

HOUSE No. 3689

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act authorizing municipalities to protect low and moderate income tenants and units of governmentally involved 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 40P the
2 following chapter:

3 CHAPTER 40Q.

4 PROTECTION OF LOW AND MODERATE INCOME TENANTS AND UNITS
5 OF GOVERNMENTALLY INVOLVED HOUSING.

6 Section 1. The general court finds and declares that: (a) a serious public
7 emergency exists with respect to the housing of a substantial number of persons in certain areas
8 of the commonwealth residing in governmentally involved housing, inasmuch as there is a threat
9 that many low-income individuals and families residing in such housing, particularly those
10 elderly and disabled, may be threatened with displacement as a result of prepayment of mortgage
11 financing, loss of use or rent restrictions, expiring subsidy contracts, and expected increases in
12 rent, and there is a threat that affordable housing stock will be lost due to expiration of use or
13 rent restrictions and such pre-payment, further exacerbating an extreme housing shortage for

14 low-income families and individuals; (b) it is the commonwealth's policy to encourage owners of
15 this governmentally involved housing to accept incentives to keep such housing affordable and
16 avert displacement; (c) such emergency should be met by the commonwealth immediately and
17 with due regard for the rights and responsibilities of its local communities; therefore, this chapter
18 is declared to be in the public interest.

19 Section 2. The following words or phrases as used in this chapter shall have the
20 following meanings:

21 (A) "governmentally-involved housing," means any residential housing project
22 constructed, rehabilitated, or assisted pursuant to any one or more of the following governmental
23 programs:

24 (1) section 202 of the Housing Act of 1959, 12 U.S.C. section 1701q;

25 (2) section 221(d) of the National Housing Act, 12 U.S.C. section 1715l(d);

26 (3) section 236 of the National Housing Act, 12 U.S.C. section 1715z-1;

27 (4) any project-based programs for low-income persons under section 8 of the
28 United States Housing Act of 1937, 42 U.S.C. section 1437f;

29 (5) the Rent Supplement Program under section 101 of the Housing and Urban
30 Development Act of 1965, 12 U.S.C. section 1701s;

31 (6) the U.S. Department of Agriculture's Rural Rental Housing Program under
32 section 515 of the Housing Act of 1949, 42 U.S.C. section 1490a;

33 (7) the Urban Development Action Grant, hereinafter referred to as UDAG, 42
34 U.S.C. section 5318, or the Housing Development Action Grant, hereinafter referred to as
35 HoDAG, 42 U.S.C. section 1437o, in either case to the extent the project’s rents are restricted or
36 regulated pursuant to a grant agreement with the U.S. Department of Housing and Urban
37 Development or otherwise;

38 (8) the federal low-income housing tax credit program under section 42 of the
39 U.S. Internal Revenue Code, 26 &.S.C. section 42;

40 (9) chapter 121A of the General Laws to the extent the chapter 121A approvals
41 restrict the affordability of the project’s dwelling units;

42 (10) section 13A of chapter 708 of the Acts of 1966, as amended;

43 (11) section 811 of the Cranston-Gonzalez National Affordable Housing Act,
44 as amended (42 U.S.C. section8013);

45 (12) section 207 of the National Housing Act, 12 U.S.C. section 1713, and
46 subject to a rent regulatory agreement pursuant to chapter 121A of the General Laws;

47 (13) section 220 of the National Housing Act, 12 U.S.C. section 1715k(a) and
48 (h), and subject to a rent regulatory agreement pursuant to chapter 121A of the General Laws; or

49 (14) the project-based Massachusetts Rental Voucher Program, so-called (see
50 line item 7004-9004 of Section 2 of chapter 159 of the Acts of 2000, as well as 760 C.M.R. Part
51 49.00)

52 For purposes of this section, “governmentally involved housing” shall not
53 include the following:(1) housing units owned or acquired by the municipality through tax

54 foreclosure;(2) housing units in a one to ten family building or structure that is not part of a
55 larger housing development, whether on one or more sites;(3) structures containing housing units
56 subsidized with mobile tenant-based rental assistance that would not otherwise come within the
57 definition of governmentally involved housing;(4) structures containing housing units which
58 were subject to chapter 36 of the acts of 1976, chapter 797 of the acts of 1969, chapter 863 of the
59 acts of 1970, chapter 843 of the acts of 1970, chapter 843 of the acts of 1971, chapter 45 of the
60 acts of 1987, chapter 504 of the acts of 1987, or chapter 601 of the acts of 1981, but which would
61 otherwise not come within the definition of governmentally involved housing; (5) public housing
62 owned or operated by a local housing authority under chapter 121B, the United States Housing
63 Act of 1937, or any successor act or public housing programs formerly assisted under the United
64 States Housing Act of 1937; (6) housing units which first became governmentally involved after
65 October 1, 1996, unless the municipality enacts a different date; and (7) housing units where the
66 sole government involvement is the owner's participation in federal, state, or municipal funded
67 programs for home repairs, energy conservation, or lead paint abatement.

68 (B) "Formerly governmentally involved housing", housing which was
69 governmentally involved as of July 1, 1994, or which became governmentally involved housing
70 after July 1, 1994, but which is no longer governmentally-involved as defined in this section.

71 (C) "Low-income", an annual income which is 80 per cent or less of the
72 median income for the area as determined by the United States Department of Housing and
73 Urban Development, with adjustments for smaller and larger families.

74 Section 3. (a) Notwithstanding the provisions of any general or special law to
75 the contrary, including, without limitation, the provisions of chapter 282 of the acts of 1994, a

76 municipality accepting the provisions of this chapter shall regulate the rent for use or occupancy
77 of governmentally involved or formerly governmentally involved housing to the extent such
78 regulation is not preempted by federal law or by section 6 of chapter 708 of the acts of 1966,
79 once the basis for federal or Massachusetts Housing Finance Agency rent preemption no longer
80 exists.(b) Said municipality shall establish as the maximum rent for governmentally involved and
81 formerly governmentally involved housing units the rent in effect therefore on July 1, 1994 or six
82 months before the basis for federal or Massachusetts Housing Finance Agency rent preemption
83 lapsed, whichever is later, adjusted to insure such rent provides a fair net operating income as of
84 the date of the loss of preemption.

85 Section 4. (a) In a municipality accepting the provisions of this chapter, no
86 person shall bring an action to recover possession of a governmentally involved or formerly
87 governmentally involved housing unit to the extent that such regulation is not otherwise
88 preempted by federal law or section 6 of chapter 708 of the acts of 1966, unless:(1) the tenant
89 has failed to pay the rent to which the owner is entitled;(2) the tenant has violated an obligation
90 or covenant of tenancy not inconsistent with chapter 93A or this chapter other than the obligation
91 to surrender possession upon proper notice, and has failed to cure the violation after having
92 received written notice thereof; (3) the tenant is causing, committing or permitting, a nuisance in,
93 or substantial damage to, the housing unit, or is creating substantial interference with the
94 comfort, safety, or enjoyment of the owner or other occupants of the same or any adjacent unit;
95 (4) the tenant has used or permitted use of a housing unit for illegal purposes; (5) the tenant, who
96 had a written lease or rental agreement which has terminated, has refused, after written requests
97 or demand by the owner, to execute a written extension or renewal thereof for a further term of
98 like duration on terms not inconsistent with or violative of any provision of this act; (6) the

99 tenant has refused the owner reasonable access to the housing unit for the purpose of making
100 necessary repairs or improvements required by law, or for the purpose of inspection as permitted
101 or required by the lease or by law, or for the purpose of showing the housing unit to any
102 prospective purchaser or mortgagee; (7) the tenant holding at the end of a lease term is a
103 subtenant not approved by the owner; (8) for tenant-based rental assistance programs only, the
104 owner seeks to recover possession in good faith of a unit for the owner's own use and occupancy
105 or for use and occupancy by the owner's spouse, children, grandchildren, great grandchildren,
106 parents, grandparents, brother, sister, father-in-law, mother in-law, son-in-law, or daughter-in-
107 law; or (9) the owner seeks to recover possession for any other just cause not in conflict with the
108 provisions and purposes of this chapter or chapter 93A.

109 (B) The provisions of this section shall be construed as additional restrictions on
110 the right to recover possession of such housing units.

111 Section 5. In a municipality accepting the provisions of this chapter, no person
112 shall remove any governmentally involved or formerly governmentally involved housing unit
113 from low-income rental housing use, without first obtaining permission for that purpose from the
114 municipality or its designee, to the extent that such provision is not preempted by federal law or
115 section 6 of chapter 708 of the acts of 1966. Such permission may be subject to terms and
116 conditions not inconsistent with the purposes and provisions of this chapter, including, without
117 limitation, (a) incentives to continue in effect the low-income use restrictions previously in place
118 for the property and (b) where sale, lease, or disposition of the property may result in the loss of
119 all or a portion of the property for low-income rental housing use, the right of an incorporated
120 tenant association in such housing, the municipality, the local housing authority, or non-profit
121 community development corporations to negotiate for, acquire and operate such property on

122 substantially equivalent terms and conditions as offered or available to a bona-fide third-party
123 purchaser.

124 Section 6. To the extent not preempted by federal law or section 6 of chapter 708
125 of the acts of 1966, a municipality accepting the provisions of this chapter shall require an owner
126 of governmentally involved housing or formerly governmentally involved housing to
127 affirmatively seek out and accept any prospective government housing resources, whether
128 tenant-based or project-based, which maximize affordability of the housing units consistent with
129 the income character of the property and the owner's right to obtain a fair net operating income
130 for the housing units. The appropriate state and municipal agencies shall assist owners by
131 identifying government housing resources.

132 Section 7. To the extent not preempted by federal law or section 6 of chapter 708
133 of the acts of 1966, and, so long as such regulation is consistent with the owner's right to obtain a
134 fair net operating income and the municipality's housing policy, a municipality accepting the
135 provisions of this chapter shall establish local preferences, priorities, and income limits for
136 admission to governmentally-involved housing or formerly governmentally involved housing
137 upon unit turnover, consistent, to the extent practicable, with the income profile of the property
138 twelve months prior to the date of the loss of rent preemption or the decision to not renew an
139 expiring subsidy contract. No ordinance, by-law, or regulation shall require an owner to create a
140 tenancy involving any person with a history of conduct which would, if repeated, be grounds for
141 eviction from such housing.

142 Section 8. A municipality accepting the provisions of this chapter may adopt such
143 ordinances or by-laws and promulgate such rules, regulations, and orders as it may deem

144 necessary or appropriate to effectuate the purposes hereof and may grant exemptions and
145 exceptions thereto when such action would tend to maintain or increase the supply of affordable
146 housing in the municipality, including, without limitation, to promote the sale of the property to a
147 bona-fide tenant organization or non-profit community development corporation under terms and
148 conditions which would tend to maintain the income character of the property.

149 Section 9. Any hearings regarding matters related to regulation of rents or
150 removal permits for governmentally involved housing or formerly governmentally involved
151 housing or regarding compliance with other provisions of this chapter, or any ordinance, by-law,
152 rule, or regulation adopted hereunder, shall be conducted by the municipality or its designee in
153 accordance with the provisions of section 11 of chapter 30A.

154 Section 10. All decisions of the municipality or its designee may be appealed to
155 the housing court if available, the district court or the superior court in the jurisdiction or county
156 where the municipality is located by any person aggrieved thereby, whether or not previously a
157 party in the matter, within 30 calendar days after receipt of notice of such decision. Judicial
158 review of adjudicatory decisions shall be conducted in accordance with section 14 of chapter
159 30A. Judicial review of regulations shall be conducted in accordance with section 7 of chapter
160 30A. The housing, district and superior courts shall have jurisdiction to enforce the provisions of
161 this chapter and any ordinance, by-law, rule, or regulation adopted under this chapter and on
162 application of the municipality or its designee or any aggrieved person may restrain or enjoin
163 violations of any such ordinance, by-law, rule or regulation. In the interests of justice, the court
164 may allow any necessary parties to be joined in or to intervene in any action brought hereunder
165 and may in its discretion allow or require an action to proceed as a class action.

166 Section 11. It shall be unlawful for any person to do or omit to do any action in
167 violation of this chapter or any order, ordinance, by-law, rule or regulation adopted or
168 promulgated under this chapter. Whoever willfully violates any provision of this chapter or any
169 order, ordinance, by-law, rule or regulation adopted or promulgated under this chapter or
170 whoever makes a false statement in any testimony before the municipality or its designee, or
171 whoever knowingly supplies the municipality or its designee with false information, in
172 connection with a proceeding under this chapter, shall be punished by a fine of not more than
173 \$400 or by imprisonment for not more than 90 days, or both. In the case of a second or
174 subsequent offense, or where the violation continues after notice thereof, such person shall be
175 punished by a fine of not more than \$2,000, or imprisonment for not more than one year, or both.

176 Section 12. The commonwealth shall not be liable for any claims or other legal
177 action arising from the acceptance of or implementation of this act by any municipality.

178 Section 13. The provisions of M.G.L. Ch 40P shall not apply to any ordinance
179 adopted under this enabling authority.

180 Section 14. The provisions of this act are severable, and if any of its provisions
181 shall be held unconstitutional or otherwise invalid by any court of competent jurisdiction, the
182 decision of such court shall not affect or impair any of the remaining provisions.