

# SENATE . . . . . No. 1090

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## The Commonwealth of Massachusetts

PRESENTED BY:

***Barbara A. L'Italien***

*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 vacant, foreclosing and foreclosed property in the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>
<i>James T. Welch</i>	<i>Hampden</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Jose F. Tosado</i>	<i>9th Hampden</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>

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By Mrs. L'Italien, a petition (accompanied by bill, Senate, No. 1090) of Barbara L'Italien, Michael O. Moore, Jason M. Lewis, Mary S. Keefe and other members of the General Court for legislation relative to vacant, foreclosing and foreclosed property in the Commonwealth. Municipalities and Regional Government.

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## The Commonwealth of Massachusetts

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In the One Hundred and Eighty-Ninth General Court  
(2015-2016)  
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An Act relative to vacant, foreclosing and foreclosed property in the Commonwealth.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           Whereas, The deferred operation of this act would tend to defeat its purpose, which is  
2   forthwith to protect citizens of the Commonwealth and Municipalities impacted by the mortgage  
3   foreclosure crisis by further expanding existing options for Municipalities to further specify and  
4   ensure compliance with state sanitary code, therefore it is hereby declared to be an emergency  
5   law, necessary for the immediate preservation of the public convenience.

6           Be it enacted by the Senate and House of Representatives in General Court assembled,  
7   and by the authority of the same, as follows:

8           SECTION 1. Chapter 111 of the General Laws is hereby amended by inserting after  
9   section 127(l)

10          the following new section- Section 127(m) which section shall be named: “some  
11   municipal options; vacant and foreclosing property code enforcement”

(a) For purposes of this section, the following terms shall have the following meanings unless the context clearly requires otherwise:

“Certificate Of Compliance” shall mean a certificate issued by the Commissioner to the Responsible Party for a Vacant, and/or Foreclosing Property upon compliance with the provisions of Section 13.

“Commissioner”, the municipality’s building inspector or commissioner or other administrative chief in a town responsible under M.G.L. c. 134 § 3 for administering and enforcing the state sanitary and/or building code.

“Days”, consecutive calendar days.

“ENTITY” shall mean a business organization, or any other kind of organization, including without limitation, a corporation, partnership, trust, limited liability corporation, limited liability partnership, joint venture, sole proprietorship, or any other category of organization, and any employee, agent, servant or other representative of such entity.

“FORECLOSED PROPERTY” shall mean a property on which a Foreclosure Deed has been recorded until such property has been purchased from a Mortgagee or its Mortgage Servicer.

“FORECLOSING PROPERTY” shall mean a property on which the Mortgagee or its agent has filed a Complaint with the Land Court or Superior Court pursuant to the Massachusetts Soldiers’ and Sailors’ Civil Relief Act (St. 1943, c. 57 (1943), as amended through St. 1988, c. 142) until such time as a Foreclosure Deed has been recorded in the Southern Essex Registry of Deeds.

“PERSON” shall mean any individual, corporation, partnership, limited liability partnership, limited liability company, trust or other entity.

“PROPERTY” means any real property, residential or commercial, or portion thereof, located in the City or town, including building or structures situated on the property.

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

“RESPONSIBLE PARTY” shall mean:

Every Person, entity, servicer, property manager, or real estate broker, who or which, alone or severally with others:

1. Has care, charge or control of Property, including but not limited to any dwelling, dwelling unit, mobile dwelling unit or parcel of land, vacant or otherwise, including a mobile home park, or any administrator, executor, trustee or guardian of the estate of the holder of legal title; or

2. Is a Mortgagee of any such Property who has filed a Complaint with the Land Court or Superior Court pursuant to the Massachusetts Soldiers’ and Sailors’ Civil Relief Act (St. 1943, c. 57 (1943), as amended through St. 1988, c. 142), including its successors or assigns; or

3. Is an agent, trustee or other Person appointed by the courts and vested with possession or control of any such Property;

4. Is a Mortgagee who has made entry on any such Property, pursuant to the terms of the Mortgage, in order to make repairs upon mortgagor's failure to do so.

"VACANT PROPERTY" shall mean structure or building not legally occupied.

(b) Any city or town which accepts the provisions of this section may impose a vacant, foreclosing and foreclosed property registration and security program as provided in section (b and c) of this chapter.

All responsible parties must register vacant, foreclosing or foreclosed residential properties with Commissioner on forms provided by the Commissioner. All registrations must provide the Commissioner with the name, local (within 20 miles of the Property) address, and telephone number of the Responsible Party or their local agent who can be contacted in case of emergency. The responsible party must also obtain a certificate of compliance that the property was inspected and identify whether the property is vacant. If the property is vacant, the registration must designate a local individual or local property management company responsible for the security and maintenance of the property. This designation must state the individual or company's name, phone number and local mailing address.

This registration must be received within thirty days of the property becoming vacant, foreclosing or foreclosed.

All property registrations are valid for one year. An annual registration fee to be set by the municipality must accompany the registration form. The fee and registration are valid for the calendar year, or remaining portion of the calendar year in which the registration was initially required. Subsequent registrations and fees are due by the first (1st) day of January of each year and must certify whether the foreclosed property remains vacant.

Once the property is sold or is no longer vacant, the responsible party must provide proof of sale or written notice of occupancy to the Commissioner.

(c) Properties subject to this section must be maintained in accordance with all applicable Sanitary, Building Codes, and local regulations and the following requirements.

The responsible party or local agent must cause the property to be inspected on a monthly basis until sold or no longer vacant.

Maintain liability insurance on the Property and furnish the Commissioner with a copy of said certificate of insurance; and,

The property must contain a posting with the name and twenty-four (24) hour contact phone number of the local individual or property management company responsible for the maintenance. The sign must also indicate the name, address and telephone number of the property responsible party and the responsible party's authorized agent for the purpose of service of process. This sign must be posted on the front of the property so it is clearly visible from the street.

If the Commissioner determines that a Property has been abandoned but Occupants remain, and conditions of disrepair threaten the health and safety of the occupants: the Commissioner shall notify the Responsible Party of the conditions of disrepair in writing. The Responsible Party will then have fifteen (15) days to comply with the requirements set forth in this Section.

The Commissioner, upon being informed of the existence of a Vacant, Foreclosing or Foreclosed Property without a Certificate of Compliance, shall cause notice to issue to the Responsible Party of the status of said Property and shall order said Responsible Party to immediately obtain a Certificate of Compliance. If any Responsible Party fails to comply with said order, Commissioner or agents thereof may enter the Property to inspect, and further may

seek court orders to enter upon the premises to secure, clean and remove any pools of stagnant water and otherwise enforce the Sanitary Code.

Compliance with this section shall not relieve the responsible party of any other obligation set forth in statute, regulation, covenant conditions and restrictions and/or homeowners' association rules and regulations.

**Maintenance of Vacant Properties.** In addition to the requirements of This Section, the Responsible Party, within fifteen (15) days of the property becoming vacant, shall:

(1) As may be required by the Commissioner, file one set of space utilization floor plans for any Buildings on said Vacant Property with the Commissioner and one set of said plans with the Commissioner. The Responsible Party shall certify space utilization plans as accurate twice annually, in January and July; and

(2) At the discretion of the Commissioner, secure all windows and door openings and ensure that the Property is secured from all unauthorized entry continuously in accordance with the United States Fire Administration, National Arson Initiative Board up Procedures or provide twenty-four (24) hour on-site security personnel on the Property; and,

(3) Post "No Trespassing" signs on the Property; and

(4) Maintain the Property in accordance with this section, free of overgrowth, trash and debris, and pools of stagnant water, and ensure that structures are maintained in a structurally sound condition; and

then required pursuant to this section, signs or markings shall be applied on the front of the Property, and elsewhere as the Commissioner may require, at or above the second floor level

119 and shall not be placed over doors, windows, or other openings. All signs/markings shall be  
120 visible from the street and, when requested by the Commissioner, shall be placed on the sides  
121 and rear of the Property. Signs/Markings shall be a minimum of 24 inches by 24 inches, with  
122 lines of two-inch width, and shall have a reflective background, or be painted with reflective  
123 paint, in contrasting colors. Signs/Markings shall be applied directly on the surface of the  
124 Property and shall state the date of posting and the most recent date of inspection by the  
125 Commissioner.

126         The Commissioner shall have the authority and the duty to inspect properties subject to  
127 this section for compliance and to issue citations for any violations. The Commissioner shall  
128 have the discretion to determine when and how such inspections are to be made, provided that  
129 their policies are reasonably calculated to ensure the enforcement of this section.

130         The Responsible Party of a Vacant, Foreclosing or Foreclosed Property who fails to  
131 obtain a Certificate of Compliance as required herein, shall be liable to the City or Town for  
132 expenses incurred by the City or Town in securing such Property, and for costs of bringing the  
133 property in compliance with this section. The Commissioner shall provide the Responsible Party  
134 with a written statement of all costs associated with inspecting, securing and marking the  
135 Property, and for costs of bringing the property in compliance with this section. The  
136 Commissioner shall record the notice of claim in the appropriate Country Registry of Deeds  
137 forthwith, and shall have the right to file a civil action in the Housing Court or District Court  
138 with jurisdiction to establish a lien on the Property for the balance due.

139         No Responsible Party for a Vacant, Foreclosing, Foreclosed Property shall allow said  
140 Property to become or remain unsecured, or to contain an accumulation of rubbish, or to contain



141 overgrowth, or to have a stagnant pool of water or otherwise not maintain the property in  
142 accordance with the Sanitary Code. If it appears that any vacant or foreclosing Property is  
143 unsecured, contains rubbish, overgrowth, or a stagnant pool of water, the Commissioner shall  
144 send written notification to the Responsible Party, requiring that the Responsible Party promptly  
145 secure the Property, remove the rubbish or overgrowth, or abate the stagnant pool of water or  
146 other non-compliance with the Sanitary Code.

147 All unsecured Vacant, Foreclosing or Foreclosed Properties shall be immediately referred  
148 to the Commissioner for a determination relative to whether the Property is a nuisance or  
149 dangerous pursuant to M.G.L. c. 139 and procedures promulgated thereunder.

150 Notices required pursuant to this section shall be served in one of the following manners:

151 (1) Personally on any Responsible Party, or on the contact person specified by such  
152 Responsible Party pursuant to this Section; or

153 (2) Left at the last and usual place of abode of any Responsible Party who is an  
154 individual; or

155 (3) Sent by certified or registered mail, return receipt requested, to the principal place  
156 of business within or without the Commonwealth of any Responsible Party who is an entity, if  
157 such principal place of business is known; or,

158 (4) The contact person identified by such Responsible Party pursuant to this Section;  
159 or

(5) Sent by certified or registered mail, return receipt requested, to any contact person specified by the Responsible Party pursuant to This Section, at the address specified by the Responsible Party pursuant to This Section.

Enforcement: violations and penalties. Failure to comply with any provision of this Section shall be punished by a fine of \$300 pursuant to M.G.L. c. 40 § 21D, with each day of violation constituting a separate offense.

This Section may also be enforced by civil, criminal process or non-criminal process, including injunctive relief. The Commissioner shall be the enforcing person for purposes of this section.

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

Subsections (b) and (c) of this section shall only take effect in a city or town accepting the provisions of these subsections by a majority vote of the city council with the approval of the mayor, in the case of a city with a Plan A, Plan B, or Plan F charter, by a majority vote of the city council, in the case of a city with a Plan C, Plan D, or Plan E charter, by a majority vote of the annual town meeting or a special meeting called for that purpose, in the called-for purpose, in the case of a municipality with a town meeting form of government; or by a majority of the town council, in the case of a municipality with a town form of government. The provisions of this section shall take effect on the first day of the first calendar month after the date of such acceptance; if such date is at least 15 days after such acceptance; and provided further, that if such date is less than 15 days after such acceptance, it shall take effect on the first day of the second calendar month following such acceptance.

(d) Any city or town which accepts the provisions of this subsection (d) may impose a vacant, foreclosing and foreclosed property refundable cash bond as provided in section (d) of this chapter.

Responsible Parties shall provide a refundable cash bond acceptable to the Commissioner to be set by the municipality, in the sum of not to exceed ten thousand (\$10,000) dollars, to secure the continued maintenance of the Property until it is no longer vacant, foreclosed or foreclosing and remunerate the City or town for any expenses incurred in inspecting, securing, marking or making safe such Property and, if applicable, the Property in which it is located.

The Commissioner shall provide the Responsible Party with a written statement of all costs associated with inspecting, securing and marking the Property, and for costs of bringing the property in compliance with this section. If the Responsible Party fails to pay or reimburse the City or town within seven days of notice of expenses, the City or town shall draw down upon the bond paid by the Responsible Party. If there is no bond available, the Commissioner shall record the notice of claim in the appropriate Country Registry of Deeds forthwith, and shall have the right to file a civil action in the Housing Court or District Court with jurisdiction to establish a lien on the Property for the balance due.

If the Responsible Party fails to comply with any order issued pursuant to this Section, the Commissioner may immediately seek to obtain the proceeds secured by the bond filed pursuant to This Section herein and shall enter upon the premises and cause the Property to be inspected, secured and marked, and further may seek court orders to enter upon the premises to secure, clean, and remove any rubbish or overgrowth, or abate any pools of stagnant water or otherwise enforce the sanitary, building codes or local regulations.

Subsection (d) of this section shall only take effect in a city or town accepting the provisions of this subsection by a majority vote of the city council with the approval of the mayor, in the case of a city with a Plan A, Plan B, or Plan F charter, by a majority vote of the city council, in the case of a city with a Plan C, Plan D, or Plan E charter, by a majority vote of the annual town meeting or a special meeting called for that purpose, in the called-for purpose, in the case of a municipality with a town meeting form of government; or by a majority of the town council, in the case of a municipality with a town form of government. The provisions of this section shall take effect on the first day of the first calendar month after the date of such acceptance; if such date is at least 15 days after such acceptance; and provided further, that if such date is less than 15 days after such acceptance, it shall take effect on the first day of the second calendar month following such acceptance.

SECTION 2. This act shall take effect upon its passage.