

**Testimony to the 132nd Maine Legislature
Committee on Judiciary**

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Good afternoon, Senator Carney, Representative Kuhn, honorable members of the Committee. My name is David Cyr, and I am CEO of Skowhegan Savings Bank. I am testifying today in opposition of L.D. 585, *Resolve, An Act to Prevent Foreclosures Without Strict Compliance with Notice Requirements*.

Skowhegan Savings Bank is a 155-year-old mutual savings bank with 12 branches throughout Maine. Residential lending is a key component of our business, and we currently hold over 2,100 mortgages and 1,300 home equity loans.

To provide some background, Maine currently has some of the most comprehensive and restrictive judicial foreclosure laws in the nation. These laws provide many opportunities over an extended period of time for homeowners to cure defaults. In fact, Maine's foreclosure process is the 4th longest in the nation according to Fannie Mae.

I'm not sure what this bill is trying to correct as Maine statute already requires a strict foreclosure process and notice requirements. This is proven by reviewing the case of *Finch v. U.S. Bank, N.A.* where the Maine Supreme Judicial Court found that when a lender fails to prove it has issued a valid notice of default or that the borrower breached the contract, the parties are returned to the positions they held before the filing of the action.

Now, in light of this, I believe the title of this bill is misleading. That being said, there is language in this new bill which is of great concern as it essentially provides the opportunity for a mortgagee to gain a substantial windfall, we call the "free house", due to something as simple as a clerical error. This is simply unfair.

In the Maine Supreme Judicial Court case previously noted they also found that a subsequent foreclosure action based on a different notice of default and a different allegation of default would assert a different claim and would not be barred. The court concluded that while a lender must strictly comply with the statutory notice requirements in a foreclosure action, a borrower is not automatically entitled to a "free house" if the lender makes a mistake in the notice of default. This bill as written would turn that finding on its head and is purely economically unfair.

I also want to take the opportunity to dispel a myth I've heard in the past, by saying, Bank's have no incentive to take somebody's home. The process is costly, as we typically pay legal fees, taxes, insurance and property managers throughout the process often adding up to more than \$30,000.00 not including internal personnel costs. Also, if a home is sold at auction for more than we are owed, those funds are not kept by the Bank but go back to the homeowner (assuming no subordinate liens

exist). There are no incentives for us to foreclose other than to recover proceeds owed to us.

I've attached 3 documents to support my testimony, a high level description of the foreclosure process, a Justia Opinion Summary of the referenced Maine Supreme Court case and a Fannie Mae report outlining Foreclosure time frames.

I'm open to taking any questions you may have and trust you will oppose proceeding with the proposed bill. If this bill passes it is likely going to increase the borrowing costs of all homeowners in Maine and cause us to tighten lending standards which will restrict access to homeownership for some.

Thank you for your time today.

The Maine Bankers Association is the trade association representing 34 retail banks across Maine, with over 9,000 employees in virtually every community state-wide. Last year, our banks provided over \$2.5 billion in residential real estate loans, and over \$3.2 billion in small business loans. Banks are deeply embedded in their communities: last year, bankers volunteered over 145,000 hours, and donated over \$18 million to charitable causes. Maine bankers are your neighbors, working to provide a safe place for deposits, modern technology solutions, fraud protection, a home mortgage, or a small business loan.

High level judicial foreclosure process Maine

<u>Process Steps</u>	<u>Cumulative Time</u>
Default occurs	
Late notice provided @ 15 days	
@40-45 days Right to Cure provided with 45 days to cure(35 day min.)	45
120 days Complaint Filed	120
Mediation available	210
Judgement received	270
90 days from Judgement redemption period	
Schedule foreclosure and issue writ of possession	330
Auction held	360

Above assumes immediate scheduling of court hearings and mediation, which never happens

Averaging 18-24 months to complete process

Bankruptcy filing at any point further delays process

JUSTIA

Finch v. U.S. Bank, N.A.

Justia Opinion Summary

In the case before the Maine Supreme Judicial Court, the dispute involved U.S. Bank, N.A. (the Bank) and Charles D. Finch. The Bank had a mortgage on Finch's property due to a loan he had taken out. When Finch defaulted on the loan, the Bank initiated foreclosure proceedings. However, the Superior Court ruled in favor of Finch, finding that the Bank's notice of default did not comply with the requirements of the Maine foreclosure statute, specifically 14 M.R.S. § 6111. Following this, Finch asked the court to rule that the Bank's mortgage was unenforceable and to order the Bank to discharge the mortgage. The court agreed with Finch, citing the Maine Supreme Judicial Court's decision in *Pushard v. Bank of America*.

The Bank appealed this decision, arguing that the *Pushard* decision should be overturned, and that even if it cannot foreclose on the property, it should not be required to discharge the mortgage.

The Maine Supreme Judicial Court, revisiting its decision in *Pushard*, determined that a lender cannot accelerate a loan balance or commence a foreclosure action without having the statutory and contractual right to do so. This effectively overruled the holding in *Pushard* that a lender could accelerate the note balance by filing a foreclosure action, even if they lacked the statutory right to do so.

The court found that when a lender fails to prove it has issued a valid notice of default or that the borrower breached the contract, the parties are returned to the positions they held before the filing of the action. Therefore, a subsequent foreclosure action based on a different notice of default and a different allegation of default would assert a different claim and would not be barred.

The court ultimately vacated the judgment requiring the Bank to discharge the mortgage and remanded the case for entry of a judgment in the Bank's favor on Finch's complaint. The judgment dismissing the Bank's unjust enrichment counterclaim was affirmed. The court concluded that while a lender must strictly comply with the statutory notice requirements in a foreclosure action, a borrower is not automatically entitled to a "free house" if the lender makes a mistake in the notice of default.

[Collapse Summary](#)

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Foreclosure Time Frames and Compensatory Fee Allowable Delays Exhibit

Effective January 1, 2019 the table below specifies Fannie Mae's maximum number of allowable days between the due date of the last paid installment (LPI) and foreclosure sale date, as referenced in the Fannie Mae *Servicing Guide Part E*. It includes all applicable time frames based on LPI due dates.

State	Method of Foreclosure*	State Time Frame	State	Method of Foreclosure*	State Time Frame
Alabama	Non-Judicial	420	Nebraska	Non-Judicial	480
Alaska	Non-Judicial	480	Nevada	Non-Judicial	930
Arizona	Non-Judicial	450	New Hampshire	Non-Judicial	480
Arkansas	Non-Judicial	420	New Jersey	Judicial	1,530 ✓
California	Non-Judicial	480	New Mexico	Judicial	930
Colorado	Non-Judicial	450	New York City	Judicial	2,190 ✓
Connecticut	Judicial	660	New York	Judicial	1,740 ✓
Delaware	Judicial	720	North Carolina	Non-Judicial	420
District of Columbia	Judicial	1,230	North Dakota	Judicial	630
Florida	Judicial	810	Ohio	Judicial	510
Georgia	Non-Judicial	330	Oklahoma	Judicial	570
Guam	Non-Judicial	500	Oregon	Non-Judicial**	960
Hawaii	Judicial	900	Pennsylvania	Judicial	690
Idaho	Non-Judicial	630	Puerto Rico	Judicial	810
Illinois	Judicial	630	Rhode Island	Non-Judicial	900
Indiana	Judicial	540	South Carolina	Judicial	570
Iowa	Judicial	570	South Dakota	Judicial	540
Kansas	Judicial	450	Tennessee	Non-Judicial	420
Kentucky	Judicial	570	Texas	Non-Judicial	390
Louisiana	Judicial	540	Utah	Non-Judicial	540
Maine	Judicial	1,320 ✓	Vermont	Judicial	1,050
Maryland	Non-Judicial	660	Virgin Islands	Judicial	510
Massachusetts	Non-Judicial	960	Virginia	Non-Judicial	450
Michigan	Non-Judicial	390	Washington	Non-Judicial	630
Minnesota	Non-Judicial	330	West Virginia	Non-Judicial	450
Mississippi	Non-Judicial	330	Wisconsin	Judicial	540
Missouri	Non-Judicial	450	Wyoming	Non-Judicial	360
Montana	Non-Judicial	450			

*This methodology is the preferred method of foreclosure for each jurisdiction. Fannie Mae's Regional Counsel must approve the use of a different methodology prior to foreclosure initiation. The servicer or law firm must submit a Non-Routine Litigation Form (Form 20) to request the necessary approval. Fannie Mae will provide procedural instructions and allowable fees if approval is granted.