HOUSE DOCKET, NO. 45 FILED ON: 1/23/2017

HOUSE . . . . . No. 45

So much of the recommendations of the Commission on Uniform State Laws (House, No. 42) as relates to adopting the Uniform Assignment of Rents Act. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act adopting the Uniform Assignment of Rents Act.

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

SECTION 1. Section 4 of chapter 183 of the General Laws is hereby amended by deleting such section and by substituting therefor the following:-

A conveyance of an estate in fee simple, fee tail or for life, or a lease for more than seven years from the making thereof, or an assignment of rents from an estate or lease, shall not be valid as against any person, except the grantor or lessor, his heirs and devisees and persons having actual notice of it, unless it, or an office copy as provided in section thirteen of chapter thirty-six, or, with respect to such a lease or an assignment of rents, a notice of lease, as hereinafter defined, or a document creating an assignment of rents in accordance with chapter one hundred eighty-three D, is recorded in the registry of deeds for the county or district in which the land to which it relates lies. A “notice of lease”, as used in this section, shall mean an instrument in writing executed by all persons who are parties to the lease of which notice is given and shall contain the following information with reference to such lease:—the date of execution thereof and a description, in the form contained in such lease, of the premises demised,

and the term of such lease, with the date of commencement of such term and all rights of extension or renewal.

SECTION 2. Section 26 of chapter 183 of the General Laws is hereby amended by deleting such section and by substituting therefor the following:-

Until default in the performance or observance of the condition of a mortgage of real estate, the mortgagor or his heirs and assigns may hold and enjoy the mortgaged premises, unless otherwise stated in the mortgage, and may receive the rents and profits thereof except as provided in chapter one hundred eighty-three D.

SECTION 3. The General Laws are hereby further amended by adding the following new chapter 183D:-

CHAPTER 183D. UNIFORM ASSIGNMENT OF RENTS ACT

SECTION 1. SHORT TITLE. This chapter may be cited as the Uniform Assignment of Rents Act.

SECTION 2. DEFINITIONS. In this chapter:

(1) "Assignee" means a person entitled to enforce an assignment of rents.

(2) "Assignment of rents" means a transfer of an interest in rents in connection with an obligation secured by real property located in this state and from which the rents arise.

(3) "Assignor" means a person that makes an assignment of rents or the successor owner of the real property from which the rents arise.

(4) “Cash proceeds” means proceeds that are money, checks, deposit accounts, or the like.

(5) “Day” means calendar day.

(6) “Deposit account” means a demand, time, savings, passbook, or similar account maintained with a bank, savings bank, savings and loan association, credit union, or trust company.

(7) “Document” means information that is inscribed on a tangible medium or that is stored on an electronic or other medium and is retrievable in perceivable form.

(8) “Notification” means a document containing information that this chapter requires a person to provide to another, signed by the person required to provide the information.

(9) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(10) “Proceeds” means personal property that is received or collected on account of a tenant’s obligation to pay rents.

(11) “Purchase” means to take by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(12) “Rents” means:

(A) sums payable for the right to possess or occupy, or for the actual possession or occupation of, real property of another person;

(B) sums payable to an assignor under a policy of rental interruption insurance covering real property;

(C) claims arising out of a default in the payment of sums payable for the right to possess or occupy real property of another person;

(D) sums payable to terminate an agreement to possess or occupy real property of another person;

(E) sums payable to an assignor for payment or reimbursement of expenses incurred in owning, operating and maintaining, or constructing or installing improvements on, real property; or

(F) any other sums payable under an agreement relating to the real property of another person that constitute rents under law of this state other than this chapter.

(13) "Secured obligation" means an obligation the performance of which is secured by an assignment of rents.

(14) "Security instrument" means a document, however denominated, that creates or provides for a security interest in real property, whether or not it also creates or provides for a security interest in personal property.

(15) "Security interest" means an interest in property that arises by agreement and secures performance of an obligation.

(16) "Sign" means, with present intent to authenticate or adopt a document:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the document an electronic sound, symbol, or process.

(17) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(18) "Submit for recording" means to submit a document complying with applicable legal standards, with required fees and taxes, to the appropriate governmental office under chapter 183 of the General Laws.

(19) "Tenant" means a person that has an obligation to pay sums for the right to possess or occupy, or for possessing or occupying, the real property of another person.

SECTION 3. MANNER OF GIVING NOTIFICATION.

(a) Except as otherwise provided in subsections (c) and (d), a person gives a notification or a copy of a notification under this chapter:

(1) by depositing it with the United States Postal Service or with a commercially reasonable delivery service, properly addressed to the intended recipient's address as specified in subsection (b), with first-class postage or cost of delivery provided for; or

(2) if the recipient agreed to receive notification by facsimile transmission, electronic mail, or other electronic transmission, by sending it to the recipient in the agreed manner at the address specified in the agreement.

(b) The following rules determine the proper address for giving a notification under subsection (a):

(1) A person giving a notification to an assignee shall use the address for notices to the assignee provided in the document creating the assignment of rents, but, if the assignee has provided the person giving the notification with a more recent address for notices, the person giving the notification shall use that address.

(2) A person giving a notification to an assignor shall use the address for notices to the assignor provided in the document creating the assignment of rents, but, if the assignor has provided the person giving the notification with a more recent address for notices, the person giving the notification shall use that address.

(3) If a tenant's agreement with an assignor provides an address for notices to the tenant and the person giving notification has received a copy of the agreement or knows the address for notices specified in the agreement, the person giving the notification shall use that address in giving a notification to the tenant. Otherwise, the person shall use the address of the premises covered by the agreement.

(c) If a person giving a notification pursuant to this chapter and the recipient have agreed to the method for giving a notification, any notification must be given by that method.

(d) If a notification is received by the recipient, it is effective even if it was not given in accordance with subsection (a) or (c).

SECTION 4. SECURITY INSTRUMENT CREATES ASSIGNMENT OF RENTS; ASSIGNMENT OF RENTS CREATES SECURITY INTEREST.

(a) An enforceable security instrument creates an assignment of rents arising from the real property described in the security instrument, unless the security instrument provides otherwise.

(b) An assignment of rents creates a presently effective security interest in all accrued and unaccrued rents arising from the real property described in the document creating the assignment, regardless of whether the document is in the form of an absolute assignment, an absolute assignment conditioned upon default, an assignment as additional security, or any other form. The security interest in rents is separate and distinct from any security interest held by the assignee in the real property.

SECTION 5. RECORDATION; PERFECTION OF SECURITY INTEREST IN RENTS; PRIORITY OF CONFLICTING INTERESTS IN RENTS.

(a) A document creating an assignment of rents may be submitted for recording in the registry of deeds for the county or district in which the land to which the assignment relates in the same manner as any other document evidencing a conveyance of an interest in real property.

(b) Upon recording, the security interest in rents created by an assignment of rents is fully perfected, even if a provision of the document creating the assignment or law of this state other than this chapter would preclude or defer enforcement of the security interest until the occurrence of a subsequent event, including a subsequent default of the assignor, the assignee's obtaining possession of the real property, or the appointment of a receiver.

(c) Except as otherwise provided in subsection (d), a perfected security interest in rents takes priority over the rights of a person that, after the security interest is perfected:

(1) acquires a judicial lien against the rents or the real property from which the rents arise; or

(2) purchases an interest in the rents or the real property from which the rents arise.

(d) A perfected security interest in rents has priority over the rights of a person described in subsection (c) with respect to future advances to the same extent as the assignee's security interest in the real property has priority over the rights of that person with respect to future advances.

SECTION 6. ENFORCEMENT OF SECURITY INTEREST IN RENTS.

(a) An assignee may enforce an assignment of rents using one or more of the methods specified in Sections 7, 8, and 9 or any other method sufficient to enforce the assignment under law of this state other than this chapter.

(b) From the date of enforcement, the assignee or, in the case of enforcement by appointment of a receiver under Section 7, the receiver, is entitled to collect all rents that:

(1) have accrued but remain unpaid on that date; and

(2) accrue on or after that date, as those rents accrue.

SECTION 7. ENFORCEMENT BY APPOINTMENT OF RECEIVER.

(a) An assignee is entitled to the appointment of a receiver for the real property subject to the assignment of rents if:

(1) the assignor is in default and:

(A) the assignor has agreed in a signed document to the appointment of a receiver in the event of the assignor's default;

(B) it appears likely that the real property may not be sufficient to satisfy the secured obligation;

(C) the assignor has failed to turn over to the assignee proceeds that the assignee was entitled to collect; or

(D) a subordinate assignee of rents obtains the appointment of a receiver for the real property; or

(2) other circumstances exist that would justify the appointment of a receiver under law of this state other than this chapter.

(b) An assignee may file a petition for the appointment of a receiver in connection with an action:

(1) to foreclose the security instrument;

(2) for specific performance of the assignment;

(3) seeking a remedy on account of waste or threatened waste of the real property subject to the assignment; or

(4) otherwise to enforce the secured obligation or the assignee's remedies arising from the assignment.

(c) An assignee that files a petition under subsection (b) shall also give a copy of the petition in the manner specified in Section 3 to any other person that, 10 days before the date the petition is filed, held a recorded assignment of rents arising from the real property.

(d) If an assignee enforces an assignment of rents under this section, the date of enforcement is the date on which the court enters an order appointing a receiver for the real property subject to the assignment.

(e) From the date of its appointment, a receiver is entitled to collect rents as provided in Section 6(b). The receiver also has the authority provided in the order of appointment and law of this state other than this chapter.

(f) The following rules govern priority among receivers:

(1) If more than one assignee qualifies under this section for the appointment of a receiver, a receivership requested by an assignee entitled to priority in rents under this chapter has priority over a receivership requested by a subordinate assignee, even if a court has previously appointed a receiver for the subordinate assignee.

(2) If a subordinate assignee obtains the appointment of a receiver, the receiver may collect the rents and apply the proceeds in the manner specified in the order appointing the receiver until a receiver is appointed under a senior assignment of rents.

SECTION 8. ENFORCEMENT BY NOTIFICATION TO ASSIGNOR.

(a) Upon the assignor's default, or as otherwise agreed by the assignor, the assignee may give the assignor a notification demanding that the assignor pay over the proceeds of any rents that the assignee is entitled to collect under Section 6. The assignee shall also give a copy of the notification to any other person that, 10 days before the notification date, held a recorded assignment of rents arising from the real property.

(b) If an assignee enforces an assignment of rents under this section, the date of enforcement is the date on which the assignor receives a notification under subsection (a).

(c) An assignee's failure to give a notification under subsection (a) to any person holding a recorded assignment of rents does not affect the effectiveness of the notification as to the assignor, but the other person is entitled to any relief permitted under law of this state other than this chapter.

(d) An assignee that holds a security interest in rents solely by virtue of Section 4(a) may not enforce the security interest under this section while the assignor occupies the real property as the assignor's primary residence.

SECTION 9. ENFORCEMENT BY NOTIFICATION TO TENANT.

(a) Upon the assignor's default, or as otherwise agreed by the assignor, the assignee may give to a tenant of the real property a notification demanding that the tenant pay to the assignee all unpaid accrued rents and all unaccrued rents as they accrue. The assignee shall give a copy of the notification to the assignor and to any other person that, 10 days before the notification date, held a recorded assignment of rents arising from the real property. The notification must be signed by assignee and:

(1) identify the tenant, assignor, assignee, premises covered by the agreement between the tenant and the assignor, and assignment of rents being enforced;

(2) provide the recording data for the document creating the assignment or other reasonable proof that the assignment was made;

(3) state that the assignee has the right to collect rents in accordance with the assignment;

(4) direct the tenant to pay to the assignee all unpaid accrued rents and all unaccrued rents as they accrue;

(5) describe the manner in which subsections (c) and (d) affect the tenant's payment obligations;

(6) provide the name and telephone number of a contact person and an address to which the tenant can direct payment of rents and any inquiry for additional information about the assignment or the assignee's right to enforce the assignment; and

(7) contain a statement that the tenant may consult a lawyer if the tenant has questions about its rights and obligations.

(b) If an assignee enforces an assignment of rents under this section, the date of enforcement is the date on which the tenant receives a notification substantially complying with subsection (a).

(c) Subject to subsection (d) and any other claim or defense that a tenant has under law of this state other than this chapter, following receipt of a notification substantially complying with subsection (a):

(1) a tenant is obligated to pay to the assignee all unpaid accrued rents and all unaccrued rents as they accrue, unless the tenant has previously received a notification from another assignee of rents given by that assignee in accordance with this section and the other assignee has not canceled that notification;

(2) unless the tenant occupies the premises as the tenant's primary residence, a tenant that pays rents to the assignor is not discharged from the obligation to pay rents to the assignee;

(3) a tenant's payment to the assignee of rents then due satisfies the tenant's obligation under the tenant's agreement with the assignor to the extent of the payment made; and

(4) a tenant's obligation to pay rents to the assignee continues until the tenant receives a court order directing the tenant to pay the rent in a different manner or a signed document from the assignee canceling its notification, whichever occurs first.

(d) A tenant that has received a notification under subsection (a) is not in default for nonpayment of rents accruing within 30 days after the date the notification is received before the earlier of:

(1) 10 days after the date the next regularly scheduled rental payment would be due; or

(2) 30 days after the date the tenant receives the notification.

(e) Upon receiving a notification from another creditor that is entitled to priority under Section 5(c) that the other creditor has enforced and is continuing to enforce its interest in rents, an assignee that has given a notification to a tenant under subsection (a) shall immediately give another notification to the tenant canceling the earlier notification.

(f) An assignee's failure to give a notification under subsection (a) to any person holding a recorded assignment of rents does not affect the effectiveness of the notification as to the assignor and those tenants receiving the notification. However, the person entitled to the notification is entitled to any relief permitted by law of this state other than this chapter.

(g) An assignee that holds a security interest in rents solely by virtue of Section 4(a) may not enforce the security interest under this section while the assignor occupies the real property as the assignor's primary residence.

SECTION 10. NOTIFICATION TO TENANT: FORM. No particular phrasing is required for the notification specified in Section 9. However, the following form of notification, when properly completed, is sufficient to satisfy the requirements of Section 9:

NOTIFICATION TO PAY RENTS TO PERSON OTHER THAN LANDLORD

Tenant:

Name of Tenant

Property Occupied by Tenant (the “Premises”):

Address

Landlord:

Name of landlord

Assignee:

Name of assignee

Address of Assignee and Telephone Number of Contact Person:

Address of assignee

Telephone number of person to contact

1. The Assignee named above has become the person entitled to collect your rents on the Premises listed above under

Name of document

(the "Assignment of Rents") dated _____, and recorded at

Date Recording data

in the .

Appropriate governmental office under the recording act of this state

You may obtain additional information about the Assignment of Rents and the Assignee's right to enforce it at the address listed above.

2. The Landlord is in default under the Assignment of Rents. Under the Assignment of Rents, the Assignee is entitled to collect rents from the Premises.

3. This notification affects your rights and obligations under the agreement under which you occupy the Premises (your "Agreement"). In order to provide you with an opportunity to consult with a lawyer, if your next scheduled rental payment is due within 30 days after you receive this notification, neither the Assignee nor the Landlord can hold you in default under your Agreement for nonpayment of that rental payment until 10 days after the due date of that payment or 30 days following the date you receive this notification, whichever occurs first.

You may consult a lawyer at your expense concerning your rights and obligations under your Agreement and the effect of this notification.

4. You must pay to the Assignee at the address listed above all rents under your Agreement which are due and payable on the date you receive this notification and all rents accruing under your Agreement after you receive this notification. If you pay rents to the Assignee after receiving this notification, the payment will satisfy your rental obligation to the extent of that payment.

5. Unless you occupy the Premises as your primary residence, if you pay any rents to the Landlord after receiving this notification, your payment to the Landlord will not discharge your rental obligation, and the Assignee may hold you

liable for that rental obligation notwithstanding your payment to the Landlord.

6. If you have previously received a notification from another person that also holds an assignment of the rents due under your Agreement, you should continue paying your rents to the person that sent that notification until that person cancels that notification. Once that notification is canceled, you must begin paying rents to the Assignee in accordance with this notification.

7. Your obligation to pay rents to the Assignee will continue until you receive either:

(a) a written order from a court directing you to pay the rent in a

manner specified in that order; or

(b) written instructions from the Assignee canceling this notification.

Name of assignee

By: Officer/authorized agent of assignee

SECTION 11. EFFECT OF ENFORCEMENT. The enforcement of an assignment of rents by one or more of the methods identified in Sections 7, 8, and 9, the application of proceeds by the assignee under Section 12 after enforcement, the payment of expenses under Section 13, or an action under Section 14(d) does not:

(1) make the assignee a mortgagee in possession of the real property;

(2) make the assignee an agent of the assignor;

(3) constitute an election of remedies that precludes a later action to enforce the secured obligation;

(4) make the secured obligation unenforceable; or

(5) limit any right available to the assignee with respect to the secured obligation.

SECTION 12. APPLICATION OF PROCEEDS. Unless otherwise agreed, an assignee that collects rents under this chapter or collects upon a judgment in an action under Section 14(d) shall apply the sums collected in the following order to:

(1) the assignee's reasonable expenses of enforcing its assignment of rents, including, to the extent provided for by agreement and not prohibited by law of this state other than this chapter, reasonable attorney's fees and costs incurred by the assignee;

(2) reimbursement of any expenses incurred by the assignee to protect or maintain the real property subject to the assignment;

(3) payment of the secured obligation;

(4) payment of any obligation secured by a subordinate security interest or other lien on the rents if, before distribution of the proceeds, the assignor and assignee receive a notification from the holder of the interest or lien demanding payment of the proceeds; and

(5) the assignor.

SECTION 13. APPLICATION OF PROCEEDS TO EXPENSES OF PROTECTING REAL PROPERTY; CLAIMS AND DEFENSES OF TENANT.

(a) Unless otherwise agreed by the assignee, and subject to subsection (c), an assignee that collects rents following enforcement under Section 8 or 9 need not apply them to the payment of expenses of protecting or maintaining the real property subject to the assignment.

(b) Unless a tenant has made an enforceable agreement not to assert claims or defenses, the right of the assignee to collect rents from the tenant is subject to the terms of the agreement between the assignor and tenant and any claim or defense arising from the assignor's nonperformance of that agreement.

(c) This chapter does not limit the standing or right of a tenant to request a court to appoint a receiver for the real property subject to the assignment or to seek other relief on the ground that the assignee's nonpayment of expenses of protecting or maintaining the real property has caused or threatened harm to the tenant's interest in the property. Whether the tenant is entitled to the appointment of a receiver or other relief is governed by law of this state other than this chapter.

SECTION 14. TURNOVER OF RENTS; COMMINGLING AND IDENTIFIABILITY OF RENTS; LIABILITY OF ASSIGNOR.

(a) In this section, "good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(b) If an assignor collects rents that the assignee is entitled to collect under this chapter:

(1) the assignor shall turn over the proceeds to the assignee, less any amount representing payment of expenses authorized by the assignee; and

(2) the assignee continues to have a security interest in the proceeds so long as they are identifiable.

(c) For purposes of this chapter, cash proceeds are identifiable if they are maintained in a segregated account or, if commingled with other funds, to the extent the assignee can identify them by a method of tracing, including application of equitable principles, that is permitted under law of this state other than this chapter with respect to commingled funds.

(d) In addition to any other remedy available to the assignee under law of this state other than this chapter, if an assignor fails to turn over proceeds to the assignee as required by subsection (b), the assignee may recover from the assignor in a civil action:

(1) the proceeds, or an amount equal to the proceeds, that the assignor was obligated to turn over under subsection (b); and

(2) reasonable attorney's fees and costs incurred by the assignee to the extent provided for by agreement and not prohibited by law of this state other than this chapter.

(e) The assignee may maintain an action under subsection (d) without bringing an action to foreclose any security interest that it may have in the real property. Any sums recovered in the action must be applied in the manner specified in Section 12.

(f) Unless otherwise agreed, if an assignee entitled to priority under Section 5(c) enforces its interest in rents after another creditor holding a subordinate security interest in rents has enforced its interest under Section 8 or 9, the creditor holding the subordinate security

interest in rents is not obligated to turn over any proceeds that it collects in good faith before the creditor receives notification that the senior assignee has enforced its interest in rents. The creditor shall turn over to the senior assignee any proceeds that it collects after it receives the notification.

SECTION 15. PERFECTION AND PRIORITY OF ASSIGNEE'S SECURITY INTEREST IN PROCEEDS.

(a) In this section:

(1) "Article 9" means Article 9 of the Uniform Commercial Code as adopted in chapter 106 of the General Laws or, to the extent applicable to any particular issue, Article 9 as adopted by the state whose laws govern that issue under the choice-of-laws rules contained in Article 9 as adopted by this state.

(2) "Conflicting interest" means an interest in proceeds, held by a person other than an assignee, that is:

(A) a security interest arising under Article 9; or

(B) any other interest if Article 9 resolves the priority conflict between that person and a secured party with a conflicting security interest in the proceeds.

(b) An assignee's security interest in identifiable cash proceeds is perfected if its security interest in rents is perfected. An assignee's security interest in identifiable noncash proceeds is perfected only if the assignee perfects that interest in accordance with Article 9.

(c) Except as otherwise provided in subsection (d), priority between an assignee's security interest in identifiable proceeds and a conflicting interest is governed by the priority rules in Article 9.

(d) An assignee's perfected security interest in identifiable cash proceeds is subordinate to a conflicting interest that is perfected by control under Article 9 but has priority over a conflicting interest that is perfected other than by control.

SECTION 16. PRIORITY SUBJECT TO SUBORDINATION. This chapter does not preclude subordination by agreement as to rents or proceeds.

SECTION 17. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 18. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et. seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

SECTION 19. APPLICATION TO EXISTING RELATIONSHIPS.

(a) Except as otherwise provided in this section, this chapter governs the enforcement of an assignment of rents and the perfection and priority of a security interest in rents, even if the document creating the assignment was signed and delivered before the effective date of this chapter.

(b) This chapter does not affect an action or proceeding commenced before the effective date of this chapter.

(c) Section 4(a) of this chapter does not apply to any security instrument signed and delivered before the effective date of this chapter.

(d) This chapter does not affect:

(1) the enforceability of an assignee's security interest in rents or proceeds if, immediately before the effective date of this chapter, that security interest was enforceable;

(2) the perfection of an assignee's security interest in rents or proceeds if, immediately before the effective date of this chapter, that security interest was perfected; or

(3) the priority of an assignee's security interest in rents or proceeds with respect to the interest of another person if, immediately before the effective date of this chapter, the interest of the other person was enforceable and perfected, and that priority was established.