

HOUSE No. 3571

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to stabilize neighborhoods through the protection of tenants in foreclosed properties..

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. Section 5 of chapter 59 of the general laws is hereby amended by inserting
2 after clause fifty-five the following clause:-

3 Fifty sixth. Real estate owned by or held in trust for a charitable organization for the
4 purpose of creating community housing, as defined in section 2 of chapter 44B, where the
5 charitable organization purchased said property from an entity that acquired the property
6 pursuant to section 14 of chapter 244 of the general laws, from the date of such real estate’s
7 acquisition by the charitable organization until such real estate is leased, rented, or otherwise
8 disposed of; provided said exemption for such real property shall not extend beyond a total
9 period of one year. This clause shall take effect upon its acceptance by any city or town.

10 SECTION 2. Section 13A of chapter 186 is hereby amended by inserting after the words
11 “federal law” the following:--

12 and the foreclosing entity shall assume the lease and rental subsidy contract with the
13 rental subsidy administrator.

14 SECTION 3. The general laws are hereby amended by adding after chapter 186, the
15 following new chapter:-

16 Chapter 186A. Tenant protections in foreclosed properties

17 Section1. As used in this chapter, the following words shall, unless the context clearly
18 requires otherwise, have the following meanings:'Entity', a business organization, or any other
19 kind of organization, including without limitation, a corporation, partnership, trust, limited
20 liability corporation, limited liability partnership, joint venture, sole proprietorship, or any other
21 category of organization, and any employee, agent, servant or other representative of such entity.

22 'Eviction', any action, without limitation, by a foreclosing owner of a housing
23 accommodation which is intended to compel a tenant to vacate or to be constructively evicted
24 from such housing accommodation. "Foreclosing owner", an entity that holds title, in any
25 capacity, directly or indirectly, without limitation, whether in its own name, as trustee, or as
26 beneficiary, to a housing accommodation that has been foreclosed upon, and either (1) held or
27 owned a mortgage or other security interest in the housing accommodation at any point prior to
28 the foreclosure of the housing accommodation or is the subsidiary, parent, trustee, or agent of, or
29 otherwise is related to any entity which held or owned the mortgage or other security interest in
30 the housing accommodation at any time prior to the foreclosure of the housing accommodation;
31 or (2) is an institutional mortgagee that acquires or holds title to the housing accommodation
32 within three years of the filing of a foreclosure deed on the housing accommodation.

33 'Foreclosure', a legal proceeding to terminate a mortgagor's interest in property,
34 instituted by the mortgagee, either to gain title or to force a sale in order to satisfy the unpaid
35 debt secured by the property, including, without limitation, foreclosure by auction, by bill in

36 equity, by entry and continuation of possession for three years, and by sale under the power of
37 sale in a mortgage as described in chapter 244.

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

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

46 'Just Cause', at least one of the following: (a) the tenant has failed to pay the rent in effect
47 prior to the foreclosure or failed to pay the newly established rent pursuant to subsection (3)
48 herein, but only if the foreclosing owner notified the tenant in writing of the amount of rent that
49 was to be paid and to whom it was to be paid; (b) the tenant has violated an obligation or
50 covenant of the tenancy or occupancy other than the obligation to surrender possession upon
51 proper notice and has failed to cure such violation within a reasonable time after having received
52 written notice thereof from the foreclosing owner; (c) the tenant is committing or permitting to
53 exist a nuisance in, or is causing substantial damage to, the unit, or is creating a substantial
54 interference with the quiet enjoyment of other occupants; (d) the tenant is convicted of using or
55 permitting the unit to be used for any illegal purpose; (e) the tenant who had a written lease or
56 other rental agreement which terminated on or after the effective date of this chapter, has
57 refused, after written request or demand by the foreclosing owner, to execute a written extension

58 or renewal thereof for a further term of like duration and in such terms that are not inconsistent
59 with the provisions of this chapter; (f) the tenant has refused the foreclosing owner reasonable
60 access to the unit for the purpose of making necessary repairs or improvement required by the
61 laws of the United States, the Commonwealth or any subdivision thereof, or for the purpose of
62 inspection as permitted or required by agreement or by law or for the purpose of showing the
63 rental housing unit to a prospective purchaser or mortgagee.

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

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

71 'Tenant' any person or group of persons who at the time of foreclosure is entitled to
72 occupy a housing accommodation pursuant to a written lease or tenancy at will. Any person
73 other than a legal dependent or spouse of the person or group of persons entitled to occupy the
74 housing accommodation at the time of the foreclosure that moves into the housing
75 accommodation owned by the foreclosing owner following the filing of the foreclosure deed
76 without the express written permission of the owner shall not be considered a tenant under this
77 statute.

78 'Unit' or 'residential unit', the room or group of rooms within a housing accommodation
79 which is used or intended for use as a residence by one household. Section 2. Notwithstanding

80 any other special or general law to the contrary, a foreclosing owner shall not evict a tenant
81 except for just cause, or in the event that there is a binding purchase and sale agreement for a
82 bona fide third party to purchase said housing accommodation from a foreclosing owner, a
83 foreclosing owner may provide the tenant with a notice to quit and serve the tenant with a
84 summary process summons and complaint to evict said tenant within 45 days of the closing date
85 of said agreement.

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

91 Section 4. Any foreclosing owner that evicts a tenant in violation of any provisions of
92 this Act, or any ordinance or by-law adopted pursuant to this Act, shall be punished by a fine of
93 not less than ten thousand dollars. Each eviction done in violation of this Act constitutes a
94 separate offense. The district and superior courts, and the housing courts in the Commonwealth,
95 shall have jurisdiction over an action arising from any violation of this Act, or any ordinance, or
96 by-law adopted pursuant to this Act, and shall have jurisdiction in equity to restrain any such
97 violation. It shall be a defense to eviction that the foreclosing owner attempted to evict a tenant
98 in violation of any provision of this Act, or any ordinance or by-law adopted pursuant to this Act.

99 Section 5. This Act shall cease to have effect on December 31, 2013.

100 SECTION 4. Section 35A of chapter 244 of the general laws is hereby amended by
101 deleting the word "90" and inserting in its place the following:- "150".

102 SECTION 5. Section 33 of chapter 266 of the General Laws, as so appearing, is hereby
103 amended by striking out, in lines 5 to 10, inclusive the words “(2) whoever, with intent to
104 defraud, by a false statement in writing respecting the financial condition, or means or ability to
105 pay, of himself or of any other person, obtains credit from any bank or trust company or any
106 banking institution or any retail seller of goods or services accustomed to give credit in any form
107 whatsoever shall be guilty of larceny” and inserting in place thereof the following words:-- “ (2)
108 whoever, with intent to defraud, by a false statement in writing respecting the financial
109 condition, or means or ability to pay, of himself or of any other person, obtains for himself or for
110 any other person credit from any bank or trust company or any banking institution or any
111 mortgage lender, as defined in section 1 of chapter 255E or any retail seller of goods or services
112 accustomed to give credit in any form whatsoever shall be guilty of larceny.

113 Whoever violates this section shall be punished by imprisonment in jail for not more than
114 1 year or by a fine of not more than \$300, or, if the value of the benefit obtained by a violation of
115 clause (1) or if the dollar amount of credit obtained by a violation of clause (2) exceeds \$250
116 shall be punished by imprisonment in the state prison for not more than 5 years, or by a fine of
117 not more than \$25,000 and imprisonment in the house of correction for not more than 2 years.

118 SECTION 6. Said chapter 266 is hereby further amended by striking out section 34, as so
119 appearing, and inserting in place thereof the following section:--

120 Section 34. Whoever, with intent to defraud and by a false pretence, induces another to
121 part with property of any kind or with any of the benefits described in section 33 shall be guilty
122 of larceny. Whoever violates this section shall be punished by imprisonment in jail for not more
123 than 1 year or by a fine of not more than \$300, or, if the value of the benefit obtained by a

124 violation of clause (1) or if the dollar amount of credit obtained by a violation of clause (2)
125 exceeds \$250 shall be punished by imprisonment in the state prison for not more than 5 years, or
126 by a fine of not more than \$25,000 and imprisonment in the house of correction for not more
127 than 2 years.

128 SECTION 7. Chapter 266 is amended by inserting after Section 35 the following new
129 section:

130 Section 35A. Residential Mortgage Fraud

131 Section 35A. (a) As used in this section, the following words shall have the following
132 meanings, unless the context otherwise requires:--

133 “Funds”, shall include, but not be limited to, a commission, fee, yield spread premium or
134 compensation in any form.

135 “Material omission”, the omission or concealment of a material fact necessary in order to
136 make the statement made, in the light of the circumstances under which it is made, not
137 misleading.

138 “Mortgage lending process”, the process through which a person seeks or obtains a
139 residential mortgage loan including, but not limited to, solicitation, application, or origination,
140 negotiation of terms, third-party provider services, underwriting, signing and closing, and
141 funding of the loan. Documents involved in the mortgage lending process include, but shall not
142 limited to: uniform residential loan applications or other loan applications; appraisal reports;
143 HUD-1 settlement statements; supporting personal documentation for loan applications such as

144 W-2 forms, verification of income and employment, bank statements, tax returns and payroll
145 stubs; and any required disclosures.

146 “Pattern of residential mortgage fraud”, the violation of subsection (b) in connection with
147 3 or more residential properties.

148 “Person”, a natural person, corporation, company, limited liability company, partnership,
149 real estate trust, association or any other entity.

150 “Residential mortgage loan”, a loan or agreement to extend credit made to a person,
151 which loan is secured by a mortgage, security interest, deed to secure debt, deed of trust, or other
152 document representing a security interest or lien upon any interest in a 1- to-4 family residential
153 property located in the commonwealth, including the renewal or refinancing of any such loan.

154 (b) Whoever: (1) makes or causes to be made any material statement that is false or any
155 statement that contains a material omission, knowing the same to be false or to contain a material
156 omission, during or in connection with the mortgage lending process, with the intent that such
157 statement be relied upon by a mortgage lender, borrower or any other party to the mortgage
158 lending process; (2) uses, or facilitates the use of, any material statement that is false or any
159 statement that contains a material omission, knowing the same to be false or to contain a material
160 omission, during or in connection with the mortgage lending process, with the intent that such
161 statement be relied upon by a mortgage lender, borrower or any other party to the mortgage
162 lending process; (3) receives any proceeds or any other funds in connection with a residential
163 mortgage closing, knowing such proceeds or funds were obtained in violation of clause (1) or
164 (2); or (4) files, or causes to be filed, with a registrar of deeds any document that contains a
165 material statement that is false or a material omission, knowing such document to contain a

166 material statement that is false or a material omission, shall be punished by imprisonment in the
167 state prison for not more than 5 years or by imprisonment in the house of correction for not more
168 than 2 ½ years or by a fine of not more than \$10,000 in the case of a natural person or not more
169 than \$100,000 in the case of any other person, or by both such fine and imprisonment.

170 Any person who engages in a pattern of residential mortgage fraud shall be punished by
171 imprisonment in the state prison for not more than 15 years or by a fine of not more than
172 \$50,000, or in the case of a natural person, not more than \$500,000 in the case of any other
173 person, or by both such fine and imprisonment.

174 (c) Any violation of this section may be prosecuted and punished in: the county in which
175 the residential property for which a mortgage loan is being sought is located; any county in
176 which any act was performed in furtherance of the violation; in any county in which any person
177 alleged to have violated this section had control or possession of any proceeds of, or other funds
178 received as a result of, the violation; any county in which a closing on the mortgage loan
179 occurred; any county in which a document containing a deliberate misstatement,
180 misrepresentation or omission is filed with a registrar of deeds.

181 (d) It shall be an affirmative defense if a defendant charged with a violation of this
182 section as a result of conduct or an omission by an employee or agent of the defendant if the
183 defendant demonstrates the following by a preponderance of the evidence:

184 (1) the defendant had in force, at the time of the violation and continues to have in force,
185 a written policy that includes:

186 (i) A prohibition against conduct that violates this section by employees and agents of the
187 defendant;

- 188 (ii) Penalties or discipline for violation of the policy;
- 189 (iii) A process for educating employees and agents concerning the policy and
190 consequences of a violation; and
- 191 (iv) A requirement for a criminal history check before employing an employee or
192 engaging an agent and a requirement that the defendant will not employ or engage an individual
193 whose criminal history check reveals a previous conviction of a crime involving fraud;
- 194 (2) the defendant demonstrates that it enforces the written policy described in clause (1);
195 and
- 196 (3) Before the violation of this section the defendant communicated the written policy
197 described in clause (1) and the consequences for violating the policy to the employee or agent
198 who committed the violation.
- 199 (e) It shall be a rebuttable presumption that a borrower in the residential mortgage
200 lending process did not make a false material statement or a material omission. Two or more
201 single incidents or occurrences of fraud in the mortgage lending process shall sufficient to
202 overcome this rebuttable presumption.

203 SECTION 8. Chapter 255 of the General Laws is hereby amended by inserting after
204 section 12 the following section-

205 Section 13.

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

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

212 “Commissioner”, the municipality’s building inspector or commissioner or other
213 administrative chief in a town responsible under M.G.L. c. 134 § 3 for administering and
214 enforcing the state building code.

215 “Days”, consecutive calendar days.

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

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

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

223 (b) Any city or town which accepts the provisions of this section may impose an
224 abandoned property registration program as provided in this chapter. All owners must register
225 abandoned and/or foreclosed residential properties with Commissioner on forms provided by the
226 Commissioner. All registrations must state the individual owner or agent’s phone number and
227 Mailing address. This registration must also certify that the property was inspected and identify
228 whether the property is abandoned. If the property is abandoned, the registration must designate

229 a local individual or local property management company responsible for the security and
230 maintenance of the property. This designation must state the individual or company's name,
231 phone number and local mailing address. This registration must be received within sixty days of
232 abandonment or within sixty days of the conclusion of the foreclosure process.

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

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

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

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

249 (d) The Commissioner shall have the authority and the duty to inspect properties subject
250 to this section for compliance and to issue citations for any violations. The Commissioner shall

251 have the discretion to determine when and how such inspections are to be made, provided that
252 their policies are reasonably calculated to ensure the enforcement of this section.

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

255 If applicable, failure to properly identify the name of the local individual or property
256 management company is punishable by a fine, not to exceed five hundred dollars and no cents
257 (\$500.00).

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

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

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