

**HOUSE . . . . . No.**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Elizabeth A. Malia**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to protect and preserve neighborhoods.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Elizabeth A. Malia	11th Suffolk

# The Commonwealth of Massachusetts

\_\_\_\_\_  
In the Year Two Thousand and Nine  
\_\_\_\_\_

## AN ACT TO PROTECT AND PRESERVE NEIGHBORHOODS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. The General Laws, as appearing in the 2006 Official Edition, are hereby  
2 amended by adding after chapter 186, the following new chapter:-

3

4 Chapter 186A. Tenant protections in foreclosed properties.

5

6 Section 1. As used in this chapter, the following words shall, unless the context clearly requires  
7 otherwise, have the following meanings:

8

9 'Entity', a business organization, or any other kind of organization, including without limitation, a  
10 corporation, partnership, trust, limited liability corporation, limited liability partnership, joint  
11 venture, sole proprietorship, or any other category of organization, and any employee, agent,  
12 servant or other representative of such entity.

13

14 'Eviction', any action, without limitation, by a foreclosing owner of a housing accommodation  
15 which is intended to compel a tenant to vacate or to be constructively evicted from such housing  
16 accommodation.

17

18 "Foreclosing owner", an entity that holds title, in any capacity, directly or indirectly, without

19 limitation, whether in its own name, as trustee, or as beneficiary, to a housing accommodation  
20 that has been foreclosed upon, and either (1) held or owned a mortgage or other security interest  
21 in the housing accommodation at any point prior to the foreclosure of the housing  
22 accommodation or is the subsidiary, parent, trustee, or agent of, or otherwise is related to any  
23 entity which held or owned the mortgage or other security interest in the housing accommodation  
24 at any time prior to the foreclosure of the housing accommodation; or (2) is an institutional  
25 mortgagee that acquires or holds title to the housing accommodation within three years of the  
26 filing of a foreclosure deed on the housing accommodation.

27

28 'Foreclosure', a legal proceeding to terminate a mortgagor's interest in property, instituted by the  
29 mortgagee, either to gain title or to force a sale in order to satisfy the unpaid debt secured by the  
30 property, including, without limitation, foreclosure by auction, by bill in equity, by entry and  
31 continuation of possession for three years, and by sale under the power of sale in a mortgage as  
32 described in chapter 244.

33

34 'Housing accommodation', any building or buildings, structure or structures, or part thereof or  
35 land appurtenant thereto, or any other real or personal property used, rented or offered for rent  
36 for living or dwelling purposes, together with all services connected with the use or occupancy of  
37 such property.

38

39 'Institutional mortgagee', any entity, or any entity which is the subsidiary, parent, trustee, or  
40 agent of, or otherwise related to any such entity, that holds or owns mortgages or other security  
41 interest in three or more housing accommodations, or acts as a mortgage servicer of three or  
42 more mortgages of housing accommodations.

43

44 'Just Cause', at least one of the following: (a) the tenant has failed to pay the rent in effect prior  
45 to the foreclosure or failed to pay use and occupancy charges, but only if the foreclosing owner  
46 notified the tenant in writing of the amount of rent or use and occupancy that was to be paid and  
47 to whom it was to be paid; (b) the tenant has violated an obligation or covenant of the tenancy or  
48 occupancy other than the obligation to surrender possession upon proper notice and has failed to  
49 cure such violation within a reasonable time after having received written notice thereof from the  
50 foreclosing owner; (c) the tenant is committing or permitting to exist a nuisance in, or is causing  
51 substantial damage to, the unit, or is creating a substantial interference with the quiet enjoyment  
52 of other occupants; (d) the tenant is convicted of using or permitting the unit to be used for any  
53 illegal purpose; (e) the tenant who had a written lease or other rental agreement which terminated

54 on or after the effective date of this chapter, has refused, after written request or demand by the  
55 foreclosing owner, to execute a written extension or renewal thereof for a further term of like  
56 duration and in such terms that are not inconsistent with the provisions of this chapter; (f) the  
57 tenant has refused the foreclosing owner reasonable access to the unit for the purpose of making  
58 necessary repairs or improvement required by the laws of the United States, the Commonwealth  
59 or any subdivision thereof, or for the purpose of inspection as permitted or required by  
60 agreement or by law or for the purpose of showing the rental housing unit to a prospective  
61 purchaser or mortgagee.

62

63 'Mortgagee', an entity to whom property is mortgaged; the mortgage creditor, or lender,  
64 including, but not limited to, mortgage servicers, lenders in a mortgage agreement and any agent,  
65 servant, or employee of the mortgagee, or any successor in interest or assignee of the mortgagees'  
66 rights, interests or obligations under the mortgage agreement.

67

68 'Mortgage Servicer', an entity which administers or at any point administered the mortgage,  
69 including, but not limited to, calculating principal and interest, collecting payments from the  
70 mortgagor, acting as an escrow agent, and foreclosing in the event of a default.

71

72 'Tenant' any person or group of persons who at the time of foreclosure is entitled to occupy a  
73 housing accommodation pursuant to a written lease or tenancy at will. Any person who moves  
74 into the housing accommodation owned by the foreclosing owner following the filing of the  
75 foreclosure deed without the express written permission of the owner shall not be considered a  
76 tenant under this statute.

77

78 'Unit' or 'residential unit', the room or group of rooms within a housing accommodation which is  
79 used or intended for use as a residence by one household.

80

81 Section 2. Notwithstanding any other special or general law to the contrary, a foreclosing owner  
82 shall not evict a tenant except for just cause, or in the event that there is a binding purchase and  
83 sale agreement for a bona fide third party to purchase said housing accommodation from a  
84 foreclosing owner, a foreclosing owner may provide the tenant with a notice to quit and serve the  
85 tenant with a summary process summons and complaint tenant to evict said tenant within 45  
86 days of the closing date of said agreement.

87

88 Section 3. In the event that a foreclosing owner disagrees with the amount of rent and/or use and  
89 occupancy rates that the tenant-at-will or lessee pays to the foreclosing owner, the foreclosing  
90 owner may bring a claim in district or superior courts, or the housing court to claim that the rent  
91 is unreasonable and set a new use and occupancy rate. A lease between the foreclosed upon  
92 owner and the lessee or proof of rental payment to the foreclosed-upon owner shall have a  
93 presumption of reasonableness.

94

95 Section 4. Any foreclosing owner that evicts a tenant in violation of any provisions of this Act,  
96 or any ordinance or by-law adopted pursuant to this Act, shall be punished by a fine of not less  
97 than ten thousand dollars. Each eviction done in violation of this Act constitutes a separate  
98 offense.

99

100 The district and superior courts, and the housing courts in the Commonwealth, shall have  
101 jurisdiction over an action arising from any violation of this Act, or any ordinance, or by-law  
102 adopted pursuant to this Act, and shall have jurisdiction in equity to restrain any such violation.  
103 It shall be a defense to eviction that the foreclosing owner attempted to evict a tenant in violation  
104 of any provision of this Act, or any ordinance or by-law adopted pursuant to this Act.

105

106

107 SECTION 2. Chapter 244 of the General Laws, as amended by Chapter 206 of the Acts of 2007,  
108 is hereby amended by inserting after section 35A the following section-

109

110 Section 35B. The chief justice for administration and management, in consultation with the city  
111 of Boston, shall establish and promulgate rules for a pilot program within the county of Suffolk  
112 to identify best practices for case management of cases involving owner-occupied residential  
113 properties which are subject to foreclosure proceedings. Said program shall include at least one  
114 mediation session to take place during said 90 day right to cure period as established by section  
115 35A.

116

117 SECTION 3. Chapter 255 of the General Laws is hereby amended by inserting after section 12  
118 the following section-

119

120 Section 13.

121

122 (a) For purposes of this section, the following terms shall have the following meanings unless the  
123 context clearly requires otherwise:

124

125 “Abandoned”, any structure or building that is not legally occupied for a period of 60 days or has  
126 visible signs of physical distress, including boarded windows, fire damage, exposure to the  
127 elements, susceptibility to unauthorized entry or where mortgage or property tax payments are  
128 delinquent for 60 days.

129

130 “Commissioner”, the municipality’s building inspector or commissioner or other administrative  
131 chief in a town responsible under M.G.L. c. 134 § 3 for administering and enforcing the state  
132 building code.

133

134 “Days”, consecutive calendar days.

135

136 “Conclusion of the foreclosure process”, means the date at which a mortgage foreclosure process  
137 is finalized as evidenced by the filing of a foreclosure deed with the Registry of Deeds

138

139 “Owner”, every person, entity, association, corporation, fiduciary, service company, property  
140 manager or realtor who alone or severally has legal or equitable title or any interest in any real  
141 property or is a trustee or agent appointed by the courts or is a mortgagee in possession.

142

143 “Residential Property”, any property that contains one or more dwelling units used, intended, or  
144 designed to be occupied for living purposes.

145

146 (b) Any city or town which accepts the provisions of this section may impose an abandoned  
147 property registration program as provided in this chapter. All owners must register abandoned  
148 and/or foreclosed residential properties with Commissioner on forms provided by the  
149 Commissioner. All registrations must state the individual owner or agent’s phone number and  
150 Mailing address. This registration must also certify that the property was inspected and identify  
151 whether the property is abandoned. If the property is abandoned, the registration must designate  
152 a local individual or local property management company responsible for the security and  
153 maintenance of the property. This designation must state the individual or company’s name,  
154 phone number and local mailing address. This registration must be received within sixty days of  
155 abandonment or within sixty days of the conclusion of the foreclosure process.

156

157 All property registrations are valid for one year. An annual registration fee, not to exceed one-  
158 hundred dollars and no cents (\$100.00) must accompany the registration form. The fee and  
159 registration are valid for the calendar year, or remaining portion of the calendar year in which the  
160 registration was initially required. Subsequent registrations and fees are due January 1<sup>st</sup> of each  
161 year and must certify whether the foreclosed property remains abandoned.

162

163 Once the property is sold or is no longer abandoned, the owner must provide proof of sale or  
164 written notice of occupancy to the Commissioner.

165

166 (c) Properties subject to this section must be maintained in accordance with all applicable  
167 Sanitary, Building Codes, and local regulations. The local owner or local property management  
168 company must inspect and maintain the property on a monthly basis for the duration of the  
169 abandonment.

170

171 The property must contain a posting with the name and 24-hour contact phone number of the  
172 local individual or property management company responsible for the maintenance. This sign  
173 must be clearly visible from the street.

174

175 Compliance with this section shall not relieve the property owner of any other obligation set  
176 forth in statute, regulation, covenant conditions and restrictions and/or homeowners' association  
177 rules and regulations.

178

179 (d) The Commissioner shall have the authority and the duty to inspect properties subject to this  
180 section for compliance and to issue citations for any violations. The Commissioner shall have  
181 the discretion to determine when and how such inspections are to be made, provided that their  
182 policies are reasonably calculated to ensure the enforcement of this section.

183

184 (e) Failure to initially register with the Commissioner is punishable by a fine, not to exceed of  
185 five hundred dollars and no cents (\$500.00).

186

187 If applicable, failure to properly identify the name of the local individual or property  
188 management company is punishable by a fine, not to exceed five hundred dollars and no cents  
189 (\$500.00).

190

191 Failure to maintain the property is punishable by a fine, not to exceed hundred dollars and no  
192 cents (\$500.00) for each month the property remains out of compliance or is otherwise not  
193 maintained.

194

195 Violations of this chapter shall be treated as a strict liability offence regardless of intent.

196

197 This section shall only take effect in a city or town accepting the provisions of this section by a  
198 majority vote of the city council with the approval of the mayor, in the case of a city with a Plan  
199 A, Plan B, or Plan F charter, by a majority vote of the city council, in the case of a city with a  
200 Plan C, Plan D, or Plan E charter, by a majority vote of the annual town meeting or a special  
201 meeting called for that purpose, in the called-for purpose, in the case of a municipality with a  
202 town meeting form of government; or by a majority of the town council, in the case of a  
203 municipality with a town form of government. The provisions of this section shall take effect on  
204 the first day of the first calendar month following days after such acceptance; provided further  
205 that if such day is at least 15 days after such acceptance; and provided further, that if such day is  
206 less than 15 days after such acceptance, it shall take effect on the first day of the second calendar  
207 month following such acceptance.

208

209

210 SECTION 4. Chapter 255 of the General Laws is hereby amended by inserting after section 12  
211 the following section-

212

213 Section 13. Foreclosed property, registration.

214

215 (a) For purposes of this section, the following terms shall have the following meanings unless the  
216 context clearly requires otherwise:

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