

SENATE No. 1609

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act requiring tenant protections in foreclosed properties..

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

1 SECTION 1. The general laws are hereby amended by adding after chapter 186, the
2 following new chapter:-

3 Chapter 186A. Tenant protections in foreclosed properties

4 Section1. As used in this chapter, the following words shall, unless the context clearly
5 requires otherwise, have the following meanings:

6 'Entity', a business organization, or any other kind of organization, including without
7 limitation, a corporation, partnership, trust, limited liability corporation, limited liability
8 partnership, joint venture, sole proprietorship, or any other category of organization, and any
9 employee, agent, servant or other representative of such entity.

10 'Eviction', any action, without limitation, by a foreclosing owner of a housing
11 accommodation which is intended to compel a tenant or former owner-occupant, now tenant at
12 sufferance, to vacate or to be constructively evicted from such housing accommodation.

13 “Foreclosing owner’, an entity that holds title, in any capacity, directly or indirectly,
14 without limitation, whether in its own name, as trustee, or as beneficiary, to a housing
15 accommodation that has been foreclosed upon, and either (1) held or owned a mortgage or other
16 security interest in the housing accommodation at any point prior to the foreclosure of the
17 housing accommodation or is the subsidiary, parent, trustee, or agent of, or otherwise is related
18 to any entity which held or owned the mortgage or other security interest in the housing
19 accommodation at any time prior to the foreclosure of the housing accommodation; or (2) is an
20 institutional mortgagee that acquires or holds title to the housing accommodation within three
21 years of the filing of a foreclosure deed on the housing accommodation.

22 ‘Foreclosure’, a legal proceeding to terminate a mortgagor's interest in property,
23 instituted by the mortgagee, either to gain title or to force a sale in order to satisfy the unpaid
24 debt secured by the property, including, without limitation, foreclosure by action, by bill in
25 equity, by entry and continuation of possession for three years, and by sale under the power of
26 sale in a mortgage as described in chapter 244.

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

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

35 'Just Cause', at least one of the following: (a) the tenant has failed to pay a reasonable
36 rent to the foreclosing owner, but only if the foreclosing owner notified the tenant in writing of
37 the amount of such reasonable rent and to whom it was to be paid; (b) the tenant has violated an
38 obligation or covenant of the tenancy or occupancy other than the obligation to surrender
39 possession upon proper notice and has failed to cure such violation within a reasonable time after
40 having received written notice thereof from the foreclosing owner; (c) the tenant is committing
41 or permitting to exist a nuisance in, or is causing substantial damage to, the unit, or is creating a
42 substantial interference with the quiet enjoyment of other occupants; (d) the tenant is convicted
43 of using or permitting the unit to be used for any illegal purpose; (e) the tenant who had a written
44 lease or other rental agreement which terminated on or after the effective date of this chapter, has
45 refused, after written request or demand by the foreclosing owner, to execute a written extension
46 or renewal thereof for a further term of like duration and in such terms that are not inconsistent
47 with the provisions of this chapter; (f) the tenant has refused the foreclosing owner reasonable
48 access to the unit for the purpose of making necessary repairs or improvement required by the
49 laws of the United States, the Commonwealth or any subdivision thereof, or for the purpose of
50 inspection as permitted or required by agreement or by law or for the purpose of showing the
51 rental housing unit to a prospective purchaser or mortgagee; (g) a binding purchase and sale
52 contract with a purchaser who intends to occupy the housing accommodation as such purchaser's
53 principal residence and who is not a foreclosing owner, where such agreement requires the
54 housing accommodation or some portion thereof to be conveyed vacant.

55 'Mortgagee', an entity to whom property is mortgaged; the mortgage creditor, or lender,
56 including, but not limited to, mortgage servicers, lenders in a mortgage agreement and any agent,

57 servant, or employee of the mortgagee, or any successor in interest or assignee of the mortgagee's
58 rights, interests or obligations under the mortgage agreement.

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

62 'Reasonable Rent', for a tenant shall be the amount paid by such tenant immediately prior
63 to the foreclosure as demonstrated by a lease, a rental agreement or other evidence of agreed-
64 upon rent or rental payments. Reasonable rent for a former owner-occupant shall be the Fair
65 Market Rent as established by the United States Department of Housing and Urban Development
66 pursuant to 42 U.S.C. c § 1437f(o), as it exists or may be amended, for a unit of comparable size
67 in the area in which the housing accommodation is located.

68 'Tenant' any person or persons who at the time of foreclosure is entitled to occupy a
69 housing accommodation pursuant to a written lease, tenancy at will, or tenancy at sufferance
70 including a former owner-occupant who held legal title to a housing accommodation
71 immediately prior to a foreclosure of such housing accommodation and who individually or with
72 other legal occupants remains in possession of such housing accommodation after foreclosure.
73 Any person who moves into the housing accommodation owned by the foreclosing owner
74 following the filing of the foreclosure deed without the express written permission of the owner
75 shall not be considered a tenant under this statute

76 'Unit' or 'residential unit', the room or group of rooms within a housing accommodation
77 which is used or intended for use as a residence by one household.

78 Section 2. Notwithstanding any other special or general law to the contrary, the
79 foreclosing owner shall not evict a tenant or former owner-occupant except for just cause.

80 Section 3. Any foreclosing owner that evicts a tenant in violation of any provisions of
81 this Act, or any ordinance or by-law adopted pursuant to this Act, shall be punished by a fine of
82 not less than ten thousand dollars. Each eviction done in violation of this Act constitutes a
83 separate offense. The district and superior courts, and the housing courts in the Commonwealth,
84 shall have jurisdiction over an action arising from any violation of this Act, or any ordinance, or
85 by-law adopted pursuant to this Act, and shall have jurisdiction in equity to restrain any such
86 violation. It shall be a defense to eviction that the foreclosing owner attempted to evict a tenant
87 in violation of any provision of this Act, or any ordinance or by-law adopted pursuant to this Act.

88 Section 4. This Act shall cease to have effect on December 31, 2013

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

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