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HOUSE . . . . . No. 3522

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to protect and preserve neighborhoods..

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

SECTION 1. The General Laws, as appearing in the 2006 Official Edition, are hereby

Chapter 186A. Tenant protections in foreclosed properties.

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

'Eviction', any action, without limitation, by a foreclosing owner of a housing accommodation which is intended to compel a tenant to vacate or to be constructively evicted from such housing accommodation. “Foreclosing owner', an entity that holds title, in any capacity, directly or indirectly, without limitation, whether in its own name, as trustee, or as beneficiary, to a housing accommodation that has been foreclosed upon, and either (1) held or owned a mortgage or other security interest in the housing accommodation at any point prior to

the foreclosure of the housing accommodation or is the subsidiary, parent, trustee, or agent of, or otherwise is related to any entity which held or owned the mortgage or other security interest in the housing accommodation at any time prior to the foreclosure of the housing accommodation; or (2) is an institutional mortgagee that acquires or holds title to the housing accommodation within three years of the filing of a foreclosure deed on the housing accommodation.

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

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

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

'Just Cause’, at least one of the following: (a) the tenant has failed to pay the rent in effect prior to the foreclosure or failed to pay use and occupancy charges, but only if the foreclosing owner notified the tenant in writing of the amount of rent or use and occupancy that was to be paid and to whom it was to be paid; (b) the tenant has violated an obligation or covenant of the

tenancy or occupancy other than the obligation to surrender possession upon proper notice and has failed to cure such violation within a reasonable time after having received written notice thereof from the foreclosing owner; (c) the tenant is committing or permitting to exist a nuisance in, or is causing substantial damage to, the unit, or is creating a substantial interference with the quiet enjoyment of other occupants; (d) the tenant is convicted of using or permitting the unit to be used for any illegal purpose; (e) the tenant who had a written lease or other rental agreement which terminated on or after the effective date of this chapter, has refused, after written request or demand by the foreclosing owner, to execute a written extension or renewal thereof for a further term of like duration and in such terms that are not inconsistent with the provisions of this chapter; (f) the tenant has refused the foreclosing owner reasonable access to the unit for the purpose of making necessary repairs or improvement required by the laws of the United States, the Commonwealth or any subdivision thereof, or for the purpose of inspection as permitted or required by agreement or by law or for the purpose of showing the rental housing unit to a prospective purchaser or mortgagee.

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

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

'Tenant’ any person or group of persons who at the time of foreclosure is entitled to occupy a housing accommodation pursuant to a written lease or tenancy at will. Any person who moves into the housing accommodation owned by the foreclosing owner following the filing of the foreclosure deed without the express written permission of the owner shall not be considered a tenant under this statute. 'Unit' or 'residential unit', the room or group of rooms within a housing accommodation which is used or intended for use as a residence by one household.Section 2. Notwithstanding any other special or general law to the contrary, a foreclosing owner shall not evict a tenant except for just cause, or in the event that there is a binding purchase and sale agreement for a bona fide third party to purchase said housing accommodation from a foreclosing owner, a foreclosing owner may provide the tenant with a notice to quit and serve the tenant with a summary process summons and complaint tenant to evict said tenant within 45 days of the closing date of said agreement.

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

Section 4. Any foreclosing owner that evicts a tenant in violation of any provisions of this Act, or any ordinance or by-law adopted pursuant to this Act, shall be punished by a fine of not less than ten thousand dollars. Each eviction done in violation of this Act constitutes a separate offense.The district and superior courts, and the housing courts in the Commonwealth, shall have jurisdiction over an action arising from any violation of this Act, or any ordinance, or

by-law adopted pursuant to this Act, and shall have jurisdiction in equity to restrain any such violation. It shall be a defense to eviction that the foreclosing owner attempted to evict a tenant in violation of any provision of this Act, or any ordinance or by-law adopted pursuant to this Act.

SECTION 2. Chapter 244 of the General Laws, as amended by Chapter 206 of the Acts of 2007, is hereby amended by inserting after section 35A the following section-

Section 35B. The chief justice for administration and management, in consultation with the city of Boston, shall establish and promulgate rules for a pilot program within the county of Suffolk to identify best practices for case management of cases involving owner-occupied residential properties which are subject to foreclosure proceedings. Said program shall include at least one mediation session to take place during said 90 day right to cure period as established by section 35A.

SECTION 3. Chapter 255 of the General Laws is hereby amended by inserting after section 12 the following section-

Section 13.

(a) For purposes of this section, the following terms shall have the following meanings unless the context clearly requires otherwise:

"Abandoned", any structure or building that is not legally occupied for a period of 60 days or has visible signs of physical distress, including boarded windows, fire damage, exposure to the elements, susceptibility to unauthorized entry or where mortgage or property tax payments are delinquent for 60 days.

"Commissioner", the municipality's building inspector or commissioner or other administrative chief in a town responsible under M.G.L. c. 134 § 3 for administering and enforcing the state building code.

"Days", consecutive calendar days.

"Conclusion of the foreclosure process", means the date at which a mortgage foreclosure process is finalized as evidenced by the filing of a foreclosure deed with the Registry of Deeds

"Owner", every person, entity, association, corporation, fiduciary, service company, property manager or realtor who alone or severally has legal or equitable title or any interest in any real property or is a trustee or agent appointed by the courts or is a mortgagee in possession.

"Residential Property", any property that contains one or more dwelling units used, intended, or designed to be occupied for living purposes.

(b) Any city or town which accepts the provisions of this section may impose an abandoned property registration program as provided in this chapter. All owners must register abandoned and/or foreclosed residential properties with Commissioner on forms provided by the Commissioner. All registrations must state the individual owner or agent's phone number and Mailing address. This registration must also certify that the property was inspected and identify whether the property is abandoned. If the property is abandoned, the registration must designate a local individual or local property management company responsible for the security and maintenance of the property. This designation must state the individual or company's name, phone number and local mailing address. This registration must be received within sixty days of abandonment or within sixty days of the conclusion of the foreclosure process.

All property registrations are valid for one year. An annual registration fee, not to exceed one-hundred dollars and no cents ($100.00) must accompany the registration form. The fee and registration are valid for the calendar year, or remaining portion of the calendar year in which the registration was initially required. Subsequent registrations and fees are due January 1st of each year and must certify whether the foreclosed property remains abandoned.

Once the property is sold or is no longer abandoned, the owner must provide proof of sale or written notice of occupancy to the Commissioner.

(c) Properties subject to this section must be maintained in accordance with all applicable Sanitary, Building Codes, and local regulations. The local owner or local property management company must inspect and maintain the property on a monthly basis for the duration of the abandonment.

The property must contain a posting with the name and 24-hour contact phone number of the local individual or property management company responsible for the maintenance. This sign must be clearly visible from the street. Compliance with this section shall not relieve the property owner of any other obligation set forth in statute, regulation, covenant conditions and restrictions and/or homeowners' association rules and regulations.

(d) The Commissioner shall have the authority and the duty to inspect properties subject to this section for compliance and to issue citations for any violations. The Commissioner shall have the discretion to determine when and how such inspections are to be made, provided that their policies are reasonably calculated to ensure the enforcement of this section.

(e) Failure to initially register with the Commissioner is punishable by a fine, not to exceed of five hundred dollars and no cents ($500.00).

If applicable, failure to properly identify the name of the local individual or property management company is punishable by a fine, not to exceed five hundred dollars and no cents ($500.00).

Failure to maintain the property is punishable by a fine, not to exceed hundred dollars and no cents ($500.00) for each month the property remains out of compliance or is otherwise not maintained.

Violations of this chapter shall be treated as a strict liability offence regardless of intent.

This section shall only take effect in a city or town accepting the provisions of this section by a majority vote of the city council with the approval of the mayor, in the case of a city with a Plan A, Plan B, or Plan F charter, by a majority vote of the city council, in the case of a city with a Plan C, Plan D, or Plan E charter, by a majority vote of the annual town meeting or a special meeting called for that purpose, in the called-for purpose, in the case of a municipality with a town meeting form of government; or by a majority of the town council, in the case of a municipality with a town form of government. The provisions of this section shall take effect on the first day of the first calendar month following days after such acceptance; provided further that if such day is at least 15 days after such acceptance; and provided further, that if such day is less that 15 days after such acceptance, it shall take effect on the first day of the second calendar month following such acceptance.

SECTION 4. Chapter 255 of the General Laws is hereby amended by inserting after section 12 the following section-

Section 13. Foreclosed property, registration.

(a) For purposes of this section, the following terms shall have the following meanings unless the

"Abandoned", any structure or building that is not legally occupied for a period of 60 days or has visible signs of physical distress, including boarded windows, fire damage, exposure to the elements, susceptibility to unauthorized entry or where mortgage or property tax payments are delinquent for 60 days.

"Commissioner", the municipality's building inspector or commissioner or other administrative chief in a town responsible under M.G.L. c. 134 § 3 for administering and enforcing the state building code.

"Days", consecutive calendar days.

"Conclusion of the foreclosure process", means the date at which a mortgage foreclosure process is finalized as evidenced by the filing of a foreclosure deed with the Registry of Deeds

"Owner", every person, entity, association, corporation, fiduciary, service company, property manager or realtor who alone or severally has legal or equitable title or any interest in any real property or is a trustee or agent appointed by the courts or is a mortgagee in possession.

"Residential Property", any property that contains one or more dwelling units used, intended, or designed to be occupied for living purposes.

(b) Any city or town which accepts the provisions of this section may impose an abandoned property registration program as provided in this chapter. All owners must register abandoned and/or foreclosed residential properties with Commissioner on forms provided by the Commissioner. All registrations must state the individual owner or agent's phone number and

Mailing address. This registration must also certify that the property was inspected and identify whether the property is abandoned. If the property is abandoned, the registration must designate a local individual or local property management company responsible for the security and maintenance of the property. This designation must state the individual or company's name, phone number and local mailing address. This registration must be received within sixty days of abandonment or within sixty days of the conclusion of the foreclosure process.

All property registrations are valid for one year. An annual registration fee, not to exceed one-hundred dollars and no cents ($100.00) must accompany the registration form. The fee and registration are valid for the calendar year, or remaining portion of the calendar year in which the registration was initially required. Subsequent registrations and fees are due January 1st of each year and must certify whether the foreclosed property remains abandoned.

Once the property is sold or is no longer abandoned, the owner must provide proof of sale or written notice of occupancy to the Commissioner.

(c) Properties subject to this section must be maintained in accordance with all applicable Sanitary, Building Codes, and local regulations. The local owner or local property management company must inspect and maintain the property on a monthly basis for the duration of the abandonment.

The property must contain a posting with the name and 24-hour contact phone number of the local individual or property management company responsible for the maintenance. This sign must be clearly visible from the street. Compliance with this section shall not relieve the property owner of any other obligation set forth in statute, regulation, covenant conditions and restrictions and/or homeowners' association rules and regulations.

(d) The Commissioner shall have the authority and the duty to inspect properties subject to this section for compliance and to issue citations for any violations. The Commissioner shall have the discretion to determine when and how such inspections are to be made, provided that their policies are reasonably calculated to ensure the enforcement of this section.

(e) Failure to initially register with the Commissioner is punishable by a fine, not to exceed of five hundred dollars and no cents ($500.00).

If applicable, failure to properly identify the name of the local individual or property management company is punishable by a fine, not to exceed five hundred dollars and no cents ($500.00).

Failure to maintain the property is punishable by a fine, not to exceed hundred dollars and no cents ($500.00) for each month the property remains out of compliance or is otherwise not maintained.

Violations of this chapter shall be treated as a strict liability offence regardless of intent.

This section shall only take effect in a city or town accepting the provisions of this section by a majority vote of the city council with the approval of the mayor, in the case of a city with a Plan A, Plan B, or Plan F charter, by a majority vote of the city council, in the case of a city with a Plan C, Plan D, or Plan E charter, by a majority vote of the annual town meeting or a special meeting called for that purpose, in the called-for purpose, in the case of a municipality with a town meeting form of government; or by a majority of the town council, in the case of a municipality with a town form of government. The provisions of this section shall take effect on the first day of the first calendar month following days after such acceptance; provided further that if such day is at least 15 days after such acceptance; and provided further, that if such day is

less that 15 days after such acceptance, it shall take effect on the first day of the second calendar month following such acceptance.