

SENATE No. 931

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 adoption of the accompanying bill:

An Act preventing unnecessary vacancies in foreclosed homes.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | |
|---------------------------|--------------------------------|------------------|
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> | |
| <i>Mike Connolly</i> | <i>26th Middlesex</i> | <i>1/28/2019</i> |
| <i>Mary S. Keefe</i> | <i>15th Worcester</i> | <i>1/31/2019</i> |
| <i>Denise Provost</i> | <i>27th Middlesex</i> | <i>1/31/2019</i> |
| <i>Jack Patrick Lewis</i> | <i>7th Middlesex</i> | <i>2/1/2019</i> |
| <i>Sal N. DiDomenico</i> | <i>Middlesex and Suffolk</i> | <i>2/1/2019</i> |
| <i>Elizabeth A. Malia</i> | <i>11th Suffolk</i> | <i>2/1/2019</i> |

SENATE No. 931

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 931) of James B. Eldridge, Mike Connolly, Mary S. Keefe, Denise Provost and other members of the General Court for legislation to prevent unnecessary vacancies in foreclosed homes. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 841 OF 2017-2018.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act preventing unnecessary vacancies in foreclosed homes.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to protect citizens of the Commonwealth involved in the mortgage foreclosure crisis, 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 186A of the General Laws is hereby amended by striking out
2 sections 1 and 2 in their entirety and inserting in place thereof the following:-

3 Section 1. (a) As used in this chapter, the following words shall, unless the context
4 clearly requires otherwise, have the following meanings:—

5 "Entity", a business organization, or any other kind of organization including, without
6 limitation, a corporation, partnership, trust, limited liability corporation, limited liability

7 partnership, joint venture, sole proprietorship or any other category of organization and any
8 employee, agent, servant or other representative of such entity.

9 "Eviction", an action, without limitation, by a foreclosing owner of a housing
10 accommodation which is intended to actually or constructively evict a tenant or otherwise
11 compel a tenant to vacate such housing accommodation.

12 "Fair Market Rent," an amount equal to that established by the United States Department
13 of Housing and Urban Development pursuant to 42 U.S.C. section 1437f(c), as it exists or may
14 be amended, for a unit of comparable size in the area in which the property is located.

15 "Foreclosing owner", an entity that holds title in any capacity, directly or indirectly,
16 without limitation, whether in its own name, as trustee or as beneficiary, to a housing
17 accommodation that has been foreclosed upon and either: (1) held or owned a mortgage or other
18 security interest in the housing accommodation at any point prior to the foreclosure of the
19 housing accommodation or is the subsidiary, parent, trustee, or agent thereof; or (2) is an
20 institutional mortgagee that acquires or holds title to the housing accommodation within 3 years
21 of the filing of a foreclosure deed on the housing accommodation; or (3) is the Federal National
22 Mortgage Association, the Federal Home Loan Mortgage Corporation or the Federal Deposit
23 Insurance Corporation.

24 "Foreclosure", a legal proceeding to terminate a mortgagor's interest in property,
25 instituted by the mortgagee, and regulated under chapter 244.

26 "Foreclosure Sale Purchaser" or "purchaser", either a foreclosing owner or a person or
27 entity which purchases a housing accommodation from a foreclosing owner, not intending to

28 reside or have a family member reside in such housing accommodation as the primary residence
29 of such person or individual in control of such entity.

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

34 "Institutional mortgagee", an entity or an entity which is the subsidiary, parent, trustee or
35 agent thereof or otherwise related to such entity, that holds or owns mortgages or other security
36 interests in 3 or more housing accommodations or that acts as a mortgage servicer of 3 or more
37 mortgages of housing accommodations.

38 "Just cause", 1 of the following: (1) the tenant has failed to pay the rent in effect prior to
39 the foreclosure or, in the case of the former mortgagor and any household members, monthly
40 rent payments in an amount agreed to by the mortgagor and purchaser or, in the absence of such
41 agreement, a Fair Market Rent as long as the foreclosure sale purchaser notified the tenant in
42 writing of the amount of rent, the agreed upon monthly rent payments or Fair Market Rent that
43 was to be paid and to whom it was to be paid; (2) the tenant has materially violated an obligation
44 or covenant of the tenancy or occupancy, other than the obligation to surrender possession upon
45 proper notice, and has failed to cure such violation within 30 days after having received written
46 notice thereof from the foreclosing owner; (3) the tenant is committing a nuisance in the unit, is
47 permitting a nuisance to exist in the unit, is causing substantial damage to the unit or is creating a
48 substantial interference with the quiet enjoyment of other occupants; (4) the tenant is using or
49 permitting the unit to be used for any illegal purpose; (5) the tenant who had a written bona fide

50 lease or other rental agreement which terminated, on or after August 10, 2010, has refused, after
51 written request or demand by the foreclosing owner, to execute a written extension or renewal
52 thereof for a further term of like duration and in such terms that are not inconsistent with this
53 chapter; (6) the tenant has refused the foreclosing owner reasonable access to the unit for the
54 purpose of making necessary repairs or improvement required by the laws of the United States,
55 the commonwealth or any subdivision thereof, or for the purpose of inspection as permitted or
56 required by agreement or by law or for the purpose of showing the unit to a prospective
57 purchaser or mortgagee provided. Nothing in the section shall limit the rights of a third-party
58 owner to evict a tenant at the expiration of an existing lease.

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

63 "Mortgage servicer", an entity which administers or at any point administered the
64 mortgage; provided, however that such administration shall include, but not be limited to,
65 calculating principal and interest, collecting payments from the mortgagor, acting as escrow
66 agent or foreclosing in the event of a default.

67 "Tenant", a person or group of persons who at the time of foreclosure is an occupant of
68 such housing accommodation. A person who moves into the housing accommodation owned by
69 the foreclosure sale purchaser, subsequent to the foreclosure sale, without the express written
70 permission of the foreclosure sale purchaser shall not be considered a tenant under this chapter.

71 "Unit" or "residential unit", the room or group of rooms within a housing accommodation
72 which is used or intended for use as a residence by 1 household.

73 Section 2. Notwithstanding any general or special law to the contrary, When a mortgage
74 of real estate is foreclosed by a sale under a power contained therein, or otherwise, a foreclosure
75 sale purchaser having a valid title to such estate, shall not evict a tenant except for just cause or
76 unless a binding purchase and sale agreement has been executed for a bona fide third party to
77 purchase the housing accommodation from a foreclosure sale purchaser.

78 SECTION 2. Said chapter 186A of the General Laws, as appearing in the 2016 Official
79 Edition, is hereby further amended in sections 3,4,5, and 6 by striking out each appearance of the
80 words "foreclosing owner" and inserting in place thereof the following words:- foreclosure sale
81 purchaser.

82 SECTION 3. Section 3 of said chapter 186A of the General Laws, as so appearing, is
83 hereby amended by striking out the first sentence and inserting in place thereof the following
84 sentence:- Within 30 days of the foreclosure, the foreclosure sale purchaser shall post in a
85 prominent location in the building a written notice stating the names, addresses, telephone
86 numbers and telephone contact information of the foreclosure sale purchaser, the building
87 manager or other representative of the foreclosure sale purchaser responsible for the management
88 of such building and stating the address to which the rent, or, in the case of the former mortgagor
89 and any household members, the agreed upon monthly rent payments or Fair Market Rent shall
90 be sent.

91 SECTION 4. Section 4 of said chapter 186A of the General Laws, as so appearing, is
92 hereby amended in subsection (a) by striking out clause (i) and inserting in place thereof the
93 following clause:-

94 (i) the tenant has failed to pay the rent in effect prior to the foreclosure or, in the case of
95 the former mortgagor and any household members, the agreed upon monthly rent payments or
96 Fair Market Rent, as long as the foreclosing owner notified the tenant in writing of the amount of
97 rent that was to be paid and to whom it was to be paid;

98 SECTION 5. Section 5 of said chapter 186A of the General Laws, as so appearing, is
99 hereby amended by striking out the second sentence and inserting in place thereof the following
100 sentence:-

101 A bona fide lease between the foreclosed-upon owner and the lessee or proof of rental
102 payment to the foreclosed-upon owner or a Fair Market Rent shall be presumed reasonable.

103 SECTION 6. Section 6 of said chapter 186A of the General Laws, as so appearing, is
104 hereby amended by striking out the first paragraph and inserting in place thereof the following
105 paragraph:-

106 A foreclosure sale purchaser that evicts a tenant in violation of this chapter or any
107 ordinance or by-law adopted pursuant to this chapter, shall be punished by penalty of not less
108 than \$5,000 to be paid to the tenant upon order of the court. Each such illegal eviction shall
109 constitute a separate offense.

110 SECTION 7. Chapter 186 of the General Laws is hereby amended by striking out section
111 3 in its entirety and inserting in place thereof the following:-

112 As previous tenants at will or under lease and given no challenge to title of a new
113 purchaser, tenants at sufferance in possession of land or tenements shall be liable to pay rent
114 therefor for such time as they may occupy or detain the same.

115 SECTION 8. Section 13 of said Chapter 186 of the General Laws, as so appearing, is
116 hereby amended by inserting, in line 18, after the word “foreclosure” the following;- “shown to
117 be valid.”

118 SECTION 9. Section 6 of Chapter 239 of the General Laws, as so appearing is hereby
119 amended by striking the first sentence and inserting in place thereof the following:-

120 If the action is for the possession of land after foreclosure of a mortgage thereon by a sale
121 under a power contained therein, or otherwise, and the person having a valid title to such estate,
122 the condition of the bond shall be for the entry of the action and payment to the plaintiff, if final
123 judgment is in his favor, of all costs and of a reasonable amount as rent of the land from the day
124 when the mortgage was foreclosed until possession of the land is obtained by the plaintiff.