

LD 745 – An Act to Allow a Municipality to Sell Tax-acquired Property in Any Manner Authorized by the Municipality's Legislative Body

Testimony of John Brautigam, Esq. for Legal Services for Maine Elders
Joint Standing Committee on Taxation

March 12, 2025

Good afternoon, Senator Grohoski, Representative Cloutier, and members of the Joint Standing Committee on Taxation.

My name is John Brautigam, and I am here today on behalf of Legal Services for Maine Elders. LSE provides free legal help for Mainers aged 60 and older when their basic human needs are at stake.

LD 745 relates to municipal tax foreclosures – a topic that was in the spotlight recently following the United States Supreme Court decision in *Tyler v. Hennepin County*. That decision held that if a municipality sells a property and there is money left over after paying off expenses and overdue taxes, the former owner has a right to that money. Your predecessor committee worked hard to address the results of this decision in not one, but two separate bills.

First, in 2023 LD 101 was passed and signed into law to amend Maine statute to incorporate the holding of *Tyler*. The bill also set up the Working Group to Study Equity in the Foreclosure Process.

During 2023 that working group conducted its review and made extensive additional recommendations for improving the foreclosure process. I would like to note what an excellent job Peter Lacy of Maine Revenue Services did in managing that group.

In 2024, your predecessor committee considered those recommendations and endorsed several amendments to Title 14 and Title 36 as set forth in LD 2262. The legislature enacted the bill and the governor signed it into law. PL 2024, c. 640.

Those discussions were balanced, fair, and exhaustive. They were guided by multiple considerations -- compliance with the decision of the United States Supreme Court, ensuring that any sale of property yields a fair market value, and compensating municipalities for the expense and staff hours required to handle this process.

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LD 745 would introduce a new twist in the foreclosure law — one that no one proposed during the process I just described. LD 745 says, in effect, that if a municipality and homeowner have not resolved the debt during the 18-month period following the notice of foreclosure, and had not sold the property during the subsequent five-year period for claiming a "taking," then the municipality does not need to utilize a competitive sale process.

We have three comments on this idea.

First, competitive sales are the norm in the market and remain the best way to sell property for a fair value. We will always advocate for market-based sales as the best way to ensure fair market value. This process does involve some cost, but the municipality is fully compensated for those costs.

Second, when municipalities attempt to sell a property in a market sale but the property proves difficult to sell, existing law already allows them to use other sale methods of their choice. 36 MRS § 943-C(4-A). And they can do so in much less time than the five years proposed in the bill.

4-A. Effect of inability to contract or sell property. If, after 3 attempts, 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 12 months after listing, the municipal officers may sell the property in any manner authorized by the municipality's legislative body, as long as the municipality pays the former owner any excess sale proceeds as calculated in subsection 3, paragraph C.

Third, the property tax deferral program is very helpful for homeowners having trouble paying their property taxes. And therefore, tax foreclosures should be very rare.

Finally, it seems extremely unlikely that six-and-one-half years would ever pass without either the municipality selling the property or the former owner stepping forward to resolve the situation.

For all these reasons, this bill seems unnecessary. We respectfully suggest that you vote ought not to pass.

Thank you.