



RIGHT OF FIRST REFUSAL IN FORECLOSURE OR SHORT SALE S.859/H.655

Sponsors: Senator Linda Dorcena Forry and Representative Daniel Cullinane

A bill to help tenants with an opportunity to purchase investor-owned homes in foreclosure or short sale to avoid displacement.

FREQUENTLY ASKED QUESTIONS

What does this bill address?

This bill proposes to provide tenants in properties to be sold at foreclosure or by short sale a right of first refusal to purchase the property. This right is an important tool to prevent displacement which occurs when properties are foreclosed or subject to short-sale and then cleared out by investors. This bill will help tenants compete for the purchase of the property by giving them notice of the pending foreclosure or short sale and the option to purchase it collectively or to assign their right to purchase in order to retain the property as affordable rental housing.

What property does this affect?

The right of first refusal applies only to tenants in good standing who are renting investor-owned properties. It does not apply to tenants in owner-occupied properties.

How do the tenants exercise the right?

In foreclosed properties, tenants will have the opportunity to match the highest bid accepted at auction. If there is no bidder, and the bank owns the property, the tenants will have an opportunity to meet the price and conditions on which the bank proposes to sell the property to a third party. In a short sale, tenants have the opportunity to meet lender-approved short sale price and conditions.

Only tenants who are in good standing can exercise this right. Tenants must be current on their rent and not in violation of the terms of the lease. Tenants must agree to the collective exercise of this right -- tenants representing 51% or more of the households must be in agreement to purchase or to assign the right to purchase.

The right of first refusal can be assigned to non-profit developers, for profit developers, land trusts or an agency so long as that party agrees to maintain the property as affordable rental housing.

How do tenants learn about their rights?

For properties subject to foreclosure, lenders will send tenants in investor-owned properties notice of the Service Members Relief Act Complaint filed in the Land Court along with all auction notices. For properties which the lender intends to approve a short sale, the lender will provide tenants with notice of their intention and an opportunity to match the approved short sale price.

What resources are available to tenants to help exercise this right?

The Office of Housing Stability or another city or state agency can help connect interested tenants with attorneys who can assist with the transfer and financing documents, financial institutions that have expressed interest in working in anti-displacement, developers who would like to work with tenants, and know-your-rights materials to assure tenants are fully aware of the plethora of options.

Has this been done before?

Yes. Massachusetts already has a statewide right of first refusal law for manufactured housing parks. It was found to be constitutional by the Supreme Judicial Court in Greenfield Country Estate Tenants Association v. Deep, 423 Mass. 81 (1993). Also, several cities have enacted condominium conversion ordinances that require that the current tenants are given the first right of refusal if their building is sold and the new developer wishes to convert the rental stock into condominiums. Finally, many tenants already have the right to stay in a foreclosed building under c. 186A.

How much will it cost?

Cities and municipalities will determine how much they want to invest to support the tenant's opportunity to purchase homes in foreclosure and short sale. In Boston, the City's Acquisition Opportunity Program funds may be used to help tenants or their assignees purchase units and maintain them as affordable housing. If cities and municipalities do not provide funding to help tenants purchase homes in foreclosure or at short sale, those tenants can assign their rights to nonprofits and developers to help them preserve their housing. Indeed this bill is intended to be a tool to help distressed owners dispose of their properties and to assure that tenants are not displaced.

Who will enforce the tenant's rights?

The Attorney General's Office will be charged with enforcing the tenant's rights and with drafting particular rules and regulations for enforcement.

Can tenants use this bill to sabotage investors in distress?

No. Tenants must be current on their rent and in good standing under their rental arrangement to exercise the rights proposed under this Bill. The tenant's opportunity to purchase does not come at the expense of the owner; it only arises if the property will be sold at auction or at short sale.

For additional information or if you have any questions, please contact the Office of Housing Stability at (617) 635-4200, housingstability@boston.gov.