

SENATE No. 2097

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act preserving publically assisted affordable housing.

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 inserting after chapter 40S the
2 following chapter:

3 CHAPTER 40T

4 PUBLICLY-ASSISTED AFFORDABLE HOUSING.

5 Section 1. As used in this chapter, the following words shall have the following
6 meanings unless the context clearly requires otherwise:

7 “Affected municipality”, any city or town in which publicly-assisted housing, or a
8 publicly-assisted housing development, is located.

9 “Affiliate”, an entity owned or controlled by an owner.

10 “Affordability restriction”, a limit on rents that an owner may charge for occupancy of a
11 rental unit in a publicly assisted housing development or a limit on tenant income for persons or
12 families seeking to qualify for admission to such housing.

“CEDAC”, the Community Economic Development Assistance Corporation established in chapter 40H.

“Chief executive officer”, the mayor in a city and the board of selectmen in a town unless otherwise is designated by a municipal charter.

“Department”, the department of housing and community development or, when applicable, its designee, or any successor agency of the department.

“Designee”, a municipality, local or regional housing authority, nonprofit or for-profit corporation or other entity qualified to do business in the commonwealth and, which is selected by the department to operate publicly-assisted housing that is decent, safe and sanitary affordable housing, under subsection (b) of section 3.

“Enhanced section 8 vouchers”, vouchers provided under 42 U.S.C. 1437f(t) or other substantially equivalent assistance.

“Extremely low income”, a household income of not more than 30 per cent of the area median income, adjusted for household size, as periodically determined by the United States Department of Housing and Urban Development.

“Government program”, a program which provides government assistance under a program set forth in the definition of publicly-assisted housing.

“Low income”, a household income of not more than 80 per cent of the area median income, adjusted for household size, as periodically determined by the United States Department of Housing and Urban Development.

“Owner”, a person, firm, partnership, corporation, trust, organization, limited liability company or other entity, or its successors or assigns, that holds title to a publicly-assisted housing development.

“Prepayment”, (i) the payment in full or the refinancing of a governmental-insured or government-held mortgage indebtedness prior to its original maturity date; (ii) the voluntary cancellation of mortgage insurance on a publicly assisted housing development; or (iii) the payment in full on a government contract, any of which would have the effect of removing either: (i) the affordability restrictions applicable to the publicly-assisted housing development; or (ii) a requirement to renew any such affordability restrictions.

“Preserve affordability”, with respect to a publicly-assisted housing development, to undertake reasonable and diligent actions to retain, renew or secure subsidies affecting a publicly-assisted housing development in order to maintain at least the same number of units affordable to low, very low and extremely low-income households, respectively, as are currently occupied by such households, and to maintain as affordable to such households generally all units that are currently vacant, to the extent of available subsidies and taking into account the need to ensure that the development provides quality housing to its tenants.

“Protected low-income tenant”, a low-income tenant residing in a publicly-assisted housing development on the date of termination of the government program and whose rent was restricted by that government program.

“Publicly-assisted housing”, a housing unit or development that receives government assistance under any of the following programs: (i) section 8 of the United States Housing Act of 1937 and 42 U.S.C. section 1437f as it applies to new construction, substantial rehabilitation,

55 moderate rehabilitation, property disposition and loan management set-aside programs or any
56 other program providing project-based rental assistance; (ii) section 42 of the Internal Revenue
57 Code and 26 U.S.C. section 42, the federal Low-Income Housing Tax Credit Program; (iii)
58 section 101 of the Housing and Urban Development Act of 1965 and 12 U.S.C. section 1701s as
59 it applies to programs for rent supplement assistance thereunder; (iv) section 202 of the Housing
60 Act of 1959 and 12 U.S.C. section 1701q; (v) section 221(d)(3) of the National Housing Act 12
61 U.S.C. section 1715 (d)(3) or (5), the below market interest rate program; (vi) section 221(d)(4)
62 of the National Housing Act 12 U.S.C. section 1715I (d)(4) to the extent the project's rents are
63 restricted pursuant to a government agreement; (vii) section 236 of the National Housing Act and
64 12 U.S.C. section 1715z-l; (viii) section 515 of the Housing Act of 1949 and 42 U.S.C. section
65 1485; (ix) section 521 of the Housing Act of 1949 and 42 U.S.C. section 1490a; (x) the Urban
66 Development Action Grant and 42 U.S.C. section 5318 to the extent that the affordability of
67 dwelling units subject to such program are restricted pursuant to a government agreement; (xi)
68 the Housing Development Action Grant, and 42 U.S.C. section 1437o to the extent the project's
69 rents are restricted pursuant to a government agreement; (xii) section 13A of chapter 708 of the
70 acts of 1966; (xiii) the voucher program provided for annually in item 7004-9024 of section 2 of
71 the general appropriation act as that program applies to project-based rental assistance; (xiv) the
72 Massachusetts low income housing tax credit program established in section 6I of chapter 62;
73 (xv) the State Housing Assistance for Rental Production, chapter established in 574 of the acts of
74 1983; and (xvi) chapter 121A to the extent that the affordability of dwelling units are restricted
75 pursuant to a written agreement with the affected municipality.

“Purchase contract”, a document that purports to sell a publicly-assisted housing development including, without limitation, a purchase and sale agreement, contract of sale, purchase option or other similar instrument.

“Regulatory agreement”, an affordable housing restriction that establishes an owner's obligations created pursuant to the efforts of the department or its designee to preserve affordability and which is consistent with section 31 of chapter 184 provided that in any project that is eligible for participation in the HUD mark up to market program, the restriction, insofar as it relates to the limiting of the level of rents, shall not apply to units covered by a section 8 housing assistance payment contract so long as such contract is effective.

“Sale”, the execution of a written agreement pursuant to which the owner or the holders of an ownership interest in the owner of the publicly assisted housing agrees to the disposition of the property by deed or otherwise, whether through a single transaction or a series of transactions, except for a disposition of such housing to an affiliate of the owner.

“Subsidy”, public financial assistance including, but not limited to, grants, loans, rental assistance, tax credits, tax abatements, mortgage financing, mortgage insurance, assistance pursuant to any government program or any other form of assistance, intended to make housing affordable to low-income households, especially very low and extremely low-income households.

“Tenant”, a person legally entitled to possession or occupancy of a rental unit within publicly-assisted housing, including a subtenant, lessee and sublessee.

“Tenant organization”, an organization established by the tenants of a publicly-assisted housing development for the purpose of addressing issues related to their living environment and

which meets regularly, operates democratically, is representative of all residents in the development, is completely independent of owners, management and their representatives and which has filed a notice of its existence with CEDAC; provided, however, that, no owner or other third party shall be required to ascertain the organization's compliance with this definition.

"Termination", the cessation, discharge or removal of an affordability restriction affecting a publicly-assisted housing development in the absence of a simultaneous replacement of that restriction with an equivalent affordability restriction including, but not limited to: (i) nonrenewal or termination, in whole or in part, of a government program contract or mortgage; (ii) expiration, in whole or in part, of an affordability restriction under a government program or the requirement to renew the restriction; (iii) payment in full of a government program mortgage; or (iv) prepayment of a government program mortgage or contract.

"Time for performance", the date for delivery of the deed or other document evidencing a sale pursuant to a purchase contract or any extension thereof.

"Very low income", having a household income of not more than 60 percent of the area median income, adjusted for household size, as periodically determined by the United States Department of Housing and Urban Development.

Section 2. (a) Except with respect to property subject to an affordability restriction which has less than 2 years remaining and, for which subsection (e) shall, apply, the owner shall provide written notice to: (i) all tenants and the tenant organization; (ii) the chief executive officer of the affected municipality; (iii) CEDAC; and (iv) the department, not less than 2 years before the termination of the affordability restriction affecting publicly-assisted housing. Nothing herein shall prohibit the owner from taking actions to terminate an affordability

120 restriction during any notice period provided herein; provided, however, that the owner shall
121 comply with all of the notice terms and restrictions pursuant to subsections (b) and (c). The
122 informational notice shall provide: (1) the address of the publicly-assisted housing; (2) the name
123 and address of the owner; (3) notification that an affordability restriction may terminate; (4) the
124 date on which each affordability restriction may terminate; and (5) such other information as
125 required by the department. Where more than 1 termination may occur, the owner may send 1
126 written notice so long as the terminations are scheduled to occur within 1 year of each other, the
127 notice is given at least 24 months before the earliest termination and the notice otherwise
128 complies with this subsection.

129 (b) An owner shall not complete a termination or allow a termination to occur unless, not
130 less than 1 year before the completion of the last termination event affecting the housing, the
131 owner provides the entities identified in subsection (a) with written notice of intent to complete
132 termination. The notice shall state: (1) the address of the publicly-assisted housing; (2) the name
133 and address of the owner; (3) the date on which the owner intends to complete termination; (4)
134 unless section 6 applies, a statement that the department has the right of offer pursuant to section
135 3; and (5) such other information as required by the department.

136 (c) An owner shall not sell publicly-assisted housing before offering the department the
137 opportunity to purchase the property pursuant to sections 3 and 4. The owner shall notify, in
138 writing, the parties identified in subsection (a) of the owner's intention to potentially sell the
139 property.

(d) A notice required by this chapter shall be deemed given when delivered in person or mailed by certified or registered mail, return receipt requested, to the party to whom notice is required. A notice to the affected municipality shall be awarded to the chief executive officer.

(e) Notwithstanding subsection (a) of section 2 of chapter 40T of the General Laws, an owner of publicly assisted housing who, on the effective date of this act, has less than 2 years remaining prior to the date when the affordability restriction will cease to apply to such property, shall not be required to give the 2-year notice required by said subsection (a), but shall provide such notice within 90 days of the effective date of this act. Notwithstanding subsection (b), an owner who, on the effective date of this act has less than 1 year remaining prior to a termination shall not be required to give the 12-month notice required by subsection (b), but shall provide such notice within 90 days after the effective date of this act.

(f) The notice requirements of this section shall not be affected by the status of an offer, purchase contract or sale under section 3 or section 4.

Section 3. (a) An owner shall offer the department an opportunity to purchase the property prior to entering into an agreement to sell the property pursuant to the time periods contained in this section, but no owner shall be under any obligation to enter into an agreement to sell such property to the department.

(b) The department may select a designee to act on its behalf as purchaser of the publicly-assisted housing and shall give the owner and CEDAC written notice of its selection. The department shall promptly consult with the affected municipality before selecting a designee and shall immediately designate the affected municipality as its designee upon written request of the affected municipality, unless the department determines that such request is not feasible for

reasons set forth in the department's regulations. The department shall enter into a written agreement with its selected designee providing that the designee and any of its successors or assigns, agree to preserve the affordability of the publicly assisted housing. Once such an agreement is executed, the designee shall assume all rights and responsibilities attributable to the department as a prospective purchaser under this section and section 4. At any time prior to a sale under section 3 or section 4, the department may revoke its designation and assume the designee's rights and responsibilities, either in its own capacity or by selecting a new designee; provided, however, that no change in a designation shall operate to extend or alter any time periods for performance set forth in this chapter or in any purchase contract entered into pursuant to this chapter.

(c) The department shall, within 90 days after it receives notice pursuant to section 2 of the owner's intention to sell, submit an offer to the owner to purchase the publicly-assisted housing. Failure by the department to submit a timely offer shall constitute an irrevocable waiver of the department's rights under this section and the owner may sell the publicly-assisted housing subject to section 4. If the owner accepts the department's initial or any revised offer, the owner and the department shall enter into such other agreements as are necessary and appropriate to complete the sale. If the owner and the department have not entered into an agreement to sell the property to the department within 90 days after receipt of the notice pursuant to subsection (c) of section 2, the owner may enter into an agreement to sell the property to a purchaser of the owner's choice, subject to the department's right of first refusal pursuant to section 4.

(d) At any time after the notice in section 2 has been provided and within 10 days of receiving a request, the owner shall make documents available to the department for review and

185 photocopying during normal business hours at the owner's principal place of business or at a
186 commercial photocopying facility. Such documents shall include, but not limited to: (1) any
187 existing architectural plans and specifications of the development; (2) itemized lists of monthly
188 operating expenses and capital expenditures in each of the 2 preceding calendar years; (3) any
189 capital needs studies or market studies that have been submitted to a federal, state, or local
190 agency in the preceding 3 years; (4) utility consumption rates for the preceding 12 months; (5)
191 copies of the last 2 annual financial and physical inspection reports filed with federal, state or
192 local agencies; (6) the most recent rent roll showing then current vacancies and rent arrearages;
193 (7) a list of vacant units; and (8) a statement of the approximate annualized vacancy rate at the
194 development for each of the 2 preceding calendar years. Documents obtained pursuant to a
195 request under this subsection shall not be considered public records, as defined in clause Twenty-
196 sixth of section 7 of chapter 4, and the department shall not make such documents available to
197 the public without the written consent of the owner or pursuant to a court order, provided,
198 however, that disclosure may be made to potential funding sources, regulatory agencies or agents
199 or consultants of the department in connection with the transaction, subject to appropriate
200 confidentiality agreements. Upon request and with appropriate notice, the owner shall also
201 permit reasonable inspections of the dwelling units, building systems, common areas, and
202 common grounds by agents, consultants and representatives of the department including, but not
203 limited to, inspections related to environmental, engineering, structural or zoning matters.

204 (e) Not later than 30 days after the department submits an offer to purchase the publicly-
205 assisted housing development pursuant to subsection (c), the department shall notify tenants in
206 the housing development and shall meet with them at least once to discuss the department's
207 plans.

Section 4. (a) The department shall have a right of first refusal to purchase any publicly-assisted housing development under this section. At any time after the 90 days the department has been given notice pursuant to subsection (c) of section (2), but not later than the 360 days after the date of such notice, the owner may execute a purchase contract with a third party to sell the publicly-assisted housing development provided that the owner complies with this section. Thereafter, the owner again shall be subject to the notice provision of subsection (c) of section (2).

(b) Upon execution of a third party purchase contract, the owner shall, within 7 days, submit a copy of the contract to the department and CEDAC, along with a proposed purchase contract for execution by the department. The department shall, within 30 days after receipt of the third party purchase contract and the proposed purchase contract, execute the proposed purchase contract or such other agreement as is acceptable to the owner and the department. The time periods set forth in this subsection may be extended by agreement between the owner and the department. The proposed purchase contract shall contain the same terms and conditions as the executed third party purchase contract, except that the proposed purchase contract shall provide at least the following terms: (i) the earnest money deposit shall not exceed the lesser of: (1) the deposit in the third party purchase contract; (2) 2 per cent of the sales price; or (3) \$250,000; provided, however, that the earnest money deposit shall be held under commercially-reasonable terms by an escrow agent selected jointly by the owner and the department; (ii) the earnest money deposit shall be nonrefundable unless the owner fails to perform its obligations with due diligence for a period of not less than 90 days from the date of execution of the purchase contract or such greater period as provided for in the third party purchase contract; and

(iii) the time for performance shall be not less than 240 days from the date of the execution of the purchase contract, or such greater period as provided for in the third party purchase contract.

(c) If the department fails to execute the proposed purchase contract within 30 days or such other period as provided in subsection (b), the owner shall have 24 months from the last day on which the department was entitled to execute the proposed purchase contract in which to complete the sale of the owner's publicly-assisted housing development to a third party, except as provided in subsection (e). Upon the expiration of the 24-month period, the owner shall be subject again to all of subsection (c) of section 2, section 3 and this section.

(d) If the department executes the proposed purchase contract as provided in subsection (b) but fails to perform as provided in the executed purchase contract, then the owner shall have 2 years from the date on which the proposed purchase contract terminated in which to complete the sale of the owner's publicly-assisted housing development to a third party on economic terms and conditions that are not materially more favorable to the proposed purchaser than the economic terms and conditions in the proposed purchase contract offered to the department. Upon the expiration of the 24-month period, the owner shall be subject to subsection (c) of section 2, section 3 and this section.

(e) The department may make a counter offer by executing and submitting to the owner an amended proposed purchase contract. The owner shall have 30 days from the date it receives the amended proposed purchase contract to execute the amended proposed purchase contract or reject, in writing, the counter offer. If the owner rejects the counter offer, it shall have 24 months from the date on which the owner rejects the department's counter offer to complete the sale of the owner's publicly-assisted housing development to a third party, provided, however, that if

such sale is: (i) upon economic terms and conditions that are materially more favorable to the proposed purchaser than the economic terms and conditions in the proposed purchase contract offered to the department; or (ii) upon terms that are substantially the same as was offered by the department in the counter offer, then the owner shall provide a copy of the new third party purchase contract, along with a proposed purchase contract for execution by the department which shall contain the same terms and conditions as the executed third party purchase contract, and the department shall have 30 days from the date it receives the third party purchase contract and the proposed purchase contract to execute the proposed purchase contract or such other agreement as is acceptable to the owner and the department.

(f) The owner shall, not later than 7 days after the execution thereof, provide the department with a copy of any new or amended purchase contract executed with respect to the property during the 2 year period set forth in subsections (c) to (e), inclusive, and shall not later than 7 days after the recording or filing thereof, provide the department with a copy of any deed or other document transferring the owner's interest in the publicly-assisted housing development.

(g) Any submission to the department of a third party purchase contract, amended third party purchase contract, deed or other document transferring the owner's interest in the publicly-assisted housing development shall include a certification by the owner and, with respect to a document executed by the third party buyer, the third party buyer, that the document is accurate and complete and there are no other agreements between the owner and the third party buyer, or an affiliate of either of them, with respect to the sale of the publicly-assisted housing development.

Section 5. An affected municipality shall not be subject to section 16 of chapter 30B.

Section 6. (a) Section 3 and 4 shall not apply to any of the following: (i) a government taking by eminent domain or a negotiated purchase in lieu of eminent domain; (ii) a forced sale pursuant to a foreclosure; (iii) a deed-in-lieu-of foreclosure; (iv) a proposed sale that, as determined by the department, is to a purchaser pursuant to terms and conditions that preserve affordability; (v) a proposed sale of a publicly-assisted development which the department has determined has section 8 contracts for all of the units in the development and the buyer has agreed, in a regulatory agreement, to renew project-based section 8 assistance, or any successor program, for all units in the development provided that at the time of such renewal, such assistance is available to the owner on economic terms and conditions that are comparable to the existing assistance contract; (vi) a proposed sale of a publicly-assisted development to an affiliate of the owner that is not a termination as determined by the department; and (vii) a proposed sale pursuant to an agreement in effect on the effective date of this chapter.

(b) An owner seeking an exemption under clause (iv), (v) or (vi) of subsection (a) shall include the name and address of any tenant organization in the request and shall provide a copy of its request to the chief executive officer of the affected municipality, CEDAC, the local legal services organization as designated by the department and the tenant organization at the time it files its exemption request with the department. The department shall provide a copy of its written determination under said clauses (iv), (v) or (vi) of said subsection (a) to the owner, CEDAC, the local legal services organization and the tenant organization.

Section 7. For 3 years after termination, the rent for a protected low-income tenant who does not receive an enhanced section 8 voucher shall not be increased more than once annually by the increase in the consumer price index applicable to the area in which the publicly-assisted housing development is located during the preceding 12 months plus 3 per cent. The foregoing

shall not apply to a low-income tenant: (i) who is income eligible for an enhanced section 8 voucher but does not obtain one solely due to some action or inaction of the tenant on or after the date he or she is eligible to apply for the enhanced section 8 voucher; or (ii) who would be eligible for an enhanced section 8 voucher if this provision was not in effect. For a period of 3 years after termination, a protected low income tenant shall not be evicted or involuntarily displaced from his apartment except for good cause related to tenant fault.

Section 8. A purchase by the department or by its designee pursuant to this chapter shall be subject to a regulatory agreement. A regulatory agreement shall not contain any terms that would preclude an owner or buyer from participating in, or diminishing the benefits that an owner would otherwise receive by participating in, the United States Department of Housing and Urban Development's Mark up to Market Program.

Section 9. An owner who has complied with sections 2 and 3 which has not resulted in a purchase by the department or which has resulted in a sale pursuant to section 4 may apply to the department for a certificate of compliance by submitting a written request for the certificate in a form and with such documentation as required by the department to establish the owner's compliance to the satisfaction of the department. At the same time, the owner shall provide a copy of the request to CEDAC and the chief executive officer of the affected municipality. The owner shall provide a copy of the owner's request to a tenant of the publicly-assisted housing upon request. The department shall issue the certificate of compliance within 30 days after receipt of the application if it determines that the owner has complied with said sections 2 and 3. The certificate of compliance shall be filed with the registry of deeds within 1 year after the date of issuance.

319 SECTION 2. Within 45 days after the effective date of this act, the department of
320 housing and community development shall establish a 13-member advisory committee to consist
321 of the undersecretary of the department or her designee, the executive director of the Community
322 Economic Development Assistance Corporation, 1 member selected by the Massachusetts
323 Mayors Association, 1 member selected by the Massachusetts Municipal Association, 1 member
324 selected by Citizens Housing and Planning Association, 1 member selected by the Greater
325 Boston Real Estate Board, 1 member selected by the Real Estate Bar Association for
326 Massachusetts, 1 member selected by the Massachusetts Association of Community
327 Development Corp., 1 member selected by the Massachusetts Legal Assistance Corporation, 1
328 member affiliated with the Affordable Housing Preservation Initiative of the Local Initiatives
329 Support Corporation, 1 member selected by the Massachusetts Chapter of the National
330 Association of Housing and Redevelopment Officials, and 2 members chosen by the department
331 to provide advice and recommendations to the department regarding regulations to implement
332 this act. The department shall promulgate regulations to effectuate the purposes and implement
333 chapter 40T of the General Laws not later than 150 days after the effective date of this act.

334 SECTION 3. For the purposes of sections 3 and 4 of chapter 40T of the General Laws,
335 housing that qualified as publicly-assisted housing under any of the programs described in the
336 definition of “publicly-assisted housing” in section 1 of said chapter 40T that was not then
337 subject to a purchase contract in existence on the effective date of this act shall be subject to said
338 chapter 40T for 4 years after the date of the last event or occurrence that constituted a
339 termination.