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Testimony of Emma Halas-O'Connor, Pine Tree Legal Assistance
In SUPPORT of LD 1444
An Act to Prevent Foreclosures Without Strict Compliance with Notice Requirements

April 11, 2025

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

My name is Emma Halas-O'Connor and I am a Foreclosure Prevention Staff Attorney at Pine Tree Legal Assistance, speaking in support of LD 1444 in response to the invitation by Senator Carney and Representative Kuhn.

Pine Tree Legal Assistance is a nonprofit legal services provider with offices in Portland, Lewiston, Augusta, Bangor, Machias, and Presque Isle. 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.

Today I want to tell you some of our clients' stories involving a defective Notice of Default and Right to Cure under 14 M.R.S. § 6111 ("6111 Notice"), which illustrate recurring themes in the foreclosure cases we handled prior to the Law Court's decision in *Finch v. U.S. Bank.*[1]

The overwhelming majority of these cases settle with terms that allows the homeowner to resume making payments and save their home. LD 1444 is not about "free houses." It's about bringing lenders to the negotiating table.

Take for example Peg Kelley, a mom in Durham taking care of her two children while working as a public school ed tech. She fell behind on the mortgage after her husband tragically died of a heroine overdose. Her lender denied her application for a loan modification even though she had enough income to afford it, and offered her no other option to save her home.

Then, on the eve of the foreclosure trial, the lender realized its error in the Right to Cure notice, and moved for dismissal without prejudice so that it could start the foreclosure process over again. We opposed that motion. Because the lender risked going to trial and losing the case on the merits, they agreed to offer a loan modification that our client could afford. She saved her

[1] 2024 ME 2.

home, kept her kids in the same school district, and preserved her equity right before a major surge in property values – she tapped into that equity to replace her roof.

Stephanie Charron, whose complete story is included with my written testimony, had a similar story – the lender agreed on the eve of trial to negotiate a loan modification, only after acknowledging the 6111 Notice error and being denied its motion to dismiss without prejudice. Yesterday, she told us she's still current on her loan, and avoiding foreclosure allowed her to complete her training to become a phlebotomist and send her second child off to college.

You can read a similar story of Tammy Ray from Greene, below. All of these settlements were negotiated prior to the Law Court's decision in *Finch.*

I have also included stories from the rare instances in which the defective 6111 notice did not result in settlement – where the homeowner took the case to trial and won. In these cases, the 6111 contained major errors.

Michael McBride, a grandfather with his minor grandchild living in the home, who worked as a security guard, received a 6111 notice stating he owed $40,000 more than he actually owed, making it impossible for Mr. McBride to cure the default in time to prevent a foreclosure case that jeopardized his homeownership. The mistake was due to the lender misclassifying a portion of Mr. McBride's loan that was supposed to be a deferred balance, not due until the loan reached maturity. After trying for years to get a loan modification so he could resume payments, his case went to trial and he won. His mortgage was discharged prior to the Law Court's decision in *Finch.*

Compare with Cynthia Barna, a retired state employee in Sydney who fell behind on mortgage payments after her husband passed away. The 6111 notice improperly charged her for several months of mortgage insurance premiums that she did not owe, and she tried multiple times to get a loan modification and was rejected. She won her case in 2022, but her mortgage was *not* discharged prior to the *Finch* decision. U.S. Bank brought a second foreclosure action – using the same 6111 notice containing the error that caused it to lose the first case. The bank is explicitly relying on the *Finch* decision to excuse its 6111 violations as it continues its attempts to foreclose on the mortgage.

Under the *Finch* decision, the lender faces relatively minor consequences for bringing the same foreclosure case over and over again, without fixing the error that made the 6111 notice defective in the first place.

You can read more of these homeowners' stories included with my written testimony below. I hope their experiences encourage you to vote OUGHT TO PASS on LD 1444. Thank you for your consideration.

CLIENT STORIES

1. **Peg Kelley, a mother of two children in Durham who worked as a public school education tech** fell behind on the mortgage after her husband, who had been the primary

earner of the family, tragically died of a heroine overdose. Even though she had full-time employment, she was denied a loan modification and the lender offered her no options to keep her home. On the eve of her foreclosure trial, the lender realized its mistake in the Right to Cure notice and moved for a dismissal without prejudice so that it could start the foreclosure case over again. We opposed that. Because of the law under *Pushard*, the lender risked losing the right to enforce the mortgage if it went to trial and lost, so the lender was finally willing to negotiate a loan modification that gave the homeowner an affordable payment, which allowed her kids to stay in the same school district, and preserved her equity right before a major surge in home values. She was later able to tap into her equity to fix her roof.

2. **Stephanie Charron, a single mother of two children in Acton who works as a restaurant server** fell behind on the mortgage after her then-husband abandoned the family. The Right to Cure Notice inaccurately inflated the total past-due amount by 10%, or about $1,000. She tried to negotiate a loan modification but was denied, even though she had steady income. On the eve of trial, the lender realized its mistake and moved for a dismissal without prejudice so that it could start the foreclosure process over again. We opposed that motion and the court agreed, and sent us back to the negotiating table. The incentive to settle created by the *Pushard* case law helped move the lender to offer a loan modification that the homeowner could afford, keeping her and her two children in their home. Yesterday, Stephanie told us that her second child is about to head off to college in the fall. She's completing her training to be a phlebotomist. Her $875 monthly mortgage payment has remained current. She told us "I definitely would not have been able to achieve any of this if I had lost the house to foreclosure."

3. **Tammy Ray, homeowner in Greene who worked her whole life as a custodian** experienced a setback from a series of medical problems causing her to be hospitalized. Wells Fargo told her that she was not "deserving" of a loan modification because of the repeated defaults, even though they were all short-term financial hardships that had been outside of her control. We brought the case to trial because the 6111 notice did not give the homeowner a fixed amount needed to cure the default as the law requires, but rather made the cure amount subject to change over time. We lost the case at trial and appealed. Thanks to the lender's incentive to avoid losing on appeal under *Pushard*, Wells Fargo agreed to a loan modification and homeowner was able to resume payments and keep her home.

4. **Michael McBride of Sabattus: a security guard, husband, father and grandfather who lives with his grandchild, a minor.** A few months after he fell behind on his loan, he received a 6111 notice stating that he must pay $50,792.34 to cure the default, **over $40,000 of which he did not owe.** A few years before, the lender had agreed to modify Mr. McBride's loan, which involved placing $40,000 of the principal balance into a separate non-interest bearing account that was not due until the loan reached maturity. The lender mistakenly included that deferred balance as a past-due "corporate advance". Because Mr. McBride could not pay over $50,000 as a lump sum to pay off what his lender said was the cure amount, the lender sued him for foreclosure. Before Mr. McBride retained Pine Tree to represent him in his foreclosure case, he tried using the

Foreclosure Diversion Program to negotiate a loan modification – but the modifications he was offered weren't affordable, in large part because they erroneously included an extra $40,000 in arrears that were not actually past-due. Only after Pine Tree got involved, the lender finally conceded the error on the day before the final pretrial conference. His loan was discharged pursuant to the law as it existed under *Pushard v. Bank of America.*[2]

5. **Cynthia Barna of Sydney is a retired state employee.** She fell behind on loan payments after the death of her late husband. The 6111 notice she received was wrong by roughly $2,000. The mistake happened after her loan was purchased by the Federal Housing Agency (FHA), and subsequently purchased by a company called Bayview Asset Management. For many months after the purchase, Bayview continued to charge Ms. Barna for Mortgage Insurance Premiums that are owed for FHA loans, even though FHA did not own the loan anymore and no such premiums were due.

   Ms. Barna tried several times to get a loan modification so that she could resume making payments, but was always rejected by the lender. The foreclosure case dragged on for years while different companies purchased and sold the loan, causing the past-due amount to keep climbing. Finally, Ms. Barna won a judgment in her favor in 2022. The current owner of the mortgage, U.S. Bank, is still trying to get a do-over of this case. US Bank has not issued a new 6111 notice: **they are relying on the same *incorrect* notice that caused them to lose the first case.**

Summary

In the majority of foreclosure cases we handle involving a defective 6111 Notice, the case settles with an outcome that lets the homeowner keep their home and resume payments on the mortgage. The Law Court's decision in *Finch* takes away a major incentive for mortgage lenders to negotiate and settle cases, especially when the lender has made a major mistake – often the very mistake that has blocked the homeowner from getting caught up on missed payments or to qualify for a loan modification.

This isn't about getting so-called "free houses" for homeowners: its about bringing the big mortgage companies to the table and leveling the playing field for Maine homeowners. For this incentive to work, there must be real consequences for lenders who push forward a foreclosure case despite defects in the Right to Cure notice that violate 14 M.R.S. § 6111.

[2] 2017 ME 230.