



Testimony of Jonathan Selkowitz, Esq.
In Support to LD 1444 "An Act to Prevent Foreclosure Without Strict
Compliance With Notice Requirements"

Before the Committee on Judiciary
Date of Public Hearing: April 11, 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's Foreclosure Prevention Unit. Pine Tree was asked by Senator Carney to share our perspective on LD 1444, and I am grateful for the opportunity explain why we support this this bill to revive the legal protections Maine homeowners lost by the Law Court's 2024 decision in *Finch v. U.S. Bank*.

Pine Tree is a statewide nonprofit organization that provides free legal services to low-income and working-class people throughout Maine. 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 am confident that no other organization has a better understanding of the impact that our foreclosure laws and processes have on the lives of ordinary Maine families.

14 M.R.S. § 6111 and the *Finch* decision that overturned *Pushard v. Bank of America*.

The Notice of Default and Right to Cure protections in 14 M.R.S. § 6111 are one of the very few protections from foreclosures available to Maine homeowners, and accordingly compliance with that law is "strictly enforced." Until last year, that "strict enforcement" had real teeth. In a 2017 decision called *Pushard*, the Law Court re-affirmed the fundamental rule that losing a foreclosure case, whether due to a violation of § 6111 or another reason, meant the lender could not bring a future foreclosure claim against that homeowner. Although *Pushard* was unanimously decided in 2017, and many Mainers including several Pine Tree clients relied on *Pushard's* clear directive, in 2024, a 4-3 majority of the Law Court in *Finch* voted to overturn *Pushard*, throwing many old and pending cases into immediate turmoil. It is clear when reading *Finch* and listening to the criticisms of *Pushard* that the justification for weakening this homeowner protection is that the outcome of "a free house" or a homeowner "windfall" is unjust. But this misses the crucial point: strict enforcement and *Pushard* were never about "windfalls" or "draconian penalties." The "free house" outcome rarely ever happens. The goal was always, and must continue to be, to ensure we prevent unnecessary foreclosures, incentivize settlements, and level the playing field by making lenders face real consequences for violating homeowner rights. LD 1444 aims to do that.

***Finch* Is Dramatically More Harmful To Homeowners Than It is Helpful to Lenders, Which Runs Counter To Public Policy Goals.**

Homeownership is the primary way Maine's working-class families build wealth and secure long-term housing and financial stability.¹ Federal and state policy incentivizes homeownership through mortgage borrowing by giving tax breaks and subsidizing mortgage lending. But the trade-off is that borrowers are not on a level playing field with their lenders. Lenders can accelerate a loan and pursue foreclosure if one payment is missed. Borrowers cannot negotiate protections into their loan to deal with an unforeseen financial hardship (divorce, job loss, illness). This puts borrowers in a precarious position: they have placed the bulk of their wealth into a single, non-diversified asset² that they will lose if they run into an unexpected financial hardship.

The goal of defending a foreclosure is not to win a free house. It is to avoid loss of the home and get the mortgage back on track. A foreclosure is a watershed moment for a homeowner. By saving a mortgage, a homeowner can preserve future home equity that becomes familial wealth: college tuition, business seed money, a cushion for hard times. Losing a home results in financial ruin, increased housing expenses, and the forfeiture of future wealth. This is not theoretical; my former clients are living testaments to this phenomenon.

By removing any serious consequences for violating a critical homeowner right, *Finch* protects lenders against their own errors, while increasing the likelihood that homeowners will lose their home. LD 1444 will protect Maine homeowners while having a relatively minimal financial impact on the trillion-dollar mortgage industry.

LD 1444 Will Incentivize Lender Compliance And Home-Retention Settlements.

Pine Tree's experience is that *Pushard* provided greater deterrence to repeated unlawful foreclosures, and lenders were far more likely to agree to a loan modification agreement to resolve a dispute over a defective Notice under § 6111. After *Finch* our clients are receiving foreclosure threats of long-dormant mortgages and lenders are less willing to agree to a loan modification settlement unless it meets their return-on-investment goals. Lenders cite *Finch* as their basis for these decisions. Our win-or-lose civil justice system encourages settlement, especially in cases over money. But if one side can never lose, it has no incentive to settle. *Finch* has made it so lenders can almost never lose. The result is they have less incentive to settle and less incentive to adhere to the crucial protections in 14 M.R.S. § 6111.

For these reasons, I strongly encourage you to vote OUGHT TO PASS on LD 4111.

¹ See generally, Thomas Boehm, *Wealth Accumulation and Homeownership: Evidence for Low-Income Households*, U.S. Dept. Housing and Urban Dev. (2004). available at <https://www.huduser.gov/publications/pdf/wealthaccumulationandhomeownership.pdf>.; Jenny Schuetz, *Rethinking homeownership incentives to improve household financial security and shrink the racial wealth gap*, Brookings Institute, Dec. 9, 2020, available at <https://www.brookings.edu/research/rethinking-homeownership-incentives-to-improve-household-financial-security-and-shrink-the-racial-wealth-gap/>.

² According to 2015 Census Bureau data, home equity made up between 50-70% of net wealth for middle income households. Schuetz, *supra*.