



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”**

**Before the Committee on Judiciary**

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

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

Good ~~morning~~ <sup>evening</sup> 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.



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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.