

HOUSE No. 4934

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

An Act to stabilize neighborhoods.

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

1 By striking out all after the enacting clause and inserting in place thereof the following:—

2 SECTION 1. The second paragraph of subclause (e) of Clause Third of section 5 of
3 chapter 59 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by
4 adding the following sentence:- In any city or town that accepts this paragraph, any real estate
5 owned by, or held in trust for, a charitable organization for the purpose of creating community
6 housing, as defined in section 2 of chapter 44B, that was purchased from an entity that acquired
7 the property pursuant to section 14 of chapter 244 shall be exempt until such real estate is leased,
8 rented or otherwise disposed of, but not for more than 7 years after such purchase.

9 SECTION 2. Chapter 167E of the General Laws is hereby amended by inserting after
10 section 7 the following section:-

11 Section 7A. (a) As used in this section the following word shall, unless the context
12 clearly requires otherwise, have the following meaning:

13 “Mortgagor”, an applicant for a reverse mortgage who: (1) has a gross income of less
14 than 50 per cent of the area median income, as periodically determined by the United States
15 Department of Housing and Urban Development; and (2) possesses assets, excluding a primary
16 residence, valued at less than \$120,000.

17 (b) No mortgagee shall make a reverse mortgage loan pursuant to section 7 to a
18 mortgagor unless: (i) the mortgagor affirmatively opts in writing for the reverse mortgage; and
19 (ii) at or before the closing of any reverse mortgage loan the mortgagee has received written
20 certification from a counselor with a third-party organization that the mortgagor has received
21 counseling in person relative to the appropriateness of the loan transaction from the third party
22 organization and has completed an approved counseling program offered by the third party
23 organization; provided, however, that the third party organization shall have been approved by
24 the executive office of elder affairs for purposes of such counseling.

25 (c) A reverse mortgage executed with a borrower that has not received counseling by a
26 third party approved by the executive office of elder affairs shall render the terms of the reverse
27 mortgage unenforceable. The commissioner shall adopt regulations to administer and implement
28 this section.

29 SECTION 3. Chapter 171 of the General Laws is hereby amended by inserting after
30 section 65C the following section:-

31 Section 65C½. (a) As used in this section the following word shall, unless the context
32 clearly requires otherwise, have the following meaning:

33 “Mortgagor”, an applicant for a reverse mortgage who: (1) has a gross income of less
34 than 50 per cent of the area median income, as periodically determined by the United States

35 Department of Housing and Urban Development; and (2) possesses assets, excluding a primary
36 residence, valued at less than \$120,000.

37 (b) No mortgagee shall make a reverse mortgage loan pursuant to section 65C to a
38 mortgagor unless: (i) the mortgagor affirmatively opts in writing for the reverse mortgage; and
39 (ii) at or before the closing of any reverse mortgage loan the mortgagee has received written
40 certification from a counselor with a third-party organization that the mortgagor has received
41 counseling in person relative to the appropriateness of the loan transaction from the third party
42 organization and has completed an approved counseling program offered by the third party
43 organization; provided, however, that the third party organization shall have been approved by
44 the executive office of elder affairs for purposes of such counseling.

45 (c) A reverse mortgage executed with a borrower that has not received counseling by a
46 third party approved by the executive office of elder affairs shall render the terms of the reverse
47 mortgage unenforceable. The commissioner shall adopt regulations to administer and implement
48 this section.

49 SECTION 4. Chapter 183 of the General Laws is hereby amended by striking out section
50 67, as appearing in the 2008 Official Edition, and inserting in place thereof the following
51 section:-

52 Section 67. No mortgagee shall make a reverse mortgage loan on residential property
53 except in accordance with sections 7 and 7A of chapter 167E. For the purposes of this section,
54 the term “residential property” shall mean a 1-to-4 family dwelling owned and occupied in whole
55 or in part by the mortgagor and located in the commonwealth.

56 SECTION 5. Section 13A of chapter 186 of the General Laws, as appearing in the 2008
57 Official Edition, is hereby amended by inserting after the word “law”, in line 6, the following
58 words:- and the foreclosing entity shall assume the lease and rental subsidy contract with the
59 rental subsidy administrator.

60 SECTION 6. The General Laws are hereby amended by inserting after chapter 186, the
61 following chapter:-

62 CHAPTER 186A.

63 TENANT PROTECTIONS IN FORECLOSED PROPERTIES.

64 Section 1. (a) As used in this chapter, the following words shall, unless the context
65 clearly requires otherwise, have the following meanings:-

66 “Bona fide lease or bona fide tenancy”, a lease or tenancy shall not be considered bona
67 fide unless: (1) the mortgagor, or the child, spouse or parent of the mortgagor under the contract,
68 is not the tenant; and (2) the lease or tenancy was the result of an arms-length transaction.

69 “Entity”, a business organization, or any other kind of organization including, without
70 limitation, a corporation, partnership, trust, limited liability corporation, limited liability
71 partnership, joint venture, sole proprietorship or any other category of organization and any
72 employee, agent, servant or other representative of such entity.

73 “Eviction”, an action, without limitation, by a foreclosing owner of a housing
74 accommodation which is intended to actually or constructively evict a tenant or otherwise
75 compel a tenant to vacate such housing accommodation.

76 “Foreclosing owner”, an entity that holds title in any capacity, directly or indirectly,
77 without limitation, whether in its own name, as trustee or as beneficiary, to a housing
78 accommodation that has been foreclosed upon and either: (1) held or owned a mortgage or other
79 security interest in the housing accommodation at any point prior to the foreclosure of the
80 housing accommodation or is the subsidiary, parent, trustee, or agent thereof; or (2) is an
81 institutional mortgagee that acquires or holds title to the housing accommodation within 3 years
82 of the filing of a foreclosure deed on the housing accommodation; or (3) is the Federal National
83 Mortgage Association or the Federal Home Loan Mortgage Corporation.

84 “Foreclosure”, a legal proceeding to terminate a mortgagor's interest in property,
85 instituted by the mortgagee, and regulated under chapter 244.

86 “Housing accommodation”, a building or structure, or part thereof or land appurtenant
87 thereto, and any other real or personal property used, rented or offered for rent for living or
88 dwelling purposes, together with all services connected with the use or occupancy of such
89 property.

90 “Institutional mortgagee”, an entity or an entity which is the subsidiary, parent, trustee or
91 agent thereof or otherwise related to such entity, that holds or owns mortgages or other security
92 interests in 3 or more housing accommodations or that acts as a mortgage servicer of 3 or more
93 mortgages of housing accommodations.

94 “Just cause”, 1 of the following: (1) the tenant has failed to pay the rent in effect prior to
95 the foreclosure or failed to pay use and occupancy charges, as long as the foreclosing owner
96 notified the tenant in writing of the amount of rent or the amount of use and occupancy that was
97 to be paid and to whom it was to be paid; (2) the tenant has materially violated an obligation or

98 covenant of the tenancy or occupancy, other than the obligation to surrender possession upon
99 proper notice, and has failed to cure such violation within 30 days after having received written
100 notice thereof from the foreclosing owner; (3) the tenant is committing a nuisance in the unit, is
101 permitting a nuisance to exist in the unit, is causing substantial damage to the unit or is creating a
102 substantial interference with the quiet enjoyment of other occupants; (4) the tenant is using or
103 permitting the unit to be used for any illegal purpose; (5) the tenant who had a written bona fide
104 lease or other rental agreement which terminated, on or after August 10, 2010, has refused, after
105 written request or demand by the foreclosing owner, to execute a written extension or renewal
106 thereof for a further term of like duration and in such terms that are not inconsistent with this
107 chapter; (6) the tenant has refused the foreclosing owner reasonable access to the unit for the
108 purpose of making necessary repairs or improvement required by the laws of the United States,
109 the commonwealth or any subdivision thereof, or for the purpose of inspection as permitted or
110 required by agreement or by law or for the purpose of showing the unit to a prospective
111 purchaser or mortgagee provided. Nothing in the section shall limit the rights of a third-party
112 owner to evict a tenant at the expiration of an existing lease.

113 “Mortgagee”, an entity to whom property is mortgaged, the mortgage creditor or lender
114 including, but not limited to, mortgage servicers, lenders in a mortgage agreement and any agent,
115 servant or employee of the mortgagee or any successor in interest or assignee of the mortgagee’s
116 rights, interests or obligations under the mortgage agreement.

117 “Mortgage servicer”, an entity which administers or at any point administered the
118 mortgage; provided, however that such administration shall include, but not be limited to,
119 calculating principal and interest, collecting payments from the mortgagor, acting as escrow
120 agent or foreclosing in the event of a default.

121 “Tenant”, a person or group of persons who at the time of foreclosure is entitled to
122 occupy a housing accommodation pursuant to a bona fide lease or tenancy or a tenancy at will.
123 A person who moves into the housing accommodation owned by the foreclosing owner,
124 subsequent to the foreclosure sale, without the express written permission of the foreclosing
125 owner shall not be considered a tenant under this chapter.

126 “Unit” or “residential unit”, the room or group of rooms within a housing accommodation
127 which is used or intended for use as a residence by 1 household.

128 Section 2. Notwithstanding any general or special law to the contrary, a foreclosing
129 owner shall not evict a tenant except for just cause or unless a binding purchase and sale
130 agreement has been executed for a bona fide third party to purchase the housing accommodation
131 from a foreclosing owner.

132 Section 3. Within 30 days of the foreclosure, the foreclosing owner shall post in a
133 prominent location in the building in which the rental housing unit is located a written notice
134 stating the names, addresses, telephone numbers and telephone contact information of the
135 foreclosing owner, the building manager or other representative of the foreclosing owner
136 responsible for the management of such building and stating the address to which rent and use
137 and occupancy charges shall be sent.

138 A foreclosing owner shall not evict a tenant for actions that constitute just cause unless
139 the foreclosing owner has delivered to each tenant at the time of delivery of written notice
140 pursuant to this section, a written disclosure of the tenant’s right to a court hearing prior to
141 eviction.

142 Section 4. (a) A foreclosing owner shall not evict a tenant for the following actions that
143 constitute just cause until 30 days after the notice required by section 3 is posted and delivered:
144 (i) the tenant has failed to pay the rent in effect prior to the foreclosure or failed to pay use and
145 occupancy charges, as long as the foreclosing owner notified the tenant in writing of the amount
146 of rent or the amount of use and occupancy that was to be paid and to whom it was to be paid;
147 (ii) the tenant has materially violated an obligation or covenant of the tenancy or occupancy,
148 other than the obligation to surrender possession upon proper notice, and has failed to cure such
149 violation within 30 days after having received written notice thereof from the foreclosing owner;
150 and (iii) the tenant who had a written bona fide lease or other rental agreement which terminated,
151 on or after August 10, 2010, has refused, after written request or demand by the foreclosing
152 owner, to execute a written extension or renewal thereof for a further term of like duration and in
153 such terms that are not inconsistent with this chapter.

154 (b) A foreclosing owner shall not evict a tenant for the following actions that constitute
155 just cause until the notice required by section 3 is posted and delivered: (i) the tenant is
156 committing a nuisance in the unit, is permitting a nuisance to exist in the unit, is causing
157 substantial damage to the unit or is creating a substantial interference with the quiet enjoyment of
158 other occupants; (ii) the tenant is using or permitting the unit to be used for any illegal purpose;
159 and (iii) the tenant has refused the foreclosing owner reasonable access to the unit for the
160 purpose of making necessary repairs or improvement required by the laws of the United States,
161 the commonwealth or any subdivision thereof, or for the purpose of inspection as permitted or
162 required by agreement or by law or for the purpose of showing the unit to a prospective
163 purchaser or mortgagee provided.

164 Section 5. If a foreclosing owner disagrees with the amount of rent or use and occupancy
165 rates that a tenant-at-will or lessee pays to the foreclosing owner, the foreclosing owner may
166 bring a claim in district or superior court or the housing court to claim that the rent is
167 unreasonable and set a new use and occupancy rate. A bona fide lease between the foreclosed-
168 upon owner and the lessee or proof of rental payment to the foreclosed-upon owner shall be
169 presumed reasonable.

170 Section 6. A foreclosing owner that evicts a tenant in violation of this chapter or any
171 ordinance or by-law adopted pursuant to this chapter, shall be punished by a fine of not less than
172 \$5,000. Each such illegal eviction shall constitute a separate offense.

173 The district and superior courts and the housing court shall have jurisdiction over an
174 action arising from a violation of this chapter or of any ordinance or by-law adopted pursuant to
175 this chapter, and shall have jurisdiction in equity to restrain any such violation. It shall be a
176 defense to an eviction proceeding that the foreclosing owner attempted to evict a tenant in
177 violation of this chapter or any ordinance or by-law adopted pursuant to this chapter.

178 SECTION 7. Chapter 244 of the General Laws, as appearing in the 2008 Official
179 Edition, is hereby amended by striking out section 35A and inserting in place thereof the
180 following section:-

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

183 “Borrower”, a mortgagor of a mortgage loan.

184 “Borrower’s representative”, an employee or contractor of a non-profit organization
185 certified by Housing and Urban Development, an employee or contractor of a foreclosure
186 education center pursuant to section 16 of chapter 206 of the acts of 2007 or an employee or
187 contractor of a counseling agency receiving a Collaborative Seal of Approval from the
188 Massachusetts Homeownership Collaborative administered by the Citizens’ Housing and
189 Planning Association.

190 “Creditor”, a person or entity that holds or controls, partially, wholly, indirectly, directly,
191 or in a nominee capacity, a mortgage loan securing a residential property, including, without
192 limitation, an originator, holder, investor, assignee, successor, trust, trustee, nominee holder,
193 Mortgage Electronic Registration System or mortgage servicer, including the Federal National
194 Mortgage Association or the Federal Home Loan Mortgage Corporation. ”Creditor” shall also
195 include any servant, employee or agent of a creditor.

196 “Creditor’s representative”, a person who has the authority to negotiate the terms of and
197 modify a mortgage loan.

198 “Modified mortgage loan”, a mortgage modified from its original terms including, but not
199 limited to, a loan modified pursuant to 1 of the following: (i) the Home Affordable Modification
200 Program; (ii) the Federal Deposit Insurance Corporation’s Loan Modification Program; (iii) any
201 modification program that a lender uses which is based on accepted principles and the safety and
202 soundness of the institution and recognized by the National Credit Union Administration, the
203 Division of Banks or any other instrumentality of the commonwealth; (iv) the Federal Housing
204 Agency; or (v) a similar federal refinance plan.

205 “Mortgage loan”, a loan to a natural person made primarily for personal, family or
206 household purposes secured wholly or partially by a mortgage on residential property.

207 “Net present value”, the present net value of a residential property based on a calculation
208 using 1 of the following: (i) the federal Home Affordable Modification Program Base Net
209 Present Value Model, (ii) the Federal Deposit Insurance Corporation’s Loan Modification
210 Program; or (iii) for the Massachusetts Housing Finance Agency’s loan program used solely by
211 the agency to compare the expected economic outcome of a loan with or without a loan
212 modification.

213 “Residential property”, real property located in the commonwealth having thereon a
214 dwelling house with accommodations for 4 or less separate households and occupied, or to be
215 occupied, in whole or in part by the obligor on the mortgage debt; provided, however, that
216 residential property shall be limited to the principal residence of a person; provided further, that
217 residential property shall not include an investment property or residence other than a primary
218 residence; and provided further, that residential property shall not include residential property
219 taken in whole or in part as collateral for a commercial loan.

220 (b) A mortgagor of residential property shall have a 150-day right to cure a default of a
221 required payment as provided in the residential mortgage or note secured by the residential
222 property by full payment of all amounts that are due without acceleration of the maturity of the
223 unpaid balance of the mortgage; provided, however, that if a creditor certifies that: (i) it has
224 engaged in a good faith effort to negotiate a commercially reasonable alternative to foreclosure
225 as described in subsection (c); (ii) its good faith effort has involved at least 1 meeting, either in
226 person or by telephone, between a creditor’s representative and the borrower, the borrower’s

227 attorney or the borrower's representative; and (iii) after such meeting the borrower and the
228 creditor were not successful in resolving their dispute, then the creditor may begin foreclosure
229 proceedings after a right to cure period lasting 90 days. A borrower who fails to respond within
230 30 days to any mailed communications offering to negotiate a commercially reasonable
231 alternative to foreclosure sent via certified and first class mail or similar service by a private
232 carrier from the lender shall be deemed to have forfeited the right to a 150-day right to cure
233 period and shall be subject to a right to cure period lasting 90 days. The right to cure a default of
234 a required payment shall be granted once during any 3 year period, regardless of mortgage
235 holder.

236 (c) For purposes of this section, a determination that a creditor has made a good faith
237 effort to negotiate and agree upon a commercially reasonable alternative to foreclosure shall
238 mean that the creditor has considered: (i) an assessment of the borrower's current circumstances
239 including, without limitation, the borrower's current income, debts and obligations; (ii) the net
240 present value of receiving payments pursuant to a modified mortgage loan as compared to the
241 anticipated net recovery following foreclosure; and (iii) the interests of the creditor; provided,
242 however, that nothing in this subsection shall be construed as prohibiting a creditor from
243 considering other factors; provided, further, that the creditor shall provide by first class and
244 certified mail or similar service by a private carrier to a borrower documentation of good faith
245 effort 10 days prior to meeting, telephone conversation or a meeting pursuant to subsection (b)

246 (d) A borrower who receives a loan modification offer from the creditor resulting from
247 the lender's good faith effort to negotiate and agree upon a commercially reasonable alternative
248 to foreclosure shall respond within 30 days of receipt of first class or certified mail. A borrower
249 shall be presumed to have responded if the borrower provides: (i) confirmation of a facsimile

250 transmission to the creditor; (ii) proof of delivery through the United States Postal Service or
251 similar carrier; or (iii) record of telephone call to the creditor captured on a telephone bill or pin
252 register. A borrower who fails to respond to the creditor's offer within 30 days of receipt of a
253 loan modification offer shall be deemed to have forfeited the 150-day right to cure period and
254 shall be subject to a right to cure period lasting 90 days.

255 (e) Nothing in this subsection shall prevent a creditor from offering or accepting
256 alternatives to foreclosure, such as a short sale or deed-in-lieu of foreclosure, if the borrower
257 requests such alternatives, rejects a loan modification offered pursuant to this subsection or does
258 not qualify for a loan modification pursuant to this subsection.

259 (f) A creditor that chooses to begin foreclosure proceedings after a right to cure period
260 lasting less than 150 days that engaged in a good faith effort to negotiate and agree upon a
261 commercially reasonable alternative but was not successful in resolving the dispute shall certify
262 compliance with this section in an affidavit. The affidavit shall include the time and place of the
263 meeting, parties participating, relief offered to the borrower, a summary of the creditor's net
264 present value analysis and applicable inputs of the analysis and certification that any
265 modification or option offered complies with current federal law or policy. A creditor shall
266 provide a copy of the affidavit to the homeowner and file a copy of the affidavit with the land
267 court in advance of the foreclosure.

268 (g) The mortgagee, or anyone holding thereunder, shall not accelerate maturity of the
269 unpaid balance of such mortgage obligation or otherwise enforce the mortgage because of a
270 default consisting of the mortgagor's failure to make any such payment in subsection (b) by any
271 method authorized by this chapter or any other law until at least 150 days after the date a written

272 notice is given by the mortgagee to the mortgagor; provided, however, that a creditor meeting the
273 requirements of subsection (b) that chooses to begin foreclosure proceedings after a right to cure
274 period lasting less than 150 days may accelerate maturity of the unpaid balance of such mortgage
275 obligation or otherwise enforce the mortgage because of a default consisting of the mortgagor's
276 failure to make any such payment in subsection (b) by any method authorized by this chapter or
277 any other law not less than 91 days after the date a written notice is given by the creditor to the
278 mortgagor.

279 Said notice shall be deemed to be delivered to the mortgagor: (i) when delivered by hand
280 to the mortgagor; or (ii) when sent by first class mail and certified mail or similar service by a
281 private carrier to the mortgagor at the mortgagor's address last known to the mortgagee or
282 anyone holding thereunder.

283 (h) The notice required in subsection (g) shall inform the mortgagor of the following:-

284 (1) the nature of the default claimed on such mortgage of residential real property and of
285 the mortgagor's right to cure the default by paying the sum of money required to cure the default;

286 (2) the date by which the mortgagor shall cure the default to avoid acceleration, a
287 foreclosure or other action to seize the home, which date shall not be less than 150 days after
288 service of the notice and the name, address and local or toll free telephone number of a person to
289 whom the payment or tender shall be made unless a creditor chooses to begin foreclosure
290 proceedings after a right to cure period lasting less than 150 days that engaged in a good faith
291 effort to negotiate and agree upon a commercially reasonable alternative but was not successful
292 in resolving the dispute, in which case a foreclosure or other action to seize the home may take
293 place on an earlier date to be specified;

294 (3) that, if the mortgagor does not cure the default by the date specified, the mortgagee,
295 or anyone holding thereunder, may take steps to terminate the mortgagor's ownership in the
296 property by a foreclosure proceeding or other action to seize the home;

297 (4) the name and address of the mortgagee, or anyone holding thereunder, and the
298 telephone number of a representative of the mortgagee whom the mortgagor may contact if the
299 mortgagor disagrees with the mortgagee's assertion that a default has occurred or the correctness
300 of the mortgagee's calculation of the amount required to cure the default;

301 (5) the name of any current and former mortgage broker or mortgage loan originator for
302 such mortgage or note securing the residential property;

303 (6) that the mortgagor may be eligible for assistance from the Homeownership
304 Preservation Foundation or other foreclosure counseling agency, and the local or toll free
305 telephone numbers the mortgagor may call to request this assistance;

306 (7) that the mortgagor may sell the property prior to the foreclosure sale and use the
307 proceeds to pay off the mortgage;

308 (8) that the mortgagor may redeem the property by paying the total amount due, prior to
309 the foreclosure sale;

310 (9) that the mortgagor may be evicted from the home after a foreclosure sale; and

311 (10) the mortgagor may have the following additional rights, depending on the terms of
312 the residential mortgage: (i) to refinance the obligation by obtaining a loan which would fully
313 repay the residential mortgage debtor; and (ii) to voluntarily grant a deed to the residential
314 mortgage lender in lieu of foreclosure.

315 The notice shall also include a declaration, in the language the creditor has regularly used
316 in its communication with the borrower, appearing on the first page of the notice stating: “This is
317 an important notice concerning your right to live in your home. Have it translated at once.”

318 The division of banks shall adopt regulations in accordance with this subsection.

319 (i) To cure a default prior to acceleration under this section, a mortgagor shall not be
320 required to pay any charge, fee or penalty attributable to the exercise of the right to cure a
321 default. The mortgagor shall pay late fees as allowed pursuant to section 59 of chapter 183 and
322 per-diem interest to cure such default. The mortgagor shall not be liable for any attorneys' fees
323 relating to the mortgagor's default that are incurred by the mortgagee or anyone holding
324 thereunder prior to or during the period set forth in the notice required by this section. The
325 mortgagee, or anyone holding thereunder, may also provide for reinstatement of the note after
326 the 150-day notice to cure has ended.

327 (j) A copy of the notice required by this section and an affidavit demonstrating
328 compliance with this section shall be filed by the mortgagee, or anyone holding thereunder, in
329 any action or proceeding to foreclose on such residential real property.

330 (k) A copy of the notice required by this section shall also be filed by the mortgagee, or
331 anyone holding thereunder, with the commissioner of the division of banks. Additionally, if the
332 residential property securing the mortgage loan is sold at a foreclosure sale, the mortgagee, or
333 anyone holding thereunder, shall notify the commissioner of the division of banks, in writing, of
334 the date of the foreclosure sale and the purchase price obtained at the sale.

335 SECTION 8. Chapter 244 of the General Laws is hereby amended by striking out section
336 35A, as appearing in section 7, and inserting in place thereof the following section:-

337 Section 35A. (a) Any mortgagor of residential real property located in the
338 commonwealth, shall have a 90-day right to cure a default of a required payment as provided in
339 such residential mortgage or note secured by such residential real property by full payment of all
340 amounts that are due without acceleration of the maturity of the unpaid balance of such
341 mortgage. The right to cure a default of a required payment shall be granted once during any 5-
342 year period, regardless of the mortgage holder. For the purposes of this section, “residential
343 property”, shall mean real property located in the commonwealth having thereon a dwelling
344 house with accommodations for 4 or less separate households and occupied, or to be occupied, in
345 whole or in part by the mortgagor; provided, however, that residential property shall be limited
346 to the principal residence of a person; provided further, that residential property shall not include
347 an investment property or residence other than a primary residence; and provided further, that
348 residential property shall not include residential property taken in whole or in part as collateral
349 for a commercial loan.

350 (b) The mortgagee, or anyone holding thereunder, shall not accelerate maturity of the
351 unpaid balance of such mortgage obligation or otherwise enforce the mortgage because of a
352 default consisting of the mortgagor's failure to make any such payment in subsection (a) by any
353 method authorized by this chapter or any other law until at least 90 days after the date a written
354 notice is given by the mortgagee to the mortgagor.

355 Said notice shall be deemed to be delivered to the mortgagor: (i) when delivered by hand
356 to the mortgagor; or (ii) when sent by first class mail and certified mail or similar service by a
357 private carrier to the mortgagor at the mortgagor's address last known to the mortgagee or
358 anyone holding thereunder.

359 (c) The notice required in subsection (b) shall inform the mortgagor of the following:-

360 (1) the nature of the default claimed on such mortgage of residential real property and of
361 the mortgagor's right to cure the default by paying the sum of money required to cure the default;

362 (2) the date by which the mortgagor shall cure the default to avoid acceleration, a
363 foreclosure or other action to seize the home, which date shall not be less than 90 days after
364 service of the notice and the name, address and local or toll free telephone number of a person to
365 whom the payment or tender shall be made;

366 (3) that, if the mortgagor does not cure the default by the date specified, the mortgagee,
367 or anyone holding thereunder, may take steps to terminate the mortgagor's ownership in the
368 property by a foreclosure proceeding or other action to seize the home;

369 (4) the name and address of the mortgagee, or anyone holding thereunder, and the
370 telephone number of a representative of the mortgagee whom the mortgagor may contact if the
371 mortgagor disagrees with the mortgagee's assertion that a default has occurred or the correctness
372 of the mortgagee's calculation of the amount required to cure the default;

373 (5) the name of any current and former mortgage broker or mortgage loan originator for
374 such mortgage or note securing the residential property;

375 (6) that the mortgagor may be eligible for assistance from the Massachusetts Housing
376 Finance Agency and the division of banks and the local or toll free telephone numbers the
377 mortgagor may call to request this assistance;

378 (7) that the mortgagor may sell the property prior to the foreclosure sale and use the
379 proceeds to pay off the mortgage;

380 (8) that the mortgagor may redeem the property by paying the total amount due, prior to
381 the foreclosure sale;

382 (9) that the mortgagor may be evicted from the home after a foreclosure sale; and

383 (10) the mortgagor may have the following additional rights, depending on the terms of
384 the residential mortgage: (i) to refinance the obligation by obtaining a loan which would fully
385 repay the residential mortgage debtor; and (ii) to voluntarily grant a deed to the residential
386 mortgage lender in lieu of foreclosure.

387 The notice shall also include a declaration, appearing on the first page of the notice
388 stating: “This is an important notice concerning your right to live in your home. Have it
389 translated at once.”

390 The division of banks shall adopt regulations in accordance with this subsection..

391 (d) To cure a default prior to acceleration under this section, a mortgagor shall not be
392 required to pay any charge, fee, or penalty attributable to the exercise of the right to cure a
393 default. The mortgagor shall pay late fees as allowed pursuant to section 59 of chapter 183 and
394 per-diem interest to cure such default. The mortgagor shall not be liable for any attorneys' fees
395 relating to the mortgagor's default that are incurred by the mortgagee or anyone holding
396 thereunder prior to or during the period set forth in the notice required by this section. The
397 mortgagee, or anyone holding thereunder, may also provide for reinstatement of the note after
398 the 90 day notice to cure has ended.

399 (e) A copy of the notice required by this section and an affidavit demonstrating
400 compliance with this section shall be filed by the mortgagee, or anyone holding thereunder, in
401 any action or proceeding to foreclose on such residential real property.

402 (f) A copy of the notice required by this section shall also be filed by the mortgagee, or
403 anyone holding thereunder, with the commissioner of the division of banks. Additionally, if the
404 residential property securing the mortgage loan is sold at a foreclosure sale, the mortgagee, or
405 anyone holding thereunder, shall notify the commissioner of the division of banks, in writing, of
406 the date of the foreclosure sale and the purchase price obtained at the sale.

407 SECTION 9. Section 33 of chapter 266 of the General Laws, as appearing in the 2008
408 Official Edition, is hereby amended by striking out, in lines 5 to 10, inclusive, the words “(2)
409 whoever, with intent to defraud, by a false statement in writing respecting the financial
410 condition, or means or ability to pay, of himself or of any other person, obtains credit from any
411 bank or trust company or any banking institution or any retail seller of goods or services
412 accustomed to give credit in any form whatsoever shall be guilty of larceny” and inserting in
413 place thereof the following words:- (2) whoever, with intent to defraud, by a false statement in
414 writing respecting the financial condition, or means or ability to pay, of himself or of any other
415 person, obtains for himself or for any other person credit from any bank or trust company or any
416 banking institution or any mortgage lender, as defined in section 1 of chapter 255E, or any retail
417 seller of goods or services accustomed to give credit in any form whatsoever shall be guilty of
418 larceny.

419 SECTION 10. Said chapter 266 is hereby further amended by striking out section 34, as
420 so appearing, and inserting in place thereof the following section:--

421 Section 34. Whoever, with intent to defraud and by a false pretence, induces another to
422 part with property of any kind or with any of the benefits described in sections 33 and 33A shall
423 be guilty of larceny.

424 SECTION 11. Said chapter 266 is hereby further amended by inserting after section 35
425 the following section:-

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

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

430 “Material omission”, the omission or concealment of a material fact necessary to prevent
431 a statement from being misleading, in the light of the circumstances under which the statement is
432 made.

433 “Mortgage lending process”, the process through which a person seeks or obtains a
434 residential mortgage loan including, but not limited to, solicitation, application, origination,
435 negotiation of terms, third-party provider services, underwriting, signing and closing, and
436 funding of the loan; provided, however, that documents involved in the mortgage lending
437 process shall include, but not be limited to, uniform residential loan applications or other loan
438 applications, appraisal reports, HUD-1 settlement statements, supporting personal documentation
439 for loan applications such as W-2 forms, verification of income and employment, bank
440 statements, tax returns and payroll stubs and any required disclosures.

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

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

445 “Residential mortgage loan”, a loan or agreement to extend credit made to a person,
446 which loan is secured by a mortgage, security interest, deed to secure debt, deed of trust, or other
447 document representing a security interest or lien upon any interest in a 1-to4-family residential
448 property located in the commonwealth, including the renewal or refinancing of any such loan.

449 (b) Whoever intentionally: (1) makes or causes to be made any material statement that is
450 false or any statement that contains a material omission, knowing the same to be false or to
451 contain a material omission, during or in connection with the mortgage lending process, with the
452 intent that such statement be relied upon by a mortgage lender, borrower or any other party to the
453 mortgage lending process; (2) uses, or facilitates the use of, any material statement that is false or
454 any statement that contains a material omission, knowing the same to be false or to contain a
455 material omission, during or in connection with the mortgage lending process, with the intent
456 that such statement be relied upon by a mortgage lender, borrower or any other party to the
457 mortgage lending process; (3) receives any proceeds or any other funds in connection with a
458 residential mortgage closing, knowing such proceeds or funds were obtained in violation of
459 clause (1) or (2); or (4) files or causes to be filed with a registrar of deeds any document that
460 contains a material statement that is false or a material omission, knowing such document to
461 contain a material statement that is false or a material omission, shall be punished by
462 imprisonment in the state prison for not more than 5 years or by imprisonment in the house of

463 correction for not more than 2 ½ years or by a fine of not more than \$10,000 in the case of a
464 natural person or not more than \$100,000 in the case of any other person, or by both such fine
465 and imprisonment.

466 Any person who engages in a pattern of residential mortgage fraud shall be punished by
467 imprisonment in the state prison for not more than 15 years or by a fine of not more than
468 \$50,000, in the case of a natural person, or not more than \$500,000 in the case of any other
469 person, or by both such fine and imprisonment.

470 (c) If a defendant is convicted of a violation of this section as a result of conduct or an
471 omission by an employee or agent of the defendant the court may consider the following
472 mitigating factors with respect to sentencing:

473 (1) that the defendant had instituted and maintained at the time of the violation, and
474 continues to have, a written policy including:

475 (i) a prohibition against conduct that violates this section by employees and agents of the
476 defendant;

477 (ii) penalties or discipline for violation of the policy;

478 (iii) a process for educating employees and agents concerning the policy and
479 consequences of a violation thereof; and

480 (iv) with respect to a defendant authorized to conduct criminal history checks for the
481 employee's or agent's position, a requirement for a criminal history check before employing an
482 employee or engaging an agent and a requirement that the defendant will not employ or engage
483 an individual who has been convicted of a crime involving fraud;

484 (2) a demonstration that the defendant enforces the policy described in clause (1); and

485 (3) prior to the violation of this section the defendant provided a copy of the policy
486 described in clause (1), including a description of the consequences for violating the policy, to
487 the employee or agent who committed the violation.

488 SECTION 12. Chapter 277 of the General Laws is hereby amended by inserting after
489 section 62B the following section:-

490 Section 62C. A violation of section 35A of chapter 266 may be prosecuted and punished
491 in:

492 (1) the county in which the residential property for which a mortgage loan is being sought
493 is located;

494 (2) the county in which any act was performed in furtherance of the violation;

495 (3) the county in which any person alleged to have violated this section had control or
496 possession of any proceeds of, or other funds received as a result of the violation;

497 (4) the county in which a closing on the mortgage loan occurred; or

498 (5) the county in which a document containing a deliberate misstatement,
499 misrepresentation or omission is filed with a registrar of deeds.

500 SECTION 13. Section 4 shall take effect 90 days after the effective date of this act.

501 Sections 2 and 3 shall take effect 90 days after the effective date of this act; provided, however,

502 that the in-person counseling requirement in subsection (b) of section 7A of chapter 167E of the

503 General Laws and in subsection (b) of section 65C½ of chapter 171 of the General Laws shall
504 take effect 24 months after the effective date of this act.

505 SECTION 14. Section 8 shall take effect on January 1, 2016.