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Lender liability

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The Massachusetts Condominium Statute (Massachusetts General Laws, Chapter 183A) does not cover lender liability in an acceptable manner. Lender liability in the event of a default by a developer is covered only in Section 22, which states:

"In the event of a foreclosure upon a condominium development, the lender taking over the project shall succeed to any obligations the developer has with the unit owners and to the tenants, except that the developers shall remain liable for any misrepresentations already made and for warranties on work prior to the transfer."

Our courts have held that Section 22 applies to deeds in lieu of foreclosure as well as to foreclosures.

Section 22 leaves many questions unanswered. For example, it is not clear that Section 22 applies to short sales, i.e., where the bank accepts less than it is owed. Section 22 is a consumer protection statute, as stated in a 1996 case, *Maloney v. Boston Five Cents Savings Bank* (422 Mass. 431). Therefore, perhaps it applies to short sales, creating lender liability where the bank accepts less than it is owed. This would make the lender liable to finish roads and amenities, such as a clubhouse that the developer was obligated to complete.

However, this is merely my opinion. We need a more detailed statute which deals with lender liability.

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