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# Testimony opposed to Homesharing as drafted

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**H.1473 An Act to expand housing opportunities through homesharing**

**S.992 An Act to expand housing options through homesharing**

**Prepared for**

The Joint Committee on Housing

General Court care of

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## Primary Sponsor Summary

As published at malegislature.gov, this is “Legislation to expand housing options through homesharing.”

## What is Homesharing?

Homesharing is broadly speaking a barter system, where someone who has excess housing would barter it for labor. As such, homesharing sits at the intersection of landlord-tenant law and employment law.

Homesharing is not an established practice. The [Wikipedia article on homesharing](#) appears to have been created by someone with a personal interest in homesharing, and needs major renovation, as identified by Wikipedia editors. A search for “homesharing” and similar terms on Google Scholar shows it is an area of active research.

The emphasis in literature is to find ways to help seniors age in place. It is not yet decided that homesharing is best. See “[More Than Just a Room: A Scoping Review of the Impact of Homesharing for Older Adults](#),” Martinez et al, *Innovation in Aging* Vol. 4 Iss. 2, 2020. There are challenges with this approach.

## **How do these bills differ from the homesharing discussed in academic literature?**

A homesharer under this bill could be anyone. Academic literature is focused on homesharers as seniors or the disabled, who want help coping with the difficulties of daily life.

A homesharing property under this bill could be just about any rental property, so long as the owner resides in it, including a multifamily dwelling. Academic literature is focused on homesharing properties as cohabitation spaces where the sharer and sharee share a common kitchen and other interior common areas.

## **Summary of Concerns**

### **Homesharing is already legal.**

Long-term homesharing is already legal under existing landlord-tenant law or even simply the Airbnb platform, which does not limit rental duration. In order for a homesharer to comply, they must follow landlord-tenant law and, if they wish to obtain labor from their renter, they must follow employment law as well.

### **The state would have to draft rental agreement terms, an area in which it has little expertise.**

Homesharing asks the state, via the Executive Office of Housing and Livable Communities, to become attorney to a homesharer and to draft terms for a written rental agreement for homesharing. The bill text reads, “The EOHLC shall set forth the terms of the homesharing agreement.” Terms are not regulations. As hardworking and capable as the EOHLC staff may be, drafting terms, as opposed to regulations, would be highly unusual. Rental agreement terms statewide are set by property owners, even to the extent where specific language (example: as in a security deposit conditions statement) is specified by statute. Such forms exist nowhere in the State House library or court systems. All such rental agreements are custom drafted for the occasion, for better or worse.

In a matter of a contract dispute, ambiguity in terms is usually construed against the drafter. If the drafter is the state, now potentially the state will be pulled into litigation on the meaning of terms and whether these terms disadvantaged one side or another as to their rights.

In a matter of enforcement, the state would need to have an enforcement mechanism to ensure that parties fulfill the terms. In political science terms, Massachusetts is a “weak enforcement” state. This means we cannot be looking over every homesharer’s shoulder to ensure compliance (just as we do not look over every landlord’s shoulder now). The EOHLC terms will be only as good as the enforcement mechanism, which is to say, no good at all, as there is no enforcement in the bill text. The bills specifically prohibit access to Housing Court summary process (eviction), as discussed next.

### **Homesharing negates important landlord-tenant protections.**

There are over 50 years of landlord-tenant law encoded in General Law Chapter 186, which this bill seeks to avoid. It reads, “Parties shall be exempt from existing state law pertaining to the relationship between landlords and tenants and the eviction process set forth in MGL Chapter 186.” This means renters would have no right to access a court for eviction procedure. (Which procedure should apply is unclear; perhaps the home sharer need only call the police or ICE? Disgraceful!) The bill eliminates protections for survivors of domestic violence (Chapter 186 Section 24), renters living in substandard conditions (Chapter 186 Section 19), renters being harassed by their landlord (Chapter 186 Section 14), and renters suing their landlord for common area safety violations (Chapter 186 Section 15E), among twice as many additional protections. It is hard to imagine how much work would have to be done to rebuild such protections for homesharers and how much complexity this would create in statute.

### **Homesharing negates important employer-employee protections.**

There are over 100 years of employment and labor law, which the bill has not even considered. For example, anyone performing labor for another in Massachusetts is either a contractor or an employee. Unless someone offers their services generally to a wide audience and meets half a dozen other tests, they are an employee. In this case, the homesharer would have to withhold taxes, obtain workers’ compensation insurance, abide by antidiscrimination protections, and do much more with respect to the homesharee. The requirements to withhold taxes and obtain workers’ compensation insurance apply even in trade or barter circumstances. It is hard to imagine who would be a homesharer who would also attend to employment law.

### **Homesharing is not limited to seniors.**

The bill text makes reference to the Executive Office of Elder Affairs, but there is no prohibition whatsoever on any person becoming a homesharer whether senior, disabled or not. This means younger people with full capacity to live a normal day-to-day life may seek to become homesharers. They may seek to do so specifically to avail themselves of the exemptions (or loopholes) created by the law.

### **Homesharing mimics the conditions of domestic violence by creating economic subservience.**

It is easy to imagine the bills opening the door to modern slavery, human trafficking and more. Imagine a situation where someone who cannot afford market rent agrees to enter into a homesharing relationship with the fully capable homesharer of an owner-occupied multifamily. The homesharer threatens the homesharee with an “emergency” three-day termination notice (as allowed by these bills)

unless they perform an indecent act. What is the homesharee to do? The state would have created exactly the conditions under which domestic violence thrives, that is, economic subservience.

MassLandlords has expertise fighting this dynamic, see for instance, [\*Trespasser or Tenant? Superior Court Case Helps Define the Difference\*](#), about a property owner seeking to remove a former romantic partner without a lawful summary process (eviction process). In the case *Slavin v. Lewis*, we wrote an amicus brief on behalf of the renter (yes, the renter). The courts then stated unequivocally that renters have a right to summary process.

The implications of homesharing as drafted are too far-reaching to contemplate further.

### **Recommendation: Ought not pass**

We recommend the committee vote these bills as ought not to pass. It is very hard to imagine the homesharing bills succeeding as drafted. Whatever good intentions may be held by the petitioners can surely be addressed by other means while preserving employer-employee and landlord-tenant protections. There are myriad ways to imagine providing at-home care for seniors and the disabled without having to upend landlord-tenant and employment protections.