

**SENATE . . . . . No. 717**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***James B. Eldridge***

*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.

PETITION OF:

NAME:

*James B. Eldridge*

DISTRICT/ADDRESS:

*Middlesex and Worcester*

**SENATE . . . . . No. 717**

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By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 717) of James B. Eldridge for legislation relative to creating a statutory housing restriction and providing remedies related to statutory housing. Housing.

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**The Commonwealth of Massachusetts**

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

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 2014 Official Edition, is hereby amended by striking out, in line 118, the word  
3 “or”; and

4           by striking out, in line 119, the word “111C” and inserting in place thereof the following  
5 words:- “111C; or”; and

6           by adding at the end thereof the following subsection:- “(35) contracts or other actions to  
7 acquire or dispose of statutory housing premises as defined in section 17A of chapter 183,  
8 including exercise of the statutory housing power to sell, following which the statutory housing  
9 restriction continues in force and effect as to the premises as before.”

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

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

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

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

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

31           "Eligible household", the owner and all persons residing together with the owner at the  
32 statutory housing premises and whose household income determined in connection with the  
33 acquisition of the statutory housing premises does not exceed the maximum household income

34 established by the holder at the time of such acquisition as stated in the deed, covenant or  
35 restriction on the statutory housing premises; provided, however, that if no maximum household  
36 income is stated in a deed, covenant or restriction, the household income does not exceed 80 per  
37 cent of the area median income, adjusted for the number of individuals in the eligible household.

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

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

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

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

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

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

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

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

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

76 (i) the grantor, for the grantor and the grantor's heirs, executors, administrators,  
77 successors and assigns, covenants with the holder and its successors and assigns that: (a) the

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

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

101 grantor and all persons claiming rights of fee simple ownership under the grantor or claiming  
102 mortgages or other liens against the statutory housing premises in excess of the affordable value  
103 from all right and interest in the statutory housing premises, whether at law or in equity.

104 "Statutory housing premises", residential real property subject to a statutory housing  
105 restriction.

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

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

118 Section 17C. The following entities shall each be eligible to be a holder of a statutory  
119 housing restriction: a governmental body or an agency thereof, a nonprofit organization, a  
120 church, employer, university or other entity that is otherwise administering government-  
121 sponsored, federal, state or local subsidy programs and any other entity so authorized by the  
122 department of housing and community development or a successor agency; provided, however,

123 that no restriction granted on the statutory housing power to sell shall be invalid by reason of  
124 being held by other than an eligible entity provided that it is assigned to an eligible entity before  
125 the exercise of the statutory housing power to sell.

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

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

142 Section 17E. A statutory housing restriction shall continue until terminated by agreement  
143 of the holder, by legislative or judicial action or otherwise according to law unless a term of  
144 years is stated in the restriction. On termination of a statutory housing restriction for any reason

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

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

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

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

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

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

183           SECTION 4. The appendix to said chapter 183, as appearing in the 2014 Official Edition,  
184 is hereby amended by adding the following 8 forms:

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

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

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

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

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

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

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

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

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

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

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

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

234 SECTION 5. Section 32 of chapter 184 of the General Laws, as so appearing, is hereby  
235 amended by inserting after the word "state", in lines 67 and 68, the following words:- or  
236 municipal

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

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

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

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

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

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

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

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

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

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

281 CHAPTER 244A.

282 FORECLOSURE AND REDEMPTION OF STATUTORY HOUSING  
283 RESTRICTIONS

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

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

295 statutory housing premises shall have the right to oppose entry under section 1 of said chapter  
296 244 and to redeem without the consent of the plaintiff under section 4 of said chapter 244; (iii)  
297 commencement of foreclosure or other legal proceedings by the holder of a conforming  
298 mortgage or other lien or claim within the affordable value shall stay the holder's foreclosure by  
299 entry; (iv) completion of the conforming mortgagee's foreclosure or judgment in favor of such  
300 other lienor or claimant shall extinguish the holder's entry; (v) that the court shall determine the  
301 performance due to the plaintiff and each mortgagee and other lienholder of record under section  
302 5 of said chapter 244; (vi) an owner who regains possession by performance as ordered by the  
303 court shall do so subject to the statutory housing restriction; (vii) a person residing in or claiming  
304 an interest in the real property subject to the restriction may be joined as a defendant irrespective  
305 of such person's estate in the statutory housing premise, but if such person has no estate in the  
306 statutory housing premises and makes no defense to the action, such person shall not be liable for  
307 costs; (viii) a mortgagee or other lienholder of record may be joined as a defendant but if such  
308 mortgagee or other lienholder makes no defense to the action, such mortgagee or other lienholder  
309 shall not be liable for costs; and (ix) any sale by order of the court shall be subject to the terms of  
310 the statutory housing restriction.

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

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

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

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

354 (Form.)

355 STATUTORY HOUSING RESTRICTION HOLDER'S SALE OF REAL ESTATE

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

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

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

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

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

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

374 Other terms to be announced at the sale.

375 (Signed)

376 Present holder of said housing restriction.

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

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

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

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

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

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

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

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

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

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

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