

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

James B. Eldridge

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 Creating a Statutory Housing Restriction and Providing Remedies Related To Statutory Housing. .

PETITION OF:

NAME:

James B. Eldridge

DISTRICT/ADDRESS:

Middlesex and Worcester

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO CREATING A STATUTORY HOUSING RESTRICTION AND PROVIDING REMEDIES RELATED TO STATUTORY HOUSING. .

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. Chapter 183 of the General Laws is hereby amended by adding the following new
2 sections:

3

4 Section 17A. Statutory Form of Housing Restriction.

5 A deed, covenant or restriction in substance following the form entitled Deed with Statutory Housing
6 Restriction or the form entitled Statutory Housing Restriction shall when duly executed have the force
7 and effect of an affordable housing restriction as defined in section 31 of chapter 184, without limitation
8 as to enforcement thereof as stated in section 32 of chapter 184, to the use of the holder and the
9 holder's successors and assigns with statutory housing covenants, upon the statutory housing condition
10 and with the statutory housing power to sell, as defined in the following sections 17B, 17C and 17D, to
11 secure the performance of the statutory housing restriction and any obligation therein specified. The
12 parties may insert in such restriction any other lawful agreement or condition reasonably related to the
13 creation, maintenance and preservation of the premises as statutory housing premises.

14

15 Section 17B. Meaning of "Statutory Housing Covenants".

16 In a conveyance of real estate the words "statutory housing covenants" shall have the full force,
17 meaning and effect of the following words, and shall be applied and construed accordingly: "The
18 grantor, for the grantor and the grantor's heirs, executors, administrators, ~~and~~ successors and assigns,
19 covenants with the holder and its successors and assigns,

20 a) that the granted statutory housing premises are free from all encumbrances made by the
21 grantor,

22 b) that the grantor will, and the grantor's heirs, executors, administrators, successors and
23 assigns shall, warrant and defend the same to the holder and the holder's successors and assigns forever
24 against the lawful claims and demands of all persons claiming by, through or under the grantor, but
25 against none other;

26 c) that the grantor and the grantor's heirs, successors or assigns, during their respective
27 ownership of the statutory housing premises, will comply fully with the statutory housing
28 condition; and

29 d) that the grantor and the grantor's heirs, successors or assigns, in case a sale shall be
30 made under the statutory housing power to sell, will, upon request, execute, acknowledge and
31 deliver to the purchaser or purchasers a deed or deeds of release confirming such sale, and that
32 the holder and the holder's successors and assigns are appointed and constituted the attorney or
33 attorneys-in-fact irrevocable of the said grantor to execute and deliver to the said purchaser or
34 purchasers such deed or deeds and a full transfer of all policies of insurance on the buildings
35 upon the land covered by the statutory housing restriction at the time of such sale.

36

37 Section 17C. Meaning of "Statutory Housing Condition".

38 The following "condition" shall be known as the "Statutory Housing Condition", and may be
39 incorporated in any deed, covenant or restriction by reference:

40

41 The grantor intends, declares, and covenants on behalf of the grantor and grantor's heirs, successors
42 and assigns that the grantor and the grantor's heirs, successors and assigns shall:

43

44 (a) occupy the dwelling unit on the statutory housing premises as the principal residence of the grantor
45 and the grantor's eligible household;

46

47 (b) pay and discharge when due and payable all debts secured by the statutory housing premises,
48 including without limitation taxes, mortgages and other voluntary liens, and judgments and other
49 involuntary liens, and reimburse the holder on demand for all amounts paid by the holder to discharge
50 such debts with interest thereon until reimbursement at the rate applicable to damages in actions for
51 breach of contract obligations.

52

53 (c) not encumber the statutory housing premises or any portion thereof in an amount in excess of their
54 affordable value, nor convey, transfer or otherwise dispose of the statutory housing premises or any
55 portion thereof other than as statutory housing premises; and

56

57 (d) upon disposition, convey any fee interest in the statutory housing premises only to one or more
58 members of an eligible household approved in writing by the holder for consideration not exceeding the
59 affordable value thereof at the time of the conveyance; provided however that a continuing or newly
60 acquired ownership, with continued occupancy as principal residence during his or her lifetime, by the
61 surviving spouse of a qualified owner in the eligible household who resided at said statutory housing
62 premises as his or her last principal residence prior to the qualified owner's death, without regard to the
63 surviving spouse's income, shall not constitute a breach of this condition.

64

65 Section 17D. Meaning of "Statutory Housing Power to Sell".

66 The following "power" shall be known as the "Statutory Housing Power to Sell", and may be
67 incorporated in any deed, covenant or restriction by reference:

68

69 But upon any default in the performance or observance of the foregoing or other condition reasonably
70 related to maintaining the premises as statutory housing premises, the holder or its successors or
71 assigns may sell the statutory housing premises or such portion thereof as may remain subject to the
72 statutory housing restriction, together with all improvements that may be thereon, by deed, first
73 complying with the statutes relating to the holder's sale of statutory housing premises by the exercise of
74 the statutory housing power to sell, and may convey the same by proper deed or deeds to the purchaser
75 or purchasers absolutely and in fee simple but subject always to the statutory housing covenants, on the
76 statutory housing condition and with the statutory housing power to sell; and such sale shall forever bar
77 the grantor and all persons claiming rights of fee simple ownership under the grantor or claiming
78 mortgages or other liens against the statutory housing premises in excess of such affordable value from
79 all right and interest in said statutory housing premises, whether at law or in equity.

80

81

82

83 Section 17E. Definitions Related to Statutory Form of Housing Restriction.

84

85 Affordable Value Defined The "Affordable Value" of the statutory housing premises under the statutory
86 housing condition and the statutory housing power to sell, unless otherwise defined in the restriction,
87 shall be equal to the consideration paid for the said premises by the eligible household owning said
88 premises subject to the statutory housing restriction adjusted in proportion to any increase of the area
89 median income from the date the eligible household acquired said premises to the date next preceding
90 the sale for which such information is publicly available. In a restriction stating an alternate means of
91 determining the value of the statutory housing premises, affordable value shall be the amount
92 determined as stated in that restriction.

93

94 Area Median Income Defined "Area median income" means the median income for the standard
95 metropolitan statistical area or equivalent area for the statutory housing premises_in which the
96 statutory housing premises are located, adjusted for household size, published by the United States
97 Department of Housing and Urban Development, or such other standard adopted by the Massachusetts
98 Department of Housing and Community Development to measure individual and household incomes in
99 Massachusetts.

100

101 Eligible Household Defined "Eligible household" means the owner and all persons residing together
102 with the owner at the statutory housing premises and whose household income determined in
103 connection with the acquisition of said statutory housing premises did not exceed the maximum
104 household income established by the holder at the time of such acquisition as stated in the deed,
105 covenant or restriction restricting the statutory housing premises, or if no maximum household income
106 is stated in a deed, covenant or restriction, did not exceed 80% of the area median income, adjusted for
107 the number of individuals in the eligible household. The term "grantor" includes any person granting a
108 restriction on the statutory housing condition and with the statutory housing power to sell, and also any
109 individual acquiring the premises subject to such a restriction previously granted.

110

111 Household Income Defined "Household income" means the aggregate combined gross income of all
112 members of a household under standards established by the United States Department of Housing and
113 Urban Development, or such other standards established by the Massachusetts Department of Housing
114 and Community Development to measure individual and household incomes in Massachusetts.

115

116 Statutory Housing Premises Defined "Statutory housing premises" means residential real property
117 subject to a statutory housing restriction.

118

119 Statutory Housing Restriction Defined "Statutory housing restriction" means a restriction containing
120 the statutory housing covenants, the statutory housing condition or the statutory housing power to sell.

121

122 Section 17F. Entities Eligible to be Holder of Statutory Housing Restriction.

123 The entities eligible to be a holder of a statutory housing restriction shall be a governmental body or any
124 agency thereof, nonprofit organizations, churches, employers, universities or ~~or~~ entities that are
125 otherwise administering government sponsored, federal, state, or local subsidy programs, and any
126 other entity so authorized by the Massachusetts Department of Housing and Community Development
127 (or any successor agency); provided, however, that no restriction granted on the statutory housing
128 power to sell shall be invalid by reason of being held by other than an eligible entity provided that it is
129 assigned to an eligible entity prior to exercise of the statutory housing power to sell. "Governmental
130 body", as referred to in this section means the United States or the commonwealth, acting through any
131 of its departments, divisions, commissions, boards or agencies, or any political subdivision or public
132 instrumentality thereof or any public authority or any quasi-public entity or any instrumentality created
133 pursuant to chapter forty F, whether acting for its own account, or as agent or designee for or assignees
134 of any private individual or private entity which has been required to place such restriction in its chain of
135 title as a condition to receiving financial or other assistance from the United States or the
136 commonwealth.

137

138 A city or town, acting, for cities, by the mayor, unless otherwise provided by charter, ordinance, or vote
139 of the city council, and for towns, by the board of selectmen, unless otherwise provided by charter,
140 bylaw, or vote of the town, may acquire by gift, purchase, grant, bequest, devise, lease or otherwise a
141 statutory housing restriction on real property resulting from regulatory action or funding by the city or
142 town, or otherwise authorized by the city or town, and shall have authority to hold and exercise all the
143 holder's rights, including the authority to acquire and re-convey the real property as statutory housing
144 premises, and otherwise administer and enforce the statutory housing restriction.

145

146 Section 17G. Holder's Obligation to Issue Affordable Value Certificate.

147 On written notice from any owner of statutory housing premises, or from any mortgagee,
148 proposed mortgagee or other person holding a lien on said premises, the holder shall state in writing the
149 affordable value of the statutory housing premises as of the nearest date for which such determination
150 can be made from public record and such other facts known to the holder necessary to establish
151 whether the owner or other person is in compliance with the statutory housing restriction, and such
152 certificate shall be conclusive as to any mortgagee or other person relying thereon and providing value
153 to the owner within the affordable value or transferring the property pursuant to the statutory housing
154 restriction. The holder may charge a reasonable fee for providing said certificate.

155

156 Section 17H. Term. Termination of Statutory Housing Restriction.

157 A statutory housing restriction shall continue until terminated by agreement of the holder, or by
158 legislative or judicial action, or otherwise according to law unless a term of years is stated in the
159 restriction. On termination of a statutory housing restriction for any reason prior to expiration of its
160 term, and after payment of the affordable value to the owner, mortgagees and other lien holders
161 according to the priority established by law, the holder (and no other person) shall be entitled to receive
162 the difference between the affordable value of the statutory housing premises immediately before
163 termination (regardless of the remaining term of the statutory housing restriction) and the fair market
164 value of those premises immediately after termination. Such amount shall be considered a first priority
165 lien in the event that the statutory housing restriction is terminated by judicial action in a bankruptcy
166 proceeding.

167

168 The statutory housing covenants, statutory housing condition and statutory housing power to
169 sell shall not be subject to section 23 and sections 26 through 30 of chapter 184 and shall have the
170 benefits of section 32 of chapter 184 without approval otherwise required thereunder, but all non-
171 statutory provisions of a statutory housing restriction shall remain subject to section 23 and sections 26
172 through 30 and shall have the benefits of section 32 only if approved as stated therein.

173

174 Section 17I. Effect of Mortgage or Other Foreclosure or Sale on Statutory Housing Restriction.

175 Unless otherwise agreed in an instrument appearing of record, following a mortgagee's
176 foreclosure by a regulated for-profit, not-for-profit or governmental mortgagee holding a first mortgage
177 on statutory housing premises which was subordinate to a statutory housing restriction, only the
178 statutory housing covenants, the statutory housing condition and the statutory housing power to sell, to
179 the extent appearing in the statutory housing restriction, shall continue in effect binding the statutory
180 housing premises and all other provisions of the restriction shall be extinguished.

181

182 Section 17J. Ownership of Statutory Housing Premises by Holder, Mortgagee or Other Lien Holder.

183 Ownership of statutory housing premises, either by the executor or administrator of an owner in
184 an eligible household, or by the holder or by a mortgagee or other lien holder, or its designee, or by any
185 entity eligible to be a holder of a statutory housing restriction, pursuant to exercise of lawful remedies
186 against the owner, shall not constitute a violation of the statutory housing covenants or the statutory
187 housing condition so long as the premises are being held for re-sale to, and are re-sold to, an eligible
188 household as statutory housing premises for an amount not exceeding the affordable value, provided

189 that said premises may not be rented, leased or otherwise occupied by a household that is not an
190 eligible household during the period in which said premises are being held for re-sale.

191 **Appendix to G.L. c 183**

192

193 The following new forms 17, 18, 19, 20, 21, 22 and 23 are added to the Appendix Statutory Forms of
194 Instruments Relating to Real Estate following chapter 183:

195

196 (17) Deed with Statutory Housing Restrictions ----- of -----, ----- County, ----- for consideration of
197 ----- dollars paid, grant to ----- of ----- with quitclaim covenants and with statutory housing
198 covenants, upon the statutory housing condition, for any breach of which the holder shall have the
199 statutory housing power to sell the land in ----- (description and encumbrances, if any). Witness -----
200 hand and seal this ----- day of ----- . (Here add acknowledgment.)

201

202 (18) Statutory Housing Restriction of -----, ----- County, ----- for consideration paid, grant to -----
203 of ----- with statutory housing covenants, the land in ----- (description and encumbrances, if any)
204 upon the statutory housing condition, for any breach of which the holder shall have the statutory
205 housing power to sell. Witness ----- hand and seal this ----- day of ----- . (Here add
206 acknowledgment.)

207

208 (19) Extension of Statutory Housing Restriction -----, holder of a statutory housing ~~covenant~~ restriction
209 by ----- to ----- dated ----- recorded ----- with ----- Deeds, book -----, page -----, and -----
210 owner of the equity of redemption of the premises, agree each for ----- sel -----, heirs,
211 representatives and assigns, that the term of said housing restriction is hereby extended to -----, and
212 said owner agrees to perform and observe the condition and covenants of said housing restriction as so
213 extended. Witness ----- hand and seal this ----- day of ----- . (Here add acknowledgment.)

214

215 (20) Assignment of Statutory Housing Restriction. ----- holder of a statutory housing restriction from ----
216 ---- to ----- dated ----- recorded with ----- Deeds, book -----, page -----, assign said statutory
217 housing restriction to ----- . Witness ----- hand and seal this ----- day of ----- . (Here add
218 acknowledgment.)

219

220 (21) Statutory Deed under Statutory Housing Power to Sell. ----- holder of a statutory housing
221 restriction from ----- to ----- dated ----- recorded with ----- Deeds, book -----, page -----, by
222 the power conferred by said housing restriction and every other power, for ----- dollars paid, grant to -
223 ----- the premises conveyed by said housing restriction, subject to said housing restriction and also to
224 (description and encumbrances, if any) upon the statutory housing condition, for any breach of which

225 the holder shall have the statutory housing power to sell. . Witness ----- hand and seal this ----- day
226 of ----- . (Here add acknowledgment.)

227

228 (22) Termination of Statutory Housing Restriction -----, holder of a statutory housing restriction
229 from ----- to ----- dated ----- recorded with ----- Deeds, book -----, page -----, releases the
230 same. Witness ----- hand and seal this ----- day of ----- . (Here add acknowledgment.)

231

232 (23) Affidavit of Sale under Statutory Housing Power to Sell ----- named in the foregoing deed, make
233 oath and say that the statutory housing restriction was breached, and that I published on the ----- day
234 of ----- 20-----, in the -----, a newspaper published or by its title page purporting to be published in
235 ----- aforesaid and having a circulation therein, a notice of which the following is a true copy: -----
236 (Insert advertisement.) ----- . Pursuant to said notice at the time and place therein appointed, I sold
237 the premises in accordance with the statutory housing power to sell, for ----- dollars, being not in
238 excess of the Affordable Value therefor. Witness ----- hand and seal this ----- day of ----- . (Here
239 add jurat.)

240

241 (24) Certificate of Compliance under Statutory Housing Power to Sell -----, holder of a statutory
242 housing restriction from ----- to ----- dated ----- recorded with ----- Deeds, book -----, page -----
243 ---, states that a) ----- is a member of an eligible household with respect the residential real property
244 described in the restriction who are obligated to occupy those statutory housing premises as their
245 principal residence, b) the present affordable value of said property is [insert affordable value] and c) to
246 the best of the undersigned's knowledge and belief the owner is otherwise in compliance with said
247 restriction. Witness ----- hand and seal this ----- day of ----- . (Here add jurat.))

248

249 SECTION 2. The General Laws are hereby amended by inserting after chapter 244 the following new
250 chapter 244A:

251

252 **General Laws Chapter 244A. Foreclosure and Redemption of Statutory Housing Restrictions**

253

254 Section 1. Exercise of Statutory Housing Power to Sell The statutory housing power to sell shall be
255 governed by the provisions of this Chapter 244A.

256

257 **Foreclosure by Sale**

258

259 Section 2 Foreclosure under statutory housing power to sell; procedure; notice; form.

260 The holder of a statutory housing restriction with respect to statutory housing premises or the
261 attorney duly authorized by a writing under seal by the holder acting in the name of such holder may,
262 upon breach of condition and without action, do all the acts authorized or required by the power to
263 convey said premises as statutory housing; but no sale under such power shall be effectual to foreclose
264 the statutory housing restriction and convey statutory housing premises, unless, previous to such sale,
265 notice thereof has been given by registered mail to the owner or owners of record of the equity of
266 redemption in the statutory housing premises as of ninety days prior to the sale, at the premises and
267 also to any other address of such owner or owners appearing on the records of the holder, not less than
268 three times at intervals of not less than seven days, beginning not later than sixty days prior to the date
269 of sale and ending not later than thirty days prior to the date of sale, and notice thereof has been
270 published once in each of three successive weeks, the first publication to be not less than twenty-one
271 days before the day of sale, in a newspaper, if any, published in the town where the land lies or in a
272 newspaper with general circulation in the town where the land lies, and notice has been given by
273 registered mail to the owner or owners of record of the statutory housing premises as of thirty days prior
274 to the date of sale, said notice to be mailed at least fourteen days prior to the date of sale to said owner or
275 owners to the address set forth in section sixty-one of chapter one hundred and eighty-five, if the land is
276 then registered or, in the case of unregistered land, to the last address of the owner or owners of the
277 equity of redemption appearing on the records of the holder of the statutory housing restriction, if any,
278 or if none, to the address of the owner or owners as given on his deed or on the petition for probate by
279 which he acquired title, if any, or if in either case no address appears, then to the address to which the
280 tax collector last sent the tax bill for the statutory housing premises to be sold, or if no tax bill has been
281 sent for the last preceding three years, then to the premises and unless a copy of said notice has been
282 sent by registered mail to all mortgagees and other persons of record as of thirty days prior to the date
283 of sale holding an interest in the property being foreclosed, said notice to be mailed at least fourteen
284 days prior to the date of sale to each such person at the address of such person set forth in any

285 document evidencing the interest or to the last address of such person known to the holder. Any
286 person of record as of thirty days prior to the date of sale holding an interest in the property being
287 foreclosed may waive at any time, whether prior or subsequent to the date of sale, the right to receive
288 notice by mail to such person under this section and such waiver shall be deemed to constitute
289 compliance with such notice requirement for all purposes. If no newspaper is published in such town, or
290 if there is no newspaper with general circulation in the town where the land lies, notice may be
291 published in a newspaper published in the county where the land lies, and this provision shall be implied
292 in every restriction containing the statutory housing power to sell in which it is not expressly set forth. A
293 newspaper which by its title page purports to be printed or published in such town, city or county, and
294 having a circulation therein, shall be sufficient for the purpose.

295

296 The following form of notice may be used and may be altered as circumstances require; but nothing
297 herein shall be construed to prevent the use of other forms.

298

299 (Form.)

300 STATUTORY HOUSING RESTRICTION HOLDER'S POWER TO SELL

301

302 By virtue and in execution of the statutory housing power to sell contained in a certain statutory
303 housing restriction given by _____ to _____ dated _____ and recorded with
304 _____ Deeds, Book _____, page _____, of which housing restriction the undersigned is the
305 present holder,

306

307 (If by assignment, or in any fiduciary capacity, give reference.)

308

309 for breach of the conditions of said housing restriction and for the purpose of the foreclosing and
310 conveying same, whether directly or through an intermediary qualified to hold statutory housing
311 restrictions, to an eligible household as their principal residence, will be sold by (specify either Public
312 Auction or Sale to the Holder or its Designee) at _____ o'clock, __.M. on the _____ day of
313 _____ A.D. (insert year), at _____ (insert place) all and singular the premises described in said
314 housing restriction, subject to the statutory housing covenants, statutory housing condition and
315 statutory housing power to sell contained therein,

316

317 To wit: "(Description as in said housing restriction , including all references to title, restrictions,
318 encumbrances, etc., as made in said housing restriction)"

319

320 having an affordable value of \$ _____ : (State the amount of the affordable value)

321

322 Terms of sale: (State here the amount, if any, to be paid in cash by the purchaser at the time and place
323 of the sale, and the time or times for payment of the balance or the whole as the case may be.)

324

325 Other terms to be announced at the sale.

326

327 (Signed)

328 Present holder of said housing restriction

329

330 A notice of sale in the above form, published in accordance with the statutory housing power to sell in
331 the statutory housing restriction and with this chapter, together with such other or further notice, if any,
332 as is required by the statutory housing restriction, shall be a sufficient notice of the sale; and the
333 statutory housing premises shall be deemed to have been sold, and the deed thereunder shall convey
334 said premises, subject to and with the benefit of the statutory housing covenants, on the statutory
335 housing condition and with the statutory housing power to sell (but no other provisions of any housing
336 restriction applicable to said premises) and also subject to and with the benefit of all other restrictions,
337 easements, improvements, outstanding tax titles, municipal or other public taxes, assessments, liens or
338 claims in the nature of liens, and existing encumbrances of record to the extent they secure debt,
339 whether created prior or subsequent to the statutory housing restriction, that in the aggregate do not
340 exceed the affordable value at the time of sale and are not paid at sale, whether or not reference to
341 such restrictions, easements, improvements, liens or encumbrances is made in the deed; but no
342 purchaser at a sale by public auction shall be bound to complete the purchase if there are
343 encumbrances which will remain following such payment at sale, other than those included in the notice
344 of sale, which are not stated at the sale and included in the auctioneer's contract with the purchaser.

345

346 Exercise of the statutory housing power to sell may be by public auction or purchase by the
347 holder as follows:

348

349 a) In the case of sale at public auction, bidding shall be capped at the affordable value and if
350 more than one qualified bidder has bid the affordable value, the premises shall be sold to such of those
351 bidders as is selected by chance.

352

353 b) Any purchase of the premises by the holder or its designee pursuant to exercise of the
354 statutory housing power to sell, in lieu of sale by public auction, shall be for the affordable value. The
355 holder may assign its right to acquire the premises at the affordable value to an eligible household
356 appearing on a list of eligible households established for the purpose or maintained by or utilized by the
357 holder generally. The eligible household shall be selected by chance or, if the holder so determines, by
358 seniority.

359

360 All proceeds from exercise of the statutory housing power to sell shall be paid to mortgagees
361 and other lien holders appearing of record immediately prior to exercise of the power according to their
362 rights of priority, and any amount remaining shall first be paid to the holder as reimbursement of the
363 holder's reasonable expenses of exercising the power and thereafter be paid to the owner. Any lien on
364 the premises which, in the aggregate with senior liens, exceeds the proceeds from exercise of the
365 statutory housing power to sell shall be extinguished by exercise of the statutory housing power to sell
366 to the extent it exceeds the proceeds of exercise of the power.

367

368 The provisions of section 15 of chapter 244, substituting statutory housing restriction for
369 mortgage deed and statutory power to sell for power of sale, shall apply in case of foreclosure by sale
370 under this section.

371

372 A holder conveying title to statutory housing premises pursuant to the provisions of this chapter
373 shall, within thirty days of conveying title, notify all residential tenants of said premises, and the office of
374 the assessor or collector of taxes of the municipality in which the premises are located and any persons,
375 companies, districts, commissions or other entities of any kind which provide water or sewer service to
376 the premises, of said conveying title.

377

378

Redemption

379

380 Section 4. Redemption. An owner of statutory housing premises under the terms of a statutory
381 housing restriction may, after breach of the statutory housing condition, have redemption in the
382 manner prescribed in and subject to sections 18, 19, 22, 23, 24, 25, 26, 27 and 32 of chapter 244,

383 substituting owner for mortgagor, holder for mortgagee, statutory housing power to sell for power of
384 sale, restriction or restricted for mortgage or mortgaged and performance under the restriction for
385 amount due on the mortgage, provided a) the person entitled to redeem shall perform or tender
386 performance of every condition contained in the restriction; and if there has been an action to recover
387 the property, shall pay or tender the costs of such action if unpaid; b) the tender shall be made before a
388 sale pursuant to the statutory power to sell contained in the restriction and if in compliance with the
389 terms of the restriction shall be accepted by the holder and c) following redemption the property shall
390 continue to be subject to the statutory housing restriction.

391

392

393

Conforming Amendments

394

395 SECTION 3. The first sentence of the third paragraph of section 32 of chapter 184 of the General
396 Laws is amended by inserting after each occurrence of the word “state” the words “or municipal”.

397

398 SECTION 4. Chapter 244 of the General Laws is hereby amended by adding the following new section
399 14A:

400

401 Section 14A. Foreclosure under Power of Sale on Property Subject to Statutory Housing Restriction or
402 other Affordable Housing Restriction

403 In the case of sale by foreclosure under the power of sale in a mortgage of a property subject to
404 a statutory housing restriction, statutory housing condition or statutory housing power to sell or other
405 affordable housing restriction as defined in section 31 of chapter 184 which will remain in effect
406 following foreclosure, the property may, if the mortgagee so determines, be auctioned only to eligible
407 households as defined in section 17E of chapter 183 (together with the mortgagee or its designee and
408 the holder of the housing restriction or its designee or any entity eligible to be a holder of a statutory
409 housing restriction) for an amount not exceeding the affordable value applicable to the property, in
410 which event if more than one eligible household or entity qualified as a bidder has bid at or in excess of
411 the affordable value, then bidding shall be capped at the affordable value and the bidder to whom the
412 property is sold shall be selected by chance from among those bidding who are willing to pay the
413 affordable value.

414

415 In lieu of conducting bidding, the mortgagee may elect to sell the property at the affordable value by
416 lottery that includes all eligible households who have been qualified to bid for the property at the public

417 auction. At the request of the mortgagee, the holder shall confirm the status as members of an eligible
418 household or as an entity eligible to be a holder of a statutory housing restriction of any persons or
419 entities identified to it by the mortgagee.

420

421 If the holder of the restriction tenders the affordable value, then the premises shall be sold to the
422 holder.

423

424

425 SECTION 5. Chapter 236 of the General Laws is hereby amended by adding the following new second
426 paragraph section 27:

427

428 When selling a property subject to a statutory housing restriction under section 17A of chapter
429 183 or other affordable housing restriction as defined in section 31 of chapter 184 which will remain in
430 effect following foreclosure, the officer may instead make the sale and convey by deed either:

431 a) by public auction only among eligible households as defined in section 17E of chapter 183
432 (together with the holder of the housing restriction or its designee or any entity eligible to be a holder of
433 a statutory housing restriction) for an amount not exceeding the affordable value applicable to the land,
434 in which event if more than one eligible household or entity qualified as a bidder has bid at or in excess
435 of the affordable value, then bidding shall be capped at the affordable value and the bidder to whom
436 the property is sold shall be selected by chance from among those bidding willing to pay the affordable
437 value; or

438 (b) if the holder of the restriction tenders the affordable value, then by deed to the holder.

439

440

441 SECTION 6. Section 1(b) of chapter 30B of the General Laws is hereby amended by adding the
442 following new subsection (35):

443

444 (35) Contracts or other actions to acquire or dispose of statutory housing premises as defined in
445 section 17E of chapter 183, including exercise of the statutory housing power to sell, following which the
446 statutory housing restriction continues in force and effect as to the premises as before shall be exempt
447 from the provisions governing disposition of real estate under Chapter 30B.

448

449

450 SECTION 7. Chapter. 183 of the General Laws is hereby amended by adding the following new
451 section 22A:

452

453 Section 22A. Protecting Public Investment.

454

455 No restriction that has been purchased with state or municipal funds or which has been granted
456 in consideration of a loan or grant made with state or municipal funds shall be released unless it is
457 repurchased by the land owner at its then current fair market value.