the unique environment produced by the new availability of HAF funds, it is not the right time to be proposing new changes to Maine's judicial foreclosure process. I respectfully urge the Committee to vote Ought not to Pass. Thank you for your consideration and I am happy to answer any of your questions.