

SENATE No.

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 Tenancies in Foreclosed Properties.

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 TENANCIES IN FORECLOSED PROPERTIES.

Whereas, The deferred operation for this act would tend to defeat its purpose, which is forthwith 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. Chapter 186 is hereby amended by adding the following new chapter:-

2

3 Chapter 186A. Tenant protections in foreclosed properties

4 As used in this section, the following words shall, unless the context clearly requires otherwise, have the
5 following meanings:

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7 Section 1. 'Entity', a business organization, or any other kind of organization, including without limitation,
8 a corporation, partnership, trust, limited liability corporation, limited liability partnership, joint venture,
9 sole proprietorship, or any other category of organization, and any employee, agent, servant or other
10 representative of such entity.

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

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

24

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

30

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

34

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

39

40 'Just Cause', at least one of the following: (a) the tenant has failed to pay the rent in effect prior to the
41 foreclosure or failed to pay use and occupancy charges, but only if the foreclosing owner notified the
42 tenant in writing of the amount of rent or use and occupancy that was to be paid and to whom it was to
43 be paid; provided that such failure to pay rent or use and occupancy charges shall not be deemed to be
44 just cause unless the foreclosing owner, within 30 days of the foreclosure, posted in a prominent
45 location in the building in which the rental housing unit is located a written notice stating the names,
46 addresses, telephone numbers and telephone contact information of the foreclosing owner, the building
47 manager, or other representative of the foreclosing owner responsible for the management of such
48 building and stating the address to which rent and use and occupancy charges must be sent; and
49 provided further that the foreclosing owner has delivered such written notice individually to each tenant
50 of said building, and to the inspection services department, or its equivalent, for the city or town in

51 which the rental housing unit is located (b) the tenant has violated an obligation or covenant of the
52 tenancy or occupancy other than the obligation to surrender possession upon proper notice and has
53 failed to cure such violation within a reasonable time after having received written notice thereof from
54 the foreclosing owner; (c) the tenant is committing or permitting to exist a nuisance in, or is causing
55 substantial damage to, the unit, or is creating a substantial interference with the quiet enjoyment of
56 other occupants; (d) the tenant is convicted of using or permitting the unit to be used for any illegal
57 purpose; (e) the tenant who had a written lease or other rental agreement which terminated on or after
58 the effective date of this chapter, has refused, after written request or demand by the foreclosing
59 owner, to execute a written extension or renewal thereof for a further term of like duration and in such
60 terms that are not inconsistent with the provisions of this chapter; (f) the tenant has refused the
61 foreclosing owner reasonable access to the unit for the purpose of making necessary repairs or
62 improvement required by the laws of the United States, the Commonwealth or any subdivision thereof,
63 or for the purpose of inspection as permitted or required by agreement or by law or for the purpose of
64 showing the rental housing unit to a prospective purchaser or mortgagee provided that none of the
65 preceding events shall be deemed just cause unless the foreclosing owner has delivered to each tenant
66 at the time of the delivery of the aforementioned written notice specified in sub-clause (a) above, a
67 written disclosure of the tenant's right to a court hearing prior to eviction.

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

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

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

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

85

86 Section 2. Notwithstanding any other special or general law to the contrary, a foreclosing owner shall

87 not evict a tenant except for just cause, or in the event that there is a binding purchase and sale
88 agreement for a bona fide third party to purchase said housing accommodation from a foreclosing
89 owner, a foreclosing owner may provide the tenant with a notice to quit and serve the tenant with a
90 summary process summons and complaint tenant to evict said tenant within 45 days of the closing date
91 of said agreement.

92

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

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

103

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

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