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Law Court Sends Right Signal to Lenders in Notice of Default Case

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Forecasting how the Law Court might rule can be as difficult as tracking a Nor' Easter. But at last week's oral argument, Maine's high court signaled that it will reject a trial court's decision that loan servicers are not authorized to issue a statutory notice of default. *Ventures Trust v. Needham et al.*, Me. Super. Docket No. AUBSC-RE-17-03 (Jul. 9, 2018). *Needham* ruled against the long accepted practice of agents - such as loan servicers - from issuing default notices on behalf of a lender.

At oral argument, questioning from the justices suggested *Needham* goes too far. Justice Gorman asked borrower's counsel whether the trial court elevates form over substance, adding that the loan servicer is in the best position to know what is happening with a loan. "Why hand that over to the mortgagee who may not have the information," Gorman asked.

Perhaps the strongest indication that the Law Court is leaning in favor of lenders was the exchange on agency law. The court asked borrower's counsel whether an attorney is authorized to send a notice of default and, if so, how that is any different from a loan servicer. Borrower's counsel argued that an attorney is authorized, but a loan servicer is not, suggesting that an attorney enjoyed a heightened agency status. The argument was not persuasive. The Law Court appeared much more likely to apply common law agency to all agents (including loan servicer) to the default notice.

A decision is likely to be issued within the next 2-3 months.