

HOUSE No. 4108

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act relative to housing rights for victims of domestic violence.

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 of the General Laws, as appearing in the 2008 Official Edition
2 is hereby amended by adding the following section;-

3 Section 23. (a) For the purposes of this section the following words shall have the
4 following meanings:-

5 “Actual and imminent threat”, a physical danger that is real, would occur within an
6 immediate time frame and could result in death or serious bodily harm.

7 “Co-tenant”, a person who shares the legal obligation to pay rent or use and occupancy
8 for the premises with a tenant and who occupies the premises.

9 "Domestic violence", the same meaning as “abuse” in section 1 of chapter 209A.

10 “Housing subsidy provider”, a local housing authority, agency, or other entity providing
11 or administering a federal or state rental subsidy within the Commonwealth in accordance with
12 applicable law.

13 “Member of the household”, a person residing with the tenant or co-tenant as an
14 authorized occupant of the premises. In the case of an application for housing, such term shall
15 include a proposed household member who would be living with the tenant or co-tenant in the
16 premises.

17 “Owner”, the same meaning as “owner” as set forth at 105 C.M.R. 410.020.

18 “Qualified third party”, a police officer or law enforcement professional including but not
19 limited to a district attorney, a victim witness advocate from a district attorney’s office, probation
20 or parole officer; an employee of Victims Services Unit of the Department of Criminal Justice
21 Information Services; an Application Assistant certified by the Secretary of State for the
22 Address Confidentiality Project pursuant to section 2 of Chapter 9A of the General Laws; a
23 licensed medical care provider; an employee of the Department of Children and Families or the
24 Department of Transitional Assistance who is charged with providing direct service to clients, or
25 is a manager, or is designated as a domestic violence or abuse advocate;; an active licensed
26 social worker; a licensed mental health professional; a sexual assault counselor as defined in
27 section 20J of chapter 233; or a domestic violence victims’ counselor as defined in section 20K
28 of said chapter 233 .

29 “Quitting date”, the date of a tenant’s or co-tenant’s surrender of his or her interest in the
30 premises. Such date shall be determined as: (a) the date notice is given to the owner of the intent
31 to abandon the premises and not to return, if the tenant or co-tenant already vacated the premises
32 without notice; or (b) either the effective date of the tenant or co-tenant’s notice to vacate or the
33 actual date that the tenant or co-tenant has vacated after providing such notice, whichever is
34 later, if the tenant or co-tenant has not yet vacated the premises.

35 “Rape”, as set forth in sections 22, 22A, 23, 24 or 24B of chapter 265 of the General
36 Laws or sections 2, 3 or 17 of chapter 272 of the General Laws.

37 “Sexual assault”, as set forth in sections 13B, 13F, 13H or 13K of chapter 265 of the
38 General Laws or section 35A of chapter 272 of the General Laws.

39 “Stalking”, as set forth in sections 43 or 43A chapter 265 of the General Laws.

40 “Tenant”, a person who has entered into a lease or rental agreement with the owner
41 (whether oral or written) or that of a tenant at sufferance who holds over after termination of
42 tenancy or expiration of a lease.

43 “Tenant screening service provider”, a business that for a fee collects, maintains, and
44 disseminates to owners data on applicants for housing.

45 (b) (1) A tenant or co-tenant may terminate a rental agreement or tenancy and quit the
46 premises upon written notification to the owner that a member of the household is a victim of
47 domestic violence, rape, sexual assault or stalking, provided such written notification occurs
48 within three months of the most recent acts or events or circumstances that gave rise to the
49 domestic violence, rape, sexual assault or stalking; or provided a member of the tenant’s
50 household has an ongoing risk of domestic violence, rape, sexual assault or stalking due to such
51 violence in the past. An owner shall have the right to request proof of the status as a victim of
52 domestic violence rape, sexual assault or stalking including the name of the perpetrator, if
53 known, as provided in subsection (c).

54 (2) A tenant or co-tenant who terminates a rental agreement or tenancy pursuant to this
55 subsection shall quit the premises within three months of the written notification to the owner,

56 along with any household member who is not or was not the perpetrator of the domestic
57 violence, rape, sexual assault or stalking. If the tenant or co-tenant fails to quit the premises
58 within three months, the notice to terminate the rental agreement or tenancy is void.

59 (3) A tenant or co-tenant protected under this subsection shall be discharged from
60 liability for rent or use and occupancy for the longer of any period following thirty days or one
61 full rental period after the quitting date to the extent that a rental agreement and applicable law
62 may otherwise impose such liability beyond the quitting date. Such tenant or co-tenant shall be
63 entitled to a refund of any prepaid rent for any period thereafter. The tenant or co-tenant shall
64 receive a full and specific statement of the basis for retaining any of the security deposit together
65 with any refund due in compliance with section 15B of chapter one hundred and eighty-six of the
66 General Laws within thirty (30) days of the conclusion of the tenancy and the delivery of full
67 possession of the leased premises by all occupants to the landlord

68 (4) Any other tenant or co-tenant who is a party to the rental agreement shall not be
69 released from such tenant's or co-tenant's obligations under the rental agreement or other
70 obligations under Chapter 186. If the tenant or co-tenant protected under this section vacates but
71 leaves belongings and does not indicate in writing that they can be treated as abandoned,
72 responsibility for such belongings and for use and occupancy until such belongings are disposed
73 of shall be determined in accordance with applicable law. If the tenant or co-tenant protected
74 under this section vacates but there are remaining persons in the premises other than another
75 tenant or co-tenant, nothing in this provision shall affect the owner's rights and obligations with
76 regard to such other persons. A landlord who in good faith initiates an action against remaining
77 tenant, co-tenant, or household member, or a housing subsidy provider who terminates or denies
78 a rental subsidy to a remaining co-tenant or household member, or takes any other action

79 pursuant to this chapter, shall not be subject to a claim of retaliation or any other claim pursuant
80 to this chapter.

81 (c) Where relief is sought because of recent or ongoing domestic violence, rape, sexual
82 assault, or stalking, proof may be requested to show that an order or third party verification is in
83 effect, or was obtained within the prior three months, or shows an ongoing risk due to such
84 violence in the past. For purposes of entitlement to protection under this section, proof of status
85 as a victim of domestic violence, rape, sexual assault or stalking shall be made by any one of the
86 following:

87 (1) a copy of a valid order for protection under chapter 209A or under chapter 258E of
88 the General Laws obtained by the tenant, co-tenant, or member of the household;

89 (2) a record from a federal, state or local court or police of an act of domestic violence,
90 rape, sexual assault or stalking and the name of the perpetrator if known;

91 (3) a written verification from any other qualified third party to whom the tenant, co-
92 tenant or member of her or his household reported the domestic violence, rape, sexual assault, or
93 stalking; provided the verification shall include the name of the organization, agency, clinic or
94 professional service provider and include the date of the domestic violence, rape, sexual assault,
95 or stalking, and the name of the perpetrator if known; and that any adult victim who has the
96 capacity to do so shall provide a statement, under the penalty of perjury, that the incident
97 described in the verification is true and correct.

98 (d) An owner or housing subsidy provider who obtains written proof of status as a victim
99 of domestic violence, rape, sexual assault or stalking shall keep the documentation confidential
100 and shall not provide or allow access to it in any way to any other persons or agencies except

101 with the written authorization of the victim or to the extent required by court order or applicable
102 regulations or governmental audit requirements.

103 (e) (1) An owner shall not terminate a tenancy, fail to renew a tenancy, or refuse to enter
104 into a rental agreement, based on a tenant's or co-tenant's or a member of the household's status
105 as a victim of domestic violence, rape, sexual assault or stalking or based upon an act or
106 omission that resulted from such domestic violence, rape, sexual assault or stalking.

107 (2) A housing subsidy provider shall not deny or terminate rental assistance, based on a
108 tenant's or co-tenant's or applicant's or a member of the household's status as a victim of
109 domestic violence, rape, sexual assault or stalking or based upon an act or omission that
110 resulted from such domestic violence, rape, sexual assault or stalking.

111 (3) Nothing in this subsection shall be construed to limit the authority of an owner or a
112 housing subsidy provider, when notified, to honor court orders addressing rights of access to or
113 control of the property, including civil protection orders issued to protect the victim and issued to
114 address the distribution or possession of property among the household members in cases where
115 a household breaks up.

116 (4) Nothing in this subsection shall be construed to limit any otherwise available
117 authority of an owner to evict a tenant, or of a housing subsidy provider to deny or terminate
118 rental assistance, for any violation of a lease or any other subsidy requirements not premised on
119 the act or acts of violence in question against the tenant, co-tenant or a member of the tenant's
120 household, provided that the owner or provider does not subject an individual who is or has been
121 a victim of domestic violence, rape, sexual assault or stalking to a more demanding standard than
122 other tenants in determining whether to evict or to deny or terminate assistance.

123 (5) Nothing in this subsection shall be construed to limit the authority of an owner to
124 terminate the tenancy of any tenant, or of a housing subsidy provider to deny or terminate rental
125 assistance, if the owner or provider can demonstrate an actual and imminent threat to other
126 tenants or those employed at or providing service to the property, if that tenant's tenancy is not
127 terminated, or if such assistance is not denied or terminated.

128 (6) An owner shall not refuse to enter into a rental agreement, nor shall a housing subsidy
129 provider deny assistance, based on an applicant having terminated a rental agreement under
130 subsection (b).

131 (7) Neither an owner or housing subsidy provider shall inquire or cause a written or oral
132 inquiry or record to be made concerning the status of an applicant or a member of the applicant's
133 household as a victim of domestic violence, rape, sexual assault or stalking or history of such
134 status, unless an applicant: (i) seeks a priority or preference from an owner or housing subsidy
135 provider based upon such status;

136 (ii) asks that the owner or housing subsidy provider not contact certain past references or
137 make certain inquiries that would normally be made regarding past history based on such status
138 and the safety risk that may be created by such contact for the applicant or a member of the
139 applicant's household; or

140 (iii) claims that there are mitigating circumstances regarding negative past history which
141 are related to such status.

142 In such cases as described in clauses (e)(7)(i)-(iii) above, the owner or housing subsidy
143 provider may request documentation of the domestic violence, rape, sexual assault or stalking,

144 and may ask for alternative forms of verification to establish suitability for tenancy which would
145 not put the applicant or a member of the applicant's household at risk.

146 (8) (4) Neither a tenant screening service provider, an owner nor a housing subsidy
147 provider may include information in a written or oral report to a prospective owner or housing
148 subsidy provider indicating that the subject of the report is a victim of domestic violence, rape,
149 sexual assault or stalking, or that the subject of the report has terminated a rental agreement
150 under subsection (b) except as may otherwise be required by law, by court order, by regulatory
151 authority, or by governmental audit requirements. Nothing in this provision, however, shall bar
152 an applicant from authorizing such a disclosure to overcome negative history, to confirm status
153 as may be necessary to establish a priority or preference for housing, or to correct inaccurate
154 information in a report.

155 (f) (1) A tenant or co-tenant who is or has been a victim of domestic violence, rape,
156 sexual assault or stalking may bring a civil action against an owner for violation of subsection (e)
157 above or assert a defense based on a violation of subsection (e) above in a civil action filed by an
158 owner. There shall be a rebuttable presumption that domestic violence, rape, sexual assault or
159 stalking that occurred more than six months before the commencement of the action or defense
160 brought under this section is not subject to the protections provided by subsection (e) above.

161 (2) An applicant who is or has been a victim of domestic violence, rape, sexual assault
162 or stalking may bring a civil action against a subsidy provider for violation of subsection (e)
163 above where there exists no pre-existing statutory remedy. Such action must be brought no later
164 than 90 days after the subsidy provider has denied or terminated the subsidy or made an inquiry
165 into the status of an applicant or the status of a member of the applicant's household as a victim

166 of domestic violence, rape, sexual assault or stalking, or history of such status, except as
167 provided in subsections (d) and (e).

168 (3) Nothing in this section shall interfere with any rights or remedies, not proscribed
169 herein and available to an owner or housing subsidy provider under existing law, to make
170 appropriate inquiries from applicants, enforce the rental agreement, exercise appropriate
171 discretion regarding the housing subsidy, protect other persons lawfully on the premises or
172 protect the premises from physical damage, including but not limited to rights for appropriate
173 injunctive relief.

174 (4) The subject of a report issued in violation of section (e) (8) above may bring a civil
175 action for damages sustained, costs and reasonable attorney's fees against the tenant screening
176 service provider, owner or housing subsidy provider who intentionally issued the report

177 (g) (1) An owner shall, upon the request of a tenant, co-tenant, or a member of the
178 tenant's or co-tenant's household, change the locks of the individual dwelling unit in which the
179 tenant, co-tenant, or member of the tenant household lives if the tenant, co-tenant, or member of
180 the household reasonably believes that he or she or a member of the household is under an
181 imminent or ongoing threat of domestic violence, rape, sexual assault or stalking at the premises.
182 The owner shall have the right to request, in good faith, evidence to support a claim of domestic
183 violence, rape, sexual assault or stalking.

184 (2) If the threat of domestic violence, rape, sexual assault or stalking is posed by a person
185 who is a tenant, co-tenant, or member of the tenant household, notice to the owner requesting a
186 change of locks shall be accompanied by: (i) a copy of a protective order issued under chapter
187 209A or chapter 258E of the General Laws; or, (ii) a court record indicating which tenant, co-

188 tenant or member of the household is posing the threat of domestic violence, rape, sexual assault
189 or stalking. In such cases, the owner may change the locks and deny a key to the alleged
190 perpetrator.

191 (3) An owner who has received notice of a request for change of locks under this section
192 shall, within two business days, make a good faith effort to change the locks or give the tenant,
193 co-tenant, or member of the tenant household permission to change the locks. If the owner
194 changes the locks, the owner shall make a good faith effort to give a key to the new locks to the
195 tenant, co-tenant or member of the household requesting the lock change as soon as possible but
196 within the same two business day period.

197 (4) An owner may charge a fee for the expense of changing the locks. The fee shall not
198 exceed the reasonable price customarily charged for changing such locks in that community.

199 (5) If an owner fails to change the locks under this section within two business days, the
200 tenant, co-tenant or member of the tenant household may change the locks without the owner's
201 permission. If the rental agreement requires that the owner retain a key to the leased residential
202 premises and where the tenant, co-tenant or member of the household changes the locks, the
203 tenant, co-tenant or member of the household shall make a good faith effort to provide a key to
204 the new locks to the owner within two business days of the locks being changed. If a tenant, co-
205 tenant or member of the household changes the locks without the owner's permission, the tenant,
206 co-tenant or member of the household shall do so in a workmanlike manner with locks of
207 similar or better quality than the original locks. An owner may replace a lock installed by the
208 tenant, co-tenant, or member of the tenant household or seek reimbursement for additional costs
209 if the owner believes that the locks were not of proper quality or were not installed properly.

210 (6) If the locks are changed pursuant to this section, the tenant shall not voluntarily give
211 the new key to the perpetrator. An owner who refuses to provide a key to any person based on
212 the belief that such person is the perpetrator of alleged domestic violence , shall not be liable for
213 such refusal.

214 (7) An owner who takes action to prevent the tenant, co-tenant or member of the tenant
215 household who has complied with paragraph (1) from changing the locks, or any owner who
216 changes the locks and does not make a good faith effort to provide a key to the tenant, co-tenant
217 or member of the household requesting the lock change as provided in paragraph (3), shall be
218 liable for actual and consequential damages or three months' rent, whichever is greater, and the
219 costs of the action including reasonable attorneys' fees, all of which may be applied in setoff or
220 recoupment against any claim for rent owed or owing for use and occupancy. Damages shall
221 not be imposed if the court determines that the owner acted in good faith.

222 (8) The superior court, housing court, district court and Boston municipal court shall have
223 jurisdiction in equity to restrain violations of this section. Section 18 of this chapter and section
224 2A of chapter 239 shall apply to an act taken in reprisal against a person for requesting the locks
225 be changed in accordance with this subsection.

226 (9) Notwithstanding the preceding paragraphs, if a court has issued an order under said
227 chapter 209A of the General Laws or any other provision of law, ordering a tenant, co-tenant or
228 member of the tenant household to vacate the dwelling unit, the owner shall not interfere with
229 the order and upon a request to change the locks as described in this section, shall comply with
230 the request

231 (10) A waiver of this provision in any lease or other rental agreement, except with respect
232 to any restriction specified or imposed by the United States or any agency thereof or the
233 commonwealth or any agency or political division, shall be void and unenforceable.

234 (11) An owner complying with this section or with the requirements of an order under
235 chapter 209A of the General Laws or other order, shall be relieved of any liability to the vacated
236 tenant, co-tenant or member of the tenant's household, or to any other third party on account of
237 the owner's good faith compliance with the court order or the owner's good faith changing of the
238 locks as provided in this section and not affording a key to the alleged perpetrator. Damages
239 shall not be imposed if the court determines that the matter was one of a good faith dispute
240 between the owner and tenants. (b) Notwithstanding any provisions to the contrary, any owner
241 who demonstrates that their conduct was in good faith, in attempting to comply with the
242 mandates of this Act shall not be liable to any multiple damages or attorney's fees.

243 SECTION 2. Section 2A of chapter 239 of the General Laws, as appearing in the 2008
244 Official Edition is hereby amended by inserting after the words, "eighty-three A", in line 14, the
245 following words:- , or the taking of action by a tenant, co-tenant or a member of the tenant
246 household under section 3 of chapter 209A or section 3 of chapter 258E of the General Laws or
247 seeking relief under section 23 of chapter 186, or reporting to any police officer or law
248 enforcement professional any incident of domestic violence, rape, sexual assault or stalking
249 against the tenant, co-tenant or member of the household, or reporting to any police officer or
250 law enforcement professional the violation of an order issued under said section 3 of said chapter
251 209A or section 3 of said chapter 258E of the General Laws or any act of abuse as set forth in
252 section 8 of said chapter 209A or any act of harassment as defined in chapter 258E of the
253 General Laws directed against the tenant, co-tenant or member of the household.