

Massachusetts Alliance Against Predatory Lending

www.maapl.info

AN ACT TO REQUIRE JUDICIAL FORECLOSURES: FACT SHEET

Senate Bill 1778, Main Sponsor: Senator Morrissey
House Bill 1729, Main Sponsor: Representative Smizik

What Does This Bill Do?

This amendment to the foreclosure law, G.L. c. 244, will enable Massachusetts to join with 25 other states that require a court to approve foreclosures. The bill, which applies only to 1-4 unit owner occupied homes, requires foreclosing lenders to file a complaint in the Superior Court of the county in which the property is located. The **homeowner has the right to defend him or herself in court** and the court may fashion appropriate relief, including modifying mortgages, depending on the facts of the case.

This bill is filed to help stop the foreclosure crisis and its impact on households, homelessness, neighborhoods and our state's entire economy.

- By Nov. '08, year-to-date foreclosure deeds shot up 65% to 11,486 from 6,970 in Nov. '07;
- By Nov. '08, year-to-date auction announcements jumped 34% to 18,064 from 13,465 in Nov. '07;

Without intervention, Congressional projections are on track for Massachusetts households to lose 58.9 billion in household wealth by 2009, with more than 2.8 billion loss in property value (half collateral) and concomitant loss in property taxes. With 21,000 petitions filed, 30,000 households would face evictions.

Also filed are three other bills: *An Act to Protect Tenants from Eviction in Foreclosed Properties*, *An Act Relative to a Temporary Moratorium on Foreclosures*, and *An Act Establishing a Foreclosure Mediation Process*.

Why Do We Need Judicial Foreclosure?

Right now homeowners, whether they have owned their home for 30 years or 3 years, can lose their house in foreclosure without ever having their day in court. Even if a loan is illegal or a lender claims more than is actually owed, borrowers have no opportunity to tell the facts to a judge before their home is lost.

How Will Judicial Foreclosure Help?

Judicial foreclosure will allow the homeowner and lender to each present their case to an impartial Judge. Many of today's mortgages were not written by and are not managed by your local banker down the street. Rather, mortgages were overwhelmingly made through brokers, who then sold the mortgages to other financial entities like complex trusts. Borrowers no longer have a local banker to turn to and are confronted by a maze of huge financial institutions. Even trained mortgage counselors and lawyers spend hours trying to find someone authorized to discuss and restructure a loan – and they often fail in that search. For homeowners trying to renegotiate loans on their own, finding the right person to talk to is almost impossible. With judicial foreclosure, the borrower and lender (or their lawyers) and a judge are face to face, and have an opportunity to sort out discrepancies and hopefully work out new terms on their mortgages before the homes are lost.

Is Judicial Foreclosure Unusual or Extreme?

No. 25 other states have judicial foreclosure, including the neighboring states of New York, Connecticut, and Maine and more distant states like Illinois, Ohio, Pennsylvania, Kentucky and Florida.

Will Judicial Foreclosure Delay the Foreclosure Process?

In the vast majority of cases, judicial foreclosure will not delay the foreclosure process. Most homeowners who are behind in their mortgage and have no reasonable expectation of paying what they

owe have no legal claims and are unlikely to contest their foreclosure in court. In states with judicial foreclosure more than 85% of borrowers do not avail themselves of the court proceeding. Because existing Massachusetts law already requires courts to verify that foreclosing lenders have complied with the Servicemember's Relief Act, foreclosing lenders must already file in court to complete the foreclosure process. This process currently takes about 120 days. Allowing a homeowner the right to respond to a court filing should not significantly lengthen the time in the majority of cases. Analysis of twenty-two states for which data is readily available indicates that for uncontested actions, the time between filing of a complaint and default judgment can take as short as about 90 days.

This bill will require lenders to file with the Superior Court (right now, they usually file in Land Court). The Land Court has only a few judges in downtown Boston, while the Superior Court has many more judges and exists in every county in the State. It is unlikely that making lenders file in Superior Court will make the process take much longer than it does now for homeowners without any defenses.

For homeowners who have legal defenses, this bill will provide an incentive for lenders to negotiate with them. While there may be some increase in court cases, the benefits of keeping people from losing their homes when lenders have done something wrong outweighs the costs.

What Defenses Will Homeowners Be Able to Raise?

Homeowners could potentially raise a wide number of defenses. In addition to simply proving that the foreclosing lender failed to appropriately credit them for payments made, homeowners could allege common law claims of fraud, unconscionability, and breach of contract or rely on a number of state and federal consumer protection statutes, such as the Fair Debt Collections Practices Act, the Real Estate Settlement and Procedures Act, the Truth in Lending Act, and the Massachusetts Consumer Protection Act.

What Other Benefits Does Judicial Foreclosure Provide?

The protections of judicial foreclosure take on added importance as so many Massachusetts communities struggle to cope with a backlog of unsold, empty, and neglected foreclosed homes. Foreclosures hurt entire communities by adding to a glut of empty properties and creating blight, both of which depress property values and continue to make it harder for lenders to sell the properties they hold. Many of the foreclosing entities do not live in or ever see our communities and the impact that foreclosures and empty buildings are having on the quality of life and economic health of our neighborhoods and the value of their own properties. *Judicial foreclosure will not only provide a chance for homeowners to save their homes, but it may also help communities to save their neighborhoods and mitigate the loss of property values, which would ultimately benefit individuals, communities and lenders alike.*

MAAPL MEMBERS/SUPPORTING ORGANIZATIONS: *Action for Boston Community Development, Inc., Association for Community Organizing for Reform Now (ACORN), Action for Regional Equity, ARISE for Social Justice, Arlington Community Trabajando, Boston Tenants Coalition, Brazilian Women's Group, Carpenters Local 40, Carpenters Local 107, Charles Hamilton Houston Institute For Race & Justice, Chelsea Collaborative, Chinese Progressive Association, City Life/Vida Urbana, Coalition for Social Justice, Community Economic Development Ctr of S.E. MA, Community Labor United, Democratic Socialists of America, Dorchester People for Peace, Era Key Realty Services, ESAC, Fair Housing Center of Greater Boston, Greater Boston Legal Services, Greater Four Corners Action Coalition, Green-Rainbow Party of MA, Harvard Legal Aid Bureau, Homeowner Options for MA Elders, Jewish Alliance for Law and Social Action, Lawrence Community Works, Lawyers' Committee for Civil Rights Under Law, Mass Advocates for Children, Mass AFL-CIO, Mass Coalition for the Homeless, Mass Community Action Network, Massachusetts Fair Housing Center, Mass Jobs With Justice, Mass Law Reform Institute, Mass Welfare Rights Union, Merrimack Valley Labor Council, NAACP N.E. Area Council, National Community Reinvestment Coalition, National Consumer Law Center, National Lawyers Guild, Neighbor-to-Neighbor, Neighborhood Legal Services, North Shore Labor Council, ¿Oiste?, Organization for a New Equality, Painters District Council 35, Pleasant St. Neighborhood Network Center, Southbridge Community Connections, Survivors Inc., Tri-City Community Action Program, UE Northeast Region, Union of Minority Neighborhoods, United Auto Workers Mass CAP, United Food & Commercial Workers 1445, United For a Fair Economy, United Steel Workers Local 5696, Volunteer Lawyers Project.*

maaplinfo@yahoo.com

www.MAAPL.info

Legislative Contacts: Grace Ross, 617-291-5591 Debra Silva, MLRI, 617-357-0700 x 340