

SENATE No. 1847

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to Stabilize Tenancies 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. Chapter 186 is hereby amended by adding the following new chapter:-

2 Chapter 186A. Tenant protections in foreclosed properties

3 As used in this section, the following words shall, unless the context clearly requires
4 otherwise, have the following meanings:Section 1.'Entity', a business organization, or any other
5 kind of organization, including without limitation, a corporation, partnership, trust, limited
6 liability corporation, limited liability partnership, joint venture, sole proprietorship, or any other
7 category of organization, and any employee, agent, servant or other representative of such entity.

8 'Eviction', any action, without limitation, by a foreclosing owner of a housing
9 accommodation which is intended to compel a tenant to vacate or to be constructively evicted
10 from such housing accommodation. "Foreclosing owner', an entity that holds title, in any
11 capacity, directly or indirectly, without limitation, whether in its own name, as trustee, or as
12 beneficiary, to a housing accommodation that has been foreclosed upon, and either (1) held or
13 owned a mortgage or other security interest in the housing accommodation at any point prior to

14 the foreclosure of the housing accommodation or is the subsidiary, parent, trustee, or agent of, or
15 otherwise is related to any entity which held or owned the mortgage or other security interest in
16 the housing accommodation at any time prior to the foreclosure of the housing accommodation;
17 or (2) is an institutional mortgagee that acquires or holds title to the housing accommodation
18 within three years of the filing of a foreclosure deed on the housing accommodation.

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

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

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

32 'Just Cause', at least one of the following: (a) the tenant has failed to pay the rent in effect
33 prior to the foreclosure or failed to pay use and occupancy charges, but only if the foreclosing
34 owner notified the tenant in writing of the amount of rent or use and occupancy that was to be
35 paid and to whom it was to be paid; provided that such failure to pay rent or use and occupancy

36 charges shall not be deemed to be just cause unless the foreclosing owner, within 30 days of the
37 foreclosure, posted in a prominent location in the building in which the rental housing unit is
38 located a written notice stating the names, addresses, telephone numbers and telephone contact
39 information of the foreclosing owner, the building manager, or other representative of the
40 foreclosing owner responsible for the management of such building and stating the address to
41 which rent and use and occupancy charges must be sent; and provided further that the
42 foreclosing owner has delivered such written notice individually to each tenant of said building,
43 and to the inspectional services department, or its equivalent, for the city or town in which the
44 rental housing unit is located (b) the tenant has violated an obligation or covenant of the tenancy
45 or occupancy other than the obligation to surrender possession upon proper notice and has failed
46 to cure such violation within a reasonable time after having received written notice thereof from
47 the foreclosing owner; (c) the tenant is committing or permitting to exist a nuisance in, or is
48 causing substantial damage to, the unit, or is creating a substantial interference with the quiet
49 enjoyment of other occupants; (d) the tenant is convicted of using or permitting the unit to be
50 used for any illegal purpose; (e) the tenant who had a written lease or other rental agreement
51 which terminated on or after the effective date of this chapter, has refused, after written request
52 or demand by the foreclosing owner, to execute a written extension or renewal thereof for a
53 further term of like duration and in such terms that are not inconsistent with the provisions of this
54 chapter; (f) the tenant has refused the foreclosing owner reasonable access to the unit for the
55 purpose of making necessary repairs or improvement required by the laws of the United States,
56 the Commonwealth or any subdivision thereof, or for the purpose of inspection as permitted or
57 required by agreement or by law or for the purpose of showing the rental housing unit to a
58 prospective purchaser or mortgagee provided that none of the preceding events shall be deemed

59 just cause unless the foreclosing owner has delivered to each tenant at the time of the delivery of
60 the aforementioned written notice specified in sub-clause (a) above, a written disclosure of the
61 tenant's right to a court hearing prior to eviction.

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

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

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

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

76 Section 2. Notwithstanding any other special or general law to the contrary, a foreclosing
77 owner shall not evict a tenant except for just cause, or in the event that there is a binding
78 purchase and sale agreement for a bona fide third party to purchase said housing accommodation
79 from a foreclosing owner, a foreclosing owner may provide the tenant with a notice to quit and

80 serve the tenant with a summary process summons and complaint tenant to evict said tenant
81 within 45 days of the closing date of said agreement.

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

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