

**SENATE . . . . . No. 1609**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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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.