SENATE DOCKET, NO. 1762 FILED ON: 1/14/2009

SENATE . . . . . No. 1379

The Commonwealth of Massachusetts

PRESENTED BY:

Susan C. Tucker

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to Stabilize Neighborhoods..

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Susan C. Tucker	*Second Essex and Middlesex*	*10/30/2023*
Bruce E. Tarr	*First Essex and Middlesex*	
Patricia D. Jehlen	*Second Middlesex*	
James B. Eldridge	*Middlesex and Worcester*	
Colleen M. Garry	*36th Middlesex*	
Denise Provost	*27th Middlesex*	
Kay Khan	*11th Middlesex*	
Timothy J. Toomey	*26th Middlesex*	
Karen E. Spilka	*Second Middlesex and Norfolk*	
Barbara A. L'Italien	*18th Essex*	
Ellen Story	*3rd Hampshire*	
Anthony D. Galluccio	*Middlesex and Suffolk*	
Gale D. Candaras	*First Hampden and Hampshire*	
Mark C. Montigny	*Second Bristol and Plymouth*	
William Lantigua		
Linda Dean Campbell	*15th Essex*	

SENATE DOCKET, NO. 1762 FILED ON: 1/14/2009

SENATE . . . . . No. 1379

[Pin Slip]

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

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:

SECTION 1. Section 5 of chapter 59 of the general laws is hereby amended by inserting after clause fifty-five the following clause:-

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

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

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

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

Chapter 186A. Tenant protections in foreclosed properties

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

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

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

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

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

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

'Just Cause', at least one of the following: (a) the tenant has failed to pay the rent in effect prior to the foreclosure or failed to pay use and occupancy charges, but only if the foreclosing owner notified the tenant in writing of the amount of rent or use and occupancy that was to be paid and to whom it was to be paid; provided that such failure to pay rent or use and occupancy charges shall not be deemed to be just cause unless the foreclosing owner, within 30 days of the foreclosure, posted in a prominent location in the building in which the rental housing unit is located a written notice stating the names, addresses, telephone numbers and telephone contact information of the foreclosing owner, the building manager, or other representative of the foreclosing owner responsible for the management of such building and stating the address to which rent and use and occupancy charges must be sent; and provided further that the foreclosing owner has delivered such written notice individually to each tenant of said building, and to the inspectional services department, or its equivalent, for the city or town in which the

rental housing unit is located (b) the tenant has violated an obligation or covenant of the tenancy or occupancy other than the obligation to surrender possession upon proper notice and has failed to cure such violation within a reasonable time after having received written notice thereof from the foreclosing owner; (c) the tenant is committing or permitting to exist a nuisance in, or is causing substantial damage to, the unit, or is creating a substantial interference with the quiet enjoyment of other occupants; (d) the tenant is convicted of using or permitting the unit to be used for any illegal purpose; (e) the tenant who had a written lease or other rental agreement which terminated on or after the effective date of this chapter, has refused, after written request or demand by the foreclosing owner, to execute a written extension or renewal thereof for a further term of like duration and in such terms that are not inconsistent with the provisions of this chapter; (f) the tenant has refused the foreclosing owner reasonable access to the unit for the purpose of making necessary repairs or improvement required by the laws of the United States, the Commonwealth or any subdivision thereof, or for the purpose of inspection as permitted or required by agreement or by law or for the purpose of showing the rental housing unit to a prospective purchaser or mortgagee provided that none of the preceding events shall be deemed just cause unless the foreclosing owner has delivered to each tenant at the time of the delivery of the aforementioned written notice specified in sub-clause (a) above, a written disclosure of the tenant’s right to a court hearing prior to eviction.

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

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

'Tenant' any person or group of persons who at the time of foreclosure is entitled to occupy a housing accommodation pursuant to a written lease or tenancy at will. Any person who moves into the housing accommodation owned by the foreclosing owner following the filing of the foreclosure deed without the express written permission of the owner shall not be considered a tenant under this statute.

'Unit' or 'residential unit', the room or group of rooms within a housing accommodation which is used or intended for use as a residence by one household.Section 2. Notwithstanding any other special or general law to the contrary, a foreclosing owner shall not evict a tenant except for just cause, or in the event that there is a binding purchase and sale agreement for a bona fide third party to purchase said housing accommodation from a foreclosing owner, a foreclosing owner may provide the tenant with a notice to quit and serve the tenant with a summary process summons and complaint tenant to evict said tenant within 45 days of the closing date of said agreement.

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

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

SECTION 4. Section 35A of chapter 244 of the general laws is hereby amended by deleting the word “90 days” and inserting in its place the following:- “150 days, unless a lender certifies that the lender and the homeowner were not successful in resolving their dispute, having engaged in a good faith effort to mediate their dispute that involved at least one mediation session where the homeowner participated in person, using the services of a mediator approved by the Trial Court, whose services were paid for by the lender, or that the lender has offered to engage in such a mediation and the homeowner has declined or failed to respond within 30 days of the offer to mediate, in which case the right to cure shall be not less than 90 days ”

SECTION 5. Chapter 266 is amended by inserting after Section 35 the following new section:

SECTION 35A. Residential Mortgage Fraud

Any person who intentionally:

(1) Makes or causes to be made any material statement that is false or any statement that contains a material omission, knowing the same to be false or to contain a material omission,

during or in connection with the mortgage lending process, with the intention that said statement be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process;

(2) Uses or facilitates the use of any material statement that is false or any statement that contains a material omission, knowing the same to be false or to contain a material omission, during or in connection with the mortgage lending process, with the intention that said statement be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process;

(3) Receives any proceeds or any other funds in connection with a residential mortgage closing knowing said proceeds or funds to have resulted from a violation of paragraph (1) or (2) of this section;

(4) Files or causes to be filed with the official registrar of deeds of any county of this commonwealth any document that contains a material statement that is false or a material omission, knowing such document to contain a material statement that is false or a material omission;

(5) coerces or induces a real estate appraiser to inflate the value of real property used as collateral for a residential mortgage loan;

(6) represents or implies that a real estate appraiser will not be selected to conduct an appraisal of the real property or selected for future appraisal work unless the appraiser agrees in advance to a value, range of values, or a minimum value for the real property;

(7) represents or implies that a real estate appraiser will not be paid for an appraisal unless

the appraiser agrees in advance to a value, range of values, or a minimum value for the real estate;

(8) conspires to violate any of the provisions of paragraphs (1) through (7) of this subsection shall be punished by imprisonment in the state prison for not more than five years or by imprisonment in the house of correction for not more than two and one-half years or by a fine of not more than $10,000 in the case of a natural person or not more than $100,000 in the case of any other person, or by both such fine and imprisonment. Any person who engages in a pattern of residential mortgage fraud shall be punished by imprisonment in the state prison for not more than fifteen years or by a fine of not more than $50,000 in the case of a natural person or not more than $500,000 in the case of any other person, or by both such fine and imprisonment.

As used in this section:

(a) "Funds" shall include but not be limited to a commission, fee, yield spread premium, or compensation in any form.

(b) "Material omission" means the omission or concealment of a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading.

(c) "Mortgage lending process" means the process through which a person seeks or obtains a residential mortgage loan including, but not limited to, solicitation, application, or origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan. Documents involved in the mortgage lending process include, but are not limited to, uniform residential loan applications or other loan applications; appraisal

reports; HUD-1 settlement statements; supporting personal documentation for loan applications such as W-2 forms, verifications of income and employment, bank statements, tax returns, and payroll stubs; and any required disclosures;

(d) "Pattern of residential mortgage fraud" means the violation of paragraph (1), (2), (3), or (4) of this section in connection with three or more residential properties;

(e) "Person" means a natural person, corporation, company, limited liability company, partnership, real estate trust, association, or any other entity;

(f) "Residential mortgage loan" means a loan or agreement to extend credit made to a person, which loan is secured by a mortgage, security interest, deed to secure debt, deed of trust, or other document representing a security interest or lien upon any interest in an owner occupied one-to-four family residential property located in Massachusetts, including the renewal or refinancing of any such loan.

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

SECTION 6. Section 33 of Chapter 266 is amended by:

a. Striking the words “obtains credit from” and inserting in their place the words “obtains credit for himself or for any other person from”; and

b. Inserting after the words “banking institution” the words “or any mortgage lender as defined in Section 1 of Chapter 255E”; and

c. Inserting the following phrase after the word “larceny”: “, and, if the value of the benefit described in clause (1) or dollar amount of credit obtained exceeds two hundred and fifty dollars, shall be punished as if he had stolen property of a value exceeding two hundred and fifty dollars as provided in Section 30(1)”

so that the statute as amended reads as follows:

Chapter 266, Section 33. Larceny; false pretences relating to contracts, banking transactions or credit

(1) Whoever, with intent to defraud, obtains by a false pretence the making, acceptance or endorsement of a bill of exchange or promissory note, the release or substitution of collateral or other security, an extension of time for the payment of an obligation, or the release or alteration of the obligation of a written contract, or (2) whoever, with intent to defraud, by a false statement in writing respecting the financial condition, or means or ability to pay, of himself or of any other person, obtains for himself or for any other person credit from any bank or trust company or any banking institution or any mortgage lender as defined in Section 1 of Chapter 255E or any retail seller of goods or services accustomed to give credit in any form whatsoever shall be guilty of larceny , and, if the value of the benefit described in clause (1) or dollar amount of credit obtained exceeds two hundred and fifty dollars, shall be punished as if he had stolen property of a value exceeding two hundred and fifty dollars as provided in Section 30(1).

Section 34. Whoever, with intent to defraud and by a false pretence, induces another to part with property of any kind or with any of the benefits described in section 33 shall be guilty of larceny. Whoever violates this section shall be punished by imprisonment in jail for not more than 1 year or by a fine of not more than $300, or, if the value of the benefit obtained by a violation of clause (1) or if the dollar amount of credit obtained by a violation of clause (2) exceeds $250 shall be punished by imprisonment in the state prison for not more than 5 years, or by a fine of not more than $25,000 and imprisonment in the house of correction for not more than 2 years.