

HOUSE No.

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 tenants in foreclosed properties from evictions.

PETITION OF:

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

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO PROTECT TENANTS IN FORECLOSED PROPERTIES FROM EVICTIONS.

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

1 WHEREAS the deferred operation of this act would tend to defeat its purpose which is to protect
2 citizens of the Commonwealth, therefore it is hereby declared to be an emergency law necessary for the
3 immediate protection of the public.

4

5 SECTION 1. The general laws are hereby amended by adding after chapter 186, the following new
6 chapter:-

7

8 Chapter 186A. Tenant protections in foreclosed properties.

9

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

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

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18 'Eviction', any action, without limitation, by a foreclosing owner of a housing accommodation which is
19 intended to compel a tenant or former owner-occupant, now tenant at sufferance, to vacate or to be
20 constructively evicted from such housing accommodation.

21
22 "Foreclosing owner", an entity that holds title, in any capacity, directly or indirectly, without limitation,
23 whether in its own name, as trustee, or as beneficiary, to a housing accommodation that has been
24 foreclosed upon, and either (1) held or owned a mortgage or other security interest in the housing
25 accommodation at any point prior to the foreclosure of the housing accommodation or is the subsidiary,
26 parent, trustee, or agent of, or otherwise is related to any entity which held or owned the mortgage or
27 other security interest in the housing accommodation at any time prior to the foreclosure of the housing
28 accommodation; or (2) is an institutional mortgagee that acquires or holds title to the housing
29 accommodation within three years of the filing of a foreclosure deed on the housing accommodation.

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31 'Foreclosure', a legal proceeding to terminate a mortgagor's interest in property, instituted by the
32 mortgagee, either to gain title or to force a sale in order to satisfy the unpaid debt secured by the
33 property, including, without limitation, foreclosure by action, by bill in equity, by entry and continuation
34 of possession for three years, and by sale under the power of sale in a mortgage as described in chapter
35 244 of the general laws.

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

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

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

54 purpose; (e) the tenant who had a written lease or other rental agreement which terminated on or after
55 the effective date of this chapter, has refused, after written request or demand by the foreclosing
56 owner, to execute a written extension or renewal thereof for a further term of like duration and in such
57 terms that are not inconsistent with the provisions of this chapter; (f) the tenant has refused the
58 foreclosing owner reasonable access to the unit for the purpose of making necessary repairs or
59 improvement required by the laws of the United States, the Commonwealth or any subdivision thereof,
60 or for the purpose of inspection as permitted or required by agreement or by law or for the purpose of
61 showing the rental housing unit to a prospective purchaser or mortgagee; (g) a binding purchase and
62 sale contract with a purchaser who intends to occupy the housing accommodation as such purchaser's
63 primary residence and who is not a foreclosing owner, where such agreement requires the housing
64 accommodation or some portion thereof to be conveyed vacant.

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

70

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

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75 'Reasonable Rent', for a tenant shall be the amount paid by such tenant immediately prior to the
76 foreclosure as demonstrated by a lease, a rental agreement or other evidence of agreed-upon rent or
77 rental payments. Reasonable rent for a tenant who is a former owner-occupant shall be the Fair Market
78 Rent as established by the United States Department of Housing and Urban Development pursuant to 42
79 U.S.C. c § 1437f(o), as it exists or may be amended, for a unit of comparable size in the area in which the
80 housing accommodation is located or as otherwise agreed to by the parties.

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82 'Tenant' any person or persons who at the time of foreclosure is entitled to occupy a housing
83 accommodation pursuant to a written lease, tenancy at will, or tenancy at sufferance including a former
84 owner-occupant who held legal title to a housing accommodation immediately prior to a foreclosure of
85 such housing accommodation and who individually or with other legal occupants remains in possession
86 of such housing accommodation after foreclosure. Any person other than a legal dependent or spouse
87 of the person or group of persons entitled to occupy the housing accommodation at the time of the
88 foreclosure who moves into the housing accommodation owned by the foreclosing owner following the

89 filing of the foreclosure deed without the express written permission of the foreclosing owner shall not
90 be considered a tenant under this statute

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

94 Section 2. Notwithstanding any other special or general law to the contrary, the foreclosing owner shall
95 not evict a tenant or former owner-occupant except for just cause.

96 Section 3. Any foreclosing owner that evicts a tenant in violation of any provisions of this Act, or any
97 ordinance or by-law adopted pursuant to this Act, shall be punished by a fine of not less than ten
98 thousand dollars. Each eviction done in violation of this Act constitutes a separate offense.

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

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106 Section 4. This Act shall cease to have effect on December 31, 2013.

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109 SECTION 2. Section 13A of chapter 186 is hereby amended by inserting after the words "federal law"
110 the following:--

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112 and the foreclosing entity shall assume the lease and rental subsidy contract with the rental subsidy
113 administrator.

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