

BOS ~~SP11~~
Ester Info
03-05-07

Maryjane Kenney

From: Don Johnson
Sent: Sunday, March 04, 2007 3:21 PM
To: Stephen Anderson
Cc: Nancy Tavernier; Board of Selectmen; Manager Department
Subject: FW: LIP unit foreclosing

Importance: High

Attachments: 670 Mass Ave. DHCD letter to Lang.pdf; 670 Mass Ave letter to mortgage.TIF; 670 Mass Ave foreclosure notice.pdf



670 Mass Ave. DHCD letter to L...
370 Mass Ave letter to mortgag...
670 Mass Ave foreclosure noti...

Steve:

Heads up! Below are excerpts of two e-mail chains (separated by the line of asterisks). I do not recall whether we sent you any of the paperwork we received on this matter and I don't know how much supporting information we can provide you prior to Monday evening but we will see what Nancy or we may have. By copy to Nancy, I am asking her to send (Reply to All) any further information or comment she may have.

Regards,
Don

-----Original Message-----

From: Don Johnson
Sent: Sunday, March 04, 2007 3:06 PM
To: Walter Foster (office)
Subject: RE: LIP unit foreclosing

Walter:
Agreed. I will get Steve involved and, if possible, ready for Monday.

Regards,
Don

-----Original Message-----

From: Walter Foster (office)
Sent: Saturday, March 03, 2007 2:49 PM
To: Don Johnson
Subject: FW: LIP unit foreclosing

This seems important enough to go ahead and get town counsel involved. What do you think? If we need to, let's be prepared to briefly discuss this at our Monday evening meeting.

Walter

Walter M. Foster
Sheehan, Phinney, Bass + Green, PA
One Boston Place, 38th Floor
Boston, MA 02108-4404
T: 617 897 5646
F: 617 439 9363
wfoster@sheehan.com

Sheehan, Phinney, Bass + Green, PA
A Regional Business Law Firm.
Innovative Approaches. Practical Solutions.

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-----Original Message-----

From: Nancy Tavernier
Sent: Saturday, March 03, 2007 3:12 PM
To: Walter Foster (office)
Cc: Board of Selectmen; Acton Community Housing Corporation
Subject: RE: LIP unit foreclosing

Hi Walter,

Thanks for your response. Yes I would be available on Monday and there may be other members who would like to come too. Any time is fine with me, just let me know. We would hope to keep the names and details somewhat confidential but now that a foreclosure notice has been published, that may not be possible.

Nancy

At 02:50 PM 3/3/2007, Walter M. Foster wrote:

>Nancy - Thank you for this important update. This appears to be a very
>important matter and we will look into getting town counsel involved.
>Are you available for a brief appearance (or someone else if you are
>not) on Monday to discuss? Let me know and thanks for bringing this
>forward to the board.

>

>Walter

>

>

>

>

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>

-----Original Message-----

From: Nancy Tavernier
Sent: Friday, March 02, 2007 8:20 PM
To: Board of Selectmen

Cc: Acton Community Housing Corporation
Subject: LIP unit foreclosing

Dear Board members,

I had not realized you were meeting next week and I know the agenda is very limited. However, we have an emergency as evidenced by the attached foreclosure notice that ran in the Beacon on 3/1/07 and it may take some time to determine what action the Town should be taking. This involves the Foreclosure on a LIP unit at 670 Mass. Ave owned by Christine and Ernest Lang. I have attached some correspondence from DHCD, one to the Langs and one to the mortgage holder. Unfortunately, the errors in regard to this property just continue to compound. The original address was 668 Mass. Ave., it was later changed by the Town for some unknown reason and is now 670 Mass. Ave. Also the original deed misspelled the Lang's name due to poor handwriting on the Regulatory agreement, they were listed as Lanes. Why the DHCD and the Registry of Deeds continue to carry the wrong address, and now the Land Court too, is very disturbing. This is a mess and it has proceeded way beyond our ability to resolve it. In November the mortgage was assigned to another mortgage company, Bear Stearns with LaSalle Bank as its subsidiary.

ACHC has been following the demise of this unit since last September. We were told by DHCD that they would handle it and we should not get involved. We forwarded the DHCD correspondence to Don and I believe he shared it with the Board in the Fall. I have made several contacts with LIP Program Manager Elsa Campbell and DHCD Counsel Robert Smith seeking updates. We have none. I have spoken to the home owners, they have now moved out of the house and intend to let the house go. They have refinanced on several occasions without permission from the Town or DHCD, a violation of the regulatory agreement with the Town. When they refinanced, the mortgage amounts exceeded the restricted value of the property. They dug themselves into a very deep hole and have no hope of getting out.

The Regulatory Agreement for this unit was signed by the Chairman of the Board of Selectmen in November 1998. This unit was acquired through a condition of the Planning Board Special Permit for Bellows with developer Ron Peabody. The unit was approved by DHCD as part of the LIP program and it counts toward our 10%. We are at grave risk of losing the unit. This is a Town asset in our opinion. We request that Town Counsel be brought into this issue. ACHC would be happy to help puzzle out the details and provide our files but we ourselves cannot manage this problem. Our reading of the foreclosure notice indicates that action must be taken before March 26, 2007. We realize this could not come at a worse time for distractions at town hall but the loss of a unit, especially a 3-BR single family home, is serious business.

We have been assured by DHCD that there are capital improvement funds available should the property need to be upgraded, ACHC has some CPA funds too. We simply don't know whether or not the Deed Rider will survive foreclosure as is the case with the deed required now for 40B's.

We remain ready to help if we can and thank you for your attention to this matter.

Nancy



Commonwealth of Massachusetts
DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT

Mitt Romney, Governor ♦ Kerry Healey, Lt. Governor ♦ Jane Wallis Gumble, Director

September 25, 2006

Ernest J. and Christine S. Lane
670 ~~668~~ Massachusetts Avenue
Acton, Massachusetts 01720

Dear Mr. and Ms. Lane,

I am writing to you about your property at ⁶⁷⁰668 Massachusetts Avenue, Acton, Massachusetts. As you are aware, you bought your unit at a price less than market value to enable you to purchase a home you might not otherwise afford. To ensure that the property remain affordable for a reasonable length of time, the property may not be sold at full market price until 50 years after the initial purchase (January 7, 2049). This restriction limiting the sale price was imposed by a deed rider which is explicitly mentioned in the deed which gave you title to your property. The deed and deed rider are recorded in the South Middlesex Registry of Deeds in Book 29663 at Page 27. These documents are also available on the registry's webpage.

Section 3 of your deed rider is entitled "Restrictions Against Leasing and Junior Encumbrances." In this section you agree to not lease, refinance, encumber or mortgage your property unless the Director of the Department and the Town of Acton approve the transaction. When you refinanced your mortgage with Fremont Investment & Loan on June 23, 2004, for an amount of \$211,250, you violated this provision of your deed rider by failing to give notice to the Department and the Town of Acton and by failing to secure the necessary approval from them. A copy of this mortgage is recorded at the South Middlesex Registry of Deeds in Book 43150 at Page 321. The amount for which you refinanced was much greater than the amount for which you were entitled to sell your property. Because the amount of the debt exceeded the maximum permissible resale price, DHCD would not have approved this transaction.

Your deed rider defines the price for which you can sell as 48.5% of your property's appraised fair market value or if no low or moderate income household can afford that price, then an amount such household could afford. DHCD has received an appraisal which values your house at \$375,000. $\$375,000 \times 48.5\% = \$181,875$. So \$181,875.00 is the maximum amount for which you can sell your house.

You are now seeking to refinance again. This time it would be for more than \$218,000 (the amount you owe Fremont). For the reasons discussed above, the Department cannot approve this transaction. The Department has a duty to enforce the affordability restriction for the 50 year period specified in your deed rider.

Although the Department is not in a position to offer you legal advice, it strongly recommends that you should seek advice from a lawyer. Because you have failed to make payments on your current debt, one possibility is that you agree to sell your property to Fremont Investment & Loan for the maximum resale

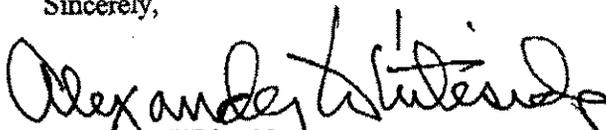
Ernest J. and Christine S. Lane
September 25, 2006
Page 2

price of \$181,875, and Fremont in turn agrees to resell the property to an eligible low or moderate income household (selected by the Town) for the same price as specified in your deed rider. Such a transaction would maintain affordability of the property, and allow Fremont to realize a substantial amount of money on the sale (less than the amount outstanding on its mortgage but the maximum to which it would be entitled if its mortgage were not voidable).

I emphasize that the property is subject to the deed rider. The Town of Acton and DHCD have not waived and will not waive affordability, and you have no power to affect it through any action of your own. The mortgage given to Fremont is voidable and the property cannot be sold at a foreclosure sale without the Town's and DHCD's consent.

Please contact DHCD attorney Robert Smith (617 573-1506) in order to work out a mutually satisfactory agreement in this matter.

Sincerely,



Alexander Whiteside

cc. Steven Sadisi, Compass Bank
Daniel J. Nigro, Esq.
Fremont Investment & Loan, Customer Service Center
Nancy Tavernier, Acton Community Housing Corporation
Elsa Campbell, DHCD LIP Program

668 MASSACHUSETTS AVE. ACTON
LEGAL NOTICE
COMMONWEALTH OF
MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT



Case No.: 337116

To:
Ernest J. Lang, Sr. and Christine S. Lang

and to all persons entitled to the benefit of
the Servicemembers Civil Relief Act.

LaSalle Bank National Association, as
Trustee for certificateholders of Bear
Stearns Asset Backed Securities I LLC
Asset Backed Certificates, Series 2004-
FR3 claiming to be the holder of Mortgage
covering real property in Acton, numbered
668 Massachusetts Avenue given by
Ernest J. Lang, Sr. and Christine S. Lang
to MERS, as nominee for Fremont
Investment & Loan dated June 23, 2004,
and recorded with the Middlesex County
(Southern District) Registry of Deeds at
Book 43150, Page 321, and now held by
Plaintiff by assignment has/have filed with
said court a complaint for authority to
foreclose said mortgage in the manner
following: by entry and possession and
exercise of power of sale.

If you are entitled to the benefits of the
Servicemembers Civil Relief Act and you
object to such foreclosure you or your
attorney should file a written appearance
and answer in said court at Boston on or
before the **26th day of March 2007**, or
you may be forever barred from claiming
that such foreclosure is invalid under said
act.

Witness, KARYN F. SCHEIER, Chief
Justice of said Court this 1st day of
February 2007.

Attest:
Deborah J. Patterson
Recorder

AD#11250741
AC 3/1/07



Commonwealth of Massachusetts
DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT

Mitt Romney, Governor ♦ Kerry Healey, Lt. Governor ♦ Isaac Wallis Gumble, Director

Fax Transmission

Date: November 22, 2006

Time: 11:25⁴¹ AM

TO

Agency / Company: Acton Community Housing Corporation

FAX Number: 978 263-9611

Attention: Nancy Tavernier

Room / Floor: _____

Office Telephone No: _____

FROM

Sender / Program: Office of the Chief Counsel

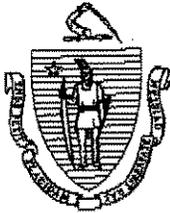
Contact Person: Robert Dickens Smith

Telephone Number: (617) 573-1506

Number of Pages to Follow (excluding this cover page): 2

Fax Number: (617) 573-1515

Comments: _____



Commonwealth of Massachusetts
DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT

Mitt Romney, Governor ♦ Kerry Healey, Lt. Governor ♦ Jane Wallis Gumble, Director

November 22, 2006

EMC Mortgage Corporation
P.O. Box 141358
Irving, Texas 75014-1358

By first class mail and facsimile (972 402-7367)

Re: 670 Massachusetts Avenue, Acton: Proposed Foreclosure in Violation of Deed Restrictions

Dear Sir or Madam,

I am writing with regard to the Local Initiative Program (LIP) unit at 670 Massachusetts Avenue, Acton, Massachusetts. This unit was conveyed to Ernest and Christine Lang by Bellows Farm, LLC via a deed dated January 7, 1999 and recorded in Book 29663 page 127 in the Middlesex South District Registry of Deeds on January 14, 1999. (A confirmation deed is also recorded at book 31345 page 112 to clarify a misspelling in the original deed.) The deed rider attached, annexed, and made part of both deeds specified that the Langs purchased this property for a sum less than the appraised fair market value of the property, and that this was done in exchange for their obligation, as detailed in the deed rider, to sell the property in the future only to an eligible purchaser located by the Department of Housing and Community Development (DHCD).

Section 3 of the deed rider entitled "Restrictions Against Leasing and Junior Encumbrances" disallows all leases, refinancing, encumbrances or mortgages unless given prior approval by the Director of DHCD and the Town of Acton. Mortgage Electronic Registration Systems as nominee for Fremont Investment & Loan violated this provision of the deed rider when it took a mortgage without the consent of DHCD or the Town of Acton from the Langs on June 23, 2004 in order to secure a loan in the amount of \$211,250. No notice of this mortgage was given to either DHCD or Acton, and no consent was granted by either DHCD or Acton. At the time of this loan, the Maximum Resale Price of the property, as defined in the deed rider, was significantly less than the amount of the loan, and, if requested, approval of the loan would have been denied by DHCD for this reason. (The deed rider defines Maximum Resale Price as the appraised fair market value multiplied by the "Discount Rate" of 48.5% or if no eligible purchase can afford that price then an amount equal to the amount for which an eligible purchaser can qualify.) Following such denial, if the mortgage had still been taken, DHCD would have voided the mortgage pursuant to section 5(d) of the deed rider.

Under these circumstances, where a mortgage on a LIP property is willfully taken in violation of a recorded deed rider and program restrictions, DHCD will be disposed to exercise the option of declaring the mortgage void. However, DHCD recognizes that such an action may be harsh on a lender which

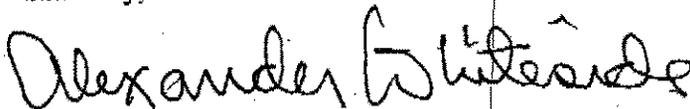
EMC Mortgage Corporation
November 22, 2006
Page 2

has simply been negligent and is unaware of the restrictions; moreover, voiding the mortgage may unduly reward a mortgagor who may have been aware of the restrictions. Hence, in an appropriate case DHCD is willing to permit a lender to foreclose or to accept a deed in lieu of foreclosure provided that in return the lender makes certain commitments to maintain program affordability of the property for low or moderate income households. The lender must agree that once it acquires the property it will sell the property to an eligible low or moderate income household, selected by the Town and DHCD, at the Maximum Resale Price as specified in the LIP Deed Rider. The affordability of the unit for an eligible purchaser will thereby be preserved, and the lender will be able to realize a substantial amount of money on the sale (less than the amount outstanding on the mortgage but more than nothing).

I emphasize that the property is now subject to the deed rider. The Town of Acton and DHCD have not waived their rights and Mr. and Ms. Lang had no power to affect them through any action of their own. Even if a foreclosure sale should occur, without DHCD's or the Town's consent the sale would be invalid and the property would remain subject to the restrictions and enforcement provisions of the deed rider.

Please contact DHCD attorney Robert Smith (617 573-1506) in order to work out a mutually satisfactory agreement in this matter. Without such an agreement DHCD would have to consider its remedy of voiding the mortgage.

Sincerely,



Alexander Whiteside

cc. Daniel Ladd, Attorney for the Langs
Elsa Campbell, DHCD Program Manager
Nancy Tavernier, Acton Program Manager ✓

Maryjane Kenney

From: Walter Foster (office)
Sent: Saturday, March 03, 2007 2:51 PM
To: Nancy Tavernier; Board of Selectmen
Cc: Acton Community Housing Corporation
Subject: RE: LIP unit foreclosing

Nancy - Thank you for this important update. This appears to be a very important matter and we will look into getting town counsel involved. Are you available for a brief appearance (or someone else if you are not) on Monday to discuss? Let me know and thanks for bringing this forward to the board.

Walter

Walter M. Foster
Sheehan, Phinney, Bass + Green, PA
One Boston Place, 38th Floor
Boston, MA 02108-4404
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-----Original Message-----

From: Nancy Tavernier [mailto:ntavern@comcast.net]
Sent: Friday, March 02, 2007 8:20 PM
To: bos@acton-ma.gov
Cc: ACHC@acton-ma.gov
Subject: LIP unit foreclosing

Dear Board members,

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