



Testimony of Jonathan Selkowitz, Esq.  
Pine Tree Legal Assistance, Inc.

Speaking in Opposition to LD 184 "Resolve, Establishing the Commission to Study the  
Foreclosure Process"  
Before the Committee on Judiciary

Date of Public Hearing: February 12, 2025

Senator Carney, Representative Kuhn, 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 184, and I am grateful for the opportunity explain why we oppose this  
proposed study as unnecessary and misplaced.

#### **Why Opposing This Bill Is Important to Pine Tree Legal.**

Pine Tree is a statewide nonprofit organization that provides free legal services to low-income  
people throughout Maine. Though our client community makes up over a quarter of the state,  
they have relatively few people advocating for their interests. This bill, which aims to form a  
commission made up of four legislators and three bankers for the purpose of "reforming" the  
foreclosure process is designed to cut out the voices of our clients and remove their already  
scarce protections when their home—their most vital asset—is at risk.

Since 2006, Pine Tree has assisted over 2,600 Maine homeowners in their efforts to avoid  
foreclosure. Since I started at Pine Tree in 2016, I have assisted many hundreds of clients facing  
foreclosure. 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. I have observed first-hand how crucial avoiding a home foreclosure is for the long-  
term financial and personal wellbeing of our clients. Based on our experiences and observations,  
the components of Maine's foreclosure process that the proponents of this bill want to end are  
vitaly important to preserving homeownership for working class, elderly, and disabled Mainers.

#### **Making Foreclosures Easier or Faster to Complete Will Exacerbate, Not Mitigate, Maine's Housing Crisis.**

A housing shortage, inflation, and high interest rates have combined to make preserving  
homeownership for low- and middle-income Mainers even more important now than it was  
when many of the statutory foreclosure protections were enacted by this Legislature. Most of  
Pine Tree's foreclosure clients have a current monthly mortgage payment that is less than a  
replacement rental. 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.

Any argument that making Maine's foreclosure process faster or easier will open up housing stock 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.

There already exist statutory procedures, enacted within the last decade, to expedite foreclosures for homes that the owner no longer occupies or wants to save, 14 M.R.S. § 6321-B, and homes that are 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.

### **The Foreclosure Process Is the Opportunity to Avoid Foreclosure**

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.

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. Under our law, a lender can win a foreclosure case by showing the borrower missed at least one payment and did not cure that default within 35 days of receiving a notice of default. There is no homeowner right to have their missed payments added to the back of the loan or dealt with in some other way. Because of this imbalanced system, the Legislature has created procedures 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 is 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.

## **The Foreclosure Process Does Not Need Fixing and 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. Federal COVID-19 foreclosure moratoria and court backlogs that resulted lengthened foreclosure timelines in Maine temporarily. Those disruptions are over. Cases can now move through the process as quickly as lenders want to move them. Foreclosure filings are also down and have not returned to pre-COVID levels. Maine State Court Caseload 5 Year Trend, available at <https://www.courts.maine.gov/about/stats/statewide.pdf><sup>1</sup>

FDP Mediation, which happens at the beginning of the lawsuit, does an excellent job of resolving cases. Of all foreclosures that have participated in FDP, 63% have concluded after mediation. Maine Judicial Branch, *Foreclosure Diversion Program, Report to the 132<sup>nd</sup> Legislature*, Jan. 27, 2025. In 2024, only 34% of foreclosures participated in FDP, and the average number of mediation sessions was 1.4 sessions per case, with a second sessions typically scheduled 30 to 60 days after the initial session. FDP adds relatively few weeks to the foreclosure process, and more so than not expedites the case.

After mediation has concluded, lenders are permitted to request summary judgment. Pine Tree’s experience, however, is that the conduct of the national servicers and banks who bring most of the foreclosure suits, prefer to extend the length of the case and wait until a final trial is held. In contrast, Maine banks and credit unions push their cases through the process swiftly because their lawyers and in-house staff are diligent, their documents are well-organized, and they utilize summary judgment procedures. But local banks and credit unions are prosecuting a tiny fraction of Maine foreclosures. Based on data from the Maine Bureau of Consumer Credit Protection, in the first three quarters of 2024, only about 6% of the mandatory pre-foreclosure notices sent to homeowners came from Maine chartered banks or credit unions. The vast majority were sent by non-bank lenders, private label securitized trusts, and federally chartered banks.

### **Our Request – Vote Ought Not to Pass**

Because the foreclosure process has already been studied by the Attorney General 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. For these reasons I strongly urge this Committee to vote “ought not to pass” on LD 184.

Jonathan Selkowitz,

Pine Tree Legal Assistance

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<sup>1</sup> State Court foreclosure filing numbers: FY’20: 1,286; FY’21: 391; FY’22: 846; FY’23: 1,005; FY’24: 752.