

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>

SENATE No. 859

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.

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.