IN MASSACHUSETTS:
AN ACT TO GUARANTEE A TENANT'S RIGHT OF FIRST REFUSAL;
BILLS H.1426 & S.890

(SOURCES: MassLandlords.net; Small Property Owners Association Newsletter of October 11, 2021; http://massrealestatelawblog.com/tag/massachusetts-tenant-right-of-first-refusal/; https://www.lawinsider.com/clause/tenants-right-of-first-refusal; https://www.rocketmortgage.com/learn/right-of-first-refusal;https://malegislature.gov/Search/FindMyLegislator)

What is "RIGHT OF FIRST REFUSAL" (ROFR)?

In a real estate transaction, the Right of First Refusal (ROFR) prevents Seller from entering into a sale with any other buyer without first giving holder of the ROFR an opportunity to accept or decline the purchase at the listed price and conditions. Because time is an important factor in real estate transactions, holder of the ROFR is usually required to make a decision by a certain date.

ROFR, most commonly, is voluntarily given by Seller to a known party: for example, a relative, friend, or acquaintance. In other cases, such as divorce proceedings, a judge might impose ROFR as part of the settlement when a property is jointly owned by the partners.

Massachusetts Legislative Bills H.1426 & S.890

Both proposals are titled "An Act to Guarantee a Tenant's Right of First Refusal". If passed into law, landlords will be mandated to offer ROFR to residing tenants before the property is sold. The language in the bills is so weighted toward the tenants that a sale could take six months or longer.

This is not the first time our representatives on Beacon Hill have attempted to enact such guarantees to renters. During the 2019-2020 legislative session, no fewer than four such acts were proposed by the House and the Senate, all of which failed to pass. This past January, Governor Baker vetoed sections of Bill H.5250 that dealt with provisions called "Tenant Right to Purchase". It makes one wonder what the motivation

is behind this persistent attempt to have our state government stipulate to whom a landlord must sell property.

Advocates of H.1426 and S.890 argue that the housing market in Massachusetts is unfair, primarily because the sales of most rental housing are sold contingent on being delivered vacant. This especially effects elderly and low-income tenants who are then left with few local options to access affordable housing; to find such housing, they must go far from familiar surroundings. In other words, they are displaced. This truly is a distressing situation for which most landlords have sympathy. It is a condition that ought to be discussed in our legislature with an eye toward setting the appropriate legal and economic environment for the free market to solve.

Instead, these two identical bills amount to a knee-jerk reaction to a serious problem, proposing that elderly and low-income renters become their own landlords.

Let's think about this. Most landlords want to sell a rental property because they are in a situation they don't want to be in. Perhaps it's because of old age or medical issues. Perhaps it's because they no longer have the energy, desire, or agility to put in sweat equity. Perhaps it's simply because they are too involved with their day job. Let's face it: being a landlord is hard work. Not all the time, certainly, but when a tenant has a plumping problem in the middle of the night, it's you who gets the call, and it's you who must solve the problem. And if you don't have the time or ability to address a problem, you've got to have enough money to hire someone to do it for you.

Given the responsibilities and expenses of being a landlord, why do our legislators think that elderly and / or low-income tenants have the means to become landlords themselves?

Bills H.1426 & S.890: How are they designed?

According to the language in these two bills, when Landlord decides to sell, she must first notify all tenants in the dwelling of her intent to sell along with the price and the conditions of the sale. The tenants then have 30 days to decide whether to purchase the property.

If the tenants decline the offer, Landlord can then proceed to market the property to other prospective buyers. However, if Landlord gets to the point of a Purchase and Sales agreement with a Third Party, the tenants get another bite of the apple and are given another 30 days to decide if they want to accept the P&S. Here's where the legislation gets lost in the weeds. I'll do my best to explain it as clearly as I can.

Test for Lead, Asbestos, or Both:

If Tenants agree to the price and terms set forth in the P&S, they can demand that the property be tested for lead, asbestos, or both, before making their decision; they are given 30 days for this. It is this provision of the proposed law that is most troublesome.

The wording of the legislation stipulates that the tenants be given "… permission to do **small amounts of demolition** that will be restored after said inspections and tests are completed." (Emphasis added)

It is my understanding that "small amounts of demolition" is vastly different than the phrase "destructive testing" which is the common legal term applied to inspecting for hazardous material. According to sources in MassLandlords.net, "small amounts of demolition" might involve taking cabinets off walls or even demolishing portions of walls to inspect for asbestos or lead paint.

Then there's the phrase: "… will be restored after said inspections and tests are completed." Neither H.1426 nor S.890 specify who is responsible for restoration. Under the state sanitary code however, any demolition conducted by the prospective buyer must be repaired immediately at the seller's – i.e., the landlord's – expense. Landlord can, of course, sue the tenants, but that takes time and money. In such a case, even if Landlord receives a favorable verdict, we are talking about defendants on fixed or low incomes. It's not likely that Landlord will ever be made whole.

Of course, if hazardous material is found, Landlord is on the hook for removal and replacement, an expense that could go into the thousands, or even tens-of-thousands of dollars. And still, the tenants can back out of the deal.

No Demolition, No Problem?

If the tenants do not want to test for hazardous material, they are given 90 days to make up their minds. If lawyers are involved – and they most likely will – Landlord can expect to wait an additional 60 days for a decision. If the decision is NO, Landlord can then put the property up for sale as normal. Meanwhile, precious time has been lost, and in every real estate transaction, "time is of the essence".

If the tenants decide to purchase the property outright without testing for hazardous material, they must be given 160 days to secure financing with provisions for extensions.

Please Contact Your State Representative and Senator – It's Easy

If you have opinions about these two proposed bills, H.1426 and S.890, please voice your views by contacting your state representative and senator.

MassLandlords.net has made it easy by providing an online facility to do it. Just log into the following link:

https://masslandlords.net/surveys/rep-and-senator-contact-response-form/

TOWN	SENATOR	REPRESENTATIVE
Brimfield	Anne M. Gobi	Todd M. Smola
Brookfield	Anne M. Gobi	Donald R. Berthiaume, Jr.
Charlton	Anne M. Gobi	Peter J. Durant
Douglas	Ryan C. Fattman	Joseph D McKenna
Dudley	Ryan C. Fattman	Peter J. Durant
E. Brookfield	Anne M. Gobi	Donald R. Berthiaume, Jr.
Holland	Anne M. Gobi	Todd M. Smola
N. Brookfield	Anne M. Gobi	Donald R. Berthiaume, Jr.
Oxford	Ryan C. Fattman	Joseph D McKenna
Palmer	Anne M. Gobi	Todd M. Smola
Southbridge	Ryan C. Fattman	Peter J. Durant
Spencer	Anne M. Gobi	Peter J. Durant
Sturbridge	Anne M. Gobi	Todd M. Smola
W. Brookfield	Anne M. Gobi	Donald R. Berthiaume, Jr.
Wales	Anne M. Gobi	Todd M. Smola
Ware	Anne M. Gobi	Todd M. Smola
Warren	Anne M. Gobi	Todd M. Smola
Webster	Ryan C. Fattman	Joseph D McKenna

If you need clarification or talking points about the information provided in this article, please access the following link:

https://masslandlords.net/they-want-your-property-hearing-oct-12-on-right-of-first-refusal/