



Maine Equal Justice

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**Testimony of Frank D'Alessandro,
Maine Equal Justice
In Support of LD 2262 with Amendments,
An Act to Amend the Process for the Sale of
Foreclosed Properties Due to Nonpayment of Taxes
March 14, 2024**

Good afternoon, Senator Grohoski and Representative Perry and members of the Joint Standing Committee on Taxation. 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 regarding LD 2262.

Why Maine Equal Justice is Testifying in Support of LD 2262 with Amendments

In May, 2023, the Supreme Court issued its decision in Tyler v. Hennepin County, Minnesota¹ which found that it is unconstitutional to retain any excess value in a home above the tax debt owed after a property is sold at a tax sale. In response to this decision the Maine State Legislature adopted LD 101 which created a process to distribute excess value to former homeowners who lost their

¹ https://www.supremecourt.gov/opinions/22pdf/22-166_8n59.pdf

property due to nonpayment of property taxes. This bill also established a working group charged with reporting its recommendations to this Committee. The working group's recommendations have been incorporated into LD 2262.

Maine Equal Justice offers this testimony regarding LD 2262 because while this bill is necessary it needs to be amended to ensure that homeowners who lose their property due to the nonpayment of property taxes receive the fair value of any property lost. Attached are the proposed amendments to LD 2262 that Maine Equal Justice believes are necessary.

The recommended amendments include:

PROPOSED AMENDMENTS to Section 1.

1. Amend Section 3A to require that the property be listed by a real estate broker or agent. It is necessary to add real estate agents to those professionals who can list the property to increase the number of professionals who can ensure that the property is properly listed and sold at the highest price.
2. Amend Section 3B to increase the time in which the property can be sold to ensure that the property is sold at the highest price.
3. Amend Section 3C (4) and (5) to ensure that the value of the property returned to the previous homeowner is only reduced by actual costs expended by the municipality.
4. Add Section 3D to ensure that heirs receive the full value of the property in the event that the former homeowner is deceased.
5. Amend Section 4 and 4-A to ensure that the property is sold in the manner most likely to increase the value of the property returned to the homeowner.
6. Amend Section 5-A to require an additional notice be provided by first class mail to ensure that the prior homeowner is most likely to receive the notice.
7. Amend Section 5-C to ensure that any excess proceeds are treated in the same manner as any other unclaimed property in the State to remove any incentive that a municipality may have not to comply with the provisions of this bill.

PROPOSED Amendment by Adding Section 2

^{amendment}
This ~~bill~~ is necessary to ensure that any proceeds returned to the former homeowner receive the same protections as any other funds provided to a former homeowner according to the requirements of 14 M.R.S. §4422(1).

These protections are necessary to provide the former homeowner, who is likely to be in a very serious negative financial position, with the best opportunity to pick up the pieces and move forward with their life.

CONCLUSION

Thank you for the opportunity to testify. Maine Equal Justice strongly urges the Committee to adopt LD 2262 with the attached amendments. I am happy to answer any questions.

Act to Amend the Process for the Sale of Foreclosed Properties Due to Nonpayment of Taxes"**Section 1. §943-C. Sale of foreclosed properties**

Notwithstanding any provision of law to the contrary, after the foreclosure process under sections 942 and 943 or sections 1281 and 1282 is completed and the right of redemption has expired, if a municipality chooses to sell to someone other than the former owner, the municipal officers or their designee shall ~~notify the former owner of the right to require the municipality to~~ use the sale process under subsection 3. For the purpose of this section, "former owner" means the owner or owners of record at the time of foreclosure or, if deceased, the former owner's heirs, devisees or personal representatives. ~~The notice must be sent by United States Postal Service certified mail, return receipt requested, and first class mail to the last known address of the former owner.~~ If the municipality agrees to sell the property back to the former owner, the alternative sale process under this section does not apply. If the sale to the former owner is not completed, the requirements of this section are reinstated.

1. Subject property. This section governs the sale of all real property tax-acquired through the tax lien mortgage foreclosure process under sections 942 and 943 or sections 1281 and 1282.

2. Notification; appeal. At least 90 days prior to listing property for sale, the municipal officers or their designee shall send a written notice to the last known address of the former owner, by United States Postal Service certified mail, return receipt requested, and first-class mail, ~~of their right to require use of the sale process described in subsection 3.~~ The State Tax Assessor shall ~~prepare application forms, notices and instructions that must be used by municipalities to inform former owners of their right to apply for the sale process provided under subsection 3.~~

3. Sale process requirements. ~~If the former owner submits a written demand within 90 days after the notification in subsection 2 that the sale process of this subsection be used~~ When selling a tax-acquired property, the municipal officers or their designee shall:

A. List the property for sale with a real estate broker or agent licensed under Title 32, chapter 114 who does not hold an elected or appointed office in the municipality and is not employed by the municipality;

B. Sell the property via quitclaim deed to the successful buyer at the highest price at which the property is able to sell, ~~or the price at which the property is anticipated by the real estate broker to sell within 6-12 months after listing; and~~

C. Pay to the former owner any sale proceeds in excess of:

- (1) The sum of all taxes owed on the property;
- (2) Property taxes that would have been assessed on the property during the period following foreclosure when the property is owned by the municipality;
- (3) All accrued interest;
- (4) Fees, including advertising, mailing, recording, property listing and real estate broker or agent's fees to the extent that those costs are not covered in the broker or agent fee agreement;
- (5) Any other expenses incurred by the municipality in selling, ~~or maintaining, or improving~~ the property, including, but not limited to, an administrative fee equal to 10% of the property taxes owed and reasonable attorney's fees. Expenses for improving or maintaining the property shall be limited to those expenses necessary so that the property is in compliance with local building codes;
- (6) The cost to the municipality of the lien and foreclosure process, including, but not limited to, reasonable attorney's fees; and
- (7) Unpaid sewer, water or other utility charges and reasonable fees imposed by the municipality.

D. If the estate of a deceased former owner is not probated, a municipality shall allow an heir, [devisee, or personal representative] to receive any excess sale proceeds as calculated in subsection 3, paragraph C if they provide (a) a sworn affidavit or upon declaration under penalty of perjury that they are an heir, [devisee, or personal representative] of the deceased former owner; (b) a copy of the former owner's death certificate; (c) if one exists, a copy of the former owner's will; and (d) a statement that the estate is not being has not been probated. In the case of multiple heirs, there is a presumption that an heir or heirs who have resided in the property have resided in the property as their primary residence for more than a year at the time of the sale or retention have authority to receive the excess sale proceeds on behalf of all heirs, in the absence of a written agreement between heirs or objection by a non-resident heir.

If the municipal officers are unable to list or sell the property under the requirements of paragraphs A and B, or if the property tax payer does not request that the property be sold according to the sale process in this subsection, the municipal officers may sell the property in any manner authorized by the municipality's legislative body, if the municipal officers pay the former owner any excess sale proceeds as calculated in paragraph C.

4. Effect of inability to contract or sell property. If, after attempting to contract with at least 3 real estate brokers or agents who meet the requirements of subsection 3, paragraph A, a municipality is unable to contract with a real estate broker or agent for the sale of the property as described in subsection 3 or the broker or agent is unable to sell the property within 126 months after listing, the municipal officers may shall sell the property at a public sale with the property selling to the highest bidder unless they use the procedure to retain the property in section 4-A. The public sale shall be conducted through an auctioneer licensed with the state of Maine who may not hold an elected or appointed office in the municipality or be otherwise employed by the municipality. Notice of the date, time, and manner of the public sale shall be provided via first class and certified mail, return receipt requested, to the former owner at least 90 days before the sale. in any manner authorized by the municipality's legislative body, provided that Tthe municipality shall pays the former owner any excess sale proceeds as calculated in subsection 3, paragraph C.

4-A. Retention of tax-acquired property. If a municipality chooses to retain a tax-acquired property for municipal use, the municipality must procure an appraisal report from an appraiser licensed to provide real estate appraisals in Maine showing the value of the tax-acquired property being retained. The appraiser, who shall be licensed to conduct business in the State of Maine, may not hold an elected or appointed office in the municipality or be otherwise employed by the municipality. The municipal officers must pay the former owner any excess sale proceeds as calculated in subsection 3, paragraph C, substituting the value of the property as shown in the appraisal report conducted within 90 days of the payment to the former owner, or the assessed value for the property, whichever is higher, for the selling price of the property.

5. Property in the unorganized territory. With regard to the sale of property acquired by the State through tax lien foreclosure in the unorganized territory, the State Tax Assessor has the obligations of a municipality under this section.

5-A. Pre-payment notice. If after the sale of a tax-acquired property, there exist any excess sale proceeds as defined in subsection 3, paragraph C, then at least 30 days prior to disbursement of those excess sale proceeds to the former owner, the municipal officers must send written notice by first class mail and certified mail, return receipt requested, to the last known address of the former owner and the last known address of each record holder of an interest in the property, of the municipality's intent to pay the former owner the excess sale

proceeds. This notice does not limit the right of lienholders to pursue any claims to the excess sale proceeds against the former owner otherwise available by law.

5-B. Notice by publication. If the municipality is unable, after reasonable diligence, to locate the former owner of the property in order to send the notice required in subsection 5-A, the municipality shall place a notice, once a week for 3 consecutive weeks, in a newspaper of general circulation in the county in which the property is located. The notice must include the name of the former owner, a description of the real estate having been sold, the amount of the excess sale proceeds, and the date by which the excess sale proceeds must be claimed.

5-C. Retention of Unclaimed proceeds. If, after provision of notice under subsection 5-B, the former owner fails to claim the excess proceeds within 180~~30~~ days of the final published notice, the surplus value shall be transferred to the state unclaimed property program set forth at Title 33, Chp. 45.

~~the former owner's rights to the excess sale proceeds are forfeited, and the municipality may retain and expend the proceeds in whatever manner the legislative body of the municipality deems appropriate.~~

~~**6. Quitclaim deed and w** Waiver of former owner. As a condition of disbursement of excess sale proceeds to the former owner under subsection 3, paragraph C, the municipal officers may require the former owner to execute a quitclaim deed without covenant conveying any interest of the former owner in the property to the municipality and to deliver that deed before conveyance by the municipality to the buyer. Receipt of such excess sale proceeds by the former owner pursuant to this section is deemed to be a waiver of any right of the former owner to commence any action pursuant to section 946-B. Failure of a municipality to file the notice required by subsection 7 does not nullify or otherwise affect the validity of the waiver under this subsection.~~

7. Notice of payment of proceeds. A municipality, within 10 days of payment of any excess sale proceeds to the former owner under this section, must record in the registry of deeds of the county or registry district where the property is located a notice signed by the municipal officers. The notice must include the name of the former owner to whom the excess sale proceeds were paid, the amount of the excess sale proceeds, the date on which the excess sale proceeds were paid to the former owner, and a description of the real estate having been sold. ~~and statement that receipt of the excess sale proceeds by the former owner is deemed to be a waiver of their right to commence any action pursuant to section 946-B.~~

The State Tax Assessor shall prescribe the form of the notice to be used by municipalities under this subsection.

Section 2. 14 M.R.S.A 4422(1)(C) is amended as follows:

C. That portion of the proceeds from (1) any sale of property, or (2) any money returned to the former owner pursuant to provisions of 36 M.R.S.A. 943-C, that is exempt under this section is exempt for a period of 12 months from the date of receipt of such proceeds for purposes of reinvesting in a residence within that period.