



# Small Property Owners Association

Families who own & operate 75% of America's rental housing

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[www.SPOA.com](http://www.SPOA.com)

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His Excellency Charles D. Baker, Governor  
Commonwealth of Massachusetts  
State House—Suite 360  
Boston, MA 02133

## **RE: The eviction moratorium and transition back to a normal rental housing market**

Dear Governor Baker:

We appreciated having a conversation recently with two of your staff in the Executive Office of Housing and Economic Development. We approach you now with concerns about the eviction moratorium and the difficult transition we can expect in getting get back to a normal post-moratorium rental housing market.

We recognize that under normal circumstances most tenants want to pay their rent. The current eviction moratorium, however, incentivizes tenants to withhold rental payments because they know there will be no consequences in doing so. For the same reason, tenants have no incentive to seek out government or other forms of rental assistance even when available to them at no cost. The moratorium has placed the entire burden of housing tenants on the backs of property owners, with no financial assistance from the Commonwealth nor any policy directives to incentivize tenants to resolve payment issues with their landlords.

Nonpayment of rent hurts small landlords first, fast, and worst. As small landlords, we typically own a small collection of rental units as a part-time or full-time business. We live in the same property as our tenants or nearby. We do our own management and repairs working from home – no fancy offices, no employees with benefits. We predominate especially in moderate- and lower-income neighborhoods where rents are substantially lower – meaning we operate on tight margins. Many of us, like our tenants, are minorities.

Since we have fewer units to count on for income and our tenants are often the ones most impacted by recent shutdowns and layoffs, we face the prospect of being put out of business from any prolonged nonpayment. Unable to pay our mortgages, taxes, and utilities or maintain our properties, we have no choice but to just give up and walk away, resulting in abandoned, boarded-up, and/or foreclosed-upon housing.

Once owners back out, their lower-rent housing too often ends up being lost forever – and the loss can be very substantial. In the attached materials, we document several major losses of lower-rent housing, including:

- The city of Lawrence, when it was hit hard by the early 1990s recession, experienced widespread nonpayment of rent, permanent loss of much housing in its lower-income neighborhoods, and crime.
- One Boston street in the Great Recession of 2007 to 2009 saw many foreclosed properties and vacant buildings taken over by gangs.
- U.S. Census data shows that low-rent housing (\$600 rents or lower) recently dropped from 46% to 25% of the nation's rental housing stock in less than three decades, 1990 to 2017.

With these facts in mind, the longer the moratorium continues, the worse the outcome. The cost of collapse in the Commonwealth's private rental market would be great. Many tenant households would be displaced as abandoned housing becomes uninhabitable, much low-rent housing would be permanently lost, and governments at all levels would lose income and property tax revenue. The magnitude of loss would completely eclipse the cost of reasonable remediation and policy measures that could be implemented to stop it.

Ending the moratorium will not result in a “tsunami of evictions.” The backlog of court filings means that evictions would be spread out over quite some time. As we know from experience, however, nonpaying tenants will continue not paying rent until their court date finally arrives months later – adding yet more nonpayment even after the moratorium ends. The obligation to pay rent needs to be restored soon and firmly.

Let’s keep in mind, however, that the first benefit of ending the moratorium is to “unlock” people from their present living situation imposed by the pandemic and give them the opportunity to make needed adjustments to the new realities they now face, to be adaptive as we know human beings to be. The options are many: strike deals with their landlords, seek help from family and friends, move to a more affordable apartment, take in a roommate or another household if space permits, move to a new job, seek loans or grants, and more.

Facing ongoing nonpayment, landlords will be highly motivated to avoid eviction and strike deals with their current tenants, deals that forgive past-due rent and work out new rent levels given each household’s financial situation. Often, the final deal will be at a lower rent than the household previously paid. SPOA could assist in telling small landlords of their circumstances and to encourage such deals. Many evictions could be avoided in this way.

When the moratorium ends, policy changes could be made to increase more affordable housing options for tenants and facilitate voluntary move-outs. For example, unnecessary occupancy restrictions could be removed – such as allowing renting by rooms instead of whole apartments and ending restrictions on the number of unrelated occupants per dwelling unit. Another needed change is a rent escrow law to stop the current abuse of the state’s rent withholding law, which lacks an escrow requirement and would easily cause yet further post-moratorium nonpayment. We discuss these options in more detail in the attached materials.

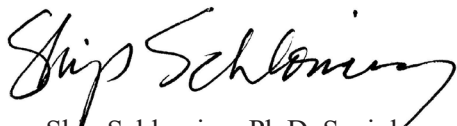
Some nonpayment situations, however, may still not be resolved. In these cases, **increased funding to such programs as Residential Assistance to Families in Transition (RAFT) is vital.** Additionally, the RAFT procedures should be changed **to allow for landlords to apply for this program on behalf of their tenants.** These changes would benefit both parties and help keep more potential disputes out of the courts.

While we know the moratorium needs to end soon, we also know it must be followed by sound policy that deals with the ongoing crisis faced by owners and tenants alike. To assist you in creating this policy, we suggest the creation of an **Executive Commission** consisting of experts, property owners, and tenant advocates, to provide balanced, informed counsel to you and your staff. We have attached below our suggestions as to the make-up and mandate of this group.

The SPOA Board of Directors also greatly favors a more permanent **Massachusetts Commission on Rental Housing Policy**, to bring together a larger collection of stakeholders and experts for more rational discussions of what makes good policy in the present arena of contentious argument. Suggestions also below.

Thank you for considering our thoughts on these matters. We look forward to working with you in dealing with these most difficult, yet vital challenges.

Very truly yours,



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## **Additional materials**

**SPOA is nonpartisan.** Small landlords are Democrats, Republicans, Independents, and a good number are Libertarians. We began as working-class owners, but now an increasing number of middle-class owners find owning rental property to be an excellent way to have a small family business, part-time or full-time, and improve a family's financial position. We do not have a greed gene. We are normal people. We want to work cooperatively with our tenants. We are invested, literally and figuratively, in our neighborhoods.

### **Massive loss of lower-rent housing**

Abandoned and foreclosed rental housing always rises during recessions. When it happens on a large scale (as now), the result is predictable: slums and high crime, loss of tax revenues – and permanent loss of some of our lowest-rent housing. Abuse of the Massachusetts rent withholding law (MGL Ch 239 Sc 8A – the “free rent trick”) is a major culprit.

**Lawrence MA:** The early 1990s recession hit the city of Lawrence very hard. Factories closed, and lower-income tenants stopped paying rent. When they claimed “rent withholding” for code violations under Massachusetts law, owners had no income to make repairs, so the tenants became unevictable – very comparable to today's situation under the moratorium. In Lawrence, over 200 buildings were torched, both factories and housing. Other buildings were abandoned and boarded up. And widespread crime arose (drug-dealing, prostitution, squatters, and vandalism). Seven years later, on invitation of Lawrence's chief inspector, I personally observed the city's lower-income neighborhoods: many empty lots where the city had bulldozed fire-gutted buildings, many triple-deckers still boarded up, and signs of illegal entry – still ongoing. The inspector attributed the loss to the free rent trick, which SPOA had begun to object to.

**Boston:** A recent opinion article in the Boston Globe (8-17-20) reported that on “Boston's Hendry Street, ... by 2009 [the Great Recession], half of the 20 properties on the street were foreclosed, and vacant buildings had been taken over by gangs.” A “stabilization” program “fell short,” and private investors “... snapped up properties, rented them out until the market stabilized, and then once again flipped them for a significant profit.”

**Nationwide:** In a recent report, the Harvard Joint Center for Housing Studies used U.S. Census data to determine that the U.S. lost a huge amount of low-rent housing (rents of \$600 or less) over less than three decades – from 1990 to 2017. In 1990, this low-rent housing comprised 46% of the nation's rental housing stock. By 2017, it had dropped to 25% of total stock, a loss of 21 percentage points. This loss continues for various reasons, but a prominent factor is destructive landlord-tenant laws like the Massachusetts rent withholding law that allows the “free rent trick.”

## **Occupancy restrictions, if repealed, to make available more affordable housing options**

### **I. Allow Owners to Legally Rent Rooms Individually**

On condition that all rooms are safe, clean, and meet health and safety standards, this solution allows landlords to rent individual rooms to one or more occupants and avoids the time-consuming and much more difficult process of putting together a group of roommates to rent an entire unit under one rental agreement. Restrictions on rooming houses likely need to be lifted.

### **II. Allow Owners to Legally Rent Basement and Attic Areas in the Same Manner as Rooms**

Provided that the occupants of a basement or unfinished attic space are allowed to use bathroom and kitchen facilities on the main or an adjoining floor and that each occupied space has at least one electric outlet, one light fixture, and adequate means of egress, this solution is very similar to allowing rooms to be rented individually and quickly.

### **III. End Occupancy Limits on Unrelated Persons Per Dwelling Unit**

Prohibit any municipality from putting a limit on the number of persons, related or unrelated, who may occupy a dwelling unit, provided that the square footage and number of occupants does not exceed the minimum required square footage of habitable floor space as defined in 105 CMR 410.400 of the State Sanitary Code.

This simple change allows larger apartments to be used to their maximum capacity and works consistently with Solution I above.

### **IV. Allow the Use of Room Dividers**

Allow the use of prefabricated, modular, or owner-built room dividers to be used to create two or more rooms out of one large room (such a former parlors and dining rooms), provided that the square footage and number of occupants does not exceed the minimum required square footage of habitable floor space as defined in 105 CMR 410.400 of the State Sanitary Code. This simple change again allows larger rooms to be used efficiently and to their maximum capacity.

### **Four Enabling Conditions Needed for the Above Changes**

#### **1) Allow Locks on Bedroom Doors**

When rooms are rented individually, allow the owner or the occupant of each room to install a lock on the room's entry door, if they so desire, provided that these locks can be opened from the inside without the use of a key, to allow rapid egress in case of an emergency, yet provide the occupant with a sense of security within their own room.

#### **2) Individual Leases**

Allow a tenant to sign an individual lease with a landlord, which is the only practical way to allow rooms to be rented individually.

#### **3) Shared Utilities**

Allow the occupants of a group of rooms rented individually to share the cost of utilities, provided that each occupant has sign an agreement accepting responsibility to pay their share. Scientific studies have shown that if multiple tenants share utility bills, the usage is reduced significantly, which not only reduces the cost burden on the occupants but also reduces pollution and saves energy.

#### **4) Eliminate the Requirement for Sprinklers**

Since none of these solutions involves any increase in the floor space of a building nor addition of any heat sources, a sprinkler requirement is not needed and would be prohibitively expensive – provided, however, that battery-operated smoke and carbon monoxide detectors shall be installed in each newly created room or living space.

#### **5) Allow all these options “as of right” and in most cases without a building permit**

The only realistic way to move forward rapidly with these alternatives is to make them “as of right,” with no requirement for a variance or special permit or other form of review and approval. At the same time, most of these solutions do not need a building permit.

### **A rent escrow requirement for the Massachusetts rent withholding law**

The state's rent withholding law (MGL Ch 239 Sec 8A) blocks eviction of tenants who claim “withholding” of rent for code violations. But the law does not require escrowing of the withheld rent to establish the tenant's good-faith concern with neglected repairs and to ensure that the escrowed rent finally reaches the landlord. Consequently, tenants who receive a 14-day notice to quit for nonpayment immediately call the local housing inspector and get code violations cited – making them unevictable until violations are corrected.

Predictably, with no escrow requirement, tenants quickly realize that they can block repairs, undo repairs, and deliberately damage their unit to create more code violations – all in order to continue living rent-free for many months and, in a few cases, for a year or longer. When they can no longer sustain this “free rent trick,” they move out, walking away with months of unpaid rent in their own pockets.

The abuse of the rent withholding law is easily resolved with a mandatory rent escrow requirement added to it. Over numerous meetings in 2015-2016, the late Representative Chris Walsh supervised a small group to negotiate acceptable rent escrow language. Skip Schloming as SPOA executive director was joined in the negotiations by landlord attorney Stuart Farkas and two legal services lawyers, Annette Duke of the Massachusetts Law Reform Institute and another legal services lawyer who changed over the course of negotiations. We agreed on the following language. (Boldfaced text is the proposed language to be added.)

MGL Ch 239 Sec 8A: There shall be no recovery of possession pursuant to this chapter pending final disposition of the plaintiff's action if the court finds that the requirements of the second paragraph have been met. The court after hearing the case may require the tenant or occupant claiming under this section to pay to the clerk of the court the fair value of the use and occupation of the premises less the amount awarded the tenant or occupant for any claim under this section. **Notwithstanding the foregoing, in the event the originally scheduled trial date is continued for any reason and any party to the action moves the court to establish a rent escrow pending a final decision on the merits of the case, the court shall promptly hear said motion in accordance with the rules governing summary process matters and order said tenant or occupant to make deposits with the clerk, plaintiff's attorney or other secure depository, the fair market value of the premises on account of use and occupation of the premises in such amount(s) or in such installments thereof from time to time as the court deems just. In the event any tenant or occupant fails to abide by the court's rent escrow order, then in that event the court, upon the filing of a motion by the aggrieved party, shall order the matter to be scheduled for a bench trial on the earliest available date and make such other and/or further orders as the court deems just.**

For various reasons, this language did not get immediately submitted as a bill. But being negotiated, this language has the best chance of passing in the Legislature.

In 1998, Lenore Schloming, then president of SPOA, and Skip Schloming as its executive director won "Honorable Mention" in a Better Government Competition sponsored by the Boston-based Pioneer Institute. Our white paper "The Road Home" reported the disastrous impact of the free rent trick in Lawrence MA in the 1990s and in several other Massachusetts municipalities, urging adoption of mandatory rent escrowing. It can be read at the SPOA website: [www.spoa.com](http://www.spoa.com).

**Typical eviction time-lengths** On an average eviction time in nonpayment cases, no good data is available since it all happens between landlord and tenant in so many different cases. The fastest an eviction for nonpayment can go is two months, assuming absolutely no delays. The delays are the problem: the owner does not act fast hoping the tenant will eventually pay, the tenant requests "discovery" at court (two more weeks of nonpayment), the tenant requests a jury trial (not all that common, but a delay of several months, again of nonpayment). Then the free rent trick can kick in at any point and it probably adds at least one or two months, often longer, and can go up to a year or longer in a few cases – all nonpayment. These multiple opportunities for delay are why the free rent trick can be such a disaster and why a rent escrow requirement is so necessary. With escrowing, inspections will drop dramatically, and municipalities can save on inspectors, their salaries, and related infrastructure.

**True cost of the free rent trick** Abandoned housing happens all the time in Massachusetts, just as in Lawrence but less severe. The city of Boston maintains an "abandoned properties" list with 638 properties as of June 2018, all residential, reported by neighbors or city officials as recently as 14 days to over 2 years after being abandoned. The listings named such conditions as rodents and racoons, people going in and out, drug addicts shooting up, trash piling up, "harboring a crowd of people," doors or windows wide open, vagrants urinating in entries, gutted by fire, etc.

The city also maintains a list of "distressed properties," which are either abandoned or severely deteriorated, with 256 residential properties on the list in 2018. All but 43 of these buildings – 73% of them – were one-to-three units, most likely owned by small owners with less financial flexibility. And they occur overwhelmingly – 81% of them – in Boston's lower-income neighborhoods: Dorchester, East Boston, Hyde Park, Mattapan, Roslindale, and Roxbury.

In addition, the website [foreclosurelistings.com](http://foreclosurelistings.com) for Suffolk County (mostly Boston) listed 346 properties

in foreclosure or pre-foreclosure in 2018, some still occupied. Often, owners are forced into foreclosure when nonpaying tenants play the free rent trick and owners can no longer pay their mortgages and maintain their properties. Boston officials claimed at the time that the city has a foreclosure crisis. At that time, Skip Schloming asked several Boston inspectors whether they knew if tenants requesting inspections were being evicted. They reported that they do ask whether tenants have received a notice to quit for nonpayment. The tenants' replies, they reported, were "yes."

## **Funding for RAFT**

A recent pamphlet says that \$4.4 million in RAFT payments has saved \$33 million (!!!) in Emergency Assistance when near-homeless families are put up in motels and hotels at \$3,000 a month per family. Assisting tenant households in private rental housing is far more economical.

## **An Executive Commission**

- To assist the Governor in developing appropriate rental housing policy as the eviction moratorium is lifted and the Commonwealth transitions to post-pandemic conditions.
- To be available for frequent meetings, as needed.
- To be composed of one representative from each of the following groups:
  - o Small Property Owners Association
  - o Greater Boston Real Estate Board
  - o MassLandlords.net
  - o Massachusetts Law Reform Institute
  - o City Life/Vida Urbana
  - o Greater Boston Legal Services
  - o Executive Office of Housing and Economic Development
  - o ...possibly others, but a smaller group might be better.
- To make suggestions for rental housing policy during the transition.
- To review and comment on proposals.
- To be disbanded after transition policy is established, or continued as an advisory group to the Governor, or replaced by a Massachusetts Commission on Rental Housing Policy (see below).

## **A Massachusetts Commission on Rental Housing Policy**

The following proposal is a draft only and incomplete, fully open to modification.

### **An Act to establish**

#### **a Massachusetts Commission on Rental Housing Policy**

WHEREAS, advocates and investigators on all sides of rental housing policy seldom speak with each other.

WHEREAS, advocates and investigators agree on many values regarding rental housing, including non-discrimination, affordability, preservation, supply, housing options, and helping the poor.

WHEREAS, rental housing policy seldom gets a dispassionate assessment of its impacts based to the extent possible on available statistics and research,

WHEREAS, a calm, reasoned discussion could greatly improve current rental housing policy and regulation in Massachusetts as well as in other states.

WHEREAS, in the last three decades (1990-2017), the nation has lost almost half (45.7%) of its low-rent housing stock (rents of \$600 or less). comprising 21% of the nation's total rental housing stock before being lost.

WHEREAS, Massachusetts has a wide array of organizations and agencies dedicated in whole or in part to rental housing issues.

THEREFORE, Be It Enacted That

1. A Massachusetts Commission on Rental Housing Policy shall be established on a permanent basis or un-

- til such time as the Governor decides it should be ended.
2. The Commission shall consist of not less than 10 nor more than 25 members, each one of whom shall be the executive officer or a delegate from the following organizations or agencies (one person per entity):
    - a. Small Property Owners Association
    - b. Greater Boston Real Estate Board
    - c. MassLandlords.net
    - d. Massachusetts Housing Coalition
    - e. Massachusetts Law Reform Institute
    - f. City Life/Vida Urbana
    - g. Boston Tenants Union
    - h. Greater Boston Legal Services
    - i. Massachusetts Department of Housing and Community Development
    - j. Massachusetts Executive Office of Housing and Economic Development
    - k. Massachusetts Department of Public Health, Community Sanitation division
    - l. Harvard Joint Center for Housing Studies
    - m. MIT Center for Real Estate
    - n. Northeastern University Dukakis Center
    - o. Metropolitan Area Planning Council
    - p. And others of like kind.....
  3. The Commission shall consider, discuss, debate, seek research, and otherwise investigate the following and related topics:
    - a. Rent control
    - b. Just cause eviction
    - c. Tenant right to counsel
    - d. Tenant right to purchase (right of first refusal)
    - e. Habitability codes
    - f. Exclusionary zoning
    - g. Inclusionary zoning
    - h. Tax-funded subsidized housing
    - i. Tax-funded tenant-based rental assistance
    - j. Eviction record sealing
    - k. ....
  4. These and related topics shall be considered as to their impacts on the following:
    - a. Rent levels
    - b. Housing preservation
    - c. Housing loss
    - d. Housing-related safety and health
    - e. Discrimination
    - f. Poverty
    - g. Renter household stability
    - h. Renter household outcomes in terms of divorce, separation, educational and economic success
    - i. Renter household needs
    - j. ....
  5. The Commission shall make a report of its findings and conclusions to the Legislature, the Governor, and the public at least once a year.
  6. The Commission shall have a staff of at least one policy and data researcher with appropriate support staff.
    7. The Commission shall meet not less than once a month.
      - a. Meetings shall be moderated by a professional nonpartisan moderator.
      - b. The moderator may, at his/her discretion, limit the time for participants to speak.
      - c. [Further conditions to ensure rational discussion and not domination by one party.]