

**SENATE . . . . . No. 859**

**The Commonwealth of Massachusetts**

PRESENTED BY:

***Linda Dorcena Forry***

*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 regarding right of first refusal in the event of foreclosure and short sales and deeds in lieu.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>	
<i>Mayor Martin J. Walsh</i>		
<i>Daniel Cullinane</i>	<i>12th Suffolk</i>	
<i>Evandro C. Carvalho</i>	<i>5th Suffolk</i>	
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>	
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>	
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	
<i>Byron Rushing</i>	<i>9th Suffolk</i>	
<i>Chynah Tyler</i>	<i>7th Suffolk</i>	
<i>Jack Lewis</i>	<i>7th Middlesex</i>	<i>2/1/2017</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/2/2017</i>
<i>Thomas M. McGee</i>	<i>Third Essex</i>	<i>2/3/2017</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>2/3/2017</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/3/2017</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>2/3/2017</i>

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By Ms. Forry, a petition (accompanied by bill, Senate, No. 859) of Linda Dorcena Forry, Mayor Martin J. Walsh , Daniel Cullinane, Evandro C. Carvalho and other members of the General Court for legislation relative to right of first refusal in the event of foreclosure and short sales and deeds in lieu. The Judiciary.

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**The Commonwealth of Massachusetts**

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

An Act regarding right of first refusal in the event of foreclosure and short sales and deeds in lieu.

*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. Chapter 244 of the General Laws is hereby amended by inserting after  
2 section 40 the following section:-

3 Section 41. (a) As used in these sections, the following words shall, unless the context  
4 clearly requires otherwise, have the following meanings:

5 "Auction" or "Public auction," the sale of a housing accommodation, under power of sale  
6 in a mortgage loan, by public bidding.

7 "Borrower," a mortgagor of a Mortgage Loan.

8 "Mortgage loan," a loan secured wholly or partially by a mortgage on a housing  
9 accommodation.

10           “Mortgagee,” an entity to whom property is mortgaged, the mortgage creditor or lender  
11 including, but not limited to, mortgage servicers, lenders in a mortgage agreement and any agent,  
12 servant or employee of the mortgagee or any successor in interest or assignee of the mortgagee's  
13 rights, interests or obligations under the mortgage agreement.

14           “Housing accommodation,” a building or buildings, structure or structures, or part  
15 thereof, rented or offered for rent for living or dwelling purposes, including, without limitation,  
16 houses, apartments, condominium units, cooperative units and other multi-family residential  
17 dwellings, but excluding a group residence, homeless shelter, lodging house, orphanage,  
18 temporary dwelling structure, and transitional housing. The provisions of this section shall not  
19 apply to a borrower-occupied housing accommodation so long as the borrower is domiciled in  
20 the housing accommodation at the initiation of the short-sale, deed-in-lieu, or foreclosure  
21 process.

22           “Foreclosure,” a legal proceeding to terminate a borrower’s interest in property, instituted  
23 by the mortgagee, and regulated under chapter 244.

24           “Short-sale,” sale approved by the mortgagee to a bona fide purchaser at a price that is  
25 less than borrower’s existing debt on the housing accommodation.

26           “Deed in lieu,” a deed for the collateral property, the housing accommodation, that the  
27 mortgagee accepts from the borrower in exchange for the release of the borrower’s obligation  
28 under the mortgage loan.

29           “Tenant,” a person or group of persons who at the time of the short-sale or foreclosure is  
30 entitled to occupy the housing accommodation pursuant to a bona fide lease or tenancy at will,  
31 the right to occupy having been established for no less than one year at the time of short-sale or

32 foreclosure process or deed-in-lieu transfer. This definition shall not exclude former owners who  
33 have a negotiated tenancy with a financial institution.

34 “Bona fide lease or bona fide tenancy,” a lease or tenancy shall not be considered bona  
35 fide unless: (1) the borrower, or the child, spouse or parent of the Borrower under the contract, is  
36 not the tenant; (2) the lease or tenancy was the result of an arms-length transaction, and (3) the  
37 tenant is current on all rental payments and there are no outstanding claims for breach of lease or  
38 property damage.

39 “Notice of Sale,” a notice in the form specified in section 14 of chapter 244 of the  
40 General Laws.

41 “Notice of Intention to Foreclose,” a notice in the form specified in chapter 244, section  
42 17B of chapter 244 of the General Laws.

43 “Third Party Offer,” an offer to purchase the mortgaged property for valuable  
44 consideration by an arm’s length purchaser, not including the borrower or the tenants.

45 “Owner,” a borrower who is not domiciled in the housing accommodation.

46 (b) Short-sales.

47 (1) An owner shall give notice to each tenant of a housing accommodation of the  
48 intention to sell the housing accommodation by way of short-sale to avoid foreclosure. Such  
49 notice shall be mailed by regular and certified mail, with a simultaneous copy to the attorney  
50 general and the director of housing and community development, within two (2) business days of  
51 the owner’s submission of a request or application to the mortgagee for permission to sell the

52 housing accommodation by way of short-sale or to accept a deed in lieu. This notice shall also  
53 include a notice of the rights provided by this section.

54 (2) No mortgagee may accept any third party offers or deem the owner's application for  
55 short-sale submitted for review unless and until the mortgagee receives documentation in a form  
56 approved by the attorney general demonstrating that the tenants of the housing accommodation  
57 have been informed of the owner's intent to seek a short-sale or deed in lieu and the tenants have  
58 expressed their interest in exercising a right of first refusal within 60 days, assigning that right of  
59 first refusal, or the tenants have waived those rights. If tenants have not affirmatively expressed  
60 their interest in exercising a right of first refusal or in assigning that right within 60 days, or have  
61 not affirmatively waived that right within 60 days, the tenants' rights are deemed waived.

62 (3) Before a housing accommodation may be transferred by short-sale or deed-in-lieu, the  
63 owner shall notify each tenant, with a simultaneous copy to the attorney general and the director  
64 of housing and community development, by regular and certified mail, of any bona fide offer  
65 that the mortgagee intends to accept. Before any short-sale or transfer by deed-in-lieu, the owner  
66 shall give each tenant such a notice of the offer only if households constituting at least fifty-one  
67 percent of the households occupying the housing accommodation notify the owner, in writing,  
68 that they collectively desire to receive information relating to the proposed sale. Tenants may  
69 indicate this desire within the same notice described in clause 2. Any notice of the offer required  
70 to be given under this subsection shall include the price, calculated as a single lump sum amount  
71 and of any promissory notes offered in lieu of cash payment.

72 (4) A tenant group representing at least fifty-one percent of the households occupying the  
73 housing accommodation which are entitled to notice under clause 3 shall have the collective right

74 to purchase, in the case of a third party offer that the mortgagee intends to accept, provided it (i)  
75 submits to the owner reasonable evidence that the tenants of at least fifty-one percent of the  
76 occupied units in the housing accommodation have approved the purchase of the housing  
77 accommodation, (ii) submits to the owner a proposed purchase and sale agreement on  
78 substantially equivalent terms and conditions within sixty days of receipt of notice of the offer  
79 made under clause 3 of this section, (iii) obtains a binding commitment for any necessary  
80 financing or guarantees within an additional ninety days after execution of the purchase and sale  
81 agreement, and (iv) closes on such purchase within an additional ninety days after the end of the  
82 ninety-day period under paragraph (iii).

83 No owner shall unreasonably refuse to enter into, or unreasonably delay the execution or  
84 closing on a purchase and sale with tenants who have made a bona fide offer to meet the price  
85 and substantially equivalent terms and conditions of an offer for which notice is required to be  
86 given pursuant to clause 3. Failure of the tenants to submit such a purchase and sale agreement  
87 within the first sixty day period, to obtain a binding commitment for financing within the  
88 additional ninety day period or to close on the purchase within the second ninety-day period,  
89 shall serve to terminate the rights of such tenants to purchase. The time periods herein provided  
90 may be extended by agreement. Nothing herein shall be construed to require an owner to provide  
91 financing to such tenants. A group or association of tenants which has the right to purchase  
92 hereunder, at its election, may assign its purchase right hereunder to the city or town in which the  
93 housing accommodation is located, or the housing authority of the city or town in which the  
94 housing accommodation is located, or an agency of the commonwealth, nonprofit, community  
95 development corporation, affordable housing developer, or land trust, for the purpose of  
96 continuing the use of the housing accommodation as permanently affordable rental housing.

97 (5) The right of first refusal created herein shall inure to the tenants for the time periods  
98 hereinbefore provided, beginning on the date of notice to the tenants under clause 1. The  
99 effective period for such right of first refusal shall begin anew for each different offer to  
100 purchase that the mortgagee intends to accept. The right of first refusal shall not apply with  
101 respect to any offer received by the owner for which a notice is not required pursuant to said  
102 clause 3.

103 (6) In any instance where the tenants are not the successful purchaser of the housing  
104 accommodation, the mortgagee shall provide evidence of compliance with this section by filing  
105 an affidavit of compliance with the attorney general, the director of housing and community  
106 development, and the official records of the county where the property is located within seven  
107 days of the sale.

108 (7) It is illegal for the owner to evict a tenant or tenants in order to avoid application of  
109 this law.

110 (8) Aggrieved tenants may seek damages under chapter 93A and may file a complaint  
111 with the attorney general. Tenants may seek damages including a percentage of the sales price  
112 and/ or injunctive relief in the form of specific performance to compel transfer of property.  
113 Nothing in this act shall be construed to limit or constrain in any way the rights tenants currently  
114 have under applicable laws, including but not limited to chapters 186 and 186A. At all times, all  
115 parties must negotiate in good faith.

116 (9) The attorney general shall enforce this section and shall promulgate rules and  
117 regulations necessary for enforcement. The attorney general may seek injunctive, declaratory,  
118 and compensatory relief on behalf of tenants and the commonwealth in a court of competent

119 jurisdiction. The attorney general shall post a sample intent to sell notice, sample proof of notice  
120 to tenants, sample notice of offer, and other necessary documents.

121 (c) Foreclosures. (1) When a mortgagee seeks judicial determination of the right to  
122 foreclose, then the mortgagee shall provide a copy of the complaint by regular and certified mail  
123 to the tenants of the housing accommodation. The mortgagee shall also provide tenants, by  
124 regular and certified mail, with a copy of any Order of Notice issued by the Land Court, if  
125 applicable, within five (5) days of issuance.

126 (2) The mortgagee shall provide each tenant, by regular and certified mail, a copy of any  
127 and all Notices of Sale published pursuant to Section 14 of chapter 244. A copy should be  
128 provided simultaneously with the successive publication notices.

129 (3) No later than five (5) business days before the auction of a housing accommodation,  
130 the tenants shall inform the mortgagee, in writing, if a group of tenants representing at least fifty-  
131 one percent of the households occupying the housing accommodation intend to exercise their  
132 collective right of first refusal at auction and desire to receive information relating to the  
133 proposed auction.

134 (4) A group of tenants representing at least fifty-one percent of the households  
135 occupying the housing accommodation may exercise their collective right to purchase the  
136 housing accommodation, in the event of a third party offer at auction that the mortgagee  
137 receives, provided that the group of tenants (i) submits to the mortgagee reasonable evidence that  
138 the tenants of at least fifty-one percent of the occupied homes in the housing accommodation  
139 have approved the purchase of the housing accommodation, (ii) submits to the mortgagee a  
140 proposed purchase and sale agreement on substantially equivalent terms and conditions to that



141 received by the mortgagee in the third party offer within sixty days of receipt of notice of the bid  
142 made under clause 3 of this section, (iii) obtains a binding commitment for any necessary  
143 financing or guarantees within an additional ninety days after execution of the purchase and sale  
144 agreement, and (iv) closes on such purchase within an additional ninety days after the end of the  
145 ninety-day period under paragraph (iii).

146 No mortgagee shall unreasonably refuse to enter into, or unreasonably delay the  
147 execution or closing on a purchase and sale with tenants who have made a bona fide offer to  
148 meet the price and substantially equivalent terms and conditions of a bid received at auction.  
149 Failure of the tenants to submit such a purchase and sale agreement within the first sixty day  
150 period, to obtain a binding commitment for financing within the additional ninety day period or  
151 to close on the purchase within the second ninety-day period, shall serve to terminate the rights  
152 of such tenants to purchase. The time periods herein provided may be extended by agreement.  
153 Nothing herein shall be construed to require a mortgagee to provide financing to such tenants. A  
154 group or association of tenants which has the right to purchase hereunder, at its election, may  
155 assign its purchase right hereunder to the city, town, housing authority, or agency of the  
156 commonwealth, nonprofit, community development corporation, affordable housing developer,  
157 or land trust for the purpose of continuing the use of the housing accommodation as permanently  
158 affordable rental housing.

159 If there are no third party bids at auction for the housing accommodation, the tenants  
160 shall have a right of first refusal whenever the mortgagee seeks to sell the housing  
161 accommodation. The tenants shall be notified of any offers the mortgagee intends to accept and  
162 shall be given an opportunity to meet the price and substantially the terms of a third-party offer  
163 based on the same time line described in clause 4.

164 (5) The right of first refusal created herein shall inure to the tenants for the time periods  
165 hereinbefore provided, beginning on the date of notice to the tenants under clause 1.

166 (6) In any instance where the tenants are not the successful purchaser of the housing  
167 accommodation, the seller of such unit shall provide evidence of compliance with this section by  
168 filing an affidavit of compliance with the attorney general, the director of housing and  
169 community development, and the official records of the county where the property is located  
170 within seven days of the sale.

171 (7) It is illegal for the owner to evict a tenant or tenants in order to avoid application of  
172 this law.

173 (8) Aggrieved tenants may seek damages under General Law Chapter 93A and may file  
174 a complaint with the attorney general. Tenants may seek damages including a percentage of the  
175 sales price and/or injunctive relief in the form of specific performance to compel transfer of  
176 property. Nothing in this Act shall be construed to limit or constrain in any way the rights  
177 tenants currently have under applicable laws, including but not limited to chapters 186 and 186A.  
178 At all times, all parties must negotiate in good faith.

179 (9) The attorney general shall enforce this section and shall promulgate rules and  
180 regulations necessary for enforcement. The attorney general may seek injunctive, declaratory,  
181 and compensatory relief on behalf of tenants and the Commonwealth in a court of competent  
182 jurisdiction. The attorney general shall post a sample intent to sell notice, sample proof of notice  
183 to tenants, sample notice of offer, and other necessary documents.