

HOUSE No. 1232

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to protect tenants in foreclosed properties from evictions..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 WHEREAS the deferred operation of this act would tend to defeat its purpose which is to
2 protect citizens of the Commonwealth, therefore it is hereby declared to be an emergency law
3 necessary for the immediate protection of the public.

4 SECTION 1. The general laws are hereby amended by adding after chapter 186, the
5 following new chapter:-

6 Chapter 186A. Tenant protections in foreclosed properties.

7 Section 1. As used in this chapter, the following words shall, unless the context clearly
8 requires otherwise, have the following meanings:'Entity', a business organization, or any other
9 kind of organization, including without limitation, a corporation, partnership, trust, limited
10 liability corporation, limited liability partnership, joint venture, sole proprietorship, or any other
11 category of organization, and any employee, agent, servant or other representative of such entity.

12 'Eviction', any action, without limitation, by a foreclosing owner of a housing
13 accommodation which is intended to compel a tenant or former owner-occupant, now tenant at

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

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

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

33 ‘Institutional mortgagee’, any entity, or any entity which is the subsidiary, parent, trustee,
34 or agent of, or otherwise related to any such entity, that holds or owns mortgages or other

35 security interest in three or more housing accommodations, or acts as a mortgage servicer of
36 three or more mortgages of housing accommodations.

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

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

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

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

71 'Tenant' any person or persons who at the time of foreclosure is entitled to occupy a
72 housing accommodation pursuant to a written lease, tenancy at will, or tenancy at sufferance
73 including a former owner-occupant who held legal title to a housing accommodation
74 immediately prior to a foreclosure of such housing accommodation and who individually or with
75 other legal occupants remains in possession of such housing accommodation after foreclosure.
76 Any person other than a legal dependent or spouse of the person or group of persons entitled to
77 occupy the housing accommodation at the time of the foreclosure who moves into the housing
78 accommodation owned by the foreclosing owner following the filing of the foreclosure deed

79 without the express written permission of the foreclosing owner shall not be considered a tenant
80 under this statute

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

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

85 Section 3. Any foreclosing owner that evicts a tenant in violation of any provisions of
86 this Act, or any ordinance or by-law adopted pursuant to this Act, shall be punished by a fine of
87 not less than ten thousand dollars. Each eviction done in violation of this Act constitutes a
88 separate offense. The district and superior courts, and the housing courts in the Commonwealth,
89 shall have jurisdiction over an action arising from any violation of this Act, or any ordinance, or
90 by-law adopted pursuant to this Act, and shall have jurisdiction in equity to restrain any such
91 violation. It shall be a defense to eviction that the foreclosing owner attempted to evict a tenant
92 in violation of any provision of this Act, or any ordinance or by-law adopted pursuant to this Act.

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

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

96 and the foreclosing entity shall assume the lease and rental subsidy contract with the
97 rental subsidy administrator.