

# **Massachusetts Alliance Against Predatory Lending**

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## **AN ACT TO REQUIRE JUDICIAL FORECLOSURE IN SOME OWNER- OCCUPIED RESIDENCES: FACT SHEET**

**Senate Bill 809, Main Sponsor: Senator Kennedy  
House Bill 503, Main Sponsor: Representative Smizik**

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

This bill requires lenders to use judicial foreclosure to foreclose one to four 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 several means of foreclosure. While judicial foreclosure is authorized in Massachusetts, lenders rarely select it because other methods 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 years. Allowance for non-judicial foreclosure procedures was based upon foreclosing entities exercising very strict compliance in every step of the foreclosure proceeding. Essentially, Massachusetts has 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 and therefore did not require a judge's supervision.

### **Three other bills have been filed:**

*Enabling Judicial Clarification of Ownership in Evictions*  
*Preventing Unnecessary Vacancies in Foreclosed Homes*  
*Mandatory Foreclosure Mediation with Judicial Review*

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

The foreclosure crisis in our Commonwealth continues to increase over time with more foreclosures, more petitions filed, and increasing geographic distribution of those foreclosures: this increases the negative impacts on Massachusetts families, communities and our economy overall. Foreclosures now occur statewide including noticeable numbers in rural communities such as Winchendon and Athol and high income suburbs. RealtyTrac, which follows foreclosures, says "2011 is going to be the peak."

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 2007, Massachusetts' 44,100 foreclosures have impacted some eighty 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. 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 and values continue to drop. In many zip codes, over 50% of homeowners who borrowed in the last decade are underwater.

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 (witness 5 times as many applicants as the HomeBase program as projected for its first year) and already an estimated \$72 thousand

children have been displaced from school systems. Housing sector job loss, depression of local businesses result in additional revenue lost to the state.

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

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.

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 homeowners but also adjoining property owners and municipal governments who must deal with the consequences of vacant, foreclosed homes. 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). For the well-being of both homeowners and our overall economy, Massachusetts courts must review lenders' foreclosure actions. Instituting Judicial Review now will prevent clouded titles from being passed on often unknowingly to future homeowners.

This January 7<sup>th</sup>, the Massachusetts Supreme Judicial Court upheld the Ibañez ruling delineating lenders' disregard for correct, legal handling of paperwork as regards the timing and processing of 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." The courts recognize that strict compliance is necessary because Massachusetts is both a title theory state and allows for extra-judicial foreclosure. While Massachusetts law requires strict compliance, recent experience shows that an honor system with no judicial review to back it up has not worked. Legal experts expect many thousands of Massachusetts foreclosures are likely problematic because of just Ibañez issues and there are numerous other types of possible challenges to foreclosures. With 44,100 MA foreclosures from 2007 to fall of 2011, a reasonable estimate is that some 33,000 carry errors sufficient to cloud their title.

### **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 believe they 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 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. Allowing a homeowner the right to respond to a court filing should not significantly lengthen time in the majority of cases. Analysis of 22 Judicial Foreclosure states for which data is available indicates the time between filing of a complaint and default judgment in uncontested actions averages less than 90 days.

**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.*

*Legislative Contact: Grace Ross, 617-291-5591*