

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Martin J. Walsh

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 Relative to Stabilizing Communities .

PETITION OF:

NAME:

Martin J. Walsh

DISTRICT/ADDRESS:

13th Suffolk

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO STABILIZING COMMUNITIES .

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

1

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

5

6 SECTION 1. Section 5 of chapter 59 of the general laws is hereby amended by inserting after clause fifty-
7 five the following clause:-

8

9 Fifty sixth. Real estate owned by or held in trust for a charitable organization for the purpose of creating
10 community housing, as defined in section 2 of chapter 44B, where the charitable organization purchased
11 said property from an entity that acquired the property pursuant to section 14 of chapter 244 of the
12 general laws, from the date of such real estate's acquisition by the charitable organization until such real
13 estate is leased, rented, or otherwise disposed of; provided said exemption for such real property shall
14 not extend beyond a total period of one year. This clause shall take effect upon its acceptance by any
15 city or town.

16

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

19 and the foreclosing entity shall assume the lease and rental subsidy contract with the rental subsidy
20 administrator.

21

22 SECTION 3. The general laws are hereby amended by adding after chapter 186, the following new
23 chapter:-

24

25 Chapter 186A. Tenant protections in foreclosed properties

26

27 Section1. As used in this chapter, the following words shall, unless the context clearly requires
28 otherwise, have the following meanings:

29

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

34

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

38

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

47

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

53

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

57

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

62

63 'Just Cause', at least one of the following: (a) the tenant has failed to pay the rent in effect prior to the
64 foreclosure or failed to pay the newly established rent pursuant to subsection (3) herein, but only if the
65 foreclosing owner notified the tenant in writing of the amount of rent that was to be paid and to whom
66 it was to be paid; (b) the tenant has violated an obligation or covenant of the tenancy or occupancy
67 other than the obligation to surrender possession upon proper notice and has failed to cure such
68 violation within a reasonable time after having received written notice thereof from the foreclosing
69 owner; (c) the tenant is committing or permitting to exist a nuisance in, or is causing substantial damage
70 to, the unit, or is creating a substantial interference with the quiet enjoyment of other occupants; (d)
71 the tenant is convicted of using or permitting the unit to be used for any illegal purpose; (e) the tenant
72 who had a written lease or other rental agreement which terminated on or after the effective date of
73 this chapter, has refused, after written request or demand by the foreclosing owner, to execute a
74 written extension or renewal thereof for a further term of like duration and in such terms that are not
75 inconsistent with the provisions of this chapter; (f) the tenant has refused the foreclosing owner
76 reasonable access to the unit for the purpose of making necessary repairs or improvement required by
77 the laws of the United States, the Commonwealth or any subdivision thereof, or for the purpose of
78 inspection as permitted or required by agreement or by law or for the purpose of showing the rental
79 housing unit to a prospective purchaser or mortgagee.

80

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

85

86 'Mortgage Servicer', an entity which administers or at any point administered the mortgage, including,
87 but not limited to, calculating [principal](#) and interest, collecting payments from the [mortgagor](#), acting as
88 an [escrow](#) agent, and [foreclosing](#) in the event of a [default](#).

89

90 'Tenant' any person or group of persons who at the time of foreclosure is entitled to occupy a housing
91 accommodation pursuant to a written lease or tenancy at will. Any person other than a legal dependent
92 or spouse of the person or group of persons entitled to occupy the housing accommodation at the time
93 of the foreclosure that moves into the housing accommodation owned by the foreclosing owner
94 following the filing of the foreclosure deed without the express written permission of the owner shall
95 not be considered a tenant under this statute.

96

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

99

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

106

107 Section 3. In the event that a foreclosing owner disagrees with the amount of rent that the tenant-at-
108 will or lessee pays to the foreclosing owner, the foreclosing owner may bring a claim in district or
109 superior courts, or the housing court to claim that the rent is unreasonable and set a new rent. A lease
110 between the foreclosed upon owner and the lessee or proof of rental payment to the foreclosed-upon
111 owner shall have a presumption of reasonableness.

112

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

116

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

122 Section 5. This Act shall cease to have effect on December 31, 2013.

123 SECTION 4. Section 35A of chapter 244 of the general laws is hereby amended by deleting the word "90"
124 and inserting in its place the following:- "150".

125

126

127 SECTION 5. Section 33 of chapter 266 of the General Laws, as so appearing, is hereby amended by
128 striking out, in lines 5 to 10, inclusive the words "(2) whoever, with intent to defraud, by a false
129 statement in writing respecting the financial condition, or means or ability to pay, of himself or of
130 any other person, obtains credit from any bank or trust company or any banking institution or any
131 retail seller of goods or services accustomed to give credit in any form whatsoever shall be guilty of
132 larceny" and inserting in place thereof the following words:-- "(2) whoever, with intent to defraud,
133 by a false statement in writing respecting the financial condition, or means or ability to pay, of
134 himself or of any other person, obtains for himself or for any other person credit from any bank or
135 trust company or any banking institution or any mortgage lender, as defined in section 1 of chapter
136 255E or any retail seller of goods or services accustomed to give credit in any form whatsoever shall
137 be guilty of larceny.

138

139 Whoever violates this section shall be punished by imprisonment in jail for not more than 1 year or
140 by a fine of not more than \$300, or, if the value of the benefit obtained by a violation of clause (1) or
141 if the dollar amount of credit obtained by a violation of clause (2) exceeds \$250 shall be punished by
142 imprisonment in the state prison for not more than 5 years, or by a fine of not more than \$25,000 and
143 imprisonment in the house of correction for not more than 2 years.

144

145 SECTION 6. Said chapter 266 is hereby further amended by striking out section 34, as so appearing,
146 and inserting in place thereof the following section:--

147

148 Section 34. Whoever, with intent to defraud and by a false pretence, induces another to part with
149 property of any kind or with any of the benefits described in section 33 shall be guilty of larceny.
150 Whoever violates this section shall be punished by imprisonment in jail for not more than 1 year
151 or by a fine of not more than \$300, or, if the value of the benefit obtained by a violation of clause
152 (1) or if the dollar amount of credit obtained by a violation of clause (2) exceeds \$250 shall be
153 punished by imprisonment in the state prison for not more than 5 years, or by a fine of not more
154 than \$25,000 and imprisonment in the house of correction for not more than 2 years.

155 SECTION 7. Chapter 266 is amended by inserting after Section 35 the following new section:

156 Section 35A. Residential Mortgage Fraud

157 Section 35A. (a) As used in this section, the following words shall have the following meanings,
158 unless the context otherwise requires:--

159

160 "Funds", shall include, but not be limited to, a commission, fee, yield spread premium or
161 compensation in any form.

162

163 "Material omission", the omission or concealment of a material fact necessary in order to make the
164 statement made, in the light of the circumstances under which it is made, not misleading.

165
166 “Mortgage lending process”, the process through which a person seeks or obtains a residential
167 mortgage loan including, but not limited to, solicitation, application, or origination, negotiation of
168 terms, third-party provider services, underwriting, signing and closing, and funding of the loan.
169 Documents involved in the mortgage lending process include, but shall not limited to: uniform
170 residential loan applications or other loan applications; appraisal reports; HUD-1 settlement
171 statements; supporting personal documentation for loan applications such as W-2 forms, verification
172 of income and employment, bank statements, tax returns and payroll stubs; and any required
173 disclosures.

174
175 “Pattern of residential mortgage fraud”, the violation of subsection (b) in connection with 3 or more
176 residential properties.

177
178 “Person”, a natural person, corporation, company, limited liability company, partnership, real estate
179 trust, association or any other entity.

180
181 “Residential mortgage loan”, a loan or agreement to extend credit made to a person, which loan is
182 secured by a mortgage, security interest, deed to secure debt, deed of trust, or other document
183 representing a security interest or lien upon any interest in a 1- to-4 family residential property
184 located in the commonwealth, including the renewal or refinancing of any such loan.

185
186 (b) Whoever: (1) makes or causes to be made any material statement that is false or any statement
187 that contains a material omission, knowing the same to be false or to contain a material omission,
188 during or in connection with the mortgage lending process, with the intent that such statement be
189 relied upon by a mortgage lender, borrower or any other party to the mortgage lending process; (2)
190 uses, or facilitates the use of, any material statement that is false or any statement that contains a
191 material omission, knowing the same to be false or to contain a material omission, during or in
192 connection with the mortgage lending process, with the intent that such statement be relied upon by a
193 mortgage lender, borrower or any other party to the mortgage lending process; (3) receives any
194 proceeds or any other funds in connection with a residential mortgage closing, knowing such
195 proceeds or funds were obtained in violation of clause (1) or (2); or (4) files, or causes to be filed,
196 with a registrar of deeds any document that contains a material statement that is false or a material
197 omission, knowing such document to contain a material statement that is false or a material omission,
198 shall be punished by imprisonment in the state prison for not more than 5 years or by imprisonment
199 in the house of correction for not more than 2 ½ years or by a fine of not more than \$10,000 in the
200 case of a natural person or not more than \$100,000 in the case of any other person, or by both such
201 fine and imprisonment.

202
203 Any person who engages in a pattern of residential mortgage fraud shall be punished by
204 imprisonment in the state prison for not more than 15 years or by a fine of not more than \$50,000, or
205 in the case of a natural person, not more than \$500,000 in the case of any other person, or by both
206 such fine and imprisonment.

207
208 (c) Any violation of this section may be prosecuted and punished in: the county in which the
209 residential property for which a mortgage loan is being sought is located; any county in which any
210 act was performed in furtherance of the violation; in any county in which any person alleged to have
211 violated this section had control or possession of any proceeds of, or other funds received as a result
212 of, the violation; any county in which a closing on the mortgage loan occurred; any county in which a

213 document containing a deliberate misstatement, misrepresentation or omission is filed with a registrar
214 of deeds.

215
216 (d) It shall be an affirmative defense if a defendant charged with a violation of this section as a result
217 of conduct or an omission by an employee or agent of the defendant if the defendant demonstrates
218 the following by a preponderance of the evidence:

219
220 (1) the defendant had in force, at the time of the violation and continues to have in force, a written
221 policy that includes:

222 (i) A prohibition against conduct that violates this section by employees and agents of the defendant;

223 (ii) Penalties or discipline for violation of the policy;

224 (iii) A process for educating employees and agents concerning the policy and consequences of a
225 violation; and

226 (iv) A requirement for a criminal history check before employing an employee or engaging an agent
227 and a requirement that the defendant will not employ or engage an individual whose criminal history
228 check reveals a previous conviction of a crime involving fraud;

229
230 (2) the defendant demonstrates that it enforces the written policy described in clause (1); and

231
232 (3) Before the violation of this section the defendant communicated the written policy described in
233 clause (1) and the consequences for violating the policy to the employee or agent who committed the
234 violation.

235
236 (e) It shall be a rebuttable presumption that a borrower in the residential mortgage lending
237 process did not make a false material statement or a material omission. Two or more single
238 incidents or occurrences of fraud in the mortgage lending process shall sufficient to overcome
239 this rebuttable presumption.

240
241 SECTION 8. Chapter 255 of the General Laws is hereby amended by inserting after section 12 the
242 following section-

243

244 Section 13.

245

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

248

249 "Abandoned", any structure or building that is not legally occupied for a period of 60 days or has visible
250 signs of physical distress, including boarded windows, fire damage, exposure to the elements,
251 susceptibility to unauthorized entry or where mortgage or property tax payments are delinquent for 60
252 days.

253

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

256

257 “Days”, consecutive calendar days.

258

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

261

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

265

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

268

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

279

280 All property registrations are valid for one year. An annual registration fee, not to exceed one-hundred
281 dollars and no cents (\$100.00) must accompany the registration form. The fee and registration are valid
282 for the calendar year, or remaining portion of the calendar year in which the registration was initially
283 required. Subsequent registrations and fees are due January 1st of each year and must certify whether
284 the foreclosed property remains abandoned.

285

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

288

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

292

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

296

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

300

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

305

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

308

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

311

312 Failure to maintain the property is punishable by a fine, not to exceed hundred dollars and no cents
313 (\$500.00) for each month the property remains out of compliance or is otherwise not maintained.

314

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

316

317 This section shall only take effect in a city or town accepting the provisions of this section by a
318 majority vote of the city council with the approval of the mayor, in the case of a city with a Plan
319 A, Plan B, or Plan F charter, by a majority vote of the city council, in the case of a city with a
320 Plan C, Plan D, or Plan E charter, by a majority vote of the annual town meeting or a special
321 meeting called for that purpose, in the called-for purpose, in the case of a municipality with a
322 town meeting form of government; or by a majority of the town council, in the case of a
323 municipality with a town form of government. The provisions of this section shall take effect on
324 the first day of the first calendar month following days after such acceptance; provided further
325 that if such day is at least 15 days after such acceptance; and provided further, that if such day is
326 less than 15 days after such acceptance, it shall take effect on the first day of the second calendar
327 month following such acceptance.

328