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The Office of Senator Elizabeth Warren
317 Hart Senate Office Building
Washington, D.C.20510

To whom it may concern:

Greetings.

We are a group of Massachusetts professionals who are deeply involved with the approximately twelve thousand condominium associations in the Commonwealth. We are requesting a meeting with Senator Warren or her staff. Our group, which is represented by Scott Wolf, owner of Greater Boston Properties, Inc. and Wes Blair, Senior Vice President of Brookline Bank, would like to bring to the Senator's attention the serious problem that will occur within those associations if FHFA is permitted to assert and obtain protection under the HERA provisions of the federal law and prevent a condominium association from foreclosing on condominium units if Fannie Mae or Freddie Mac has a mortgage loan on said units. The foreclosures are authorized by state laws which afford to these condominiums a limited priority lien which protects their ability to collect the funds needed in order to operate and maintain their associations.

By way of background, in 1977, The Uniform Commissioners of State Laws adopted the Uniform Condominium Act which introduced the concept of condominium associations having a limited priority lien of 6 months of condominium fees ahead of the first mortgagees' liens. The draft noted that, while a departure from existing practice, it struck a fair balance of the condominium association's right and ability to maintain its property and the rights of first mortgage holders. It is important to note that Fannie Mae, Freddie Mac, American Bankers Association and Mortgage Bankers of America were all present at the bargaining table for these negotiations which resulted in the limited priority lien.

This limited priority lien is a true priority not a payment priority and as such is based upon hundreds of years of real estate law. Accordingly, a foreclosure sale by a condominium association extinguishes the first mortgage holder' lien. However, the lender is entitled to notice. In Massachusetts, Chapter 183A (the "Condominium Statute") requires notice to be sent to the lenders at numerous points in the enforcement of the limited priority lien. Experience over the past twenty plus years has shown that in the substantial majority of cases, most lenders pay the six months of common fees and any costs incurred by the association. The simplicity of the limited priority lien is that no one loses under these circumstances; the association's stream of income is not interrupted, the lender adds the amount to the mortgage balance and the owner receives financial relief during a period of time that they are unable to pay their fees, so once notice is received most mortgagees simply pay the 6 month priority lien plus attorney's fees to preserve their priority. In some instances where the lenders were considering, or even starting foreclosure proceedings, many actually prefer to let the association foreclose as our process is considerably faster than mortgage foreclosures which can take up to 900 days. In those instances, the lender can either bid at the auction or a third party bidder bids more than the amount owed on the mortgage. The net result of this is that the association is paid the limited priority lien (and

all the costs incurred in bringing the matter to foreclosure) and the mortgage lender receives the lion share of the sale proceeds to satisfy its mortgage lien.

The limited priority lien, in one form or another, is the law in 22 states plus the District of Columbia. It has been the law in Massachusetts since April 6, 1993. Since that time, it has saved numerous associations from going out of business while at the same time protecting the property of other owners who were current in their common fee payments and their lenders. In addition, it avoided compelling condominium owners who were current in their common fee payments to subsidize non-paying owners and consequently their lenders. If the association did not have a limited priority lien, the lenders would eventually foreclose on the unit without any obligation to pay any unpaid common area fees. As a result, the remaining unit owners would be forced (and in fact in some instances were forced) to make up this lost revenue in order to meet the association's budget and pay its bills. The domino effect of putting additional strain on those unit owners' finances could (and in many cases did) lead to more delinquencies and even increased the number of people who fell behind in their mortgage payments. The lien system which existed prior to the enactment of the limited priority lien had the net effect of condominium owners (with condominiums being the last bastion of affordable housing) subsidizing the lender which led to the inability of many associations to pay for essential costs.

This unforeseen and absurd situation was exacerbated by the failure of the national lenders to properly underwrite the loans and thus mortgage loans were granted to people unable to pay the loan or the condominium association's common fees. Our group would like to stress that condominium associations have absolutely no control over the people who receive mortgage loans, although the obligation to pay condominium fees was and is as important as the obligation to make the mortgage payments. Thus associations involuntarily inherited new non-paying owners. It was only through the enactment of the limited priority lien that the financial risk to the association was brought into balance with that of the mortgage lender. For 22 years it has worked well in Massachusetts.

In 2014, in both the Chase case in D.C. and the SFR case in Nevada, the supreme courts of both states rightfully decided based on hundreds of years of real estate law that the foreclosure of the condominium's lien extinguished the first mortgage but that lender would likely get excess proceeds once the association was paid. Lenders acted shocked at this result and eventually convinced FHFA to argue in Nevada federal courts that the HERA provisions of the federal law prevent a condominium association from foreclosing condominium units on which Fannie Mae or Freddie Mac has a mortgage loan. HERA parrots the FIRREA language used by the FDIC in the early 90s as an excuse for FDIC not paying its fair share of condominium fees. The basis for FHFA's position is that Fannie Mae and Freddie Mac are under conservatorship with the FHFA and as such are "federal government entities" and not subject to state law.

The FHFA fight seems to be one FHFA is fighting for the national lenders since the Fannie Mae and Freddie Mac servicing guides are clear that Fannie or Freddie pay only 6 months of condominium fees and the servicing banks pay anything above that. This is a good result that was intended to keep the loan servicer aware when they received notice of foreclosure from a condominium association. The proper response of the servicers should have been to forward the notice to Fannie or Freddie so the association would get paid and the limited priority lien satisfied. Massachusetts has a judicial condominium lien procedure which requires numerous notices. It would be only as a result of incompetence on the part of lenders or servicers in ignoring the numerous notices (including being named in the litigation to obtain the judicial order for foreclosure to satisfy the limited priority) that the

foreclosure process would be finalized. Clearly, that would be a result they brought upon themselves through no fault of the association.

In the 1990s when the FDIC took the position that they didn't have to pay condominium fees but rather the poor unit owners should subsidize them, Congressman Barney Frank, at our urging, wrote a letter to the FDIC as a letter of congressional inquiry, telling FDIC that they were to pay condominium fees in full and on time. Whether that is the fix this time or whether the fix is to take out the avoiding powers of HERA is the topic we would like to discuss with Senator Warren and her staff. As to condominium and homeowner associations, if FHFA prevails then the thousands of condominiums and tens of thousands of condominium owners in Massachusetts will go back in time 22 years and associations will lose this effective tool for collecting from delinquent owners. As a result, owners of units will see values dramatically decrease and condominiums will not be properly maintained, thereby hurting the paying condominium owners and the lenders of performing loans. The impact of this on housing in Massachusetts will be as severe as it was prior to the 1993 enactment of the limited priority lien.

Thank you for your time and consideration. We appreciate your help in arranging this meeting with Senator Warren. If you have any questions or would like further details please feel free to contact Scott Wolf (Scott@GBProperties.com) or Wes Blair (wblair@BRKL.com).

Sincerely,

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