

HOUSE No. 1201

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act preserving publicly assisted affordable 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. The General Laws are hereby amended by inserting after chapter 40S the
2 following chapter:

3 CHAPTER 40T

4 PUBLICLY ASSISTED AFFORDABLE HOUSING.

5 Section 1. As used in this chapter, the following words shall have the following
6 meanings unless the context clearly requires otherwise:

7 “Affected municipality”, a city or town in which publicly-assisted housing or a publicly-
8 assisted housing development, is located.

9 “Affiliate”, an entity owned or controlled by an owner or under common control with the
10 owner.

11 “Affordability restriction”, limit on rents that an owner may charge for occupancy of a
12 rental unit in a publicly assisted housing development or a limit on tenant income for persons or
13 families seeking to qualify for admission to such housing.

14 ”Affordable Units”, units in publicly assisted housing reserved for occupancy by low-
15 income households.

16 “CEDAC”, the Community Economic Development Assistance Corporation, established
17 in chapter 40H.

18 “Chief executive officer”, the mayor in a city and the board of selectman in a town,
19 unless otherwise is designated by a municipal charter.

20 “Department”, the department of housing and community development, or any successor
21 agency of the department.

22 “Designee”, a municipality, local or regional housing authority, nonprofit or for-profit
23 corporation or other entity qualified to do business in the Commonwealth and , which is selected
24 by the department to operate publicly-assisted housing that is decent, safe and sanitary affordable
25 housing, under subsection (b) of section 3.

26 “Enhanced section 8 vouchers”, vouchers provided under 42 U.S.C. 1437f(t), or other
27 substantially equivalent assistance.

28 “Extremely low income”, a household income of not more than 30 per cent of the area
29 median income, adjusted for household size, as periodically determined by the United States
30 Department of Housing and Urban Development.

31 “Government program”, a program which provides government financial assistance
32 under a program set forth in the definition of publicly assisted housing.

33 “Low income”, a household income of not more than 80 per cent of the area median
34 income, adjusted for household size, as periodically determined by the United States Department
35 of Housing and Urban Development.

36 “Owner”, a person, firm, partnership, corporation, trust, organization, limited liability
37 company or other entity, or its successors or assigns, that holds title to a publicly-assisted
38 housing development.

39 “Prepayment”, (i) the payment in full or the refinancing of a governmental insured or
40 government held mortgage loan indebtedness prior to its original maturity date: (ii) or the
41 voluntary cancellation of mortgage insurance on a publicly assisted housing development; (iii) or
42 the payment in full on a government contract, any of which would have the effect of removing
43 either: (a) the affordability restrictions applicable to the publicly-assisted housing development;
44 or (b) a requirement to renew any such affordability restrictions.

45 “Preserve affordability”, with respect to a publicly-assisted housing development, to
46 undertake reasonable and diligent actions to retain, renew or secure subsidies affecting a
47 publicly-assisted housing development in order to maintain approximately the same number of
48 affordable units, all to the extent of available subsidies and taking into account the need to
49 ensure that the development provides quality housing, including mixed income housing.

50 “Protected low-income tenant,” a low-income tenant residing in a publicly assisted
51 housing development on the date of termination of the government program and whose rent was
52 restricted by that government program.

53 “Publicly-assisted housing”, a housing unit or development that receives government
54 assistance under any of the following programs: (i) section 8 of the United States Housing Act of
55 1937, 42 U.S.C. section 1437f as it applies to new construction, substantial rehabilitation,
56 moderate rehabilitation, property disposition and loan management set-aside programs or any
57 other program providing project-based rental assistance; (ii) section 42 of the Internal Revenue
58 Code, and 26 U.S.C. section 42, the federal Low-Income Housing Tax Credit Program; (iii)
59 section 101 of the Housing and Urban Development Act of 1965, and, 12 U.S.C. section 1701s
60 as it applies to programs for rent supplement assistance thereunder; (iv) section 202 of the
61 Housing Act of 1959, and 12 U.S.C. section 1701q; (v) section 221(d)(3) of the National
62 Housing Act, 12 U.S.C. section 1715 (d)(3) or (5), the below market interest rate program; (vi)
63 section 221(d)(4) of the National Housing Act, 12 U.S.C. section 1715l (d)(4) to the extent the
64 project’s rents are restricted pursuant to a federal government agreement; (vii) section 236 of the
65 National Housing Act, and 12 U.S.C. section 1715z-1; (viii) section 515 of the Housing Act of
66 1949, and, 42 U.S.C. section 1485; (ix) section 521 of the Housing Act of 1949, 42 U.S.C.
67 section 1490a; (x) the Urban Development Action Grant, 42 U.S.C. section 5318 to the extent
68 that the affordability of dwelling units subject to such program are restricted pursuant to a
69 government agreement; (xi) the Housing Development Action Grant, 42 U.S.C. section 1437, to
70 the extent the project’s rents are restricted pursuant to a government agreement; (xii) section 13A
71 of chapter 708 of the acts of 1966; (xiii) the voucher program provided for annually, in item
72 7004-9024 of section 2 of the general appropriation act as that program applies to project-based
73 rental assistance; (xiv) the state low income housing tax credit program established in section 6I
74 of chapter 62; (xv) the State Housing Assistance for Rental Production, established in chapter
75 574 of the acts of 1983;

76 “Purchase contract”, a binding written agreement whereby an owner agrees to sell a
77 publicly assisted housing development including, without limitation, a purchase and sale
78 agreement, contract of sale, purchase option or other similar instrument.

79 Regulatory agreement”, an affordable housing restriction that establishes an owner's
80 obligations created pursuant to the efforts of the department or its designee to preserve
81 affordability and which is consistent with section 31 of chapter 184.

82 “Sale”, the act(s) by which an owner conveys, transfers or disposes of property, by deed
83 or otherwise, whether through a single transaction or a series of transactions during any twelve
84 month period. For purposes of this Chapter, a disposition of publicly assisted housing by an
85 owner to an affiliate of owner shall not constitute a sale requiring compliance with this Chapter.

86 “Tenant”, person legally entitled to possession or occupancy of a rental unit within
87 publicly assisted housing including a subtenant, lessee and sublessee

88 “Tenant organization”, an organization established by the tenants of a publicly-assisted
89 housing development for the purpose of addressing issues related to their living environment and
90 which meets regularly, operates democratically, is representative of all residents in the
91 development, is completely independent of owners, management and their representatives and
92 which has filed a notice of its existence with CEDAC, provided however that, no owner or other
93 third party shall be required to ascertain the organization’s compliance with this definition.

94 “Termination”, the cessation, discharge or removal of an affordability restriction
95 affecting a publicly-assisted housing development in the absence of a simultaneous replacement
96 of that restriction with an equivalent affordability restriction. By way of example and not in
97 limitation, the following constitute terminations: (i) nonrenewal or termination, in whole or in

98 part, of a government program contract; (ii) expiration, in whole or in part, of an affordability
99 restriction under a government program or the requirement to renew the restriction; (iii) payment
100 in full of a government program mortgage loan; or (iv) prepayment of a government program
101 mortgage loan.

102 “Time for performance” the date for delivery of the deed or other document evidencing a
103 sale pursuant to a purchase contract.

104 “Very low income”, having a household income of not more than 60 percent of the area
105 median income, adjusted for household size, as periodically determined by the United States
106 Department of Housing and Urban Development

107 Section 2.

108 (a) Except with respect to property subject to an affordability restriction which has less
109 than 2 years remaining and for which subsection (e) shall, apply, the owner shall provide written
110 notice to: (i) all tenants and the tenant organization, if any; (ii) the chief executive officer of the
111 affected municipality; (iii) CEDAC; and (iv) the department, not less than 2 years before the
112 termination of the affordability restriction affecting publicly-assisted housing. Nothing herein
113 shall prohibit the owner from taking actions to terminate an affordability restriction during any
114 notice period provided herein; provided, however, that the owner shall comply with all of the
115 notice terms and restrictions pursuant to subsections (b) and (c). The informational notice shall
116 provide: (1) the address of the publicly-assisted housing; (2) the name and address of the owner;
117 (3) notification that an affordability restriction may terminate; (4) the date on which each
118 affordability restriction may terminate. Where more than 1 termination may occur, the owner
119 may send 1 written notice so long as the terminations are scheduled to occur within 1 year of

120 each other, the notice is given at least 24 months before to the earliest termination and the notice
121 otherwise complies with this subsection. Thereafter, the owner shall again be subject to the
122 notice provision of subsection (c) of section 2.

123 (b) Except with respect to property subject to an affordability restriction which has less
124 than 1 year remaining and for which subsection (e) shall apply, an owner shall not complete a
125 termination or allow a termination to occur unless, not less than 1 year before the completion of
126 the last termination event affecting the housing, the owner provides the entities identified in
127 subsection (a) with written notice of intent to complete termination. The notice shall state: (1) the
128 address of the publicly-assisted housing; (2) the name and address of the owner; (3) the date on
129 which the owner intends to complete termination; and (4) unless section 6 applies, a statement
130 that the department has the right of offer pursuant to section 3 to the extent the owner wishes to
131 pursue a potential sale of the property in question.

132 (c) Except as provided in Section 6 an owner shall not sell publicly –assisted housing
133 before offering the department the opportunity to purchase the property pursuant to sections 3
134 and 4. The owner shall notify, in writing, the parties identified in subsection (a) of the owner’s
135 intention to consider whether it wishes to sell the property.

136 (d) Any notice, other than to tenants, shall be deemed given when delivered in person or
137 mailed by certified or registered mail, return receipt requested, to the party to whom notice is
138 required. Notices to tenants shall be deemed given when delivered in any manner which satisfies
139 requirements established by the United States Department of Urban Development for the giving
140 of notices to tenants regarding rent increases. A notice to the affected municipality shall be sent
141 to the chief executive officer.

142 (e). Notwithstanding subsection (a) of section 2, an owner of publicly assisted housing
143 who, on the effective date of this act, has less than 2 years remaining prior to the date when the
144 affordability restriction will cease to apply to such property, shall not be required to give the 2
145 year notice required by said subsection (a), but shall provide such notice within 90 days of the
146 effective date of this act, provided that the affordability restrictions have more than one year
147 remaining at the end of such 90 day period. Notwithstanding subsection (b) of Section 2, an
148 owner who, on the effective date of this act has less than 1 year remaining prior to a termination
149 shall not be required to give the 12-month notice required by subsection (b), but shall provide
150 such notice within 90 days after the effective date of this act provided that the affordability
151 restriction has not terminated.

152 (f) The notice requirements of this section shall not be affected by the status of an offer,
153 purchase contract or sale under section 3 or section 4

154 Section 3.(a) An owner shall offer the department an opportunity to purchase a publicly
155 assisted housing development prior to entering into an agreement to sell such property pursuant
156 to the time periods contained in this section, but no owner shall be under any obligation to enter
157 into an agreement to sell such property to the department.

158 (b) The department may select a designee to act on its behalf as purchaser of the
159 publicly-assisted housing and shall give the owner and CEDAC written notice of its selection .
160 The department shall promptly consult with the affected municipality before selecting a
161 designee and shall immediately designate the affected municipality as its designee upon written
162 request of the affected municipality, unless the department determines that such request is not
163 feasible for reasons set forth in the department's regulations. The department shall enter into a

164 written agreement with its selected designee providing that the designee and any of its successors
165 or assigns agree to preserve the affordability of the publicly assisted housing. Once such an
166 agreement is executed, the designee shall assume all rights and responsibilities attributable to the
167 department as a prospective purchaser under this section and section 4. At any time prior to a
168 sale under section 3 or section 4, the department may revoke its designation and assume the
169 designee's rights and responsibilities, either in its own capacity or by selecting a new designee;
170 provided, however, that no change in a designation shall operate to extend or alter any time
171 periods for performance set forth in this chapter or in any purchase contract entered into pursuant
172 to this chapter.

173 (c) The department may, within 60 days after it receives notice pursuant to section 2 (c)
174 of the owner's intention to sell, submit an offer to the owner to purchase the publicly-assisted
175 housing. Failure by the department to submit an offer within such 60 day period shall constitute
176 an irrevocable and permanent waiver of the department's rights under this section and the owner
177 may sell the publicly-assisted housing, subject only to the provisions of section 4. If the owner
178 accepts the department's initial or any revised offer, the owner and the department shall enter
179 into such other agreements as are necessary and appropriate to complete the sale. If the owner
180 and the department have not entered into an agreement to sell the property to the department
181 within 30 days after acceptance of such offer, or if the department fails to perform under such
182 agreements, the owner may enter into an agreement to sell the property to a purchaser of the
183 owner's choice, subject only to the department's right of first refusal pursuant to section 4.

184 (d) At any time after the notice in section 2 has been provided, and within 10 days of
185 receiving a request, the owner shall make documents which are in its possession available to the
186 department for review and photocopying during normal business hours at the owner's principal

187 place of business or at a commercial photocopying facility. Such documents shall include: (1)
188 any existing architectural plans and specifications of the development; (2) itemized lists of
189 capital expenditures in each of the 2 preceding calendar years; (3) any capital needs studies or
190 market studies that have been submitted to a federal, state or local agency in the preceding 3
191 years; (4) utility consumption rates for the preceding 12 months; (5) copies of the last 2 audited
192 annual financial statements, (6) physical inspection reports filed with federal, state or local
193 agencies within the last two years, and ; (7) the most recent rent roll showing then current
194 vacancies and rent arrearages. Documents obtained pursuant to a request under this section shall
195 not be considered public records, as defined in clause 26 of section 7 of chapter 4, and the
196 department shall not make such documents available to the public without the written consent of
197 the owner or pursuant to a court order, provided, however, that disclosure may be made to
198 potential funding sources, regulatory agencies or agents or consultants of the department in
199 connection with the transaction, subject to appropriate confidentiality agreements in form and
200 substance reasonably acceptable to the owner. Upon request and with appropriate notice and
201 upon execution of an access and confidentiality agreement in form and substance reasonably
202 acceptable to the owner with respect to matters which may include, without limitation,
203 appropriate times of inspections, limitations on invasive inspections, obligations to provide
204 copies of all reports to the owner, insurance and indemnity requirements and confidentiality
205 provisions, the owner shall also permit reasonable inspections of the dwelling units, building
206 systems, common areas and common grounds by agents, consultants and representatives of the
207 department including, but not limited to inspections related to, environmental, engineering,
208 structural or zoning matters.

209 (e) Not later than 30 days after the department submits an offer to purchase the publicly-
210 assisted housing development pursuant to subsection (c), the department shall notify tenants in
211 the housing development and shall meet with them at least once to discuss the department's
212 plans.

213 Section 4 (a) The department shall have a right of first refusal to purchase any publicly-
214 assisted housing development under this section. At any time after the 90 days the department
215 has been given notice pursuant to subsection (c) of section (2), but not later than the 360 days
216 after the date of such notice, the owner may execute a purchase contract with a third party to sell
217 the publicly-assisted housing development provided that the owner complies with this section.

218 (b) Upon execution of a bona fide third party purchase contract, the owner shall, within 7
219 days, submit a copy of the contract to the department and CEDAC along with a proposed
220 purchase contract, for execution by the department. The department shall within 30 days after
221 receipt of the third party purchase contract and the proposed purchase contract, execute the
222 proposed purchase contract or such other agreement as is acceptable to the owner and the
223 department. The time periods set forth in this subsection may be extended by agreement
224 between the owner and the department. The proposed purchase contract shall contain the same
225 terms and conditions as the executed third party purchase contract, except for such modifications
226 as may be agreed to by the owner and the department.

227 (c) If the department fails to execute the proposed purchase contract within 30 days or
228 such other period as provided in subsection (b), the owner shall have 24 months from the last day
229 on which the department was entitled to execute the proposed purchase contract in which to
230 complete the sale of the owner's publicly-assisted housing development to a third party. Upon

231 the expiration of the 24-month period, the owner shall be subject again to all of subsection (c) of
232 section 2, section 3 and this section 4.

233 (d) If the department executes the proposed purchase contract as provided in subsection
234 (b) but fails to perform as provided in the executed purchase contract, then the owner shall have
235 2 years from the date on which the proposed purchase contract terminated in which to complete
236 the sale of the owner's publicly-assisted housing development to a third party. Upon the
237 expiration of the 24-month period, the owner shall be subject to subsection (c) of section 2,
238 section 3 and this section 4.

239 (e) Any submission to the department of a third party purchase contract, amended third
240 party purchase contract, deed or other document transferring the owner's interest in the publicly-
241 assisted housing development shall include a certification by the owner and, with respect to a
242 document executed by the third party buyer, the third party buyer, that the document is accurate
243 and complete and there are no other agreements between the owner and the third party buyer, or
244 an affiliate of either of them, with respect to the sale of the publicly-assisted housing
245 development.

246 Section 5. An affected municipality shall not be subject to section 16 of chapter 30B.

247 Section 6. (a) Section 3 and 4 shall not apply to any of the following: (i) a government
248 taking by eminent domain or a negotiated purchase in lieu of eminent domain; (ii) a forced sale
249 pursuant to a foreclosure; (iii) a deed-in-lieu-of foreclosure; (iv) a proposed sale to a purchaser
250 pursuant to terms and conditions which preserve affordability as determined by the department;
251 (v) a proposed sale of a publicly-assisted development which the department has determined has
252 section 8 contracts for all of the publicly assisted units in the development and the buyer has

253 agreed, in a regulatory agreement, to renew project-based section 8 assistance, or any successor
254 program, for all of the publicly assisted units in the development provided that at the time of
255 such renewal, such assistance is available to the owner on economic terms and conditions that
256 are comparable to the existing assistance contract; (vi) a proposed sale of a publicly-assisted
257 development to an affiliate of the owner that is not a termination as determined by the
258 department; (vii) a proposed sale pursuant to agreement in effect on the effective date of this
259 chapter; (viii) a proposed sale involving a publicly assisted development in which no
260 affordability restriction is set to expire within two years of the date of the sale; and (ix) any
261 project that is eligible for participation in the United States Department of Housing and Urban
262 Development's Mark up to Market Program so long as the owner applies for a renewal of such
263 contract for all eligible units. For the purposes of section 3 and section 4, housing that, as of the
264 effective date of this chapter, received government assistance under any of these programs and
265 was not subject to a purchase contract, but which no longer receives any such government
266 assistance shall be subject to the provisions of this chapter for 2 years from the date of the last
267 termination.

268 (b) An owner seeking an exemption under clause(iv), (v) or (vi) of subsection (a) shall
269 include the name and address of any tenant organization in the request and shall provide a copy
270 of its request to the chief executive officer of the affected municipality, CEDAC, the local legal
271 services organization as designated by the department and the tenant organization , if any, at the
272 time it files its exemption request with the department. The department shall provide a copy of
273 its written determination under said clauses (iv), (v) or (vi) of said subsection (a) to the owner,
274 CEDAC, the local legal services organization and the tenant organization.

275 Section 7. A purchase by the department or by its designee pursuant to this chapter shall
276 be subject to a regulatory agreement. A regulatory agreement with any owner shall not contain
277 any terms which preclude an owner from participating in the United States Department of
278 Housing and Urban Development's Mark up to Market Program.

279 Section 8. An owner who has complied with of sections 2 and 3 which has not resulted
280 in a purchase by the department or which has resulted in a sale pursuant to section 4 may apply
281 to the department for a certificate of compliance by submitting a written request for the
282 certificate in a form and with such documentation as required by the department to establish the
283 owner's compliance to the satisfaction of the department pursuant to regulations of the
284 department. At the same time, the owner shall provide a copy of the request to CEDAC and the
285 chief executive officer of the affected municipality. The owner shall provide a copy of the
286 owner's request to a tenant of the publicly-assisted housing upon request of any such tenant. The
287 department shall issue the certificate of compliance within 30 days after receipt of the application
288 if it determines that the owner has complied with said sections 2 and 3. The certificate of
289 compliance shall be filed with the registry of deeds within 1 year after the date of issuance.

290 Section 9. Within 45 days after the effective date of this act, the department of housing
291 and community development shall establish a 12-member advisory committee, to consist of the
292 undersecretary of the department or her designee, the executive director of the Community
293 Economic Development Assistance Corporation, 1 member selected by the Massachusetts
294 Mayors Association, 1 member selected by the Massachusetts Municipal Association, 1 member
295 selected by Citizens Housing and Planning Association, 1 member selected by the Greater
296 Boston Real Estate Board, 1 member selected by the Real Estate Bar Association for
297 Massachusetts, 1 member selected by the Massachusetts Association of Community

298 Development Corp., 1 member selected by the Massachusetts Legal Assistance Corporation, 1
299 member affiliated with the Affordable Housing Preservation Initiative of the Local Initiatives
300 Support Corporation and 2 members chosen by the department to provide advice and
301 recommendations to the department regarding regulations to implement this act. The department
302 shall promulgate regulations to effectuate the purposes and implement chapter 40T of the
303 General Laws not later than within 150 after the effective date of this act the passage of this
304 chapter.