

SENATE No. 717

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

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.

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.