

Massachusetts Legislative Update Fall 2020

Lisa Vesperman Still, Esq.

V.P., New England Regional Counsel

WFG National Title Insurance Company

As the Massachusetts General Court starts to finish up the second year of its two-year legislative cycle, as we can all imagine, COVID-19 put the brakes on many legislative initiatives which were to be taken up by the legislature. Of interest to our membership, I've included one update that is not related to COVID at all, and one that is.

Amendment #269 to HB 4879 (H.4887) – *“To guarantee a tenant’s right of refusal”* aka TOPA. This version of TOPA is an amendment to the Economic Development Bill (An Act Enabling Partnerships for Growth) and allows municipalities to adopt a local option that would require owners of residential rentals to notify a Tenant Association comprised of present tenants in the building of its intention to sell, and provide the Tenant Association with an opportunity to purchase the property prior to the owner entering into an agreement to sell the property to a third party. The amendment also requires the owner, upon entering into a purchase contract with a third party to purchase the property, to submit a copy of that purchase contract to the Tenant Association along with a proposed purchase contract, essentially giving the Tenant Association a right of first refusal and a second opportunity to purchase the property. There are specific requirements for mortgagees attempting to foreclose and for those owners attempting to sell via a short sale. There are various time constraints, as well as exceptions to the applicability of the option/rofr. As currently stands, the amendment was passed by the House as part of Consolidated Amendment A to the Bill, but it was rejected by the Senate (S.2842). However, because it was passed by the House, it is still being considered and is subject to the House and Senate Conference Committee.

H.4878/S.2831 - *An Act to guarantee housing stability during the COVID-19 emergency and recovery.* This bill attempts to extend the current eviction and foreclosure moratorium which expires October 17, 2020. The bill prohibits evictions for non-payment of rent, and with respect to foreclosures on the basis of mortgage payments due and payable, prohibits 1) causing a notice of sale pursuant to MGL c. 244, §14 to be published; 2) exercising power of sale; 3) exercising a right of entry; 4) initiating judicial or non-judicial foreclosure process; or 5) filing a complaint to determine military status under SCRA, for residential properties (as defined under MGL c. 244, §35B) that are not vacant or abandoned, until 12 months after the Emergency Declaration (Executive Order 591 dated March 10, 2020) is rescinded or the end of any forbearance period granted under Chapter 65 of the Acts of 2020, and any violation would void the foreclosure. Additionally, any violation would constitute an unfair or deceptive act or practice under MGL c. 93A. The bill was reported to the Joint Committee on Housing and a hearing on the bill was held and written testimony only was taken on July 23, 2020. The current eviction and foreclosure moratorium has been the subject of judicial review, the latest being a challenge to the constitutionality of the Act in US District Court. A ruling by the US First District Court is expected soon.