

SENATE No. 785

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act regulating the maintenance of vacant and foreclosing residential 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 inserting after chapter 244 the
2 following chapter:-

3 CHAPTER 244A

4 MAINTENANCE OF VACANT AND FORECLOSING RESIDENTIAL PROPERTIES

5 Section 1. Purpose: It is the intent of this legislation to protect and preserve public
6 safety, security, and quiet enjoyment of occupants, abutters, and neighborhoods by (i) requiring
7 all residential property owners, including lenders, trustees, and service companies, to properly
8 maintain vacant or foreclosing properties, and (ii) regulating the maintenance of vacant or
9 foreclosing, residential properties to prevent blighted and unsecure residences. The city's
10 designated inspector of buildings or buildings commissioner has enforcement authority under
11 section 3 of chapter 143 of the General Laws, the State Building Code, and the local city zoning
12 code.

13 SECTION 2. As used in this chapter, unless a contrary intention clearly appears, the
14 following terms shall have the following meanings:

15 “City”, a city or town of the Commonwealth.

16 “Commissioner”, a city’s designated inspector of buildings or building commissioner.

17 “Days”, consecutive calendar days.

18 “Foreclosing”, the process by which a property, placed as security for a real estate loan, is
19 prepared for sale to satisfy the debt if the borrower defaults.

20 “Initiation of the foreclosure process”, any of the following actions: (i) taking possession
21 of a residential property under section 1 of chapter 244 of the General Laws; (ii) delivering the
22 mortgagee’s notice of intention to foreclose to the borrower under 17B of chapter 244 of the
23 General Laws; or (iii) commencing a foreclosure action on a property in either land court or a
24 county’s superior court.

25 “Local”, within twenty (20) driving miles distance of the property in question.

26 “Mortgagee”, the creditor, including but not limited to, service companies, lenders in a
27 mortgage agreement and any agent, servant, or employee of the mortgagee, or any successor in
28 interest or assignee of the mortgagee’s rights, interests or obligations under the mortgage
29 agreement.

30 “Owner”, every person, entity, service company, property manager or real estate broker,
31 who alone or severally with others:

32 has legal or equitable title to any dwelling, dwelling unit, mobile dwelling unit, or parcel
33 of land, vacant or otherwise, including a mobile home park; or

34 has care, charge or control of any dwelling, dwelling unit, mobile dwelling unit, or parcel
35 of land, vacant or otherwise, including a mobile home park, in any capacity including but not
36 limited to agent, executor, executrix, administrator, administratrix, trustee or guardian of the
37 estate of the holder of legal title; or

38 is a mortgagee in possession of this property; or

39 is an agent, trustee or other person appointed by the courts and vested with possession or
40 control of this property; or

41 is an officer or trustee of the association of unit owners of a condominium. Each of these
42 persons is bound to comply with the provisions of these minimum standards as if he were the
43 owner. However, this ordinance shall not apply to a condominium association created under
44 chapter 138A of the General Laws to the extent that this association forecloses on or initiates the
45 foreclosure process for unpaid assessments due or owing to the association. "Owner" also means
46 every person who operates a rooming house; or

47 is a trustee who holds, owns or controls mortgage loans for mortgage backed securities
48 transactions and has initiated the foreclosure process.

49 "Property", any real, residential property, or portion thereof, located in the
50 Commonwealth, including buildings or structures situated on the property. For purposes of this
51 chapter only, property does not include property owned or subject to the control of a
52 Commonwealth city or any of that city's governmental bodies.

53 “Residential Property”, any property that contains one or more dwelling units used,
54 intended, or designed to be occupied for living purposes.

55 “Securing”, measures that assist in making the property inaccessible to unauthorized
56 persons.

57 “Vacant”, any property not currently legally occupied and not properly maintained or
58 secured.

59 SECTION 3. All owners must register vacant or foreclosing properties with the city
60 commissioner on forms provided by the commissioner. All registrations must state the
61 individual owner’s or agent’s phone number and mailing address located within the
62 Commonwealth as required by section 57D of chapter 59 of the General Laws, section 5.02 of
63 chapter 156D of the General Laws, and 950 CMR 113.20. The mailing address may not be a
64 P.O. Box. This registration must also certify that the property was inspected and identify
65 whether the property is vacant at the time of filing. If the property is vacant, the owner or
66 registrant must designate and retain a local individual or local property management company
67 responsible for the security and maintenance of the property. This designation must state the
68 individual’s name, phone number and local mailing address. The mailing address may not be a
69 P.O. Box. If the property is in the process of foreclosure, then the registration must be received
70 within seven days of the initiation of the foreclosure process, as defined in Section 2. If the
71 commissioner determines that the property is vacant and the foreclosure proceedings have not
72 been initiated, the registration must be received within 14 days of the commissioner’s first
73 citation for improper maintenance.

74 All property registrations are valid for one calendar year. An annual registration fee of
75 \$100 must accompany the registration form. Subsequent annual registrations and fees are due
76 within 30 days of the expiration of the previous registration and must certify whether the
77 foreclosing or foreclosed property remains vacant or not.

78 Once the property is no longer vacant or is sold, the owner must provide proof of sale or
79 written notice and proof of occupancy to the commissioner.

80 SECTION 4. Properties subject to this chapter must be maintained in accordance with
81 the relevant sanitary codes, building codes and local regulations. The owner, local individual or
82 local property management company must inspect and maintain the property on a monthly basis
83 for the duration of the vacancy.

84 The property must contain a posting with the name and 24-hour contact phone number of
85 the local individual or property management company responsible for the maintenance. This
86 sign must be posted on the front of the property so it is clearly visible from the street.

87 Adherence to this chapter does not relieve the owner of any applicable obligations set
88 forth in code regulations, covenant conditions and restrictions, or home owner association rules
89 and regulations.

90 SECTION 5. The commissioner's department shall have the authority and the duty to
91 inspect properties subject to this chapter for compliance and to issue citations for any violations.
92 The commissioner's department shall have the discretion to determine when and how such
93 inspections are to be made, provided that their policies are reasonably calculated to ensure that
94 this chapter is enforced.

95 SECTION 6. Failure to initially register with the commissioner is punishable by a fine of
96 \$300.

97 If applicable, failure to properly identify the name of the local individual or local
98 property management company is punishable by a fine of \$300.

99 Failure to maintain the property is punishable by a fine of not more than \$300 for each
100 week the property is not maintained.

101 Violations of this chapter shall be treated as a strict liability offense regardless of intent.

102 All monies collected pursuant to this chapter shall be directed to a specific
103 commissioner's enforcement fund.

104 SECTION 7. Any person aggrieved by the requirements of this chapter or by a decision
105 issued under this chapter by the commissioner, may seek relief in any court of competent
106 jurisdiction as provided by the laws of the Commonwealth.

107 SECTION 8. If any provision of this chapter imposes greater restrictions or obligations
108 than those imposed by any other general law, special law, regulation, rule, ordinance, by-law,
109 order or policy, then the provisions of this chapter control.

110 SECTION 9. The commissioner has the authority to promulgate rules and regulations
111 necessary to implement and enforce this chapter.

112 SECTION 10. The provisions of this chapter are effective immediately upon passage and
113 all provisions shall be enforced immediately but no monetary fine shall be imposed under this act
114 until 90 days after passage.

115 SECTION 11. A copy of this ordinance is to be mailed to all owners of residential
116 property located in the city. In addition, a copy of this ordinance is to be mailed to all loan
117 institutions, banks, real estate offices and management companies located in or having legal or
118 equitable interest in residential property located in the city.