



Boston City Council

Committee on Government Operations

Maureen Feeney, *Chair*

May 19, 2009

Dear Councillors:

The Committee on Government Operations held a hearing to discuss three separate home rule petitions concerning evictions on certain foreclosed residential property in the city of Boston (Docket# 0395), a moratorium on foreclosures in the city of Boston (Docket #0396) and a foreclosure mediation program in the city of Boston (Docket #0397). These matters were sponsored by Councillor Turner, referred to this Committee on Wednesday, March 11, 2009, and heard at a public hearing on Tuesday, May 5, 2009 at which public comment was taken.

At the hearing several individuals from the administration, MAAPL, GBLS and citizens and housing advocates testified in support of all three petitions. Docket #0395 seeks to provide tenant protection against eviction as a result of foreclosure. This home rule petition would prevent a foreclosing owner from evicting a tenant without just cause. Some testifiers urged amending the home rule to include eviction protection for former owner occupants. An additional amendment that would allow foreclosing owners to evict if a purchase and sale agreement was executed with someone who intended to occupy the home was raised.

Several individuals voiced support for these suggestions in light of the increasing need for housing stabilization, citing that homeowners and tenants are being treated similarly under the law for determining legal tenancy status purposes. As such, the proposed new draft would afford the same protections to tenants and former owner occupants. Former owner occupants would pay the reasonable rent as established by HUD and there is an additional just cause reason for evicting if the aforementioned purchase and sale agreement is executed.

Docket #0396 would impose a 180-day moratorium on foreclosures of any home with four or less separate households occupied by the mortgagor. The moratorium is limited in scope and would only prevent foreclosures for these types of property for a limited period if the mortgage in question was presumptively unfair as defined. This would seek to grant mortgagors time to re-negotiate these bad loans and urge mortgagees to find equitable solutions.

Docket #0397 would establish a foreclosure mediation program, which would apply to a dwelling with four or less households occupied by the mortgagor. City designated mediators would work with the mortgagor and mortgagee to try and prevent foreclosures. If no agreement is reached, the foreclosure proceeding would resume after the set period of time. Failure to comply with this program would be a defense to foreclosure. The original draft designated the Boston Rental Housing Resource center as the administering agency, but in light of administration testimony at the hearing this designation has been left open. The proposed new draft would allow the administration to properly review its departments' capabilities for the program upon passage.

All three of these proposals are an admirable approach to tackling a complex issue. Hopefully these three initiatives will work jointly to solve an escalating housing crisis within the City of Boston.

By the Chair of the Committee on Government Operations, to which the following were referred:

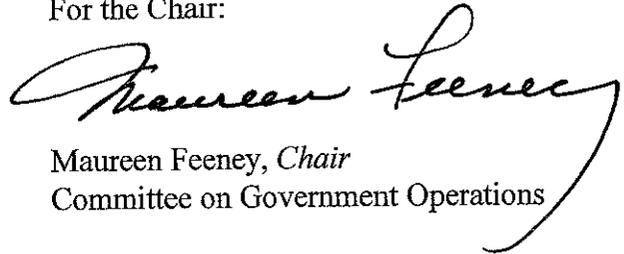
Docket #0395 Home Rule Petition: Evictions on certain foreclosed residential property in the city of Boston;

Docket #0397 Home Rule Petition: A foreclosure mediation program in the city of Boston; and

Docket #0396 Home Rule Petition: A moratorium on foreclosures in the city of Boston

based on information presented at the hearing and public comment gathered by the Committee and having considered the same, respectfully recommends that **dockets #0395 and #0397 ought to pass in new drafts and docket #0396 ought to pass.**

For the Chair:

A handwritten signature in black ink, appearing to read "Maureen Feeney". The signature is written in a cursive style with a large, sweeping flourish at the end that extends downwards and to the right.

Maureen Feeney, *Chair*
Committee on Government Operations

Offered by Councillors **CHUCK TURNER** and **MICHAEL ROSS**, Flaherty, Yancey, LaMattina, Linehan, Yoon, Feeney, Murphy, Consalvo, Ciommo, Connolly



**CITY OF BOSTON
IN CITY COUNCIL**

HOME RULE PETITION

ORDERED, That a petition to the General Court, accompanied by a bill for a special law relating to the City of Boston to be filed with an attested copy of this order be, and hereby is, approved under Clause 1 of Section 8 of Article II, as amended, of the Articles of Amendment to the Constitution of the Commonwealth of Massachusetts, to the end that legislation be adopted precisely as follows, except for clerical or editorial changes of form only:

**PETITION FOR A SPECIAL LAW RE:
EVICTIONS ON CERTAIN FORECLOSED RESIDENTIAL PROPERTY IN THE CITY
OF BOSTON**

(a) Definitions.

As used in this Act, the following words shall, unless the context clearly requires otherwise, have the following meanings:

Entity means a business organization, or any other kind of organization, including without limitation, a corporation, partnership, trust, limited liability corporation, limited liability partnership, joint venture, sole proprietorship, or any other category of organization, and any employee, agent, servant or other representative of such entity.

Eviction means any action, without limitation, by a foreclosing owner of a housing accommodation which is intended to compel a tenant to vacate or to be constructively evicted from such housing accommodation.

Foreclosing owner means an entity that both (i) held or owned a mortgage or other security interest in the housing accommodation at any point prior to the foreclosure of the housing accommodation or is the subsidiary, parent, or agent of, or otherwise is related to any entity which held or owned the mortgage or other security interest in the housing accommodation at any time prior to the foreclosure of the housing accommodation; and (ii) holds title to this housing accommodation that it acquired at a foreclosure sale or by any other method of foreclosure.

For purpose of this definition, the phrase 'holds title' shall include an entity which holds title in any capacity, directly or indirectly, without limitation, whether in its own name, as trustee, or as beneficiary. Any entity which attempts to evict tenants from the housing accommodation, whether in its own name, as trustee, as mortgage servicer, or as beneficiary, or in any other role, without limitation, shall be considered to 'hold title' for the purpose of this definition.

Any institutional mortgagee that holds title to a housing accommodation that has been foreclosed upon within the last three years shall be considered to be a foreclosing owner for the purpose of this Act.

Foreclosure means a legal proceeding to terminate a mortgagor's interest in property, instituted by the mortgagee, either to gain title or to force a sale in order to satisfy the unpaid debt secured by the property, including, without limitation, foreclosure by action, by bill in equity, by entry and continuation of possession for three years, and by sale under the power of sale in a mortgage as described in chapter two hundred forty-four of the General Laws.

Foreclosure sale means the foreclosure of a mortgage by sale of a housing accommodation pursuant to a power of sale in a mortgage deed, as described in section fourteen of chapter two hundred forty-four of the General Laws.

Housing accommodation means any building or buildings, structure or structures, or part thereof or land appurtenant thereto, or any other real or personal property used, rented or offered for rent for living or dwelling purposes, located in the City of Boston, together with all services connected with the use or occupancy of such property.

Institutional mortgagee means any entity that holds or owns mortgages or other security interest in three or more properties in the City of Boston or acts as a mortgage servicer of three or more mortgages of properties in the City of Boston, or is the subsidiary, parent, or agent of, or otherwise related to any entity which holds or owns mortgages or other security interests in three or more properties in the City of Boston or acts as a mortgage servicer of three or more mortgages of properties in the City of Boston.

Just cause means at least one of the following:

- (i) the tenant has failed to pay the rent in effect prior to the foreclosure, but only if the foreclosing owner notified the tenant in writing of the amount of rent that was to be paid and to whom it was to be paid;
- (ii) the tenant has violated an obligation or covenant of the tenancy other than the obligation to surrender possession upon proper notice and has failed to cure such violation within a reasonable time after having received written notice thereof from the foreclosing owner;
- (iii) the tenant is committing or permitting to exist a nuisance in, or is causing substantial damage to, the unit, or is creating a substantial interference with the quiet enjoyment of other tenants;

- (iv) the tenant is convicted of using or permitting the unit to be used for any illegal purpose;
- (v) the tenant who had a written lease or other rental agreement which terminated on or after this Act has taken effect, has refused, after written request or demand by the foreclosing owner to execute a written extension or renewal thereof for a further term of like duration and in such terms that are not inconsistent with or violative of any provisions of this Act; or
- (vi) the tenant has refused the foreclosing owner reasonable access to the unit for the purpose of making necessary repairs or improvement required by the laws of the United States, the Commonwealth or any subdivision thereof, or for the purpose of inspection as permitted or required by agreement or by law or for the purpose of showing the rental housing unit to a prospective purchaser or mortgagee.

Mortgagee means an entity to whom property is mortgaged; the mortgage creditor, or lender, including, but not limited to, mortgage servicers, lenders in a mortgage agreement and any agent, servant, or employee of the mortgagee, or any successor in interest and/or assignee of the mortgagee's rights, interests or obligations under the mortgage agreement.

Mortgage Servicer means an entity which administers or at any point administered the mortgage, including, but not limited to, calculating principal and interest, collecting payments from the mortgagor, acting as an escrow agent, and foreclosing in the event of a default.

Post-foreclosure eviction means an eviction of a tenant by a foreclosing owner.

Tenant means any person or group of persons that occupied a housing accommodation prior to foreclosure pursuant to a written lease, tenancy at will, or tenancy at sufferance, exclusive of a homeowner that was also the defaulting mortgagor.

'Unit' or 'residential unit' means the room or group of rooms within a housing accommodation, located in the City of Boston, which is used or intended for use as a residence by one household.

(b) Foreclosure Tenant Eviction.

Notwithstanding any other special or general law to the contrary, the foreclosing owner shall not evict a tenant from a housing accommodation located in the City of Boston except for just cause. This eviction limitation shall only be in effect for the duration of this Act as outlined in section (h) or until title is properly transferred to a bona fide purchaser, whichever is sooner. If the foreclosing owner exercises their option to immediately sell said housing accommodation to a subsequent purchaser, other than an institutional mortgagee, a summary process action may be initiated for any reason, including no fault, against any tenant upon transfer of title.

(c) Certain Leases.

Leases, or other rental agreements, of the foreclosing housing accommodation entered into by a foreclosing owner, mortgagee in possession, or receiver shall be binding on all parties, including the mortgagor after redemption or the purchaser of the housing accommodation pursuant to foreclosure.

(d) Penalties.

Any foreclosing owner that evicts tenants in violation of any provisions of this Act shall be punished by a fine of not less than ten thousand dollars. Each eviction done in violation of this Act constitutes a separate offense on a per unit basis.

(e) Jurisdiction.

The Boston Municipal Court, Suffolk Superior Court, and Boston Housing Court shall have jurisdiction over an action arising from this Act and shall have jurisdiction in equity to restrain any such violation. No tenant shall be evicted in violation of any provision of this Act. It shall be a defense to eviction that the foreclosing owner attempted to evict a tenant in violation of any provision of this Act.

(f) Conflict of Laws.

Any provision of federal law relating to rental units owned, operated or subsidized by the federal government which are inconsistent with or contrary to the provisions of this Act shall supersede the provisions of this Act. Where not inconsistent, the provisions of federal law shall apply in conjunction with the provisions of this Act.

(g) Severability.

If any provision of this Act or the application of such provision to any person or circumstance shall be held invalid, the validity of the remainder of this Act and the applicability of such provision to other persons or circumstances shall not be affected thereby.

(h) Effective Date.

The provisions of this Act shall be effective immediately upon passage and shall cease to have effect two years after passage. Within the three months immediately preceding the expiration date of this Act, the Boston City Council may, by majority vote, vote to pass a one-year extension of this Act, subject to Mayoral approval.

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Offered by Councillors **CHUCK TURNER, MICHAEL ROSS, FLAHERTY,
YANCEY, LAMATTINA, LINEHAN, YOON, FEENEY,
MURPHY, CONSLAVO, CIOMMO, CONNOLLY**



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Eviction means any action, without limitation, by a foreclosing owner of a housing accommodation which is intended to compel a tenant to vacate or to be constructively evicted from such housing accommodation.

Foreclosing owner means an entity that both (i) held or owned a mortgage or other security interest in the housing accommodation at any point prior to the foreclosure of the housing accommodation or is the subsidiary, parent, or agent of, or otherwise is related to any entity which held or owned the mortgage or other security interest in the housing accommodation at any time prior to the foreclosure of the housing accommodation; and (ii) holds title to this

housing accommodation that it acquired at a foreclosure sale or by any other method of foreclosure.

For purpose of this definition, the phrase 'holds title' shall include an entity which holds title in any capacity, directly or indirectly, without limitation, whether in its own name, as trustee, or as beneficiary. Any entity which attempts to evict tenants from the housing accommodation, whether in its own name, as trustee, as mortgage servicer, or as beneficiary, or in any other role, without limitation, shall be considered to 'hold title' for the purpose of this definition.

Any institutional mortgagee that holds title to a housing accommodation that has been foreclosed upon within the last three years shall be considered to be a foreclosing owner for the purpose of this Act.

Foreclosure means a legal proceeding to terminate a mortgagor's interest in property, instituted by the mortgagee, either to gain title or to force a sale in order to satisfy the unpaid debt secured by the property, including, without limitation, foreclosure by action, by bill in equity, by entry and continuation of possession for three years, and by sale under the power of sale in a mortgage as described in chapter two hundred forty-four of the General Laws.

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Institutional mortgagee means any entity that holds or owns mortgages or other security interest in three or more properties in the City of Boston or acts as a mortgage servicer of three or more mortgages of properties in the City of Boston, or is the subsidiary, parent, or agent of, or otherwise related to any entity which holds or owns mortgages or other security interests in three or more properties in the City of Boston or acts as a mortgage servicer of three or more mortgages of properties in the City of Boston.

Just cause means at least one of the following:

- (i) the tenant has failed to pay a reasonable rent to the foreclosing owner, but only if the foreclosing owner notified the tenant in writing of the amount of rent that was to be paid and to whom it was to be paid;
- (ii) the tenant has violated an obligation or covenant of the tenancy other than the obligation to surrender possession upon proper notice and has failed to cure such violation within a reasonable time after having received written notice thereof from the foreclosing owner;

- (iii) the tenant is committing or permitting to exist a nuisance in, or is causing substantial damage to, the unit, or is creating a substantial interference with the quiet enjoyment of other tenants;
- (iv) the tenant is convicted of using or permitting the unit to be used for any illegal purpose;
- (v) the tenant who had a written lease or other rental agreement which terminated on or after this Act has taken effect, has refused, after written request or demand by the foreclosing owner to execute a written extension or renewal thereof for a further term of like duration and in such terms that are not inconsistent with or violative of any provisions of this Act;
- (vi) the tenant has refused the foreclosing owner reasonable access to the unit for the purpose of making necessary repairs or improvement required by the laws of the United States, the Commonwealth or any subdivision thereof, or for the purpose of inspection as permitted or required by agreement or by law or for the purpose of showing the rental housing unit to a prospective purchaser or mortgagee; or
- (vii) execution of a binding purchase and sale contract with a purchaser who intends to occupy the housing accommodation as such purchaser's primary residence and who is not a foreclosing owner, where such agreement requires the housing accommodation or some portion thereof to be conveyed vacant.

Mortgagee means an entity to whom property is mortgaged; the mortgage creditor, or lender, including, but not limited to, mortgage servicers, lenders in a mortgage agreement and any agent, servant, or employee of the mortgagee, or any successor in interest and/or assignee of the mortgagee's rights, interests or obligations under the mortgage agreement.

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Reasonable Rent means, in the case of a tenant who wasn't a former owner-occupant, the amount paid by such tenant immediately prior to the foreclosure as demonstrated by a lease, a rental agreement or other evidence of agreed-upon rent or rental payments for a tenant and, in the case of a tenant who was a former owner-occupant, the Fair Market Rent as established by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. § 1437f(o), as it exists or may be amended, for a unit of comparable size in the area in which the housing accommodation is located or as otherwise agreed to by the parties.

Tenant any person or persons who at the time of foreclosure is entitled to occupy a housing accommodation pursuant to a written lease, tenancy at will, or tenancy at sufferance including a former owner-occupant who held legal title to a housing accommodation immediately prior to a foreclosure of such housing accommodation and who individually or with other legal occupants remains in possession of such housing accommodation after foreclosure. Any person other than a legal dependent or spouse of the person or group of persons entitled to occupy the housing accommodation at the time of the foreclosure who moves into the housing

accommodation owned by the foreclosing owner following the filing of the foreclosure deed without the express written permission of the foreclosing owner shall not be considered a tenant under this Act.

'Unit' or 'residential unit' means the room or group of rooms within a housing accommodation, located in the City of Boston, which is used or intended for use as a residence by one household.

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