

Massachusetts Alliance Against Predatory Lending

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AN ACT TO PREVENT UNNECESSARY VACANCIES IN FORECLOSED HOMES: FACT SHEET

S931, Main Sponsor: Senator James Eldridge

H1373, Main Sponsors: Representative Peter Capano and Daniel Cahill

What Does This Bill Do?

This Bill amends the Massachusetts post-foreclosure tenant law, G.L. c. 186a, to allow homeowners and their families, if they fulfill the responsibilities of tenancy, to remain in their homes and pay rent after foreclosure under limited circumstances. It also strengthens G.L. c. 186a for all post-foreclosure tenants by, for instance, clarifying how penalties are imposed and that rent is only paid to those with a right to it.

In order for the former owner to remain as an occupant after foreclosure, several conditions must be met: 1) the purchaser at foreclosure must be either the holder of the mortgage or in the post-foreclosure investment business. Any other buyer may evict the former owner as allowed by current law; 2) The former homeowner must comply with basic occupancy obligations – pay the rent at an objectively & publically-defined standard, not cause a nuisance, not commit illegal acts, etc; 3) If the former homeowner does not comply with these standard rules, the purchaser at foreclosure can bring an eviction action against the former homeowner; 4) The purchaser at foreclosure may also bring an eviction action against the former homeowner as soon as there is a binding purchase and sale agreement on the property with a bona fide new owner/occupant purchaser or if the property is sold.

The Foreclosure Impacts Task Force commissioned by this Legislature in 2012 found: *“Task Force heard evidence that it is feasible for large banks to implement rental programs that allow former homeowners to remain in their former property until such time as it is sold to a bona fide purchaser who intends to occupy the property. As a result, large lenders and servicers should endeavor to develop these types of programs.”*

How Will Preventing Unnecessary Vacancies in Foreclosed Homes Help?

In the last available study, Massachusetts has been the 10th hardest hit state by increasing vacant properties with their concomitant homelessness, destruction of neighborhoods, property values and municipal tax base. When foreclosures empty homes, other housing measures record the impact. Rents are skyrocketing across the state and Emergency Assistance, family homeless shelters and motels at record capacities. Between 2000 and 2010, Massachusetts experienced a staggering 72% increase in non-seasonal vacancies. Like “underwater” properties, vacancies are one of the most damaging aspects of the foreclosure crisis in our state. Even though in 2010, the Massachusetts state legislature passed critical, ground breaking legislation allowing former tenants to rent post-foreclosure, it did not protect most post-foreclosure occupants: prior homeowner-residents (tenants-at-sufferance, by state law, upon foreclosure).

This bill extends the benefits of on-going, responsible occupancy statewide including increased neighborhood stability and decreased economic costs to our communities and overall economy. This protects the fabric of our neighborhoods, ensures the housing stock and maintains a revenue stream for the lenders until resale. In multi-unit buildings, the emptying out of just the former owner’s household undermines the safety and well-being of the remaining prior tenant households and the neighborhood. Vacating of a foreclosed property compounds the damage of foreclosure to occupants and the neighborhood. In Boston, for example, the vacating of one property costs neighbors, residents and the City between \$190,000 to \$1,072,000.

This bill also protects the rights of homeowners ensuring that before rental obligation is incurred the foreclosure is valid as strictly complied with the legal requirements of the mortgage and foreclosure laws.

Protecting Former Tenants Post-Foreclosure Has Been Effective BUT Insufficient

In 2010, 53% of occupants post-foreclosure were actually former homeowners, not prior renters. This percentage continues to increase as the foreclosure crisis spreads geographically into all areas of the state with fewer tenants and

increased numbers of owner-occupants. The majority of foreclosures initially hit working class, urban, gateway cities and towns such as Chelsea, Worcester, Lynn, Brockton, and Framingham but now reach Massachusetts' rural communities and into the heart of wealthy suburbs. HUD and Freddie Mac permit post foreclosure rental by former owners. National Consumer Law Center's November 2011 report re-affirmed that Massachusetts was on track for almost another 100,000 foreclosures. The Boston Federal Reserve figures show the vast majority of foreclosures today are of loans with prime characteristics but because of inflated property values at their origination date are still predatory (See criteria including for "certain loans" pursuant to MGL Chapter 244 §35B).

This bill prevents eviction of tenants in foreclosed properties who were previously owner occupants if they are willing and able to be responsible tenants. They must meet all the standard tenant responsibilities to protect the property, not create a nuisance and pay fair market rents (federally defined) Research shows that maintaining occupancy is vital for property upkeep and community stabilization.

How do Former Homeowners Now Become Tenants by State Law? Could They Ever be Evicted?

Massachusetts law separates the rights and responsibilities of homeownership from those of occupancy. By law, if a foreclosure is not void, homeowners become tenants-at-sufferance and already have some rights and responsibilities of regular tenants, such as court-only eviction. This Bill applies to occupants in residential property while owned by foreclosing lenders and post-foreclosure investors. It defines the eviction circumstances and requires former homeowners to meet tenant obligations such as paying rent.

The tenancy rights and responsibilities extended by this bill do not represent a barrier to repurchase of the property. Responsible tenants are an attraction to investors looking to purchase. In the case of potential new owner-occupants, the signing of a purchase and sale agreement triggers the right of legitimate post-foreclosure owners to evict existing occupants before resale.

Why Do We Need to *Prevent Unnecessary Vacancies in Foreclosed Homes?*

Benefits to individuals, neighborhoods and municipalities have resulted from implementing the 2010 law, protecting the numerous former tenants post foreclosure prepared to pay and be responsible tenants. Insuring properties remain occupied has provided protection to Massachusetts' critical housing stock. It bolsters our neighborhoods, schools and religious institutions by preserving long-term households in our communities. Stopping the vacating of post-foreclosure homes also arrests increased blight, neglect and the downward impact on property values. The presence of tenants ensures a revenue stream for post-foreclosure owners; it protects their assets as their properties' longevity is protected and extended by responsible occupancy. It avoids additional economic harm of vacancy on top of foreclosure to our property values, municipal tax bases, system of homeless services and portfolios of our community banks and credit unions. Tenant protections enacted in 2010 has primarily benefited those urban, "gateway" communities with high percentages of renters. **We need to extend vital economic benefits statewide.**

Other bills filed include: *An Act to Facilitate Alternatives to Foreclosure, Review Division of Superior Court, Relief of Tax on Foreclosure Sale (in line with Federal Tax Law)*

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