

**SENATE . . . . . No.**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Susan C. Tucker**

*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 Stabilize Neighborhoods.**

PETITION OF:

NAME:

Susan C. Tucker

DISTRICT/ADDRESS:

Second Essex and Middlesex

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT TO STABILIZE NEIGHBORHOODS.

*Whereas*, The deferred operation for this act would tend to defeat its purpose, which is forthwith to make which is to protect citizens of the Commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

*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. Section 5 of chapter 59 of the general laws is hereby amended by inserting after clause fifty-  
2 five the following clause:-

3

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

11

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

14 and the foreclosing entity shall assume the lease and rental subsidy contract with the rental subsidy  
15 administrator.

16

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

19

20 Chapter 186A. Tenant protections in foreclosed properties

21

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

24

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

29

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

33

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

42

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

48

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

52

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

57

58 'Just Cause', at least one of the following: (a) the tenant has failed to pay the rent in effect prior to the  
59 foreclosure or failed to pay use and occupancy charges, but only if the foreclosing owner notified the  
60 tenant in writing of the amount of rent or use and occupancy that was to be paid and to whom it was to  
61 be paid; provided that such failure to pay rent or use and occupancy charges shall not be deemed to be  
62 just cause unless the foreclosing owner, within 30 days of the foreclosure, posted in a prominent  
63 location in the building in which the rental housing unit is located a written notice stating the names,  
64 addresses, telephone numbers and telephone contact information of the foreclosing owner, the building  
65 manager, or other representative of the foreclosing owner responsible for the management of such  
66 building and stating the address to which rent and use and occupancy charges must be sent; and  
67 provided further that the foreclosing owner has delivered such written notice individually to each tenant  
68 of said building, and to the inspection services department, or its equivalent, for the city or town in  
69 which the rental housing unit is located (b) the tenant has violated an obligation or covenant of the  
70 tenancy or occupancy other than the obligation to surrender possession upon proper notice and has  
71 failed to cure such violation within a reasonable time after having received written notice thereof from  
72 the foreclosing owner; (c) the tenant is committing or permitting to exist a nuisance in, or is causing  
73 substantial damage to, the unit, or is creating a substantial interference with the quiet enjoyment of  
74 other occupants; (d) the tenant is convicted of using or permitting the unit to be used for any illegal  
75 purpose; (e) the tenant who had a written lease or other rental agreement which terminated on or after  
76 the effective date of this chapter, has refused, after written request or demand by the foreclosing  
77 owner, to execute a written extension or renewal thereof for a further term of like duration and in such  
78 terms that are not inconsistent with the provisions of this chapter; (f) the tenant has refused the  
79 foreclosing owner reasonable access to the unit for the purpose of making necessary repairs or  
80 improvement required by the laws of the United States, the Commonwealth or any subdivision thereof,  
81 or for the purpose of inspection as permitted or required by agreement or by law or for the purpose of  
82 showing the rental housing unit to a prospective purchaser or mortgagee provided that none of the  
83 preceding events shall be deemed just cause unless the foreclosing owner has delivered to each tenant  
84 at the time of the delivery of the aforementioned written notice specified in sub-clause (a) above, a  
85 written disclosure of the tenant's right to a court hearing prior to eviction.

86

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

91

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

95

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

100

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

103

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

110

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

117

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

121

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

127

128

129 SECTION 4. Section 35A of chapter 244 of the general laws is hereby amended by deleting the word “90  
130 days” and inserting in its place the following:- “150 days, unless a lender certifies that the lender and the  
131 homeowner were not successful in resolving their dispute, having engaged in a good faith effort to  
132 mediate their dispute that involved at least one mediation session where the homeowner participated  
133 in person, using the services of a mediator approved by the Trial Court, whose services were paid for by  
134 the lender, or that the lender has offered to engage in such a mediation and the homeowner has  
135 declined or failed to respond within 30 days of the offer to mediate, in which case the right to cure shall  
136 be not less than 90 days ”

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138

139 SECTION 5. Chapter 266 is amended by inserting after Section 35 the following new section:

140 SECTION 35A. Residential Mortgage Fraud

141 Any person who intentionally:

142 (1) Makes or causes to be made any material statement that is false or any statement that  
143 contains a material omission, knowing the same to be false or to contain a material omission,  
144 during or in connection with the mortgage lending process, with the intention that said statement  
145 be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process;

146 (2) Uses or facilitates the use of any material statement that is false or any statement that  
147 contains a material omission, knowing the same to be false or to contain a material omission,  
148 during or in connection with the mortgage lending process, with the intention that said statement  
149 be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process;

150 (3) Receives any proceeds or any other funds in connection with a residential mortgage  
151 closing knowing said proceeds or funds to have resulted from a violation of paragraph (1) or (2) of  
152 this section;

153 (4) Files or causes to be filed with the official registrar of deeds of any county of this  
154 commonwealth any document that contains a material statement that is false or a material

155 omission, knowing such document to contain a material statement that is false or a material  
156 omission;

157 (5) coerces or induces a real estate appraiser to inflate the value of real property used as  
158 collateral for a residential mortgage loan;

159 (6) represents or implies that a real estate appraiser will not be selected to conduct an  
160 appraisal of the real property or selected for future appraisal work unless the appraiser agrees in  
161 advance to a value, range of values, or a minimum value for the real property;

162 (7) represents or implies that a real estate appraiser will not be paid for an appraisal  
163 unless

164 the appraiser agrees in advance to a value, range of values, or a minimum value for the real estate;

165 (8) conspires to violate any of the provisions of paragraphs (1) through (7) of this  
166 subsection shall be punished by imprisonment in the state prison for not more than five years or by  
167 imprisonment in the house of correction for not more than two and one-half years or by a fine of  
168 not more than \$10,000 in the case of a natural person or not more than \$100,000 in the case of any  
169 other person, or by both such fine and imprisonment. Any person who engages in a pattern of  
170 residential mortgage fraud shall be punished by imprisonment in the state prison for not more than  
171 fifteen years or by a fine of not more than \$50,000 in the case of a natural person or not more than  
172 \$500,000 in the case of any other person, or by both such fine and imprisonment.

173 As used in this section:

174 (a) "Funds" shall include but not be limited to a commission, fee, yield spread premium, or  
175 compensation in any form.

176 (b) "Material omission" means the omission or concealment of a material fact necessary in  
177 order to make the statement made, in the light of the circumstances under which it is made, not  
178 misleading.

179 (c) "Mortgage lending process" means the process through which a person seeks or obtains  
180 a residential mortgage loan including, but not limited to, solicitation, application, or origination,  
181 negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of  
182 the loan. Documents involved in the mortgage lending process include, but are not limited to,  
183 uniform residential loan applications or other loan applications; appraisal reports; HUD-1  
184 settlement statements; supporting personal documentation for loan applications such as W-2  
185 forms, verifications of income and employment, bank statements, tax returns, and payroll stubs;  
186 and any required disclosures;

187 (d) "Pattern of residential mortgage fraud" means the violation of paragraph (1), (2), (3), or  
188 (4) of this section in connection with three or more residential properties;

189 (e) "Person" means a natural person, corporation, company, limited liability company,  
190 partnership, real estate trust, association, or any other entity;

191 (f) "Residential mortgage loan" means a loan or agreement to extend credit made to a  
192 person, which loan is secured by a mortgage, security interest, deed to secure debt, deed of trust,  
193 or other document representing a security interest or lien upon any interest in an owner occupied  
194 one-to-four family residential property located in Massachusetts, including the renewal or  
195 refinancing of any such loan.

196

197 Any violation of this section may be prosecuted and punished in the county in which the  
198 residential property for which a mortgage loan is being sought is located, or in any county in which  
199 any act was performed in furtherance of the violation, or in any county in which any person alleged  
200 to have violated this section had control or possession of any proceeds of or other funds received as  
201 a result of the violation, or in any county in which a closing on the mortgage loan occurred, or in any  
202 county in which a document containing a deliberate misstatement, misrepresentation, or omission  
203 is filed with the official registrar of deeds.

204

205 SECTION 6. Section 33 of Chapter 266 is amended by:

- 206 a. Striking the words "obtains credit from" and inserting in their place the  
207 words "obtains credit for himself or for any other person from"; and
- 208 b. Inserting after the words "banking institution" the words "or any mortgage  
209 lender as defined in Section 1 of Chapter 255E"; and
- 210 c. Inserting the following phrase after the word "larceny": ", and, if the value  
211 of the benefit described in clause (1) or dollar amount of credit obtained  
212 exceeds two hundred and fifty dollars, shall be punished as if he had stolen  
213 property of a value exceeding two hundred and fifty dollars as provided in  
214 Section 30(1)"

215 so that the statute as amended reads as follows:

216 Chapter 266, Section 33. Larceny; false pretences relating to contracts, banking transactions  
217 or credit

218 (1) Whoever, with intent to defraud, obtains by a false pretence the making, acceptance or  
219 endorsement of a bill of exchange or promissory note, the release or substitution of collateral or  
220 other security, an extension of time for the payment of an obligation, or the release or alteration of  
221 the obligation of a written contract, or (2) whoever, with intent to defraud, by a false statement in  
222 writing respecting the financial condition, or means or ability to pay, of himself or of any other



223 person, obtains for himself or for any other person credit from any bank or trust company or any  
224 banking institution or any mortgage lender as defined in Section 1 of Chapter 255E or any retail  
225 seller of goods or services accustomed to give credit in any form whatsoever shall be guilty of  
226 larceny , and, if the value of the benefit described in clause (1) or dollar amount of credit obtained  
227 exceeds two hundred and fifty dollars, shall be punished as if he had stolen property of a value  
228 exceeding two hundred and fifty dollars as provided in Section 30(1).

229  
230

231 Section 34. Whoever, with intent to defraud and by a false pretence, induces another to part with  
232 property of any kind or with any of the benefits described in section 33 shall be guilty of larceny.  
233 Whoever violates this section shall be punished by imprisonment in jail for not more than 1 year  
234 or by a fine of not more than \$300, or, if the value of the benefit obtained by a violation of clause  
235 (1) or if the dollar amount of credit obtained by a violation of clause (2) exceeds \$250 shall be  
236 punished by imprisonment in the state prison for not more than 5 years, or by a fine of not more  
237 than \$25,000 and imprisonment in the house of correction for not more than 2 years.  
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239

240 SECTION 7. Section 34 of Chapter 266 is amended by:

- 241 a. Striking out the words “the preceding section” and inserting in their  
242 place the words “Section 33”; and
- 243 b. Inserting the following phrase after the word “larceny”: “, and, if the  
244 dollar amount of the credit or value of the benefit parted with  
245 exceeds two hundred and fifty dollars, shall be punished as if he had  
246 stolen property of a value exceeding two hundred and fifty dollars as  
247 provided in Section 30(1)”

248 so that the statute as amended reads as follows:

249 Chapter 266: Section 34. Larceny; inducement to part with property

250 Whoever, with intent to defraud and by a false pretence, induces another to part with  
251 property of any kind or with any of the benefits described in Section 33 shall be guilty of larceny,  
252 and, if the dollar amount of the credit or value of the benefit parted with exceeds two hundred and  
253 fifty dollars, shall be punished as if he had stolen property of a value exceeding two hundred and  
254 fifty dollars as provided in Section 30(1).

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257 SECTION 9. Sections 3 and 4 shall cease to have effect on December 31, 2013.

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