



**Bernstein, Shur,
Sawyer & Nelson, P.A.**
100 Middle Street
PO Box 9729
Portland, ME 04104-5029

T (207) 774-1200

F (207) 774-1127

Construction Law Group:
Michael R. Bosse, Esq.
George F. Burns, Esq.
Asha A. Echeverria, Esq.
Meredith C. Eilers, Esq.
Michael A. Hodgins, Esq.
Conor M. Shankman, Esq.
Arnold C. MacDonald, Esq.

March 1, 2017

Senator Lisa Keim, Chair
Representative Matthew Moonen, Chair
Committee on Judiciary
100 State House Station
Augusta, Maine 04333-0100

Re: Written Testimony in Opposition to LD 536
"An Act to Protect Homeowners from Debt Collectors"

Dear Senator Keim, Representative Moonen, members of the Joint Standing Committee on Judiciary:

With the endorsement of our clients and friends who are engaged in the construction and building materials industry who have endorsed this letter below, Bernstein Shur's Construction Law Practice Group writes to express our respectful opposition to L.D. 536, "An Act to Protect Homeowners from Debt Collectors."

The intent of L.D. 536 is straightforward: to take away the power of Maine courts to order a foreclosure sale of residential property encumbered by a mechanic's lien. But, to be clear, the practical effect of the measure is to obliterate mechanic's lien rights in Maine altogether.

The title of the bill seems benign, but actually suggests that homeowners ought to be exempted from paying even undisputed debts. The practical effect of this legislation is to give the homeowner a windfall. A homeowner could request work to be done, have the work completed perfectly, and then refuse to pay for the work with no consequences to that homeowner, but at great detriment to the contractor, subcontractor, or material supplier. This is not wise policy. Our laws should protect people in Maine who have worked hard to add value to property and allow them to collect fair compensation for doing so.

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The existing mechanics lien law in Maine does just that. Likewise, homeowners who have good faith defenses on the merits (e.g., poor work or defective materials) have no reason to worry. They are presently protected by the law and the courts. Maine's lien law secures only valid debts. Lienors have to prove their claims in a lawsuit, and Maine courts and juries are well suited to decide those cases.

For centuries the mechanics lien has been an important remedy for the construction and building materials industry. Lien laws, which trace back to Thomas Jefferson, are built on the premise that when laborers and material suppliers increase the value of property, they have a lien to secure payment for their work. A mechanics lien is a kind of involuntary mortgage on the improved property to ensure that that value added is not simply a windfall to the owner. Often a mechanic's lien is the only source of value from which the hard working members of the construction industry in Maine can collect. An unsecured judgment against the owner is often worthless.

To take away the ability to order a foreclosure sale is to eliminate entirely the mechanics lien remedy. What good is a mortgage that cannot be foreclosed upon? Of course, as those in the industry know, as a practical matter, mechanic's lien foreclosure sales almost never occur. In fact, in our law firm's experience with hundreds of mechanic's lien cases, the debt always has been settled before foreclosure occurs. But, of course, without the looming threat of foreclosure, there would be no incentive or need to settle the claim by the homeowner.

Residential homeowners already have special protections under existing Maine lien law. In addition to the requirement that Maine's lien law only secures valid debts, to protect residential owners not in direct contract with the lienor, the lienor is required to give the homeowner written notice that they should not pay the general contractor until the lienor is paid. This avoids the possibility of the homeowner paying twice for the same work: once to the general contractor and again directly to the lienor. But as discussed above, the way L.D. 536 is written, the homeowner can get away without paying for improvements at all.

The Legislature has already struck a fair balance between mechanics lienors and residential homeowners. This current bill, however, could not be more one-sided, and does an injustice to the hardworking members of our construction and building materials industry.

L.D. 536 is unfair and ill-conceived. We urge the committee to recommend that this bill ought not to pass.

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Respectfully submitted,



Bernstein Shur Construction Law Group
By: Michael R. Bosse, Esq., Chair

cc via email: Senator Rodney L. Whittemore
Senator Dawn Hill
Representative Joyce McCreight
Representative Christopher W. Babbidge
Representative Donna Bailey
Representative Barbara A. Cardone
Representative Lois Galgay Reckitt
Representative Stacey K. Guerin
Representative Roger L. Sherman
Representative Richard T. Bradstreet
Representative Chris A. Johansen