



## **CHAPA Testimony Regarding the Need to Enable Bona Fide Third Parties to Acquire Foreclosed Properties**

January 11, 2012

Submitted By:  
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Dear Chairman O'Flaherty, Chairwoman Creem, and Members of the Committee:

Thank you for the opportunity to provide testimony regarding foreclosures. I would like to speak about the need to ensure that properties foreclosed by lenders are returned to conventional homeowners or renters as quickly as possible, and specifically about Senate Bill 830, *An Act Clearing Titles to Foreclosed Properties*.

Addressing the foreclosure crisis is an economic imperative. The Commonwealth's housing market, and the related consumer confidence that correlate with a strong housing market, will not fully recover until home foreclosures return to 2005 levels. Each foreclosure erodes confidence in the market, brings down neighboring property values and forcefully disrupts the homeowners' life.

There have been several notable efforts to help communities struggling with home losses. To date, the legislature has enacted two sweeping pieces of legislation to prevent foreclosures and protect tenants in foreclosed properties. The federal government has also implemented several programs to promote loan modifications and assist struggling homebuyers. In Massachusetts, 18,234 homeowners have received permanent loan modifications through the Making Home Affordable Program (HAMP) and 2,006 have received trial modifications. 568 unemployed or underemployed Massachusetts households were assisted through the Emergency Homeowner Loan Program.

These programs and initiatives have helped many homeowners, but haven't met expectations. While the Commonwealth is doing better than most states, there have been 42,409 home foreclosures between 2006 and October, 2011. There is widespread frustration that the largest lenders haven't done nearly enough to avoid foreclosures. Many housing professionals would like to see a mandatory mediation program instituted in Massachusetts, although there isn't consensus on this issue. Lenders resist this new requirement and some housing professionals worry that new requirements may slow down the pipeline of foreclosures that will need to be processed in order for the real estate market to fully recover. CHAPA has not taken a position on state-level legislation but we continue to push federal policymakers to create more sticks and carrots for the lenders to make permanent loan modifications. Even with more work at the federal level, the unfortunate truth

is that the recession, housing market, and previous lax lending standards make many foreclosures unavoidable.

Our organization has focused significant time and resources towards working with community organizations to acquire abandoned or foreclosed properties, rehabilitate the property if necessary, and return them to renters or homeowners. There are two significant issues that require legislative attention to ensure that abandoned and foreclosed properties are quickly reoccupied through conventional ownership and/or leasing.

The first issue relates to the title a bona fide third party purchaser acquires from a lender that completed a foreclosure on a residential property. First, decisions in *U.S. Bank v. Ibanez* and *Bevilaqua v. Rodriguez* have created title issues for many bona fide purchasers where the foreclosing lender didn't have the proper documentation or follow proper procedure. The rulings mean that bona fide purchasers don't actually possess title to the property and are stuck in legal limbo, even where the prior owner that was foreclosed on cannot be located. *Bevilaqua* briefly describes a concept for these subsequent purchasers to complete a proper foreclosure, but in many events, its unclear how this could occur. The second title issues revolve around the *Eaton v. Federal National Mortgage Association (Eaton)* case pending before the Supreme Judicial Court. The court will decide whether to require a unity of the mortgage and the underlying promissory note in order for there to be a valid foreclosure. Lenders that complete mortgage foreclosures in Massachusetts do not typically hold the note and requiring both the mortgage and the note could cloud any title that has a foreclosure in the chain of title. Depending on the court's decision, this is a serious issue that could disrupt the entire housing market.

Senate Bill 830, filed by Senator Michael Moore, attempts to address this issue by creating a limited amount of time the prior owner that was unlawfully foreclosed upon could petition the court to have the property returned to his or her possession. We support this concept as a means of establishing clear title, although the 90 day time period in the bill as filed is far too short and the *Eaton* decision may alter the precise legislative solution necessary to effectuate clear title for thousand of properties that were foreclosed on in the past. We encourage the Committee to monitor *Eaton* closely and if necessary, advance a legislative fix that creates a path for bona fide purchasers to establish clear title.

The second issue concerns the acquisition and rehabilitation of foreclosed properties in struggling markets. Most foreclosed properties will be bought and reoccupied without any government intervention. However, there are distressed markets throughout the Commonwealth where the private market has not filled the need to secure new tenants or homeowners for the abandoned properties. One of the primary reasons is that these properties need significant rehabilitation; they may have been in poor condition prior to the foreclosure and have gone months and sometimes years without maintenance. In other areas, the real estate market is simply too fragile for the private sector to take on the risk of purchasing a property with a checkered title and suspect location.

These foreclosed properties must be acquired, fixed up and placed in the hands of new owners or tenants in order for the neighborhoods to be stable and avoid further price decline. Otherwise, the eyesores bring down prices and create additional foreclosures because neighboring home values will fall below mortgage balances due to their proximity to a distressed property. Abandoned properties are also attractive nuisances and create significant public safety challenges.

Congress created the Neighborhood Stabilization Program (NSP) and rolled out three phases of the program to help community organizations address this challenge. In Massachusetts, organizations have purchased and rehabilitated over 1,200 units of housing in challenging markets across the state with NSP. By creating neighborhood stability, this work prevents future challenges, ranging from additional foreclosures to crime. CHAPA has assumed a leadership role in this area, serving as a clearinghouse connecting banks that own foreclosed properties with the housing organizations that purchase foreclosed properties and upgrade them. Property listings from these banks are provided to CHAPA through the National Community Stabilization Trust—a national non-profit organization specifically created to help local communities acquire foreclosed properties. A key feature of this program is the 5-day “first look” period, which provides CHAPA’s qualified purchasers access to foreclosed properties prior to being listed on the market. Once the foreclosed property is inspected by the qualified purchaser, the bank provides an adjusted sale price that accounts for holding costs, maintenance and brokerage fees. The qualified purchaser then determines in a 24-hour time period to acquire the property. While the constrained timeline can be difficult, the process addresses the challenges of working with banks in acquiring foreclosed properties. Participating banks now provide up-to-date listings of foreclosed properties, property access and adjusted pricing.

This work has had a significant impact, but Congress failed to fund the next round of Neighborhood Stabilization Funding and all of the funds have been committed. The Commonwealth needs between \$10 and 12 million in funding to continue to neighborhood stabilization work with local partners to be able to acquire distressed properties throughout 2012 and 2013. Without these funds, neighborhoods in weak housing markets throughout the Commonwealth will suffer additional foreclosures and the Commonwealth will find itself in a deeper hole. We understand that this is an issue for the Ways and Means Committee, and we hope you will assist us in advocating for the need for resources to reoccupy foreclosed properties.

Thank you for considering this testimony.