

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Ms. Chandler

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 requiring tenant protections in foreclosed properties.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Ms. Chandler	First Worcester
Elizabeth A. Malia	11th Suffolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S02664 OF 2007-2008.]

The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine
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AN ACT REQUIRING TENANT PROTECTIONS 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. The general laws are hereby amended by adding after chapter 186, the following new
2 chapter:-
- 3 Chapter 186A. Tenant protections in foreclosed properties
- 4 Section1. As used in this chapter, the following words shall, unless the context clearly requires
5 otherwise, have the following meanings:
- 6 'Entity', a business organization, or any other kind of organization, including without limitation, a
7 corporation, partnership, trust, limited liability corporation, limited liability partnership, joint venture,
8 sole proprietorship, or any other category of organization, and any employee, agent, servant or other
9 representative of such entity.
- 10 'Eviction', any action, without limitation, by a foreclosing owner of a housing accommodation which is
11 intended to compel a tenant or former owner-occupant, now tenant at sufferance, to vacate or to be
12 constructively evicted from such housing accommodation.

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

21 ‘Foreclosure’, a legal proceeding to terminate a mortgagor’s interest in property, instituted by the
22 mortgagee, either to gain title or to force a sale in order to satisfy the unpaid debt secured by the
23 property, including, without limitation, foreclosure by action, by bill in equity, by entry and continuation
24 of possession for three years, and by sale under the power of sale in a mortgage as described in chapter
25 244.

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

29 ‘Institutional mortgagee’, any entity, or any entity which is the subsidiary, parent, trustee, or agent of, or
30 otherwise related to any such entity, that holds or owns mortgages or other security interest in three or
31 more housing accommodations, or acts as a mortgage servicer of three or more mortgages of housing
32 accommodations.

33 ‘Just Cause’, at least one of the following: (a) the tenant has failed to pay a reasonable rent to the
34 foreclosing owner, but only if the foreclosing owner notified the tenant in writing of the amount of such
35 reasonable rent and to whom it was to be paid; (b) the tenant has violated an obligation or covenant of
36 the tenancy or occupancy other than the obligation to surrender possession upon proper notice and has
37 failed to cure such violation within a reasonable time after having received written notice thereof from
38 the foreclosing owner; (c) the tenant is committing or permitting to exist a nuisance in, or is causing
39 substantial damage to, the unit, or is creating a substantial interference with the quiet enjoyment of
40 other occupants; (d) the tenant is convicted of using or permitting the unit to be used for any illegal
41 purpose; (e) the tenant who had a written lease or other rental agreement which terminated on or after
42 the effective date of this chapter, has refused, after written request or demand by the foreclosing
43 owner, to execute a written extension or renewal thereof for a further term of like duration and in such
44 terms that are not inconsistent with the provisions of this chapter; (f) the tenant has refused the
45 foreclosing owner reasonable access to the unit for the purpose of making necessary repairs or
46 improvement required by the laws of the United States, the Commonwealth or any subdivision thereof,
47 or for the purpose of inspection as permitted or required by agreement or by law or for the purpose of
48 showing the rental housing unit to a prospective purchaser or mortgagee; (g) a binding purchase and
49 sale contract with a purchaser who intends to occupy the housing accommodation as such purchaser’s
50 principal residence and who is not a foreclosing owner, where such agreement requires the housing
51 accommodation or some portion thereof to be conveyed vacant.

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

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

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

65 'Tenant' any person or persons who at the time of foreclosure is entitled to occupy a housing
66 accommodation pursuant to a written lease, tenancy at will, or tenancy at sufferance including a former
67 owner-occupant who held legal title to a housing accommodation immediately prior to a foreclosure of
68 such housing accommodation and who individually or with other legal occupants remains in possession
69 of such housing accommodation after foreclosure. Any person who moves into the housing
70 accommodation owned by the foreclosing owner following the filing of the foreclosure deed without the
71 express written permission of the owner shall not be considered a tenant under this statute

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

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

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

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

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

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

88 and the foreclosing entity shall assume the rental subsidy contract with the rental subsidy administrator.

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