

# Massachusetts Alliance Against Predatory Lending

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## AN ACT TO AMEND THE FORECLOSURE STATUTE TO REQUIRE JUDICIAL FORECLOSURE: FACT SHEET

**S836, Main Sponsor:** Senator Michael Brady  
**H3384, Main Sponsor:** Representative Paul Mark

### **What Does This Bill Do?**

This bill requires lenders to use judicial foreclosure to foreclosure one to six unit, owner-occupied properties. Cases will be brought in Superior court. All defenses will be available to homeowners. Judgments will only be entered with regards to the borrower and the lender. The bill also recognizes a procedural necessity for removing defaults.

Unlike the 23 other states which require judicial foreclosure, Massachusetts provides four means of foreclosure. While judicial foreclosure is authorized in Massachusetts, lenders rarely select it because foreclosure by sale and by entry do not require a judge's supervision. Therefore, homeowners seeking judicial review have had to initiate proceedings often in more than one venue, whether they have owned their home for 30 years or 3. Allowance for non-judicial foreclosure procedures was founded upon foreclosing entities exercising very strict compliance in every step of the foreclosure proceeding. Essentially, Massachusetts depended upon strict adherence to an honor system, assuming that lenders' maintain high standards of legal precision in writing, conveying and, if necessary, foreclosing upon mortgages. 12 years of experience in the continuing historic rates of foreclosure has shown this presumption to be repeatedly violated – almost all of the cases that reached the Massachusetts Supreme Judicial Court have revealed extensive violations of settled law. New protective laws passed by this legislature in the key subprime-lending years have been almost universally ignored.

### **Why Do We Need *Judicial Foreclosure*?**

The foreclosure crisis in our Commonwealth continues at historic levels. Foreclosures affect every community, homeowners in every walk of life even those they began through targeted illegal lending to households of color and women heads of household. The cumulative negative impacts are ever increasing on Massachusetts families, communities and our economy overall.

Secretary of State Galvin has stated, "We're not going to get the real estate industry moving again 'til we clean up this vast bubble of real estate that's out there in foreclosure." Since 2005, Massachusetts' 94,000 foreclosures have impacted some one hundred sixty-five thousand households. Our state economy and budget have been severely damaged, with an estimated loss of up to \$4.1 billion per month to our state economy in the worst 3 years. Violent crime increases 2.33% for every percentage rise in an area's foreclosures. A loss in property values approaching 1/3 in some counties has been documented; values in most of the state remain low.

Municipalities' tax bases have been undercut just as they experienced increased economic burdens from the foreclosure crisis, related recession and state budget cuts. Now they must also foot the bill for increased fire, police, sanitary code enforcement and delinquent tax, water and sewer bills of those vacant homes. The state budget is damaged by increasing costs of homelessness; by end of 2010 an estimated 72 thousand children have been displaced from school systems. Rents skyrocket from evictions and removal of housing stock while banks sit on empty houses and major investors buy up still disputed titles to demand exorbitant rents. Job loss, depression of local businesses drive more revenue lost to the state.

### **How Will *Judicial Foreclosure* Help?**

When the Massachusetts Supreme Judicial Court upheld the Ibañez ruling delineating lenders' disregard for correct, legal handling of paperwork as the chain of ownership of deeds and mortgages. Justice Cordy said, "What is surprising about these cases is... the utter carelessness with which the plaintiff banks documented the titles to their assets." Strict compliance is necessary because Massachusetts is both a title theory state and allows for extra-judicial foreclosure. Present experience shows that an honor system instead of judicial review has not worked. Legal experts

estimated 48,000 Massachusetts foreclosures are illegal because of just Ibañez issues. Recent grassroots efforts have revealed 60 forged notes out of 62 reviewed by Questioned Document analyst. Dozens of criminal referrals based in other criminal acts have been made. Evidence of 100s more criminal acts is ready for referral

Five years ago the MAAPL compiled what ended up being 120 common legal violations violating the mortgaging servicing and foreclosing requirements – this list is now around 150. Each of these violations if proven show that a foreclosure was invalid (void). Every claimed foreclosure of 100s reviewed have different combinations of violations. Pretty much every foreclosure since the widespread subprime lending has at least 25 of these violations somewhere in the procedure that renders the foreclosure void. With the increase and broadening of the expertise of those fighting foreclosures, identifying criminal violations has become part of the regular paperwork review for supposedly foreclosed properties.

Massachusetts homeowners need a method by which their legitimate claims throughout the mortgage process can be addressed in court. Improper handling of the foreclosure process hurts not only home-owners but also adjoining property owners and municipal governments. In Boston alone, one vacated foreclosure costs neighbors, residents and the City itself from \$190 thousand to \$1.072 million (according to *Vacant Spaces*, June 2011). Courts must review lenders' foreclosure actions. Instituting Judicial Review now will prevent clouded titles from being passed on often unknowingly to future homeowners.

### **Will Judicial Foreclosure Delay the Foreclosure Process?**

*In most cases, judicial foreclosure will not delay the foreclosure process.* Most homeowners who are behind in their mortgage believe they have no legal claims and are unlikely to contest 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 foreclosing lenders comply with the Service Member's Relief Act, foreclosing lenders must already file in court to complete the foreclosure process. This process currently takes a minimum of 120 days after the Right to Cure period. Allowing a homeowner the right to respond to a court filing should not significantly lengthen time in the majority of cases. Analysis of data from 22 Judicial Foreclosure states shows the time between filing of a complaint and default judgment in uncontested actions averages less than 90 days.

### **Other bills have filed include:**

*An Act to Facilitate Alternatives to Foreclosure, An Act to Establish a Foreclosure Review Division of Superior Court, An Act for Tax Relief from Foreclosure debt*

**MAAPL MEMBERS/SUPPORTING ORGANIZATIONS:** *Action for Boston Community Development, Inc., Action for Regional Equity, Alliance of Providers of Legal Services to Individuals Facing Foreclosure, ARISE for Social Justice, Arlington Community Trabajando, Boston Tenants Coalition, Brazilian Women's Group, Brockton Interfaith Community, 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, Lynn United for Change, Legal Assistance Corporation of Central Mass, 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, New England United for Justice, North Shore Labor Council, ¿Oiste?, Organization for a New Equality, Painters District Council 35, Pleasant St. Neighborhood Network Center, Southbridge Community Connections, Springfield No One Leaves Coalition, Survivors Inc., 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, Worcester Anti-Foreclosure Team*

*maaplinfo@yahoo.com                      www.MAAPL.info*  
*Legislative Contact: Grace Ross, 617-291-5591*