

SENATE No. 1316

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act establishing the Martha’s Vineyard housing bank..

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. For the purposes of this act, the words and phrases set forth in this section
2 shall have the following meanings:

3 "Community Housing", rental and home ownership housing units for use by those
4 residents of Martha's Vineyard earning 150% or less of the median household income for Dukes
5 county as calculated and adjusted for household size annually by the federal Department of
6 Housing and Urban Development (HUD); this percentage of median income, should economic
7 conditions warrant a change, can be adjusted by a majority vote of both the housing bank
8 commission and four or more of the six town advisory boards.

9 "Eligible Applicants", non-profit and for-profit corporations and organizations,
10 individuals, and public entities.

11 "Fund", shall refer to the Martha's Vineyard Housing Bank Fund established under
12 section 7.

13 "Housing Bank", the Martha's Vineyard housing bank, established by section 2.

14 "Housing bank commission", the Martha's Vineyard housing bank commission,
15 established by section 3.

16 "Legal representative", with respect to any person, shall mean any other person acting
17 under a written power-of-attorney executed by that person, but any affidavit attesting to the true
18 and complete purchase price of real property, submitted to the housing bank commission
19 pursuant to section 9, may also be signed on behalf of that person by an attorney admitted to
20 practice in the commonwealth.

21 "Purchaser", the transferee, grantee or recipient of any real property interests.

22 "Purchase price", all consideration paid or transferred by or on behalf of a purchaser to a
23 seller or a seller's nominee, or for the seller's benefit, for the transfer of any real property interest,
24 and shall include, but not be limited to, all cash or other property paid or transferred by or on
25 behalf of the purchaser to discharge or reduce any obligation of the seller; the principal amount
26 of all notes or their equivalent, or other deferred payments, given or promised to be given by or
27 on behalf of the purchaser to the seller or the seller's nominee; the outstanding balance of all
28 obligations of the seller which are assumed by the purchaser or to which the real property interest
29 transferred remains subject after the transfer, determined at the time of transfer but excluding
30 real estate taxes or other municipal liens or assessments which are not overdue at the time of the
31 transfer; and the fair market value at the time of transfer of any other consideration or thing of
32 value paid or transferred by or on behalf of the purchaser, including, but not limited to, any
33 property, goods or services paid, transferred or rendered in exchange for such real property
34 interest.

35 "Real property interest", any present or future legal or equitable interest in or to real
36 property, and any beneficial interest in real property, including the interest of any beneficiary in
37 a trust which holds any legal or equitable interest in real property, but shall not include any
38 interest which is limited to any or all of the following: the dominant estate in any easement or
39 right of way; the right to enforce any restriction; any estate at will or at sufferance, and any estate
40 for years having a term of less than thirty years; the reversionary right, condition, or right of
41 entry for condition broken; the interest of a mortgagee or other secured party in any mortgage or
42 security agreement; and the interest of a stockholder in a corporation, or a partner in a
43 partnership, unless any real property interest has been transferred to the corporation or
44 partnership for the purpose of evading the fee imposed by section 9.

45 "Seller", the transferor, grantor or immediate former owner of any real property
46 interests."Time of transfer", of any real property interest shall mean, the time that such transfer is
47 legally effective as between the parties to the transfer, and, in any event, with respect to a
48 transfer evidenced by an instrument recorded with the appropriate registry of deeds or filed with
49 the assistant recorder of the appropriate registry district, not later than the time of the recording
50 or filing.

51 "Town advisory board" (TAB), a town board created in each of the towns of Aquinnah,
52 Chilmark, Edgartown, Oak Bluffs, Tisbury and West Tisbury to assist the housing bank
53 commission in administering this act, such advisory board to consist of 7 members; 1
54 representative duly appointed, either from its membership or a designee, by each of the following
55 town boards: board of selectmen, conservation commission, planning board and board of health;
56 2 members appointed by the housing committee with preference given to the town representative
57 to the regional housing authority; and one member from either the Highway Department,

58 Department of Public Works, or Water Department, or a designee from one of said departments.
59 Should a position become vacant, a member appointed by the respective board to complete the
60 unexpired term shall fill said vacancy. Members shall hold 3- year staggered, renewable terms,
61 with the length of the initial terms to be designated by the board of selectmen.

62 SECTION 2. There is hereby established a Martha's Vineyard housing bank, to be
63 administered by a housing bank commission established by section 3; for the purpose of
64 providing funding for community housing as set forth in section 5. The housing bank is hereby
65 constituted a body politic and corporate and a public instrumentality and the exercise of the
66 powers herein conferred upon the housing bank shall be deemed to be the performance of an
67 essential governmental function.

68 SECTION 3. The housing bank shall be administered by a housing bank commission
69 consisting of 7 voting persons.

70 3.1 Membership: There shall be one member who is a legal resident of each of the towns
71 of Aquinnah, Chilmark, Edgartown, Oak Bluffs, Tisbury and West Tisbury, each person to be
72 elected to a 3-year term, in the same manner as other elected town officials, and one member
73 who will be appointed by the director of the Massachusetts Department of Housing and
74 Community Development (DHCD). The six town boards of selectmen shall appoint the initial 6
75 members to serve from the effective date of this act until the first elections of the regular
76 members at each town's regular or special town election after the effective date of this act. The
77 initial terms, which will be drawn by lot by the initial six appointed members, shall be staggered
78 so that two members are elected each year, following the initial election.

79 3.2 Vacancies: Should a vacancy occur during the term of any elected town member, the
80 town housing committee and the board of selectmen shall jointly appoint an interim member to
81 serve until the next scheduled town election.

82 3.3 Administration: Members shall serve without compensation. The initial appointed
83 members shall adopt temporary rules and regulations to the extent necessary to conduct business
84 until the regular members are elected. The housing bank commission shall elect a chairman and a
85 vice chairman from among its regular members and shall elect a secretary and a treasurer who
86 may be the same person, but who need not be members of the housing bank commission. The
87 members of the housing bank commission shall adopt, after holding a public hearing and after
88 requesting recommendations from the town advisory board of each of the six member towns that
89 comprise the commission, rules and regulations for conducting its internal affairs and procedural
90 guidelines for carrying out its responsibilities under this act.

91 3.4 Quorum: A quorum shall be 4 or more members. Decisions of the housing bank
92 commission shall be by majority vote at a meeting where a quorum is present. The housing bank
93 commission shall make rules regarding attendance. The housing bank commission shall keep
94 accurate records of its meetings and actions and shall file an annual report that shall be
95 distributed with the annual report of each member town.

96 SECTION 4A. The housing bank commission shall, subject to this act, have the power
97 authority, and responsibility to (a) provide funding in the form of grants, loans, loan guarantees,
98 lines of credit, interest subsidies, rental assistance or any other means determined to further the
99 goals of the housing bank for eligible community housing activities as cited in section 5 of this
100 act, provided that any such funding shall require the approval of the town advisory board of any

101 town or towns in which the eligible activities shall be located; (b) accept gifts of funds to further
102 the purposes of the housing bank; (c) prepare an annual budget, which shall be subject to
103 approval by the town advisory boards of the majority of the member towns of the housing bank
104 commission; (d) hire such staff and obtain such professional services as are necessary in order to
105 perform its duties; (e) adopt such regulations and procedures it deems necessary or appropriate,
106 subject to this act, regarding the use and investment of its funds and the keeping of records and
107 accounts; (f) adopt such procedures it deems necessary or appropriate to provide funding for the
108 implementation of any and all programs cited in section 5 of this act; and (g) enter into and
109 enforce such contracts it deems necessary to achieve the goals of this legislation.

110 SECTION 4B. Each member town is hereby authorized to appropriate money to be
111 deposited the fund as provided in section 7A.

112 SECTION 4C. The housing bank is authorized to issue bonds and notes to further the
113 purpose of the housing bank but only if the issuance of these bonds or notes has been approved
114 by all of the member towns by a majority vote at a town meeting.

115 SECTION 4D. The housing bank revenues and income will be used solely for the
116 furtherance of its public purposes and shall be exempt from taxation.

117 SECTION 5. The Martha's Vineyard housing bank is a funding agency only. Upon
118 receiving applications from eligible applicants in a competitive process which will include public
119 notice of funding availability, and in a form prescribed by the commission, the housing bank will
120 provide funding for eligible community housing activities as defined below, while respecting
121 special Vineyard habitats and rural character. The Housing Bank shall, wherever possible, give

122 preference to a) the reuse of existing buildings, and b) construction of new buildings on
123 previously developed sites.

124 Eligible community housing activities for receipt of funding shall include, but not be
125 limited to, the following:

126 (a) Purchase and rehabilitation of existing structures for rental or home ownership;

127 (b) Construction of rental or home ownership housing and necessary on-site or off site
128 infrastructure, including mixed use development;

129 (c) Purchase of land, and any and all improvements including easements;

130 (d) Down payment assistance, grants and soft second loans;

131 (e) Rental assistance programs;

132 (f) Modernization and capital improvements of existing rental and ownership housing;

133 (g) Creation of apartments and other ancillary housing;

134 (h) Housing counseling, predevelopment costs and technical assistance associated with
135 creating community housing projects and programs; and

136 (i) Mixed -use development projects.

137 SECTION 6. All housing units created by means of funding from the housing bank under
138 this act shall be deed restricted in perpetuity for use as community housing as defined in section
139 1 of this act, except in cases when the housing bank commission determines that such deed

140 restriction is not feasible, and except in cases when the housing bank commission determines
141 that it is beneficial to support rental housing that does not have permanent restrictions.

142 SECTION 7A. The housing bank commission shall meet its financial obligations by
143 drawing upon a fund to be set up as a revolving or sinking account of the housing bank
144 commission. Deposits into the fund shall include (a) funds appropriated, borrowed or transferred
145 to be deposited into the fund by vote of the county commissioners of the county of Dukes county
146 or of town meetings of the towns represented in the housing bank commission; (b) voluntary
147 contributions of money and other liquid assets to the fund; and (c) revenues from fees imposed
148 upon the transfer of real property interests under section 9 occurring after the effective date of
149 this act as set forth in section 15. Grants or gifts of money or other assets to the housing bank
150 shall be subject to any restrictions or limitations imposed by the grantor or donor.

151 All expenses lawfully incurred by the housing bank commission in carrying out this act
152 shall be evidenced by proper vouchers and shall be paid by the treasurer of the housing bank
153 commission only upon submission of warrants duly approved by the housing bank commission.
154 The housing bank commission treasurer shall prudently invest available assets of the fund in
155 accordance with the regulations and procedures adopted by the housing bank commission under
156 Section 4A (f) and all income from its investments shall accrue to the fund.

157 SECTION 7B. An individual account shall be established by the housing bank
158 commission for each member town of the housing bank. The treasurer of the housing bank
159 commission shall administer all transactions for the individual town accounts. Of the revenues
160 collected under this act, 50 per cent shall remain in the fund, to be directly administered by the
161 housing bank commission under this act. The remaining 50 per cent of the revenues collected

162 shall be transferred to the individual town accounts in proportion to the amount of collected
163 housing bank revenues derived from transfer of any real property interest in any real property
164 within each respective town. Money in the individual town account of each member town may
165 be expended by the housing bank commission, subject to the approval of a majority of the
166 members of the town advisory board of such town, for purposes permitted by this act, within or
167 outside the borders of such town.

168 SECTION 8. The housing bank commission shall keep a full and accurate account of its
169 actions including a record as to when, from or to whom, and on what account money has been
170 paid or received under this act. These records or accounts shall be subject to examination by the
171 director of accounts or the director's agent pursuant to section 45 or chapter 35 of the General
172 Laws, and there shall be an annual audit conducted by a duly recognized accounting firm and a
173 copy of said audit distributed to all member towns.

174 SECTION 9. There is hereby imposed a fee equal to 1 per cent of the purchase price upon
175 the transfer of any real property interest in any real property situated in a member town or towns.
176 The fee shall be the liability of the seller of the real property interest, and any agreement between
177 the purchaser and the seller or any other person with reference to the allocation of the
178 responsibility for bearing this fee shall not affect the liability of the seller. This fee shall be paid
179 to the housing bank commission or its designee, and shall be accompanied by a copy of the deed
180 or other instrument evidencing such transfer, if any, and an affidavit signed under oath or under
181 the pains and penalties of perjury by the seller or the seller's legal representative, attesting to the
182 true and complete purchase price and the basis, if any, upon which the transfer is claimed to be
183 exempt in whole or in part from the fee imposed. The housing bank commission, or its designee,
184 shall promptly thereafter execute and issue a certificate indicating that the appropriate fee has

185 been paid or that the transfer is exempt from the fee, stating the basis for the exemption. The
186 register of deeds for the county of Dukes county, and the assistant recorder for the registry
187 district of the county of Dukes county, shall not record or register, or receive or accept for
188 recording or registration, any deed, except a mortgage deed, relative to any real property interest
189 situated in any town that is a member of the housing bank commission to which has not been
190 affixed such a certificate, executed by the housing bank commission or its designee. Failure to
191 comply with this requirement shall not affect the validity of any instrument. The housing bank
192 commission shall deposit all fees received under this section with its treasurer as part of the fund
193 established by section 7. The fee imposed under this section shall be due at the time of transfer of
194 the real property interest.

195 SECTION 10. At any time within 7 days following the issuance of the certificate of
196 payment of the fee imposed by section 9, the seller or the seller's legal representative may return
197 said certificate to the housing bank commission or its designee for cancellation, together with an
198 affidavit signed under oath or under the pains and penalties of perjury that the transfer, with
199 respect to which such certificate was issued, has not been consummated, and thereupon the fee
200 paid with respect to such transfer shall be forthwith returned to the seller or the seller's legal
201 representative.

202 SECTION 11. The following transfers of real property interests shall be exempt from the
203 fee established by section 9. Except as otherwise provided, the seller shall have the burden of
204 proof that any transfer is exempt under this section:

205 a) transfers made by a charitable organization as defined in clause three of section 5 of
206 chapter 59 of the General Laws, or by any nonprofit organization which is exempt from income
207 tax under section 501(c)(3) of the Internal Revenue Code, Title 26 of the United States Code;

208 b) transfers which, without additional consideration, confirm, correct, modify or
209 supplement a transfer previously made;

210 c) transfers made as gifts without consideration; in any proceedings to determine the
211 amount of any fee due under this clause, it shall be presumed that any transfer for consideration
212 of less than fair market value of the real property interests transferred was made as a gift without
213 consideration to the extent of the difference between the fair market value of the real property
214 interests transferred and the amount of consideration claimed by the purchaser to have been paid
215 or transferred, if the purchaser shall have been at the time of transfer the spouse, the lineal
216 descendant or the lineal ancestor of the seller, by blood or adoption; otherwise it shall be
217 presumed that consideration was paid in an amount equal to the fair market value of the real
218 property interests transferred, at the time of transfer;

219 d) transfer to the trustees of a trust in exchange for a beneficial interest received by the
220 seller in such trust; distribution by the trustees of a trust to the beneficiaries of such trust;
221 schedules of beneficiaries shall be submitted to the housing bank collection agent, at the
222 discretion of such agent, without becoming part of the public record;

223 e) transfers by operation of law without actual consideration, including but not limited to
224 transfers occurring by virtue of the death or bankruptcy of the owner of a real property interest;

225 f) transfers made in partition of land and improvements to it, under chapter 241 of the
226 General Laws, but any portion of a partition for which consideration has been paid is not exempt;

227 g) transfers without consideration to any charitable organization as defined in clause third
228 of section 5 of chapter 59 of the General Laws, or to any nonprofit organization which is exempt
229 from income tax under section 501(c)(3) of the Internal Revenue Code, Title 26 of the United
230 States Code, provided that the real property interests transferred shall be held by the organization
231 solely for its public, charitable or religious purposes, and provided that any portion of the
232 transaction for which any consideration may have been paid is not exempt;

233 h) transfers to a mortgagee in foreclosure of the mortgage held by the mortgagee, and
234 transfers of the property subject to a mortgage to the mortgagee in consideration of the
235 forbearance of the mortgagee from foreclosing the mortgage, including sheriffs sales;i) transfers
236 made to a corporation or partnership at the time of its formation, in which no gain or loss is
237 recognized under section 351 of the Internal Revenue Code, Title 26 of the United States Code;

238 j) transfers made to a stockholder of a corporation in liquidation of the corporation, and
239 transfers made to a partner of a partnership in dissolution of the partnership;

240 k) transfers consisting of the division of marital assets under the provisions of section
241 thirty-four of chapter two hundred and eight of the Mass General Laws or other provisions of law
242 of any state in the U.S.;

243 l) transfers of property consisting in part of real property interests situated within a town
244 that is a member of the housing bank commission and in part of other property interests, to the
245 extent that the property transferred consists of property other than real property situated within a
246 town that is a member of the housing bank commission, but the seller shall furnish the housing
247 bank commission with such information as it shall require or request in support of the claim of
248 exemption and manner of allocation of the consideration for the transfers;

249 m) the first \$750,000 of the sale price of all transfers of real estate, or a higher exemption
250 to be adjusted for inflation as determined tri-annually by vote of the majority of the housing bank
251 commission and the majority of the six town advisory boards.

252 SECTION 12. A seller who fails to pay all or any portion of the fee established by section
253 9 on or before the time when the fee is due shall be liable for the following additional payments
254 in addition to said fee:

255 a) Interest. The seller shall pay interest on the unpaid amount of the fee to be calculated
256 from the time of transfer at a rate equal to prime rate plus 1 per cent per annum.

257 b) Penalties. Any person who, without fraud or willful intent to defeat or evade a fee
258 imposed by section 9, fails to pay all or a portion of the fee within 30 days after the time of
259 transfer, shall pay a penalty equal to 5 per cent of the outstanding fee as determined by the
260 housing bank commission for each month or portion of a month that the fee is not paid in full,
261 but in no event shall the amount of any penalty imposed hereunder exceed 25 per cent of the
262 unpaid fee due at the time of transfer. Whenever the housing bank commission determines that
263 all or a portion of a fee due under section 9 was unpaid due to fraud with intent to defeat or
264 evade the fee, a penalty equal to the amount of the fee as determined by the housing bank
265 commission shall be paid by the seller in addition to the fee.

266 SECTION 13. (a) The housing bank commission shall notify a seller by registered or
267 certified mail of any failure to discharge in full the amount of the fee due under section 9 and any
268 penalty or interest assessed. The housing bank commission shall grant a hearing on the matter of
269 the imposition of the fee, or of any interest or penalty assessed, if a petition requesting a hearing
270 is received by the housing bank commission within 30 days after the mailing of the notice. The

271 housing bank commission shall notify the seller in writing by registered or certified mail of its
272 determination concerning the deficiency, penalty or interest within 15 days after the hearing.
273 Any party aggrieved by a determination of the housing bank commission concerning a
274 deficiency, penalty or interest may, after payment of the deficiency, appeal to the district or
275 superior court within 3 months after the mailing of notification by the housing bank
276 commission. Upon the failure to timely petition for a hearing, or appeal to the court, within the
277 time limits hereby established, the seller shall be bound by the terms of the notification,
278 assessment or determination, and shall be barred from contesting the fee or any interest and
279 penalty, as determined by the housing bank commission. All decisions of these courts shall be
280 subject to appeal. Every notice to be given under this section by the housing bank commission
281 shall be effective if mailed by certified or registered mail to the seller at any available legal
282 address of the seller, or at the address stated in a recorded or registered instrument by virtue of
283 which the seller holds any interest in land, the transfer of which gives rise to the fee which is the
284 subject of such notice; and if no such address is stated or if such transfer is not evidenced by an
285 instrument recorded or registered in the public records in the county of Dukes County, such
286 notice shall be effective when so mailed to the seller in care of any person appearing of record to
287 have a fee interest in such land, at the address of such person as set forth in an instrument
288 recorded or registered in the county of Dukes County.

289 (b) All fees, penalties and interest required to be paid under this act shall constitute a
290 personal debt of the seller and may be recovered in an action of contract or in any other
291 appropriate action, suit or proceeding brought by the housing bank commission subject to
292 chapter 260 of the General Laws.

293 (c) Sellers applying for an exemption pursuant to

294 Section 11(a-1) above shall be required at the time of application for exemption to
295 execute a legally binding agreement 1) assuming complete liability for any fee, plus interest and
296 penalties if any, waived on account of an allowed exemption subsequently determined to have
297 been invalid, and 2) submitting to the jurisdiction of the Massachusetts Department of the Trial
298 Court sitting in the County of Dukes County. Fees, plus interest and penalties if any, shall be
299 calculated as of the date of the initial property transfer. Execution of the above-described
300 agreement shall not be required of any mortgagee, pledgee, purchaser or judgment creditor
301 unless notice thereof has been filed by the housing bank commission.

302 The housing bank commission, without waiving any of its rights, may direct a civil action
303 to be filed in the Massachusetts Department of the Trial Court District or Superior Court
304 Division sitting in the County of Dukes County to enforce the agreement of the housing bank
305 commission under this section with respect to this liability or to subject any property of whatever
306 nature of the delinquent, or in which the delinquent has any right, title or interest, to the payment
307 of this liability.

308 The housing bank commission may issue a waiver or release of any agreement imposed
309 by this section with the approval of the town advisory board of the town or towns in which the
310 property subject to the agreement is located. Such waiver or release shall be conclusive evidence
311 that the agreement is extinguished.

312 SECTION 13A. This act, being necessary for the welfare of the member towns and the
313 county of Dukes County and their inhabitants, shall be liberally construed to effect its purposes.

314 SECTION 14. Any time after 5 years from the effective date of this act, any town that is a
315 member of the housing bank may withdraw from it by the affirmative vote of a majority of the

316 voters at any regular or special town election. A town that has withdrawn may renew its
317 membership by the affirmative vote of a majority of the voters at any regular or special town
318 election at which the question of acceptance has been placed on the ballot. Upon the withdrawal
319 of a town from the housing bank, all funds then held in the account established for such town
320 pursuant to section 7B, after payment or provision of payment has been made in full on all
321 funding commitments made by the housing bank prior to receipt by the housing bank
322 commission of written notice that an election has been called by the town to vote upon the
323 question of withdrawal, shall be transferred to the fund established by section 7A. If the housing
324 bank is reduced to fewer than 3 member towns, the housing bank shall be dissolved, but the fee
325 imposed by section 9 shall continue to be imposed in each member town until all funding
326 commitments, including repayment of any bonds or notes, have been paid in full, and the
327 housing bank shall continue in existence during this time for the sole purpose of collecting and
328 administering these fees. Upon dissolution of the housing bank, title to all funds and other
329 properties held by the housing bank shall vest in the towns of Dukes county as herein provided
330 after provision is made for payment of all bonds, notes and other obligations of the housing bank.
331 Funds shall be transferred to each town in proportion to the fees generated by lands situated
332 within that town over the life of the housing bank under this act. The housing bank commission
333 shall not submit an amendment of this act to the general court unless the amendment has been
334 approved by two-thirds of the member towns by the affirmative vote of a majority of the voters
335 at a town meeting.

336 SECTION 15. Acceptance of this act, by each of the towns of Aquinnah, Chilmark,
337 Edgartown, Oak Bluffs, Tisbury and West Tisbury shall be by the affirmative vote of a majority
338 of the voters at any regular or special town election at which the question of acceptance has been

339 placed on the ballot. This act shall become effective on the date on which acceptance by all of
340 these towns has been effected.