



**Statement of Deborah Sousa, Executive Director, on the behalf of the  
Massachusetts Mortgage Bankers Association  
Regarding Legislation to Provide 1<sup>st</sup> Right of Refusal to Tenants; Tenants Right to Purchase; Rent  
Control; Just Cause Evictions and Emergency Supplemental Housing Bond Funding  
Joint Committee on Housing  
January 14, 2020**

Chairman Crighton, Chairman Honan, members of the Joint Committee, my name is Deborah Sousa and I am Executive Director of the Massachusetts Mortgage Bankers Association (MMBA). The MMBA represents roughly 239 lending institutions made up of equal representation between depository institutions (banks and credit unions) and non-depository institutions (mortgage banker/lender companies, mortgage brokers and all ancillary companies) which touch mortgage transactions throughout the Commonwealth. We appreciate the opportunity to provide you with our opinion for several bills before the committee:

**H.3878 (Support)**

An Act Financing an Emergency Supplemental Affordable Housing Bond

This bill would amend SL 2018:99 (Financing the Production and Preservation of Housing for Low and Moderate Income Residents) to add \$1 billion in new capital appropriations. This bill adds a new line-item of \$1 billion for state financial assistance in the form of grants or loans to cities and towns throughout the Commonwealth for the preservation and production of income restricted housing affordable to households at or below 80% of median income; second, it increases the bonding authority of the existing bill from \$1.8 billion to \$2.8 billion. In addition, the bill makes construction and development activity financed by the bill subject to the prevailing wage rate.

**The MMBA supports funding and improving public housing efforts and supports H.3878.**

**H.1260 and S.786 (Oppose)**

An Act to Guarantee a Tenant's First Right of Refusal

This bill establishes a municipal local option creating a right of first refusal for tenants associations prior to the sale or foreclosure of residential property occupied by tenants; requires property owners in municipalities that create a tenants right of first refusal, to provide notice to both the tenants and the municipality of an intended sale, and offer tenants associations made up of a sufficient renter percentage with the opportunity to purchase the property prior to entering into a sales agreement with a third party; regulates offers tendered by tenants associations; requires completion of any sales transaction between an owner and a tenants association within 160 days of completion of the purchase and sale agreement; exempts certain properties, including those subject to a government taking, those defined as publicly assisted housing, those in a hospital, skilled nursing facility or health facility, those in a nonprofit facility, public housing, academic student housing and small rental units where the

owner also resides, from such rights of first refusal; establishes similar rights of first refusals for properties subject to short sale by a mortgagee to avoid foreclosure and foreclosures; bans evicting tenants to avoid granting tenants the initial right to purchase.

Notices must be mailed to the Attorney General G and the CDC. The mortgagee may not accept any third party offer or an application submitted for review until Owner submits proof that within 60 days it has sent the notice and tenant has expressed interest in purchasing, assigned their right or waived it. Failure to respond constitutes a waiver.

Further when an owner intends to accept a bona fide offer, the owner must notify the tenant of its intention to accept an offer and the amount of the offer before the property may be transferred. They are only required to do so if at least 51% of the household elects to receive offer information. The tenants have 9 months to close the transaction. If tenant fails to purchase the owner must file a notice with the AG and Director of Housing and Development.

The MMBA strongly feels that this law would delay, depress the market and likely lose sales of property to the original buyer if the tenant can't perform. The time period of more than 9 months to close is burdensome and unrealistic. **The MMBA opposes H.1260 and S.786.**

#### **H.1256, H.1303, H.1315 and S.801 (Oppose)**

**An Act to Guarantee Tenant's Right to Purchase (H.1256)**

**An Act Relative to Guaranteeing the Tenants Right to Purchase (H.1303)**

**An Act to Preserve Affordable Housing Through a Local Option Tenant's Right to Purchase (H.1315)**

**An Act Relative to Tenants' Opportunity to Purchase (S.801)**

H.1256 and H.1303 require the owner of a residential property promptly inform all tenants of their right to make an offer to purchase the property upon advertising the property for sale.

H.1315 and S.801 allow municipalities where they have voted to adopt the law to require a seller of an investment property to notify the municipality and each tenant within 2 days of accepting an offer to purchase, the intention to sell property for the price offered. The tenants then have either 15 days (6 units or less) or 30 days (7 or greater units) to either form a Tenant Association or notify the owner that they do not wish to purchase the property. The tenants must within 10 days negotiate a sales agreement and deposit 5 % of the price with 60 days to close.

These bills exempt certain properties such as publicly-assisted housing, or a nonprofit facility. **The MMBA strongly recommends that a specific exemption be included for mortgage foreclosure sales.**

These bills do not recognize that an offer agreement is a legally binding contract and once an initial offer is accepted by a seller, they are contractually obligated to sell the property. The bills would delay, depress the market and likely lose the original buyer if the tenant can't perform since the law does not have any requirement that a tenant or a tenant association produce a commitment so the seller must wait until the closing for the tenant to perform. Realistically, if the tenants are not able to eventually purchase the property, an owner would most likely not be able to sell the property for 4 months or more depending upon the real estate market.

**The MMBA opposes H.1256, H.1303, H.1315 and S.801.**

### **H.1306, H.1316 and H.3924 (Oppose)**

**An Act to Further Protect Low-Income Tenants Following Termination of Affordability Restrictions (H.1306)**

**An Act Relative to the Stabilization of Rents in Towns and Cities Facing Distress in the Housing Market (H.1316)**

**An Act Enabling Local Options for Tenant Protections (H.3924)**

H.1306 would protect a low-income tenant who does not receive an enhanced Section 8 voucher to rent control for five years.

H.3924 would protect a low-income tenant who does not receive an enhanced Section 8 voucher to rent control for five years. Exclusions include tenants who are eligible for Section 8 housing but do not apply or the provision were not in effect. A protected low-income tenant shall not be evicted or involuntarily displaced except for good cause relating to tenant fault.

H.1316 allows any municipality to impose a limit on the size of annual rent increases for rental units. The annual limit shall not exceed the annual change in the Consumer Price Index for the applicable area or five percent, whichever is less. Owner-occupied two family and three family properties are excluded. Only individuals whose income is 80% or less of Area Median Income are eligible.

Affordable housing is a concern for all however rent control is not the answer. Economists have long coitized government price controls on apartments. In a March 2019 study from Stanford University studying the effect of rent control in San Francisco, the study found that while rent control prevents displacement of incumbent renters in the short term, the lost rental housing supply drove up market rents in the long run. Research also indicates that landlords have less incentive to maintain their properties in a rent-controlled environment. Governments can impose maintenance requirements on landlords — but they are tough to enforce.

The MMBA strongly supports efforts such as the Housing Choice Initiative which would allow municipalities to adopt best practices and zoning that supports sustainable housing production.

**The MMBA opposes H.1306, H.1316 and H.3924**

### **S.773 (Strongly Oppose)**

**An Act Supporting Affordable Housing with a Local Option for a Fee to be Applied to Certain Real Estate Transactions**

There are currently several bills in other committees (H.1769, H.2552 and H.2457) allowing municipalities to impose transfer fees. None of these bills or the bill before you have consistency regarding exemptions.

S.773 allows municipalities where they have voted to adopt the law to establish an Affordable Housing Trust Fund which imposes a range of fees between .5% - 2% of the purchase price of real property with exemptions for transfers to federal or state government and charitable organizations. Any municipality can establish additional exemptions – suggestions are included in this bill including exemptions for a purchase price for a city/town based upon the previous we month period.

The MMBA strongly opposes all legislation imposing transfer fees for numerous reasons:

- The MMBA is deeply concerned about affordability. Massachusetts is one of the most expensive states to purchase a home. Adding an additional .5% - 2% cost on top of down payments and closing costs will make the dream of homeownership nonexistent for the average homeowner. As an example – the median condo price in Dorchester is \$517,924. A 5% down payment with a conservative amount in closing costs and escrows –a consumer would need almost \$30,000 to purchase that condominium. A transfer tax of up to 2% would require an additional \$10,358.48 to purchase that home which is going to put homeownership out of the reach for so many consumers.
- The MMBA is deeply concerned with consistency across each municipality. Allowing municipalities to be able to set standards and exemptions for a transfer tax is a recipe for disaster. As an example, S.773 has a \$2M exclusion in the language of the bill however this is the only bill with this exclusion. Instead most language allows each municipality to determine the exclusions.

Lenders have the obligation of providing a loan estimate of closing costs to a consumer. The disclosure of a transfer tax needs to be 100% accurate. Imagine trying to provide accurate information to a consumer when each city and town has different exclusions and rates.

- The MMBA is deeply concerned with disparate impact These bills could allow a community the unintended consequence of excluding low-income or middle-income borrowers from a transfer tax exemption in more desirous communities.
- The MMBA is deeply concerned with the clarity of information available to the consumer and other parties to determine the actual amount of transfer fees in a specific municipality. As an example, here are some realistic challenges and questions that arise from the language in S.773:

The language in S.773 includes exclusion for a purchase price below the mean purchase price based upon the previous twelve-month period. Exactly how is a consumer going to obtain this information? Is it 12 months from the signing of the contract? Is it 12 months when they start searching for a home? What about cities such as Brookline that has Newton, Brookline and West Roxbury areas within the border -how exactly would a consumer determine the mean purchase price when exploring communities?

We strongly advocate for the creation of affordable housing in the Commonwealth. We strongly advocate for the Housing Choice bill and providing municipalities with a simple majority to make zoning changes to assist with this goal. We strongly oppose creating transfer taxes that will hurt more than help.

The MMBA would strongly suggest that the Study to study which is best for the consumer and all parties.

### **S.782 (Oppose)**

#### **An Act Relative to the Melinda Stewart Stabilization Act**

This bill is specific to the City of Boston. The bill requires that a landlord or foreclosing owner must provide a tenant or former homeowner with a notice of housing rights and a list of tenant rights organizations when giving notice to

the tenants thirty days in advance of a summary process notice. This bill also extends significant new rights to former homeowners in foreclosed properties to remain in the home after the foreclosure sale and creates new statutory rights for these borrowers. Only a "just-cause" for eviction or the sale of a property to a third party who intends to reside in the home would be permitted. However, even if a purchaser intends to live in the property, they would be forced to begin eviction proceedings against the former homeowner to live in the property. Lenders would be left with very little recourse against owners who refuse to vacate foreclosed properties and instead would be forced to become landlords.

This legislation will make it far more difficult for mortgage lenders to put homes back on the market and for potential buyers to be able to purchase a home that they can live in.

**The MMBA opposes S.782**

We would like to offer the MMBA and our membership as a resource to you for any questions or clarifications on the impact of any bills in this committee.

Thank you for the opportunity to provide you with written testimony before the Committee.



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