

HOUSE No. 3573

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”, any city or town in which publicly-assisted housing, or a
8 publicly-assisted housing development, is located.

9 “Affiliate”, an entity owned or controlled by an owner.

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

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

15 “Chief executive officer”, the mayor in a city and the board of selectmen in a town unless
16 otherwise is designated by a municipal charter.

17 “Department”, the department of housing and community development or, when
18 applicable, its designee, or any successor agency of the department.

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

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

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

28 “Government program”, a program which provides government assistance under a
29 program set forth in the definition of publicly-assisted housing.

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

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

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

42 “Preserve affordability”, with respect to a publicly-assisted housing development, to
43 undertake reasonable and diligent actions to retain, renew or secure subsidies affecting a
44 publicly-assisted housing development in order to maintain at least the same number of units
45 affordable to low, very low and extremely low-income households, respectively, as are currently
46 occupied by such households, and to maintain as affordable to such households generally all
47 units that are currently vacant, to the extent of available subsidies and taking into account the
48 need to ensure that the development provides quality housing to its tenants.

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

52 “Publicly-assisted housing”, a housing unit or development that receives government
53 assistance under any of the following programs: (i) section 8 of the United States Housing Act of
54 1937 and 42 U.S.C. section 1437f as it applies to new construction, substantial rehabilitation,

55 moderate rehabilitation, property disposition and loan management set-aside programs or any
56 other program providing project-based rental assistance; (ii) section 42 of the Internal Revenue
57 Code and 26 U.S.C. section 42, the federal Low-Income Housing Tax Credit Program; (iii)
58 section 101 of the Housing and Urban Development Act of 1965 and 12 U.S.C. section 1701s as
59 it applies to programs for rent supplement assistance thereunder; (iv) section 202 of the Housing
60 Act of 1959 and 12 U.S.C. section 1701q; (v) section 221(d)(3) of the National Housing Act 12
61 U.S.C. section 1715 (d)(3) or (5), the below market interest rate program; (vi) section 221(d)(4)
62 of the National Housing Act 12 U.S.C. section 1715I (d)(4) to the extent the project's rents are
63 restricted pursuant to a government agreement; (vii) section 236 of the National Housing Act and
64 12 U.S.C. section 1715z-1; (viii) section 515 of the Housing Act of 1949 and 42 U.S.C. section
65 1485; (ix) section 521 of the Housing Act of 1949 and 42 U.S.C. section 1490a; (x) the Urban
66 Development Action Grant and 42 U.S.C. section 5318 to the extent that the affordability of
67 dwelling units subject to such program are restricted pursuant to a government agreement; (xi)
68 the Housing Development Action Grant, and 42 U.S.C. section 1437o to the extent the project's
69 rents are restricted pursuant to a government agreement; (xii) section 13A of chapter 708 of the
70 acts of 1966; (xiii) the voucher program provided for annually in item 7004-9024 of section 2 of
71 the general appropriation act as that program applies to project-based rental assistance; (xiv) the
72 Massachusetts low income housing tax credit program established in section 6I of chapter 62;
73 (xv) the State Housing Assistance for Rental Production, chapter established in 574 of the acts of
74 1983; and (xvi) chapter 121A to the extent that the affordability of dwelling units are restricted
75 pursuant to a written agreement with the affected municipality.

76 “Purchase contract”, a document that purports to sell a publicly-assisted housing
77 development including, without limitation, a purchase and sale agreement, contract of sale,
78 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 provided that in any project
82 that is eligible for participation in the HUD mark up to market program, the restriction, insofar as
83 it relates to the limiting of the level of rents, shall not apply to units covered by a section 8
84 housing assistance payment contract so long as such contract is effective.

85 “Sale”, the execution of a written agreement pursuant to which the owner or the holders
86 of an ownership interest in the owner of the publicly assisted housing agrees to the disposition of
87 the property by deed or otherwise, whether through a single transaction or a series of
88 transactions, except for a disposition of such housing to an affiliate of the owner.

89 “Subsidy”, public financial assistance including, but not limited to, grants, loans, rental
90 assistance, tax credits, tax abatements, mortgage financing, mortgage insurance, assistance
91 pursuant to any government program or any other form of assistance, intended to make housing
92 affordable to low-income households, especially very low and extremely low-income
93 households.

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

96 “Tenant organization”, an organization established by the tenants of a publicly-assisted
97 housing development for the purpose of addressing issues related to their living environment and

98 which meets regularly, operates democratically, is representative of all residents in the
99 development, is completely independent of owners, management and their representatives and
100 which has filed a notice of its existence with CEDAC; provided, however, that, no owner or
101 other third party shall be required to ascertain the organization's compliance with this definition.

102 "Termination", the cessation, discharge or removal of an affordability restriction
103 affecting a publicly-assisted housing development in the absence of a simultaneous replacement
104 of that restriction with an equivalent affordability restriction including, but not limited to: (i)
105 nonrenewal or termination, in whole or in part, of a government program contract or mortgage;
106 (ii) expiration, in whole or in part, of an affordability restriction under a government program or
107 the requirement to renew the restriction; (iii) payment in full of a government program mortgage;
108 or (iv) prepayment of a government program mortgage or contract.

109 "Time for performance", the date for delivery of the deed or other document evidencing a
110 sale pursuant to a purchase contract or any extension thereof.

111 "Very low income", having a household income of not more than 60 percent of the area
112 median income, adjusted for household size, as periodically determined by the United States
113 Department of Housing and Urban Development.

114 Section 2. (a) Except with respect to property subject to an affordability restriction which
115 has less than 2 years remaining and, for which subsection (e) shall, apply, the owner shall
116 provide written notice to: (i) all tenants and the tenant organization; (ii) the chief executive
117 officer of the affected municipality; (iii) CEDAC; and (iv) the department, not less than 2 years
118 before the termination of the affordability restriction affecting publicly-assisted housing.
119 Nothing herein shall prohibit the owner from taking actions to terminate an affordability

120 restriction during any notice period provided herein; provided, however, that the owner shall
121 comply with all of the notice terms and restrictions pursuant to subsections (b) and (c). The
122 informational notice shall provide: (1) the address of the publicly-assisted housing; (2) the name
123 and address of the owner; (3) notification that an affordability restriction may terminate; (4) the
124 date on which each affordability restriction may terminate; and (5) such other information as
125 required by the department. Where more than 1 termination may occur, the owner may send 1
126 written notice so long as the terminations are scheduled to occur within 1 year of each other, the
127 notice is given at least 24 months before the earliest termination and the notice otherwise
128 complies with this subsection.

129 (b) An owner shall not complete a termination or allow a termination to occur unless, not
130 less than 1 year before the completion of the last termination event affecting the housing, the
131 owner provides the entities identified in subsection (a) with written notice of intent to complete
132 termination. The notice shall state: (1) the address of the publicly-assisted housing; (2) the name
133 and address of the owner; (3) the date on which the owner intends to complete termination; (4)
134 unless section 6 applies, a statement that the department has the right of offer pursuant to section
135 3; and (5) such other information as required by the department.

136 (c) An owner shall not sell publicly-assisted housing before offering the department the
137 opportunity to purchase the property pursuant to sections 3 and 4. The owner shall notify, in
138 writing, the parties identified in subsection (a) of the owner's intention to potentially sell the
139 property.

140 (d) A notice required by this chapter shall be deemed given when delivered in person or
141 mailed by certified or registered mail, return receipt requested, to the party to whom notice is
142 required. A notice to the affected municipality shall be awarded to the chief executive officer.

143 (e) The notice requirements of this section shall not be affected by the status of an offer,
144 purchase contract or sale under section 3 or section 4.

145 Section 3. (a) An owner shall offer the department an opportunity to purchase the
146 property prior to entering into an agreement to sell the property pursuant to the time periods
147 contained in this section, but no owner shall be under any obligation to enter into an agreement
148 to sell such property to the department.

149 (b) The department may select a designee to act on its behalf as purchaser of the
150 publicly-assisted housing and shall give the owner and CEDAC written notice of its selection.
151 The department shall promptly consult with the affected municipality before selecting a designee
152 and shall immediately designate the affected municipality as its designee upon written request of
153 the affected municipality, unless the department determines that such request is not feasible for
154 reasons set forth in the department's regulations. The department shall enter into a written
155 agreement with its selected designee providing that the designee and any of its successors or
156 assigns, agree to preserve the affordability of the publicly assisted housing. Once such an
157 agreement is executed, the designee shall assume all rights and responsibilities attributable to the
158 department as a prospective purchaser under this section and section 4. At any time prior to a
159 sale under section 3 or section 4, the department may revoke its designation and assume the
160 designee's rights and responsibilities, either in its own capacity or by selecting a new designee;
161 provided, however, that no change in a designation shall operate to extend or alter any time

162 periods for performance set forth in this chapter or in any purchase contract entered into pursuant
163 to this chapter.

164 (c) The department shall, within 90 days after it receives notice pursuant to section 2 of
165 the owner's intention to sell, submit an offer to the owner to purchase the publicly-assisted
166 housing. Failure by the department to submit a timely offer shall constitute an irrevocable
167 waiver of the department's rights under this section and the owner may sell the publicly-assisted
168 housing subject to section 4. If the owner accepts the department's initial or any revised offer,
169 the owner and the department shall enter into such other agreements as are necessary and
170 appropriate to complete the sale. If the owner and the department have not entered into an
171 agreement to sell the property to the department within 90 days after receipt of the notice
172 pursuant to subsection (c) of section 2, the owner may enter into an agreement to sell the
173 property to a purchaser of the owner's choice, subject to the department's right of first refusal
174 pursuant to section 4.

175 (d) At any time after the notice in section 2 has been provided and within 10 days of
176 receiving a request, the owner shall make documents available to the department for review and
177 photocopying during normal business hours at the owner's principal place of business or at a
178 commercial photocopying facility. Such documents shall include, but not limited to: (1) any
179 existing architectural plans and specifications of the development; (2) itemized lists of monthly
180 operating expenses and capital expenditures in each of the 2 preceding calendar years; (3) any
181 capital needs studies or market studies that have been submitted to a federal, state, or local
182 agency in the preceding 3 years; (4) utility consumption rates for the preceding 12 months; (5)
183 copies of the last 2 annual financial and physical inspection reports filed with federal, state or
184 local agencies; (6) the most recent rent roll showing then current vacancies and rent arrearages;

185 (7) a list of vacant units; and (8) a statement of the approximate annualized vacancy rate at the
186 development for each of the 2 preceding calendar years. Documents obtained pursuant to a
187 request under this subsection shall not be considered public records, as defined in clause Twenty-
188 sixth of section 7 of chapter 4, and the department shall not make such documents available to
189 the public without the written consent of the owner or pursuant to a court order, provided,
190 however, that disclosure may be made to potential funding sources, regulatory agencies or agents
191 or consultants of the department in connection with the transaction, subject to appropriate
192 confidentiality agreements. Upon request and with appropriate notice, the owner shall also
193 permit reasonable inspections of the dwelling units, building systems, common areas, and
194 common grounds by agents, consultants and representatives of the department including, but not
195 limited to, inspections related to environmental, engineering, structural or zoning matters.

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

200 Section 4. (a) The department shall have a right of first refusal to purchase any publicly-
201 assisted housing development under this section. At any time after the 90 days the department
202 has been given notice pursuant to subsection (c) of section (2), but not later than the 360 days
203 after the date of such notice, the owner may execute a purchase contract with a third party to sell
204 the publicly-assisted housing development provided that the owner complies with this section.
205 Thereafter, the owner again shall be subject to the notice provision of subsection (c) of section
206 (2).

207 (b) Upon execution of a third party purchase contract, the owner shall, within 7 days,
208 submit a copy of the contract to the department and CEDAC, along with a proposed purchase
209 contract for execution by the department. The department shall, within 30 days after receipt of
210 the third party purchase contract and the proposed purchase contract, execute the proposed
211 purchase contract or such other agreement as is acceptable to the owner and the department. The
212 time periods set forth in this subsection may be extended by agreement between the owner and
213 the department. The proposed purchase contract shall contain the same terms and conditions as
214 the executed third party purchase contract, except that the proposed purchase contract shall
215 provide at least the following terms: (i) the earnest money deposit shall not exceed the lesser of:
216 (1) the deposit in the third party purchase contract; (2) 2 per cent of the sales price; or (3)
217 \$250,000; provided, however, that the earnest money deposit shall be held under commercially-
218 reasonable terms by an escrow agent selected jointly by the owner and the department; (ii) the
219 earnest money deposit shall be nonrefundable unless the owner fails to perform its obligations
220 with due diligence for a period of not less than 90 days from the date of execution of the
221 purchase contract or such greater period as provided for in the third party purchase contract; and
222 (iii) the time for performance shall be not less than 240 days from the date of the execution of the
223 purchase contract, or such greater period as provided for in the third party purchase contract.

224 (c) If the department fails to execute the proposed purchase contract within 30 days or
225 such other period as provided in subsection (b), the owner shall have 24 months from the last day
226 on which the department was entitled to execute the proposed purchase contract in which to
227 complete the sale of the owner's publicly-assisted housing development to a third party, except
228 as provided in subsection (e). Upon the expiration of the 24-month period, the owner shall be
229 subject again to all of subsection (c) of section 2, section 3 and this section.

230 (d) If the department executes the proposed purchase contract as provided in subsection
231 (b) but fails to perform as provided in the executed purchase contract, then the owner shall have
232 2 years from the date on which the proposed purchase contract terminated in which to complete
233 the sale of the owner's publicly-assisted housing development to a third party on economic terms
234 and conditions that are not materially more favorable to the proposed purchaser than the
235 economic terms and conditions in the proposed purchase contract offered to the department.
236 Upon the expiration of the 24-month period, the owner shall be subject to subsection (c) of
237 section 2, section 3 and this section.

238 (e) The department may make a counter offer by executing and submitting to the owner
239 an amended proposed purchase contract. The owner shall have 30 days from the date it receives
240 the amended proposed purchase contract to execute the amended proposed purchase contract or
241 reject, in writing, the counter offer. If the owner rejects the counter offer, it shall have 24 months
242 from the date on which the owner rejects the department's counter offer to complete the sale of
243 the owner's publicly-assisted housing development to a third party, provided, however, that if
244 such sale is: (i) upon economic terms and conditions that are materially more favorable to the
245 proposed purchaser than the economic terms and conditions in the proposed purchase contract
246 offered to the department; or (ii) upon terms that are substantially the same as was offered by the
247 department in the counter offer, then the owner shall provide a copy of the new third party
248 purchase contract, along with a proposed purchase contract for execution by the department
249 which shall contain the same terms and conditions as the executed third party purchase contract,
250 and the department shall have 30 days from the date it receives the third party purchase contract
251 and the proposed purchase contract to execute the proposed purchase contract or such other
252 agreement as is acceptable to the owner and the department.

253 (f) The owner shall, not later than 7 days after the execution thereof, provide the
254 department with a copy of any new or amended purchase contract executed with respect to the
255 property during the 2 year period set forth in subsections (c) to (e), inclusive, and shall not later
256 than 7 days after the recording or filing thereof, provide the department with a copy of any deed
257 or other document transferring the owner's interest in the publicly-assisted housing development.

258 (g) Any submission to the department of a third party purchase contract, amended third
259 party purchase contract, deed or other document transferring the owner's interest in the publicly-
260 assisted housing development shall include a certification by the owner and, with respect to a
261 document executed by the third party buyer, the third party buyer, that the document is accurate
262 and complete and there are no other agreements between the owner and the third party buyer, or
263 an affiliate of either of them, with respect to the sale of the publicly-assisted housing
264 development.

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

266 Section 6. (a) Section 3 and 4 shall not apply to any of the following: (i) a government
267 taking by eminent domain or a negotiated purchase in lieu of eminent domain; (ii) a forced sale
268 pursuant to a foreclosure; (iii) a deed-in-lieu-of foreclosure; (iv) a proposed sale that, as
269 determined by the department, is to a purchaser pursuant to terms and conditions that preserve
270 affordability; (v) a proposed sale of a publicly-assisted development which the department has
271 determined has section 8 contracts for all of the units in the development and the buyer has
272 agreed, in a regulatory agreement, to renew project-based section 8 assistance, or any successor
273 program, for all units in the development provided that at the time of such renewal, such
274 assistance is available to the owner on economic terms and conditions that are comparable to the

275 existing assistance contract; (vi) a proposed sale of a publicly-assisted development to an
276 affiliate of the owner that is not a termination as determined by the department; and (vii) a
277 proposed sale pursuant to an agreement in effect on the effective date of this chapter.

278 (b) An owner seeking an exemption under clause (iv), (v) or (vi) of subsection (a) shall
279 include the name and address of any tenant organization in the request and shall provide a copy
280 of its request to the chief executive officer of the affected municipality, CEDAC, the local legal
281 services organization as designated by the department and the tenant organization at the time it
282 files its exemption request with the department. The department shall provide a copy of its
283 written determination under said clauses (iv), (v) or (vi) of said subsection (a) to the owner,
284 CEDAC, the local legal services organization and the tenant organization.

285 Section 7. For 3 years after termination, the rent for a protected low-income tenant who
286 does not receive an enhanced section 8 voucher shall not be increased more than once annually
287 by the increase in the consumer price index applicable to the area in which the publicly-assisted
288 housing development is located during the preceding 12 months plus 3 per cent. The foregoing
289 shall not apply to a low-income tenant: (i) who is income eligible for an enhanced section 8
290 voucher but does not obtain one solely due to some action or inaction of the tenant on or after the
291 date he or she is eligible to apply for the enhanced section 8 voucher; or (ii) who would be
292 eligible for an enhanced section 8 voucher if this provision was not in effect. For a period of 3
293 years after termination, a protected low income tenant shall not be evicted or involuntarily
294 displaced from his apartment except for good cause related to tenant fault.

295 Section 8. A purchase by the department or by a purchaser pursuant to this chapter shall
296 be subject to a regulatory agreement.

297 Section 9. An owner who has complied with sections 2 and 3 which has not resulted in a
298 purchase by the department or which has resulted in a sale pursuant to section 4 may apply to the
299 department for a certificate of compliance by submitting a written request for the certificate in a
300 form and with such documentation as required by the department to establish the owner's
301 compliance to the satisfaction of the department. At the same time, the owner shall provide a
302 copy of the request to CEDAC and the chief executive officer of the affected municipality. The
303 owner shall provide a copy of the owner's request to a tenant of the publicly-assisted housing
304 upon request. The department shall issue the certificate of compliance within 30 days after
305 receipt of the application if it determines that the owner has complied with said sections 2 and 3.
306 The certificate of compliance shall be filed with the registry of deeds within 1 year after the date
307 of issuance.

308 SECTION 2. Within 45 days after the effective date of this act, the department of
309 housing and community development shall establish a 13-member advisory committee to consist
310 of the undersecretary of the department or her designee, the executive director of the Community
311 Economic Development Assistance Corporation, 1 member selected by the Massachusetts
312 Mayors Association, 1 member selected by the Massachusetts Municipal Association, 1 member
313 selected by Citizens Housing and Planning Association, 1 member selected by the Greater
314 Boston Real Estate Board, 1 member selected by the Real Estate Bar Association for
315 Massachusetts, 1 member selected by the Massachusetts Association of Community
316 Development Corp., 1 member selected by the Massachusetts Legal Assistance Corporation, 1
317 member affiliated with the Affordable Housing Preservation Initiative of the Local Initiatives
318 Support Corporation, 1 member selected by the Massachusetts Chapter of the National
319 Association of Housing and Redevelopment Officials, and 2 members chosen by the department

320 to provide advice and recommendations to the department regarding regulations to implement
321 this act. The department shall promulgate regulations to effectuate the purposes and implement
322 chapter 40T of the General Laws not later than 150 days after the effective date of this act.

323 SECTION 3. For the purposes of sections 3 and 4 of chapter 40T of the General Laws,
324 housing that qualified as publicly-assisted housing under any of the programs described in the
325 definition of “publicly-assisted housing” in section 1 of said chapter 40T that was not then
326 subject to a purchase contract in existence on the effective date of this act shall be subject to said
327 chapter 40T for 4 years after the date of the last event or occurrence that constituted a
328 termination.

329 SECTION 4. Notwithstanding subsection (a) of section 2 of chapter 40T of the General
330 Laws, an owner of publicly assisted housing who, on the effective date of this act, has less than 2
331 years remaining prior to the date when the affordability restriction will cease to apply to such
332 property, shall not be required to give the 2-year notice required by said subsection (a), but shall
333 provide such notice within 90 days of the effective date of this act. Notwithstanding subsection
334 (b), an owner who, on the effective date of this act has less than 1 year remaining prior to a
335 termination shall not be required to give the 12-month notice required by subsection (b), but shall
336 provide such notice within 90 days after the effective date of this act.