



Testimony for Hearing November 14, 2023

RE: Tenant Opportunity to Purchase (TOPA) in all its forms:
H.1162 and S.626 An Act for a right of first refusal for foreclosed property Foreclosure TOPA
H.1350 and S.880 An Act to guarantee a tenant's first right of refusal
H.4074 An Act authorizing the city of Somerville to enact Right to Purchase Legislation

Prepared for

The Joint Committee on Housing, Massachusetts General Court, State House, Boston
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Funded by

The members of MassLandlords, Inc.
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to create better rental housing in Massachusetts.

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Contents

Executive Summary.....	1
By Bill.....	1
• H.1162 and S.626 An Act for a right of first refusal for foreclosed property Foreclosure TOPA OPPOSE	1
• H.1350 An Act to guarantee a tenant’s first right of refusal OPPOSE	1
• H.4074 An Act authorizing the city of Somerville to enact Right to Purchase Legislation OPPOSE .	1
By Position and Topic.....	1
Membership Polling	2
Flaw One: Right of First Refusal Would Redistribute State Budget from Market Towns to TOPA Towns ...	4
Flaw Two: TOPA would allow a few nonprofits to monopolize the market	5
Flaw Three: TOPA Advocacy Shows it Preserves only 16 units per year at a cost of \$239,000 per unit.....	5
Flaw Four: TOPA is not about Preservation, it's about Extortion	7
Easy alternative: Renters and CDCs can compete like the rest of us.....	8

Executive Summary

On the basis of communication with members, member polling and MassLandlords staff assessment, MassLandlords, Inc. takes the following positions:

By Bill

- H.1162 and S.626 An Act for a right of first refusal for foreclosed property Foreclosure TOPA OPPOSE
- H.1350 An Act to guarantee a tenant’s first right of refusal OPPOSE
- H.4074 An Act authorizing the city of Somerville to enact Right to Purchase Legislation OPPOSE

By Position and Topic

- Support
 - N/A. Tenants already have the right to purchase.
- Oppose
 - H.1162 and S.626 An Act for a right of first refusal for foreclosed property Foreclosure TOPA
 - H.1350 An Act to guarantee a tenant’s first right of refusal

- H.4074 An Act authorizing the city of Somerville to enact Right to Purchase Legislation
- Neutral
 - N/A

Membership Polling

MassLandlords, Inc. is a nonprofit that was launched in 2014. Since then, we have grown to serve over 2,400 dues-paying businesses headquartered in more than 300 municipalities across the commonwealth, with site traffic of over 300,000 unique individuals yearly. **Our mission is to create better rental housing** by helping owners rent their property and by advocating for better laws. Each week we deliver networking and training events over Zoom. Each month we deliver an in-person event and a 30-page, full color newsletter. Available 24/7 are a host of cost-saving and educational services. In 2019, we launched the Certified Massachusetts Landlord Level One™, the first of three levels of our new professional certification for individual owners and managers. **Our average member owns 19 units. Half our members own fewer than 6 units. In total, we have direct connections to over 45,000 renter households.**

Each member is asked regularly to participate in our ongoing survey on “public policy priorities.” We use this data, in combination with our economic analysis, to study aspects of housing policy and to make recommendations for reform. Our policy priority survey uses “score voting,” where each participant scores each policy area. A “0” means “strongly opposed to this idea.” A “100” means “strongly in support of this idea.” “50” is a point of indifference.

Our members consistently vote “oppose right of first refusal” as a high-consensus policy priority. Over half of members rate “oppose right of first refusal” an 80 in importance or higher. 82% of members oppose the right of first refusal.

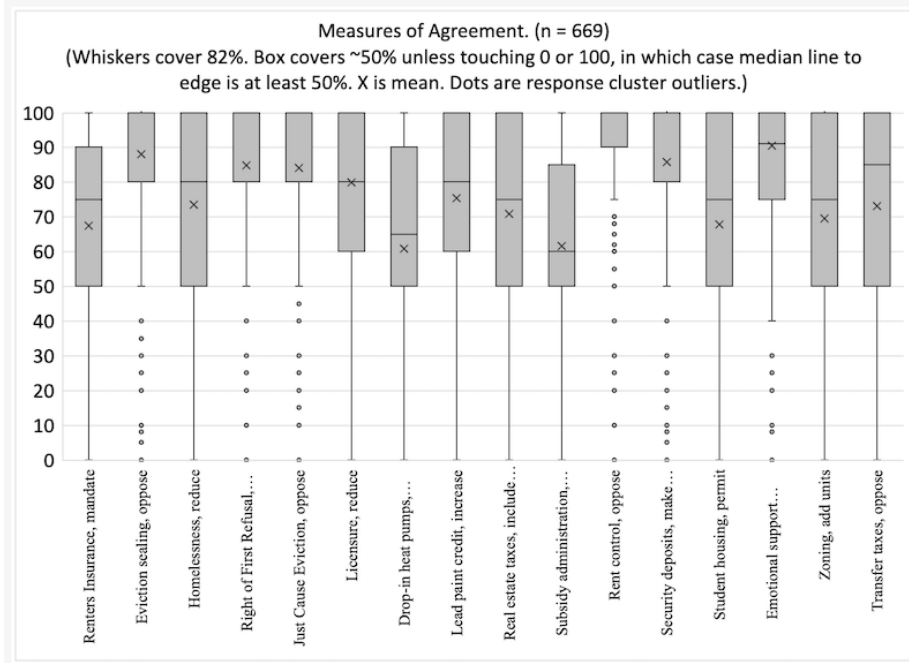


Figure 1. The high, small solid bar for "Right of first refusal, oppose"(4th from left) shows that 82% of members oppose this policy. This proposal is an anticompetitive maneuver by the community development corporations primarily.

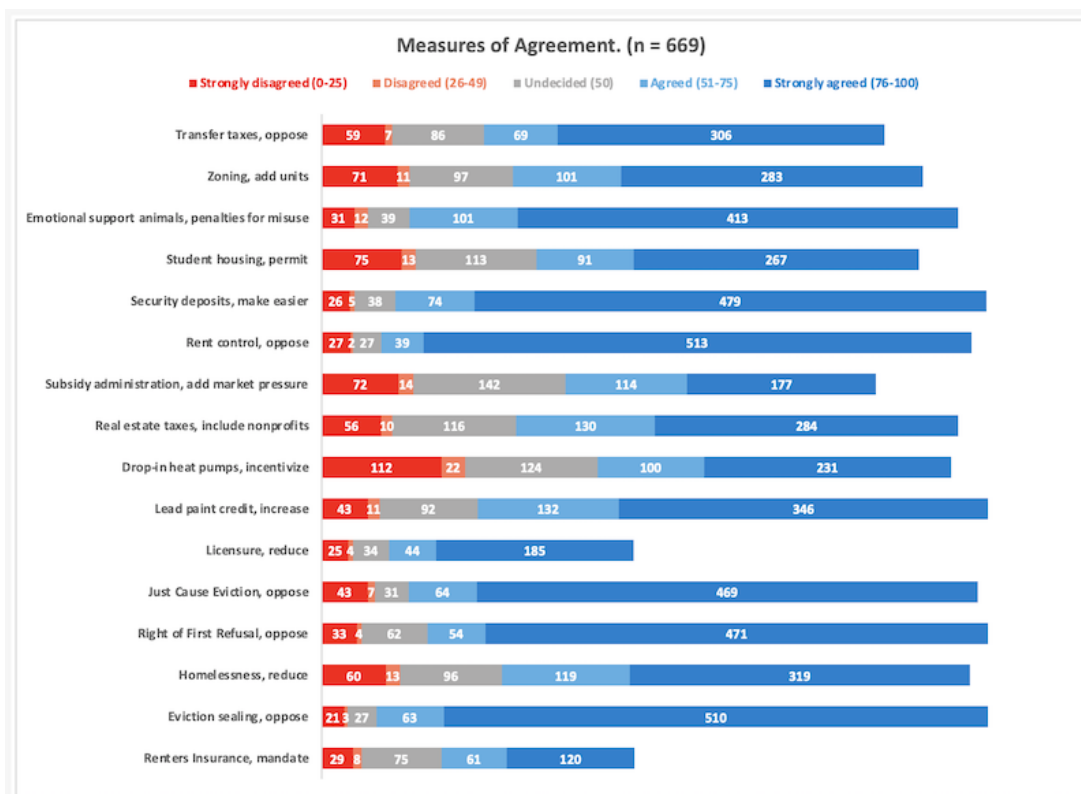


Figure 2. An alternative view of the same data in the above graph. "Right of first refusal" is here 4th from the bottom.

Flaw One: Right of First Refusal Would Redistribute State Budget from Market Towns to TOPA Towns

The testimony for this section follows the same reasoning as the testimony we provided in opposition to rent control, both of which hammer assessed values downward.

Massachusetts municipalities are funded to varying degrees by real estate taxes, which we expect to be lower under TOPA. TOPA dramatically increases the time to close a property, incentivizing buyers to shop in other non-TOPA communities. With lower buyer interest, prices fall, assessed values fall and tax revenue falls. Our commonwealth uses a "State Aid" formula (sometimes called "Cherry Sheets") for redistributing resources among towns to ensure that each community has a budget for schools and municipal operations. If a town or city becomes weaker through loss of local real estate tax revenue, then the State Aid formula automatically redistributes revenue from stronger towns to the weaker town.

For example, consider the City of Somerville, which seems the most eager to enact TOPA. Somerville is the rare wealthy town that is also full of rentals: only 6% of Somerville's revenue will be State Aid. This is because Somerville is largely self-funded by real estate taxes.

The same is not true of gateway cities. In fact, most of the communities with a lot of rental housing rely on State Aid. Springfield and Lowell each will receive 62% of FY24 municipal budget from State Aid. Worcester will receive 47% of FY24 budget in the form of State Aid.

TOPA delays a normal real estate close from 30 days to roughly six months. This should be expected to sharply decrease the purchase price of real estate in TOPA towns, possibly by 20% or more.

Municipality	Total Budget FY24 (\$)	Property Taxes as a Percentage of Total Budget	Cost to State Aid of TOPA in 2023 dollars (\$)
Somerville	337,300,000	72%	48,571,200

If other towns enact TOPA, the cost to State Aid will increase. Remember also that TOPA requires a bureaucracy, so municipal budgets enacting TOPA will be further strained by increased expenses.

Allowing a town or city to enact a renter right of first refusal like the kind proposed would be giving it unilateral power to increase its own State Aid. Other towns should not want to pay into a TOPA system. And to the extent that TOPA draws resources away from other towns, especially non-TOPA gateway cities, the rest of the commonwealth will be harmed.

Because TOPA directly limits sales, the effect on assessed values and therefore revenue should be expected to be dramatic.

Flaw Two: TOPA would allow a few nonprofits to monopolize the market

The strongest advocates for TOPA have been the community development corporations (CDCs). They are hobbled by difficult underwriting requirements for nonprofits, slower decision making times and imperfect knowledge about which properties may soon be transacted in their operating regions. These are all fixable problems and do not require them to stop the market. The problems can be fixed on the CDC end.

A key factor in each TOPA bill is the ability of the renters to assign their right to a nonprofit. There is basically no other type of rental housing nonprofit but a CDC or land trust to receive this right, so it will be one of those two classes. Typically the land trust operators are connected with CDCs or other local advocacy nonprofits. Few renters are willing and able to be their own landlords, so assignment is the likeliest outcome on each TOPA-restricted sale.



The NBC I-Team investigation of DC in 2017 strongly suggests that TOPA does not promote increased residency or decreased displacement.



Flaw Three: TOPA Advocacy Shows it Preserves only 16 units per year at a cost of \$239,000 per unit

Recent testimony by TOPA advocates about a significant study out of Washington DC must be taken with a grain of salt. The study "Sustaining Affordability: The Role Of The Tenant Opportunity To Purchase Act (TOPA) In Washington, DC" published November 13, 2023 was written by what we would describe here in Massachusetts as a CDC, or more exactly, their equivalent of our Massachusetts Association of Community Development Corporations (MACDC). This is exactly the kind of entity that would benefit from TOPA. This study was not peer reviewed. It is an advocacy piece, not a piece of economics research.

Worse, the whole study hinges around a simple count of how many TOPA-involved sales there have been. The study claims 51% of all units sold involved a TOPA right being asserted. This is equivalent to saying 51% of all renters knew about TOPA to make a claim. This reflects marketing, not policy success.

Furthermore, the study plainly shows TOPA as a failure in terms of helping renters become homeowners. 96% of the TOPA-involved sales (49% of all sales) involved an assignment of rights, which is to say, the renters took the money and ran. They were paid to give their right of first refusal to someone else, typically, the seller.

Total sales in Washington DC during the "study" period 1975 - 2021	37,471	100%
Sales in which renters were aware of TOPA and used it	19,170	51%
Sales in which renters merely assigned their rights to someone (e.g., the seller)	18,399	49%
Sales in which renters actually formed a cooperative (with or without a CDC)	771	2%

FINDING # 1 : TOPA made a meaningful impact on preserving the District's affordable housing stock, improving housing conditions, and reducing displacement.

Overall, the study highlights that tenants using TOPA have played a crucial role in maintaining affordable housing, improving living conditions, and mitigating displacement in the District, particularly as tenant associations have become more engaged and aware of their housing challenges.

There were 19,170 units where TAs were able to successfully negotiate a rental or ownership outcome comprising **of the entire number of units sold** following a TOPA process in our study period (37,471 units). This corresponds to 18,399 units developed through the assignment of rights, and 771 units purchased as tenant-sponsored cooperatives. These correspond to 74% of all registered tenant associations (and 84% of registered units) which either assigned their rights or engaged in co-op or condo purchases.

The pace of TOPA assignments increased over time, in correlation to the District's affordable housing crisis. The distribution of these assignments by ward highlights the effectiveness of TOPA, particularly in wards 8, 1, and 4. Ward 8 saw a remarkable increase in TOPA assignments during this period, aligning with the rising development interest in the area.

Naturally, tenant associations more often view buildings as home, and not just a real estate deal, leading them to explore development options that align with their housing

In total, **16,224** of affordable units were developed or preserved through TOPA.

needs and community-oriented goals. Affordability was a major focus of TOPA negotiations, with many projects preserving or adding affordability through subsidy programs like the Low-Income Housing Tax Credit (LIHTC), project-based Section 8, Housing Production Trust Fund, rent control extensions, and limited equity cooperatives. These efforts resulted in the preservation of a substantial number of affordable rental units and the maintenance of LIHTC in numerous properties. **In total, 16,224 affordable units were developed or preserved through TOPA.**

Misleading,
Not peer reviewed,
advocacy puff.

Figure 3. This "study" is not peer-reviewed and worse, includes the extortion of rights as a benefit. Out of 37,471 units, only 771 units are owned cooperatively by renters. Bear in mind the study covers 46 years. That's a preservation rate of 16 units per year.

A 2017 NBC I-Team investigation found average TOPA payouts in the \$10,000 per unit range. Colin Johnson, DC Realtors Association President, said he had seen payouts as large as \$50,000 to \$100,000 for single family TOPA rights.

If we assume an average assignment of TOPA rights costs the seller \$10,000, then the 18,399 TOPA-involved sales would have cost the DC economy a combined \$184 million. Divided by the 771 units actually now owned by renters, this cost works out to \$239,000 per unit preserved. That is equivalent to a new construction cost, but there was no new construction. That is a prodigious cost to end up with no new housing.

Flaw Four: TOPA is not about Preservation, it's about Extortion

All the versions of our TOPA bill try to get around the fact that these rights are very valuable. Our bills don't really accomplish this goal. Washington DC has a cottage industry of rights attorneys. One even drove around in a mini labeled for this purpose.



Figure 4. "TOPA Mobile" believed to belong to Andrew McGuire photographed by NBC Washington I-Team in 2017.

Basically, the attorney would drive around looking for "for sale" signs. They would stop and alert renters that they had the right to purchase the property by dragging out the sale for half a year. The seller would rather not wait so long, so why not sell your right back to the seller? This is exactly what happened as the TOPA advocacy itself shows.

It doesn't matter that some of our bills explicitly ban the sale of rights. There are many forms of consideration for assignment and these rights will be enormously valuable one way or another.

If TOPA remains on the books even though it is failing to preserve affordable housing in a meaningful way, somebody somewhere must be benefiting. But who? Investigative reporters at NBC came up with one answer: Those tenants and their lawyers who "hold homes hostage," selling the refusal rights to the

highest bidder. The reporters interviewed a first-time buyer named Clara, whose contract to buy a house in DC came undone at the last minute:

The sellers had been asking for the renter who lived in the basement to sign a TOPA waiver since they first accepted Clara's offer to buy the house.

"They were offering [the renter] \$10,000 to sign the waiver, and so we felt who wouldn't take that kind of a deal?" Clara said.

But the renter got an even better deal by selling her TOPA rights to a developer who was willing to pay more and got to buy the house instead.

Clara said it "felt like extortion... really slimy." The reporters also interviewed Andrew McGuire, a lawyer who specializes in buying and selling TOPA rights in what he calls a "\$100-million a year industry." His website domain name is TOPAmarket.com, by the way.



"[it] felt like extortion... really slimy"



"You want the buyer to walk away," [McGuire] said. "If the buyer walks away, it clears the deck so the tenant can assign his rights to a developer who'll come in and then the seller has no one else to sell to."

Using the law to obtain an economic gain without creating any new wealth is what economists and public-policy types call "rent seeking." TOPA has provided a classic example of the rent-seeking phenomenon, moving money from landlords to savvy lawyers without generating anything of value.

This gross unfairness is why in 2021, Washington DC started the slow process of repealing TOPA beginning with single family rentals.

Easy alternative: Renters and CDCs can compete like the rest of us

The easy alternative to TOPA is intuitive: If you want renters to form a nonprofit to shop for real estate together, do that. Form the nonprofit. Get a preapproval letter. If your place comes up for sale, make a winning offer. If you want, approach your landlord before that point. Nothing's stopping them. And we don't have any issue with selling to our renters. We have an issue with extortionate delays.

Otherwise, given how pivotal real estate taxes are to the funding of municipal operations, we should not be going out of our way as a commonwealth to gift tax-exempt CDCs previously tax-generating real estate.