



Paul R. LePage
GOVERNOR

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
BUREAU OF CONSUMER CREDIT PROTECTION
35 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0035

William N. Lund
SUPERINTENDENT

**TESTIMONY OF WILLIAM N. LUND, SUPERINTENDENT
BUREAU OF CONSUMER CREDIT PROTECTION**

**Neither for nor against LD 1389
“An Act to Expedite the Foreclosure Process”
With proposed amendment from the Attorney General’s office**

Before the Committee on Judiciary

**Work Session with Public Comment: Wednesday, March 5, 2014; 1 pm
Room 438, State House**

Senator Valentino, Representative Priest and members of the Joint Standing
Committee on Judiciary:

Good afternoon. My name is Will Lund, and I serve as Superintendent of
the Bureau of Consumer Credit Protection within the Department of Professional
and Financial Regulation.

On May 8th of last year, I appeared before this committee to testify neither
for nor against portions of Representative Crockett’s original bill, and because that
testimony is still relevant to this proposed replacement amendment, I have attached
last year’s testimony for reference.



PRINTED ON RECYCLED PAPER

PHONE: (207) 624-8527

OFFICES LOCATED AT: 76 NORTHERN AVENUE, GARDINER, MAINE 04345
TTY: 1-888-577-6690 users call Maine relay 711
www.credit.maine.gov

FAX: (207) 582-7699

Specifically, this amendment, like the original bill, proposes to stabilize funding for the bureau's foreclosure counseling and referral program by clarifying the transfer tax assessment process, by applying the tax in those cases in which a lender or servicer is the high bidder at a foreclosure auction, but then assigns its rights as high bidder to the owner of, or investor in, the property.

In a development on that front, we received word last week that an out-of-state bank was the high bidder in a foreclosure auction on its own property, but then assigned its rights as high bidder not to the investor, but rather to a third party. If the committee wishes to address that additional loophole it may wish to accept suggestions from others who are more familiar with the foreclosure auction and bidding process.

With respect to another item that was also part of the original bill, namely to increase accountability of so-called "property preservation companies," we have been notified of at least 2 additional incidents of harmful errors resulting from such companies operating in Maine. For example, last month we received a complaint claiming that a nationally-chartered bank hired a property preservation company whose employees entered the wrong house in Stonington, removed all its contents and changed all the locks. In that case the bank quickly acknowledged its error and told the property preservation company to return the items, but such a fast resolution has not always been the case.

As with last year's consideration of the original bill, this testimony is limited to issues involving our office's activities, and we do not have input on the civil court procedure portions of the bill.

Thank you for your attention, and I would be pleased to respond to any questions.

Attachment



Paul R. LePage
GOVERNOR

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
BUREAU OF CONSUMER CREDIT PROTECTION
35 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0035

William N. Lund
SUPERINTENDENT

Copy of May 8, 2013 Testimony of William N. Lund

TESTIMONY OF WILLIAM N. LUND, SUPERINTENDENT

BUREAU OF CONSUMER CREDIT PROTECTION

**Neither for nor against LD 1389
“An Act to Expedite the Foreclosure Process”**

Before the Committee on Judiciary

**Public Hearing: Wednesday, May 8, 2013; 1 pm
Room 438, State House**

Senator Valentino, Representative Priest and members of the Joint Standing Committee on Judiciary:

Good afternoon. My name is Will Lund, and I serve as Superintendent of the Bureau of Consumer Credit Protection within the Department of Professional and Financial Regulation. I appear before you on behalf of my agency to speak neither for nor against LD 1389, but to provide relevant information to the committee on two aspects of this bill.

Much of the bill addresses perceived sources of delay in the civil procedure process of judicial foreclosure. Although my agency administers the program that assists consumers prior to court action in their efforts to achieve alternatives to foreclosure, we do not participate in the foreclosure process once a case is in court, so I will not be speaking to those issues.



PRINTED ON RECYCLED PAPER

PHONE: (207) 624-8527

OFFICES LOCATED AT: 76 NORTHERN AVENUE, GARDINER, MAINE 04345
TTY: 1-888-577-6690 users call Maine relay 711
www.credit.maine.gov

FAX: (207) 582-7699

However, I would like to bring your attention to two portions of the bill that relate to our work, and provide my input. The first topic is found at the end of the bill, on pages 6 and 7, in sections 12 and 13. These provisions were included, not at our request, but nonetheless in an effort to stabilize the funding source for the bureau's foreclosure assistance and counseling program. The program, which has operated by entering into 12 contracts with non-profit foreclosure counseling organizations in every region of the state, is funded from a real estate transfer tax paid when a lender purchases its own property at a foreclosure auction sale, or enters into a "short sale" or deed-in-lieu-of-foreclosure in which the lender takes possession of the residence voluntarily and directly from the homeowner.

Three years ago, we budgeted the program at just over \$79,000 per month, and the first few months receipts actually exceeded that amount. Very soon, however, that revenue decreased, and at the present time revenues average just over half that amount, \$46,000 per month. As a result we have budgeted for a reduction in the number of contracts for next year, as well as cutbacks in our resources directed to the program.

We heard from those involved in the auction sale process that the tax was not being paid because, rather than transferring a property to itself, the high bidder at auction, usually the servicer for the ultimate investor, was simply transferring its rights as high bidder to the investor. The language in the bill is intended to cover that situation, making certain that the original intent of the funding mechanism is followed. I would like to add that the only instances I saw of this practice of assigning high-bidder rights was being conducted by national investors and out-of-state banks; I do now believe Maine banks or credit unions engaged in this practice. I believe the change, if enacted, would have no net effect whatsoever on Maine banks or credit unions.

The second issue is found on pages 5 and 6 of the bill, in sections 9, 10 and 11, dealing with the business of companies whose employees enter into homes that are approaching the foreclosure process or are in foreclosure, and who “secure” the homes, winterizing pipes, changing locks and otherwise protecting the lender’s interests.

There is nothing wrong with these companies, termed “residential real estate property preservation companies,” so long as they do their work carefully, correctly and respectfully of homeowners’ rights. However, because they are enforcing the security interests of lenders, we took the position several years ago that they were a form of repossession company, since just as a repo company taking your car away prevents you from accessing that car, changing the locks and turning off the furnace prevents you from accessing your home.

This bill contains a provision calling for these companies to be licensed, in the same way repossession companies are licensed. That does not prevent them from doing their job, but merely makes them accountable to the public if they make mistakes or abuse their authority.

Already in Maine we have dealt with several consumer complaints relating to the activities of property preservation companies:

1) One company mistakenly entered, winterized and changed the locks on a house *next door* to the home whose owners were in foreclosure.

2) In another case, a homeowner, an elderly gentleman, told us he went to bed early but was awakened by the sound of someone trying to force their way into his attached barn, as a way of then gaining access to the house. Again, the property preservation company was at the wrong address.

3) A Falmouth resident told us the locks were changed on his home while he was away, and all his band's musical equipment was moved offsite into locked storage. Until my office became involved, the national bank that ordered the clean-out refused to provide the homeowner with the location of the items taken from the home, and even the name of the company they had employed to secure the home and its contents.

4) And 3 weeks ago, a man who lives in a building he owns and who has 2 rental units also in the building, was awakened after 9 PM because a representative of a property preservation company was shining a flashlight into his windows and the windows of his tenants. When one of the tenants asked the company representative why he was there, he reportedly told the tenant that the building's owner was behind in his mortgage payments.

So in short, we believe these companies are a form of repossession company, and we support adding them to the current repossession statutes as is proposed in this bill. It will result in increased accountability, such that if incorrect actions are taken, we will know who to talk to for answers to permit us to respond appropriately to consumers' complaints or questions.

The bill contains a minor drafting error on page 6, line 16, using the word "dwelling" rather than the intended word "items," but I can work with the analyst to point out the appropriate fix.

Thank you for your attention. I would be pleased to answer any questions you may have.