



July 25, 2024

The Honorable Willam Brownsberger
State House, Room 319
Boston, MA 02133

The Honorable Aaron Michlewitz
State House Room 243
Boston, MA 02133

The Honorable Lydia Edwards
State House, Room 413-C
Boston, MA 02133

The Honorable James Arciero
State House Room 146
Boston, MA 02133

The Honorable Peter Durant
State House, Room 413-A
Boston, MA 02133

The Honorable David Decoste
State House Room 443
Boston, MA 02133

RE: H.4726/S.2850 - An Act Relative to the Affordable Homes Act

Dear Chair Edwards, Chair Arciero and Members of the Conference Committee on the Affordable Homes Act:

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 H.4726/S.2850 - *An Act Relative to the Affordable Homes Act*.

Our views on these bills are detailed below:

H.4726 - An Act Relative to the Affordable Homes Act.

Oppose Section 36D of H.4726: Guarantee a Tenant's First Right of Refusal

MBA opposes Section 36D of H.4726, 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 Section 36D of H.4726, 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.

We respectfully request you to strike Section 36D of H.4726 from the final bill.



S.2850 - An Act Relative to the Affordable Homes Act

Support Section 2FFFFFF of S.2850: Crumbling Concrete Assistance Fund

Section 2FFFFFF of S.2850 establishes a Crumbling Concrete Assistance Fund, which among other items, will “provide financial assistance to owners of residential real property for the repair or replacement of concrete foundations of such residential real property that have deteriorated due to the presence of pyrite or pyrrhotite” and seeks to minimize any negative economic impacts on municipalities in which such property is located.

Section 2FFFFFF of S.2850 also provides the opportunity for reimbursement for eligible homeowners who “paid for and replaced their concrete foundation that deteriorated due the presence of pyrite or pyrrhotite prior to the establishment of the fund.”

We are longtime advocates for crumbling concrete relief and respectfully request that you include Section 2FFFFFF of S.2850 in the final bill.

Oppose Section 54 of S.2850: Mandatory Home Inspection Contingencies

MBA, along with a coalition of businesses and professional service providers, recently submitted testimony opposing Section 54 of S.2850. We would like to reiterate our opposition in the comments below.

SECTION 54 Upends Freedom of Contract and the Open Market

Every home sale is unique, and every consumer’s situation is different. All of our coalition members provide valuable, but optional, services for home buyers and sellers. It is up to consumers what services they want to contract for and whether they want to take on their inherent time, effort, and/or expense when weighed against every other variable in the transaction.

Consumers do the same with home inspections, weighing the risks and benefits of inspection contingencies against other contract terms, their odds to secure the property, and the use of other tools to limit their liability., such as pre-offer inspections or home inspection addendums SECTION 54 would remove consumer flexibility and upend this marketplace. That sets a dangerous precedent for freedom of contract and government interference in the private market unlike any other state in the country.

SECTION 54 Does Not Enhance Consumer Protections

Home buyers and sellers already receive statutory protections. Real estate licensees are mandated to disclose known material defects under Chapter 93A and Chapter 112, Section 87AAA3/4 or face treble damages. All home sellers (regardless of whether they work with a licensee) are prohibited from willfully or negligently misrepresenting their property’s condition. A court would require them to cover the cost of repairs and could impose additional penalties. Consumers would likely derive greater protection from enhancing regulation of the home inspection industry, to ensure that consumers are receiving quality inspections¹ that they value.



We respectfully ask you to strike Section 54 of S.2850 from the final bill.

Oppose Section 150 of S.2850: Foreclosure Mediation Pilot Program

Section 150 of S.2850 seeks to create a Massachusetts foreclosure mediation pilot program, administered by the Massachusetts Office of Public Collaboration at the University of Massachusetts at Boston. 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 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 foreclosure mediation pilot program in the Commonwealth.

We respectfully request you to strike Section 150 of S.2850 from the final bill.



Oppose Section 152 of S.2850: Municipal Right of First Refusal

Section 152 of S.2850 would establish a program allowing municipalities to have the first right of refusal for the purchase of property to be used as affordable housing. 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.

We respectfully request you to strike Section 152 of S.2850 from the final bill.

Conclusion

Thank you for considering our views on H.4726/S.2850 - *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