



June 4, 2024

The Honorable
State House, Room
Boston, MA 02133

RE: Proposed Amendments to H. 4707 - An Act relative to the Affordable Homes Act

Dear Representative:

On behalf of the Massachusetts Bankers Association's (MBA) more than 120 commercial, savings and cooperative banks and federal savings institution members with 72,000 employees located throughout the Commonwealth and New England, we are writing to express our views on several amendments to *H.4707 - An Act relative to the Affordable Homes Act*

Our views on these amendments are detailed below:

Support Amendment #16: Crumbling Concrete Assistance Fund

Amendment #16, which was filed by Rep. Brian Ashe, seeks to establish a “Crumbling Concrete Assistance Fund” to provide financial assistance to owners of residential real property for the repair or replacement of concrete foundations of such property that have deteriorated due to the presence of pyrite or pyrrhotite. The fund would also attempt to minimize any negative economic impacts on municipalities in which such property is located and directs the Comptroller to transfer \$100,000,000 into fund for these activities.

MBA respectfully requests that you support this amendment during debate this week.

Oppose Amendments #135, #144 #165, #247, & #326 - Granting a Local Option for a Real Estate Transfer Fee

While MBA and our member institutions strongly believe that more affordable and market rate housing should be built in the Commonwealth, we are opposed to proposals to impose new taxes on real estate transactions to fund these initiatives. Taxing certain home sales will increase income stratification, raising the already expensive market rate price to become a homeowner. In our view, these taxes will add an additional barrier to homeownership for middle- and lower-income individuals and families since in some cases their transactions are more complicated due to special financing or assistance programs. The layering of a complicated transfer tax will only serve to further limit their ability to become homeowners and build equity.

In addition, transfer taxes are a logistical nightmare for buyers, sellers, lenders, closing attorneys, and other stakeholders and will add significant costs and complexity to the mortgage market. Many of these additional costs will be passed on to homebuyers or sellers. We urge you to oppose Amendments #135, #144, #165, #247 and #326.

Oppose Amendment #160: Guarantee a Tenant's First Right of Refusal

MBA opposes Amendment #160, which provides for a tenant's right of first refusal for many residential real estate sales in the Commonwealth. The provision, which is structured as a local option for municipalities, will create significant delays in the conveyancing of real estate throughout Massachusetts, potentially affecting sale prices and other market conditions.

Under the amendment, property owners are required to adhere to a schedule determined by the municipality, provide notice to tenant organizations about the impending sale, and wait for specified periods of time before moving forward with a sale to a third party. The provisions would also apply to short sales and foreclosures, further complicating these processes at a time when the state is under a foreclosure moratorium. MBA urges you to oppose Amendment #160.

Oppose Amendment #174: Foreclosure Prevention Program

This amendment seeks to create a Massachusetts Foreclosure Prevention Program (MFPP), administered by a "Foreclosure prevention program administrator" or a "Mediation Program Manager" in which the mortgagor may choose to participate in mediation proceedings with the mortgagee or their representative. While noble in its mission, the program is wholly unnecessary given the recent advancements and current conditions that exist in the Massachusetts homeowners market.

We would emphasize that foreclosure is always a last resort and banks work diligently to keep borrowers in their homes. The Massachusetts housing market is also far different than the one we experienced during the economic crisis more than a decade ago, with increasing home values and stronger underwriting requirements on home mortgages imposed by the Dodd-Frank Act and other federal laws and regulations. In addition, the federal housing GSEs, Fannie Mae and Freddie Mac, along with other government agencies, have developed comprehensive programs to assist borrowers impacted by the pandemic. Finally, we would note that the Consumer Financial Protection Bureau (CFPB) and the banking regulatory agencies have promulgated new rules to ensure that banks and other mortgage servicers are providing a wide range of options for at-risk consumers.

Since 2007, the Massachusetts legislature has enacted three major changes to the state's foreclosure laws: Chapter 206 of the Acts of 2007, Chapter 258 of the Acts of 2010, and most recently Chapter 194 of the Acts of 2012. Each one of these laws extended new protections for Massachusetts consumers, added costs to the lending community and significantly delayed the time frames to complete a foreclosure in the Commonwealth. This is in addition to the Dodd Frank Act which substantially changed the mortgage origination process for all banks improving disclosures, defining a qualified mortgage and instituting strict Ability-to-Repay rules.

Unfortunately, unless a homeowner acts quickly in acknowledging a delinquency and agrees to work with the lender to address it, a short sale, deed-in-lieu or a foreclosure may ultimately be the only solutions. During the 90-day right to cure period, banks make regular weekly calls to borrowers to understand their situation. Foreclosure is the final event when all alternatives have been exhausted. Many times, changes in a family's household financial situation require downsizing of debt and the sale of the home.

The most recent law also created the "Foreclosure Impacts Task Force", which was charged with studying foreclosure mediation. It is important to note that after extensive research and analysis of mediation laws in a number of other states, the Task Force did not issue a recommendation in favor of mandatory foreclosure mediation in Massachusetts. In fact, the Task Force urged that any approach to

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foreclosure mediation be mindful of the existing foreclosure statutes before layering the mediation process on top of existing state foreclosure laws.

Given the numerous changes to state law in recent years, the state and federal aid to at-risk borrowers over the last 18 months, and the continued strength of the Massachusetts housing market - even throughout the recent public health emergency - MBA questions the need for a mandatory foreclosure mediation program in the Commonwealth. We respectfully ask you to oppose Amendment #174.

Support Amendment #284: Protect Consumers by Further Defining Subprime Loans

By way of background, following the Great Recession several federal and state laws and regulations were implemented to protect consumers, and particularly mortgage loan borrowers. Among these initiatives was [MGL. Chapter 184, Section 17B ½](#) specifically providing protections to First Time Home loan borrowers obtaining an adjustable-rate mortgage (ARM). The Division of Banks issued [Regulatory Bulletin 1.3-104](#) to implement this law.

However, Chapter 184, Section 17B ½ was passed *prior to* the Consumer Financial Protection Bureau (CFPB) finalizing its Ability-to-Repay (ATR) rule, which established that most new mortgages must comply with basic requirements that protect consumers from taking on loans they do not have the financial means to pay back. Lenders are presumed to have complied with the ATR rule if they issue “Qualified Mortgages” (QMs). These loans must meet certain requirements including prohibitions or limitations on the risky features that harmed consumers during the Great Recession. If a lender makes a QM, consumers have greater assurance that they can pay back the loan.

Under the 2012 Regulatory Bulletin, the mathematical calculation to determine if an ARM met the subprime threshold was: “the fully indexed rate is greater than three (3.0) percentage points above the yield on United States Treasury securities having comparable periods of maturity, as of the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor.”

In 2022, market factors – specifically rapidly rising interest rates and an inverted yield curve - and not the loan product, caused many ARM loans on Massachusetts homes to suddenly be categorized as “subprime” under the 1.3-104 calculation. A consortium of representatives from the Cooperative Credit Union Association, the Massachusetts Bankers Association, and the Massachusetts Mortgage Bankers Association worked with the Division of Banks and provided initial documentation and language recommendations. The Division of Banks [revised the regulatory bulletin](#) on November 23rd, 2022, in response but legislative changes are also needed.

The revised bulletin made much needed changes to the subprime calculations, but there remain issues in this current rising interest rate environment. When using interest rates based upon when the interest rate has been set (Division) versus when the loan closes (CFPB), the time difference alone could put loans at risk for falling into a “subprime” classification. As an example, there could be 1-2 months between application date/interest rate set date and closing, and longer if the mortgage was for a new construction property. As was the case during 2022, loans could be clear of the subprime rate threshold at the time the rate is set but fall into it at any time up until the week of closing, and too late for a consumer to obtain in-person counseling in time.

Collectively the CCUA, MMBA and MassBankers filed legislation (H.974) this session, which has been reported out favorably by the Joint Committee on Financial Services, to revise Chapter 184, Section 17B ½. Its language, which is found in Amendment #284, includes the following changes:

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- Clarifying that a first-time home loan that is a Qualified Mortgage is exempt from this section. The Commonwealth modified the Borrower Best Interest regulation (209 CMR 53.00) in 2014 to presume compliance if “the new home loan is a Qualified Mortgage” so there is already a precedence.

MBA strongly supports Amendment #284 and respectfully requests that you support this amendment during debate this week.

Conclusion

Thank you for considering our views on these proposed amendments to *H. 4707 - An Act relative to the Affordable Homes Act*. If you have any questions or need additional information, please contact us at any time.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Papalardo', with a long horizontal line extending to the right.

Brad S. Papalardo, Esq.
Senior Vice President,
Chief of Government Affairs
& Counsel