

Massachusetts Alliance Against Predatory Lending

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AN ACT TO ENABLE JUDICIAL CLARIFICATION OF OWNERSHIP IN EVICTIONS: FACT SHEET

Senate Bill S684, Main Sponsor: Senator Clark
House Bill H2240, Main Sponsor: Representative Malia

What Does This Bill Do?

By law, only the owner of a piece of property can evict a tenant. This bill amends a section of the summary process (eviction) law, G.L. c. 239 § 1, to allow consideration by Housing Court of whether a mortgage was “lawfully foreclosed” in order to ensure that a lender who purchased at foreclosure sale and seeks to evict has clear ownership of the property.

A mortgage would not be considered “lawfully foreclosed” and the lender after foreclosure would not have the right to possession *unless*: 1) the foreclosure was carried out strictly according to Massachusetts foreclosure law, G.L. c. 244, and the power of sale in the mortgage; 2) the foreclosing entity held the mortgage and the note at the time of foreclosure; 3) if the foreclosing entity was an investment trust, the note and mortgage has been deposited into such trust before the foreclosure; 4) the mortgage is not void because of defects in the chain of mortgage assignments; 5) the mortgage is not found to be “voidable” by a court because of fraud, duress, breach of contract or other legal or equitable reasons.

However, if the plaintiff seeking to evict in summary process is a “bona fide purchaser” at the foreclosure sale and is not connected to any foreclosing mortgagee, that purchaser will have the right to possession if the mortgage was foreclosed strictly according to the Massachusetts foreclosure law and the power of sale in the mortgage.

Three other bills filed:

Preventing Unnecessary Vacancies in Foreclosed Homes
Mandatory Foreclosure Mediation with Judicial Review
Judicial Foreclosure

Why Do We Need *Judicial Clarification of Ownership in Evictions*?

Recent headlines document one new revelation after another questioning the legal handling of mortgages by lenders. Cases in Massachusetts and elsewhere enumerate multiple irregularities in mortgage initiation, mortgage paperwork transfer from lender to lender, the bundling of securities and legal questions around signatures’ validity, filing of legally required paperwork, foreclosure timing in relationship to mortgage loan modification procedures, etc.

As a state that has not required judicial foreclosure and has relied on a honor system of strict adherence by lenders to legal procedures, many of these legal issues with the handling of mortgages only come before a judge post-foreclosure. A high percentage of foreclosures are first part of judicial proceedings as part of an eviction action. To date, it has not been clear if questions of the legal validity of ownership based on the underlying foreclosure are in the purview of judges who adjudicate evictions.

While other changes will need to be made to Massachusetts' general laws to address the large number of potentially questionable titles to property, this amendment to eviction procedures is necessary right now for the tens of thousands of post-foreclosure tenants throughout the Commonwealth. Presently and in the coming years, they face possible eviction from a property where legitimate legal concerns exist as to its clear ownership. Massachusetts law recognizes that all legitimate occupants post-foreclosure are tenants and therefore must be evicted by the owner of record through a court proceeding.

Recently passed legislation extended the rights of many bona fide former tenants who meet their responsibilities to maintain tenancy post-foreclosure until a property is resold. Many tenants may still face a challenge to tenancy in court including those in buildings foreclosed before the law took effect and former homeowners who become tenants post-foreclosure and may be prepared to be responsible, paying tenants in that property post-foreclosure.

How Will *Judicial Clarification of Ownership in Evictions* Help?

The legal ability to evict presupposes clear ownership of the property from which the owner seeks to evict a tenant. This bill clarifies the eviction process in light of the numerous legal questions that have been raised in regards to ownership of residential property as part of the present foreclosure crisis. It will protect legitimate tenancy and begin the process of identifying clouded titles that need to be cleared through proper legal action.

Will *Judicial Clarification of Ownership in Evictions* Cost Anything?

There is no cost for implementation of this bill

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., 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, Worcester Anti-Foreclosure Team.*

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