

# HOUSE . . . . . No. 1130

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## The Commonwealth of Massachusetts

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PRESENTED BY:

***David M. Rogers***

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to creating a statutory housing restriction and providing remedies related to statutory housing.

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PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>1/14/2015</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>	<i>9/12/2019</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>9/12/2019</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>9/12/2019</i>

# HOUSE . . . . . No. 1130

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By Mr. Rogers of Cambridge, a petition (accompanied by bill, House, No. 1130) of David M. Rogers and others relative to statutory housing. Housing.

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## The Commonwealth of Massachusetts

\_\_\_\_\_  
In the One Hundred and Eighty-Ninth General Court  
(2015-2016)  
\_\_\_\_\_

An Act relative to creating a statutory housing restriction and providing remedies related to statutory 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. Subsection (b) of section 1 of chapter 30B of the General Laws, as  
2     appearing in the 2012 Official Edition, is hereby amended by striking out, in line 110, the figure  
3     “111C” and inserting in place thereof the following words:- 111C; or

4           (35) contracts or other actions to acquire or dispose of statutory housing premises as  
5     defined in section 17A of chapter 183, including exercise of the statutory housing power to sell,  
6     following which the statutory housing restriction continues in force and effect as to the premises  
7     as before.

8           SECTION 2. Chapter 183 of the General Laws is hereby amended by adding the  
9     following 7 sections:-

10          Section 17A. As used in this section and sections 17B to 17G, inclusive, the following  
11     words shall have the following meanings unless the context clearly requires otherwise:

"Affordable value", the affordable value of the statutory housing premises under the statutory housing condition and the statutory housing power to sell, unless otherwise defined in the restriction, equal to the consideration paid for the premises by the eligible household owning the premises, subject to the statutory housing restriction adjusted in proportion to any increase of the area median income from the date the eligible household acquired the premises to the date next preceding the sale for which such information is publicly available; provided, however, that in a restriction stating an alternate means of determining the value of the statutory housing premises, the "affordable value" shall be the amount determined as stated in that restriction.

"Area median income", the median income for the standard metropolitan statistical area or equivalent area for the statutory housing premises in which the statutory housing premises are located, adjusted for household size, published by the United States Department of Housing and Urban Development or such other standard adopted by the department of housing and community development to measure individual and household incomes.

"Conforming mortgage", a statutory housing restriction having priority over all mortgages, any mortgage which, when aggregated with all then existing mortgages senior to such mortgage, does not secure principal exceeding the affordable value of the statutory housing premises.

"Eligible household", the owner and all persons residing together with the owner at the statutory housing premises and whose household income determined in connection with the acquisition of the statutory housing premises does not exceed the maximum household income established by the holder at the time of such acquisition as stated in the deed, covenant or restriction on the statutory housing premises; provided, however, that if no maximum household

income is stated in a deed, covenant or restriction, the household income does not exceed 80 per cent of the area median income, adjusted for the number of individuals in the eligible household.

"Governmental body", the United States or the commonwealth, acting through any of its departments, divisions, commissions, boards or agencies, or a political subdivision or public instrumentality thereof or a public authority or quasi-public entity or a municipal affordable housing trust or an instrumentality, whether acting for its own account or as an agent or designee for or as assignees of a private individual or private entity which has been required to place such restriction in its chain of title as a condition of receiving financial or other assistance from the governmental body.

"Grantor", a person granting a restriction on the statutory housing condition and with the statutory housing power to sell and an individual acquiring the premises subject to such a restriction previously granted.

"Household income", the aggregate combined gross income of all members of a household under standards established by the United States Department of Housing and Urban Development or such other standards established by the department of housing and community development to measure individual and household incomes.

"Statutory housing condition", a condition that may be incorporated in a deed, covenant or restriction by reference, whereby the grantor intends, declares and covenants on behalf of the grantor and grantor's heirs, successors and assigns that the grantor and the grantor's heirs, successors and assigns shall:

(i) occupy the dwelling unit on the statutory housing premises as the principal residence of the grantor and the grantor's eligible household;

(ii) pay and discharge, when due and payable, all debts secured by the statutory housing premises including, without limitation, taxes, mortgages and other voluntary liens and judgments and reimburse the holder on demand for all amounts paid by the holder to discharge such debts, with interest thereon, until reimbursement at the rate applicable to damages in actions for breach of contract obligations.

(iii) not encumber the statutory housing premises or any portion of the statutory housing premises in an amount in excess of its affordable value, nor convey, transfer or otherwise dispose of the statutory housing premises or any portion of the statutory housing premises other than as statutory housing premises; and

(iv) upon disposition, convey a fee interest in the statutory housing premises only to a member of an eligible household, approved in writing by the holder, for consideration not exceeding the affordable value of the statutory housing premises at the time of the conveyance; provided, however, that a continuing or newly-acquired ownership, with continued occupancy as a principal residence by the surviving spouse of a qualified owner in the eligible household who resided at the statutory housing premises as the surviving spouse's last principal residence before the qualified owner's death, without regard to the surviving spouse's income, shall not constitute a breach of this condition.

"Statutory housing covenant", in a conveyance of real estate:

(i) the grantor, for the grantor and the grantor's heirs, executors, administrators, successors and assigns, covenants with the holder and its successors and assigns that: (a) the granted statutory housing premises are free from all encumbrances made by the grantor; (b) the grantor and the grantor's heirs, executors, administrators, successors and assigns shall warrant

and defend the same to the holder and the holder's successors and assigns forever against the lawful claims and demands of all persons claiming by, through or under the grantor, but against none other; (c) the grantor and the grantor's heirs, successors or assigns, during their respective ownership of the statutory housing premises, shall comply fully with the statutory housing condition; and (d) the grantor and the grantor's heirs, successors or assigns, in case a sale shall be made under the statutory housing power to sell, shall, upon request, execute, acknowledge and deliver to any purchaser a deed of release confirming such sale and that the holder and the holder's successors and assigns are appointed and constituted the attorneys-in-fact irrevocable of the the grantor to execute and deliver to any such purchaser a deed and a full transfer of all policies of insurance on the buildings upon the land covered by the statutory housing restriction at the time of sale.

"Statutory housing power to sell", the authority of the holder or its successors or assigns, which may be incorporated in a deed, covenant or restriction by reference, upon a default in the performance or observance of the foregoing or other condition reasonably related to maintaining the premises as statutory housing premises, to sell the statutory housing premises or such portion of the statutory housing premises as may remain subject to the statutory housing restriction, together with all improvements thereon, by deed, first complying with the General Laws relating to the holder's sale of statutory housing premises by the exercise of the statutory housing power to sell and may convey the same by proper deed to the purchaser absolutely and in fee simple, but subject always to the statutory housing covenants on the statutory housing condition and with the statutory housing power to sell; provided, however, that such sale shall forever bar the grantor and all persons claiming rights of fee simple ownership under the grantor or claiming

100 mortgages or other liens against the statutory housing premises in excess of the affordable value  
101 from all right and interest in the statutory housing premises, whether at law or in equity.

102 "Statutory housing premises", residential real property subject to a statutory housing  
103 restriction.

104 "Statutory housing restriction", a restriction containing the statutory housing covenants,  
105 the statutory housing condition or the statutory housing power to sell.

106 Section 17B. A deed, covenant or restriction in substance following the form entitled  
107 Deed with Statutory Housing Restriction or the form entitled Statutory Housing Restriction shall,  
108 when duly executed, have the force and effect of an affordable housing restriction as defined in  
109 section 31 of chapter 184, without limitation to the enforcement thereof as stated in section 32 of  
110 said chapter 184, to the use of the holder and the holder's successors and assigns with statutory  
111 housing covenants, upon the statutory housing condition and with the statutory housing power to  
112 sell, to secure the performance of the statutory housing restriction and any obligation therein  
113 specified. The parties may insert in such restriction any other lawful agreement or condition  
114 reasonably related to the creation, maintenance and preservation of the premises as statutory  
115 housing premises.

116 Section 17C. The following entities shall each be eligible to be a holder of a statutory  
117 housing restriction: a governmental body or an agency thereof, a nonprofit organization, a  
118 church, employer, university or other entity that is otherwise administering government-  
119 sponsored, federal, state or local subsidy programs and any other entity so authorized by the  
120 department of housing and community development or a successor agency; provided, however,  
121 that no restriction granted on the statutory housing power to sell shall be invalid by reason of

being held by other than an eligible entity provided that it is assigned to an eligible entity before the exercise of the statutory housing power to sell.

A city, by the mayor, unless otherwise provided by charter, ordinance or vote of the city council, and a town, by the board of selectmen, unless otherwise provided by charter, by-law or vote of the town, may acquire by gift, purchase, grant, bequest, devise, lease or otherwise a statutory housing restriction on real property resulting from regulatory action or funding by the city or town, or otherwise authorized by the city or town, and may hold and exercise all the holder's rights, including the authority to acquire and reconvey the real property as statutory housing premises and otherwise administer and enforce the statutory housing restriction.

Section 17D. On written notice from an owner of statutory housing premises or from a mortgagee, proposed mortgagee or other person holding a lien on such premises, the holder shall state in writing the affordable value of the statutory housing premises as of the nearest date for which such determination can be made from public record and such other facts known to the holder necessary to establish whether the owner or other person is in compliance with the statutory housing restriction. Such certificate shall be conclusive as to a mortgagee or other person relying thereon and providing value to the owner within the affordable value or transferring the property pursuant to the statutory housing restriction. The holder may charge a reasonable fee for providing the certificate.

Section 17E. A statutory housing restriction shall continue until terminated by agreement of the holder, by legislative or judicial action or otherwise according to law unless a term of years is stated in the restriction. On termination of a statutory housing restriction for any reason prior to expiration of its term and after payment of the affordable value to the owner, mortgagees



144 and other lienholders according to the priority established by law, or such greater amount as is  
145 payable under section 3 of chapter 244A, as to holders of conforming mortgages, the holder  
146 alone shall be entitled to receive the difference between the affordable value of the statutory  
147 housing premises immediately before termination, regardless of the remaining term of the  
148 statutory housing restriction, and the fair market value of those premises immediately after  
149 termination. Such amount shall be considered a first priority lien in the event that the statutory  
150 housing restriction is terminated by judicial action in a bankruptcy proceeding.

151 The statutory housing covenants, statutory housing condition and statutory housing  
152 power to sell shall not be subject to section 23 and sections 26 to 30, inclusive, of chapter 184  
153 and shall have the benefits of section 32 of said chapter 184 without approval otherwise required  
154 thereunder, but all nonstatutory provisions of a statutory housing restriction shall remain subject  
155 to said section 23 and said sections 26 to 30, inclusive, of said chapter 184 and shall have the  
156 benefits of said section 32 of said chapter 184 only if approved as stated therein.

157 Section 17F. Unless otherwise agreed in an instrument appearing of record, following a  
158 mortgagee's foreclosure by a regulated for-profit, not-for-profit or governmental mortgagee  
159 holding a first mortgage on statutory housing premises which was subordinate to a statutory  
160 housing restriction, in addition to remaining restricted at the affordable value for eligible  
161 households as stated in the restriction, only the statutory housing covenants, the statutory  
162 housing condition and the statutory housing power to sell, to the extent appearing in the statutory  
163 housing restriction, and the statutory obligations of the holder to mortgagees holding conforming  
164 mortgages, shall continue in effect, binding the statutory housing premises, and all other  
165 provisions of the restriction shall be extinguished.

Section 17G. Ownership of statutory housing premises, either by the executor or administrator of an owner in an eligible household, by the holder or by a mortgagee or other lienholder or its designee or by an entity eligible to be a holder of a statutory housing restriction, pursuant to exercise of lawful remedies against the owner, shall not constitute a violation of the statutory housing covenants or the statutory housing condition so long as the premises are being held for resale to, and are resold to, an eligible household as statutory housing premises for an amount not exceeding the affordable value or, in the case of a holder of a conforming mortgage, such greater amount as payable to the mortgagee under section 3 of chapter 244A; provided, however, that the premises shall not be rented, leased or otherwise occupied by a household that is not an eligible household during the period in which the premises are being held for resale.

SECTION 3. Said chapter 183 is hereby further amended by inserting after section 22 the following section:-

Section 22A. No restriction that has been purchased with state or municipal funds or which has been granted in consideration for a loan or grant made with state or municipal funds shall be released unless it is repurchased by the landowner at its then current fair market value.

SECTION 4. The appendix to said chapter 183, as appearing in the 2012 Official Edition, is hereby amended by adding the following 8 forms:

(17) Deed with Statutory Housing Restrictions ----- of -----, ----- county, ----- for consideration of ----- dollars paid, grant to ----- of ----- with quitclaim covenants and with statutory housing covenants, upon the statutory housing condition, for any breach of which the holder shall have the statutory housing power to sell the land in ----- (description and

187 encumbrances, if any). Witness ----- hand and seal this ----- day of ----- (Here add  
188 acknowledgment.)

189 (18) Statutory Housing Restriction of -----, ----- county, ----- for consideration  
190 paid, grant to ----- of ----- with statutory housing covenants, the land in ----- (description  
191 and encumbrances, if any) upon the statutory housing condition, for any breach of which the  
192 holder shall have the statutory housing power to sell. Witness ----- hand and seal this -----  
193 day of ----- (Here add acknowledgment.)

194 (19) Extension of Statutory Housing Restriction -----, holder of a statutory housing  
195 restriction by ----- to ----- dated ----- recorded ----- with ----- deeds, book -----,  
196 page -----, and ----- owner of the equity of redemption of the premises, agree each for -----  
197 - sel -----, heirs, representatives and assigns, that the term of said housing restriction is hereby  
198 extended to -----, and said owner agrees to perform and observe the condition and covenants of  
199 said housing restriction as so extended. Witness ----- hand and seal this ----- day of -----.  
200 (Here add acknowledgment.)

201 (20) Assignment of Statutory Housing Restriction. ----- holder of a statutory housing  
202 restriction from ----- to ----- dated ----- recorded with ----- deeds, book -----, page ---  
203 ----, assign said statutory housing restriction to ----- Witness ----- hand and seal this -----  
204 day of ----- (Here add acknowledgment.)

205 (21) Statutory Deed under Statutory Housing Power to Sell. ----- holder of a statutory  
206 housing restriction from ----- to ----- dated ----- recorded with ----- deeds, book -----,  
207 page -----, by the power conferred by said housing restriction and every other power, for -----  
208 - dollars paid, grant to ----- the premises conveyed by said housing restriction, subject to said

209 housing restriction and also to (description and encumbrances, if any) upon the statutory housing  
210 condition, for any breach of which the holder shall have the statutory housing power to sell. .

211 Witness ----- hand and seal this ----- day of ----- . (Here add acknowledgment.)

212 (22) Termination of Statutory Housing Restriction. -----, holder of a statutory  
213 housing restriction from ----- to ----- dated ----- recorded with ----- deeds, book -----,  
214 page -----, releases the same. Witness ----- hand and seal this ----- day of ----- . (Here  
215 add acknowledgment.)

216 (23) Affidavit of Sale under Statutory Housing Power to Sell. ----- named in the  
217 foregoing deed, make oath and say that the statutory housing restriction was breached, and that I  
218 published on the ----- day of ----- 20-----, in the -----, a newspaper published or by its  
219 title page purporting to be published in ----- aforesaid and having a circulation therein, a notice  
220 of which the following is a true copy: ----- (Insert advertisement.) ----- . Pursuant to said  
221 notice at the time and place therein appointed, I sold the premises in accordance with the  
222 statutory housing power to sell, for ----- dollars, being not in excess of the Affordable Value  
223 therefor. Witness ----- hand and seal this ----- day of ----- . (Here add acknowledgement.)

224 (24) Certificate of Compliance under Statutory Housing Power to Sell. -----,  
225 holder of a statutory housing restriction from ----- to ----- dated ----- recorded with -----  
226 deeds, book -----, page -----, states that a) ----- is a member of an eligible household  
227 with respect the residential real property described in the restriction who are obligated to occupy  
228 those statutory housing premises as their principal residence, b) the present affordable value of  
229 said property is [insert affordable value] and c) to the best of the undersigned's knowledge and

230 belief the owner is otherwise in compliance with said restriction. Witness ----- hand and seal  
231 this ----- day of ----- (Here add acknowledgement.)

232 SECTION 5. Section 32 of chapter 184 of the General Laws, as so appearing, is hereby  
233 amended by inserting after the word "state", in lines 64 and 65, each time it appears, the  
234 following words:- or municipal.

235 SECTION 6. Section 27 of chapter 236 of the General Laws, as so appearing, is hereby  
236 amended by adding the following paragraph:-

237 When selling a property subject to a statutory housing restriction under section 17A to  
238 17G, inclusive, of chapter 183, or other affordable housing restriction as defined in section 31 of  
239 chapter 184 which will remain in effect following foreclosure, the officer may instead make the  
240 sale and convey by deed either:

241 (i) at public auction only among eligible households as defined in said section 17A of  
242 said chapter 183, together with the holder of the housing restriction or its designee or any entity  
243 eligible to be a holder of a statutory housing restriction, for an amount not exceeding the  
244 affordable value applicable to the statutory housing premises or for such higher amount as may  
245 be required to pay each holder of a conforming mortgage as provided in section 3 of chapter  
246 244A, in which event, if more than 1 eligible household or entity qualified as a bidder has bid at  
247 or in excess of the affordable value, then bidding shall be capped at the affordable value and the  
248 bidder to whom the property is sold shall be selected by chance from among those bidding and  
249 willing to pay the affordable value; or

(ii) if the holder of the restriction tenders the affordable value or such higher amount as may be required to pay each holder of a conforming mortgage as stated in said section 3 of said chapter 244A, then by deed to the holder.

SECTION 7. Chapter 244 of the General Laws is hereby amended by inserting after section 14A the following section:-

Section 14B. In the case of sale by foreclosure under a power of sale in a mortgage of a property subject to a statutory housing restriction, statutory housing condition, statutory housing power to sell or other affordable housing restriction as defined in section 31 of chapter 184 which will remain in effect following foreclosure, the property may, if the mortgagee so determines, be auctioned only to an eligible household as defined in section 17A of chapter 183, together with the mortgagee or its designee and the holder of the housing restriction or its designee or any entity eligible to be a holder of a statutory housing restriction, for an amount not exceeding the affordable value applicable to the property or such higher amount as may be required to pay each holder of a conforming mortgage as stated in section 3 of chapter 244A, in which event, if more than 1 eligible household or entity qualified as a bidder has bid at or in excess of the affordable value, then bidding shall be capped at the affordable value and the bidder to whom the property is sold shall be selected by chance from among those bidding who are willing to pay the affordable value.

In lieu of conducting bidding, the mortgagee may elect to sell the property at the affordable value or at such higher amount required to pay each holder of a conforming mortgage as stated in section 3 of chapter 244A, by a lottery that includes all eligible households who have been qualified to bid for the property at the public auction. At the request of the mortgagee, the

272 holder shall confirm the status as members of an eligible household or as an entity eligible to be  
273 a holder of a statutory housing restriction of any person or entity identified to it by the  
274 mortgagee.

275 If the holder of the restriction tenders the affordable value, then the premises shall be sold  
276 to the holder.

277 SECTION 8. The General Laws are hereby amended by inserting after chapter 244 the  
278 following chapter:-

279 CHAPTER 244A.

280 FORECLOSURE AND REDEMPTION OF STATUTORY HOUSING  
281 RESTRICTIONS

282 Section 1. The statutory housing power to sell shall be governed by this chapter.

283 Section 2. The holder of a restriction with the statutory housing power to sell may recover  
284 possession of the statutory housing premises and foreclose the right of redemption while the  
285 breach of condition continues by entry or action in the manner prescribed in and subject to  
286 sections 1 to 4, inclusive, 6, 8, 11, 12 and 13 of chapter 244, substituting “holder” for  
287 “mortgagee”, “owner” for “mortgagor”, “statutory housing restriction” for “mortgage” and  
288 “statutory housing power to sell” for “power of sale”; provided, however, that (i) if an entry for  
289 breach of condition is made without a judgment, then in addition to the requirements of section 2  
290 of said chapter 244, the holder shall give written notice thereof to the owner and each mortgagee  
291 and other lienholder of record within 30 days after entry and the same shall be recorded in the  
292 manner required for the memorandum of entry; (ii) only an owner entitled to occupy the

statutory housing premises shall have the right to oppose entry under section 1 of said chapter 244 and to redeem without the consent of the plaintiff under section 4 of said chapter 244; (iii) commencement of foreclosure or other legal proceedings by the holder of a conforming mortgage or other lien or claim within the affordable value shall stay the holder's foreclosure by entry; (iv) completion of the conforming mortgagee's foreclosure or judgment in favor of such other lienor or claimant shall extinguish the holder's entry; (v) that the court shall determine the performance due to the plaintiff and each mortgagee and other lienholder of record under section 5 of said chapter 244; (vi) an owner who regains possession by performance as ordered by the court shall do so subject to the statutory housing restriction; (vii) a person residing in or claiming an interest in the real property subject to the restriction may be joined as a defendant irrespective of such person's estate in the statutory housing premise, but if such person has no estate in the statutory housing premises and makes no defense to the action, such person shall not be liable for costs; (viii) a mortgagee or other lienholder of record may be joined as a defendant but if such mortgagee or other lienholder makes no defense to the action, such mortgagee or other lienholder shall not be liable for costs; and (ix) any sale by order of the court shall be subject to the terms of the statutory housing restriction.

Section 3. The holder of a statutory housing restriction with respect to statutory housing premises, a person authorized by a power to sell or the attorney duly authorized by a writing under seal by the holder or person acting in the name of such holder or person, may, upon breach of condition and without action, do all the acts authorized or required by the power to convey the premises as statutory housing; provided, however, that no sale under such power to sell shall be effective to foreclose the statutory housing restriction and convey the statutory housing premises, unless, prior to such sale, notice thereof has been sent by registered mail to any owners of record



316 of the equity of redemption in the statutory housing premises as of 90 days prior to the sale, at  
317 the premises and also to any other address of any other owners appearing on the records of the  
318 holder, not less than 3 times at intervals of not less than 7 days, beginning not later than 60 days  
319 prior to the date of sale and ending not later than 30 days prior to the date of sale. Notice thereof  
320 shall be published once a week for 3 consecutive weeks in a newspaper published in the town in  
321 which the statutory housing premises lies or, if none, in a newspaper of general circulation in the  
322 town in which the statutory housing premises lies. The first publication shall be not less than 21  
323 days before the date of sale and such notice shall be sent by registered mail to any owners of  
324 record of the statutory housing premises as of 30 days prior to the date of sale and such notice  
325 shall be mailed at least 14 days prior to the date of sale to the owners at the addresses as set forth  
326 in section 61 of chapter 185, if the statutory housing premises is then registered. In the case of  
327 unregistered premises, such notice shall be mailed to the last address of the owners of the equity  
328 of redemption appearing on the records of the holder of the statutory housing restriction, if any,  
329 or, if none, to the address of any owners as given on the deed of the holder or person authorized  
330 by a power to sell, or the attorney duly authorized by a writing under seal by the holder or a  
331 person acting in the name of such holder or person or on the petition for probate by which any  
332 such holder, attorney or other person acquired title, if any If in either case no address appears,  
333 then such notice shall be mailed to the address to which the tax collector last sent the tax bill for  
334 the statutory housing premises to be sold, or if no tax bill has been sent for the preceding 3 years,  
335 then to the statutory housing premises; provided, however, that unless a copy of the notice of sale  
336 has been sent by registered mail to all mortgagees and other persons of record as of 30 days prior  
337 to the date of sale holding an interest in the property being foreclosed, such notice shall be  
338 mailed at least 14 days prior to the date of sale to each such person at the address of that person

as set forth in any document evidencing the interest or to the last address of such person known to the holder. A person of record as of 30 days prior to the date of sale, holding an interest in the property being foreclosed, may waive at any time, whether prior or subsequent to the date of sale, the right to receive notice by mail under this section and such waiver shall constitute compliance with this notice requirement for all purposes. If no newspaper is published in a town or if there is no newspaper of general circulation published any such town where the statutory housing premises are located, notice may be published in a newspaper published in the county in which the statutory housing premises are located and this provision shall be implied in every restriction containing the statutory housing power to sell in which it is not expressly set forth. A newspaper which, by its title page, purports to be printed or published in such town, city or county, and having a circulation therein, shall be sufficient for the purpose.

The following form of notice may be used and may be altered as circumstances require; provided, however, that nothing herein shall be construed to prevent the use of other forms.

(Form.)

#### STATUTORY HOUSING RESTRICTION HOLDER'S SALE OF REAL ESTATE

By virtue and in execution of the statutory housing power to sell contained in a certain statutory housing restriction given by \_\_\_\_\_ to \_\_\_\_\_ dated \_\_\_\_\_ and recorded with \_\_\_\_\_ deeds, book \_\_\_\_\_, page \_\_\_\_\_, of which housing restriction the undersigned is the present holder,

(If by assignment, or in any fiduciary capacity, give reference.) for breach of the conditions of said housing restriction and for the purpose of the foreclosing and conveying the same, whether directly or through an intermediary qualified to hold statutory housing

361 restrictions, to an eligible household as its principal residence, will be sold by (specify either  
362 Public Auction or Sale to the Holder or its Designee) at \_\_\_\_\_ o'clock, \_\_.M. on the  
363 \_\_\_\_\_ day of \_\_\_\_\_ A.D. (insert year), at \_\_\_\_\_ (insert place) all and singular the  
364 premises described in said housing restriction, subject to the statutory housing covenants,  
365 statutory housing condition and statutory housing power to sell contained therein,

366 To wit: "(Description as in said housing restriction, including all references to title,  
367 restrictions, encumbrances, etc., as made in said housing restriction)"

368 having an affordable value of \$\_\_\_\_\_ : (State the amount of the affordable value)

369 Terms of sale: (State here the amount, if any, to be paid in cash by the purchaser at the  
370 time and place of the sale and the times for payment of the balance or the whole as the case may  
371 be.)

372 Other terms to be announced at the sale.

373 (Signed)

374 Present holder of said housing restriction.

375 A notice of sale in the above form, published in accordance with the statutory housing  
376 power to sell in the statutory housing restriction and this chapter, together with such other or  
377 further notice, if any, as is required by the statutory housing restriction, shall be a sufficient  
378 notice of the sale and the statutory housing premises shall be deemed to have been sold and the  
379 deed thereunder shall convey those premises, subject to and with the benefit of the statutory  
380 housing covenants, on the statutory housing condition and with the statutory housing power to  
381 sell, but no other provisions of any housing restriction applicable to such premises, and also

subject to and with the benefit of all other restrictions, easements, improvements, outstanding tax titles, municipal or other public taxes, assessments, liens or claims in the nature of liens and existing encumbrances of record to the extent such encumbrances secure debt, whether created prior or subsequent to the statutory housing restriction, that, together with the portion of the affordable value paid at sale, in the aggregate, do not exceed the affordable value at the time of sale and are not paid at sale, whether or not reference to such restrictions, easements, improvements, liens or encumbrances is made in the deed; provided, however, that no purchaser at a sale by public auction shall be bound to complete the purchase if there are encumbrances which will remain following such payment at sale, other than those included in the notice of sale, which are not stated at the sale and included in the auctioneer's contract with the purchaser.

Exercise of the statutory housing power to sell may be by public auction or purchase as provided in this section.

In the case of sale at public auction, bidding shall be capped at the affordable value or such higher amount required to pay each holder of a conforming mortgage as stated in this section, in either case net of outstanding tax titles, municipal or other public taxes, assessments, liens or claims in the nature of liens and existing encumbrances of record to the extent they secure debt, not being paid at sale and if more than 1 qualified bidder has bid such affordable value or such higher amount, the premises shall be sold to such bidder as is selected by chance.

A purchase of the premises by the holder or its designee under the exercise of the statutory housing power to sell, in lieu of sale by public auction, shall be for the affordable value or such higher amount required to pay each holder of a conforming mortgage as stated in this section, in either case net of outstanding tax titles, municipal or other public taxes, assessments,

liens or claims in the nature of liens and existing encumbrances of record to the extent they secure debt, not being paid at sale. The holder may assign its right to acquire the premises at the affordable value or such higher amount to an eligible household appearing on a list of eligible households established or maintained by or utilized by the holder generally. The eligible household shall be selected by chance, seniority or otherwise in accordance with applicable law, as the holder determines.

All proceeds from the exercise of the statutory housing power to sell shall be paid to mortgagees and other lienholders subordinate to the statutory housing restriction appearing of record immediately prior to the exercise of the power according to their rights of priority and any amount within the affordable value remaining shall first be paid to the holder as reimbursement of the holder's reasonable expenses of exercising the power and thereafter to the owner; provided, however, that when foreclosing by public auction or by purchase, a holder of a conforming mortgage shall be paid principal, accrued interest, all future advances and all reasonable costs and expenses secured by its mortgage, notwithstanding such payment may exceed the affordable value. A lien on the premises which, in the aggregate with senior liens, exceeds the proceeds from the exercise of the statutory housing power to sell shall be extinguished by the exercise of the statutory housing power to sell to the extent it exceeds the proceeds from the exercise of the power.

In case of foreclosure by sale under this section, the person selling, or the attorney duly authorized by a writing or the legal guardian or conservator of such person, shall, after the sale, cause a copy of the notice and affidavit, fully and particularly stating the person's acts, or the acts of the person's principal or ward, to be recorded in the registry of deeds for the county or district where the land lies, with a note or reference thereto on the margin of the record of the

statutory housing restriction, if it is recorded in the same registry. If the affidavit shows that the requirements of the statutory power to sell and of the statute have been complied with in all respects, the affidavit or a certified copy of the record thereof, shall be admitted as evidence that the power of sale was duly executed.

A holder conveying title to statutory housing premises under this chapter shall, within 30 days after conveying title, notify all residential tenants of the premises and the office of the assessor or collector of taxes of the municipality in which the premises are located and any persons, companies, districts, commissions or other entities of any kind which provide water or sewer service to the premises, of such conveying of title.

Section 4. An owner of statutory housing premises under a statutory housing restriction may, after breach of the statutory housing condition, have redemption in the manner prescribed in and subject to sections 18, 19, 22 to 27, inclusive, and 32 of chapter 244, substituting “owner” for “mortgagor”, “holder” for “mortgagee”, “statutory housing power to sell” for “power of sale”, “restriction or restricted” for “mortgage or mortgaged” and “performance under the restriction” for “amount due on the mortgage”; provided, however, that (i) the person entitled to redeem shall perform or tender performance of every condition contained in the restriction and, if there has been an action to recover the property, shall pay or tender the costs of such action if unpaid; (ii) the tender shall be made before a sale pursuant to the statutory power to sell contained in the restriction and, if in compliance with the terms of the restriction, shall be accepted by the holder; and (iii) following redemption the property shall continue to be subject to the statutory housing restriction.