

SENATE No. 801

The Commonwealth of Massachusetts

PRESENTED BY:

Patricia D. Jehlen

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 tenants’ opportunity to purchase.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | |
|---------------------------|--------------------------------|------------------|
| <i>Patricia D. Jehlen</i> | <i>Second Middlesex</i> | |
| <i>José F. Tosado</i> | <i>9th Hampden</i> | <i>1/31/2019</i> |
| <i>Denise Provost</i> | <i>27th Middlesex</i> | <i>1/31/2019</i> |
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> | <i>2/1/2019</i> |

SENATE No. 801

By Ms. Jehlen, a petition (accompanied by bill, Senate, No. 801) of Patricia D. Jehlen, José F. Tosado, Denise Provost and James B. Eldridge for legislation relative to tenants’ opportunity to purchase. Housing.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to tenants’ opportunity to purchase.

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 184 of the General Laws as appearing in the 2016 Official Edition
2 is hereby amended by the adding after section 21, the following new section:--

3 Section 21A: Municipal Local Option for a Tenants’ Opportunity to Purchase

4 (a) For the purposes of this section the following words shall have the following
5 meanings—

6 "Affiliate", an entity owned or controlled by an Owner or under common control with the
7 Owner of Residential Property.

8 “Department”, Department of Housing and Community Development, or its successor
9 agency.

10 “Designee” a nonprofit organization, established pursuant to chapter 180 of the General
11 Laws which is duly selected by members of a Tenant Association, as defined in this section; a
12 public land trust; or a Tenant Cooperative as defined herein.

13 “Member”, a natural person who is a certified member of a Tenant Association.

14 “Minimum Tenant Participation Percentage” the minimum percentage of tenants, as
15 defined herein, which must agree to participate as members of the Tenant Association, and which
16 shall be not less than 35 percent. The percentage shall be calculated based on the number of
17 housing units in a property rather than the number of individuals listed on leases as Tenants.
18 Tenants agreeing to participate in a Tenants Association shall signify their intent by signing a
19 form provided by the municipality.

20 “Owner”, a person, firm, partnership, corporation, trust, organization, Limited Liability
21 Company or other entity, or its successors or assigns that holds title to Residential Property as
22 defined herein.

23 “Purchaser”, a party who has entered into a purchase contract with an Owner and who
24 will, upon performance of the purchase contract, become the new Owner of the Residential
25 property as defined herein.

26 "Purchase contract", a written agreement whereby an Owner agrees to sell property
27 including, without limitation, a purchase and sale agreement, contract of sale, purchase option or
28 other similar instrument.

29 “Residential Property”, a buildings structure, or one or more units therein which are
30 designed and equipped for human habitation.

31 "Sale", an act by which an Owner conveys, transfers or disposes of property by deed or
32 otherwise, whether through a single transaction or a series of transactions; provided, that a
33 disposition of housing by an Owner to an affiliate of such Owner shall not constitute a sale.

34 "Successor", the entity through which the Tenant Association will take title to the
35 property, which may be a corporation, with the sole stockholder being the Tenant Association; a
36 housing cooperative organized under chapter 157 B of the General Laws, a limited liability
37 company in which the Tenant Association is the Member; a limited partnership in which the
38 Tenant Association is a general partner or when permitted by the municipality's ordinance, a
39 joint venture between any of such entities, and another party (i) with the requisite experience in
40 acquiring, developing and owning Residential Property (ii) with the financial capacity to
41 guaranty financing of the purchase transaction.

42 "Tenant", a natural person who has entered into an express written lease or rental
43 agreement with the owner for exclusive possession of the premises for at least six months, or a
44 natural person who has paid rent to the Owner, which rent has been accepted by the Owner for at
45 least six months, and who is residing in a residential unit at the time of a notification under
46 subsection (c)(1) herein. If more than one tenant is listed on a lease any such tenants may
47 exercise the rights granted under this section.

48 "Tenant Association", an unincorporated organization with a Minimum Tenant
49 Participation Percentage, as defined herein, with membership limited to present participating
50 Tenants of a property and registered with a municipality which has adopted an ordinance
51 consistent with this Section 21A; such Tenants shall have signified their intent to participate in
52 the Tenant Association by signing a form provided by the municipality.

53 “Tenant Cooperative”, a duly formed cooperative corporation or limited equity
54 cooperative housing corporation as defined in section 4 of chapter 157B of the General Laws. All
55 members of the cooperative shall be tenants as defined in this section.

56 “Third-Party Purchaser”, is a purchaser that is not a Tenant Association, a Designee, or
57 an affiliate.

58 (b) A city or town may accept this section in the manner provided in section 4 of chapter
59 4 of the General Laws. The acceptance of this local option by a municipality shall take effect no
60 later than 180 days after adoption. A municipality which accepts this section shall adopt an
61 ordinance or bylaw which effectuates the provisions of this section no later than 180 days after
62 acceptance. The municipality may by such ordinance or bylaw:

63 (i) provide tenancy protections for tenants that do not participate in the Tenant
64 Association;

65 (ii) exempt from the application of the ordinance or bylaw properties with fewer than a
66 designated number of units;

67 (iii) provide different exemptions for owner-occupied properties; and

68 (iv) exempt classes of properties in addition to those enumerated in section (f) herein.

69 No municipal ordinance or bylaw shall require the participation of more than 51 percent
70 of tenants. The percentage shall be calculated based on the number of housing units in a property
71 rather than the number of individuals listed on leases as Tenants.

72 (c) In any city or town which has accepted the provisions of this section:

73 (1) An Owner of a Residential Property shall, within two (2) business days of accepting a
74 bona fide offer to purchase, notify the municipality and each Tenant, in writing by hand delivery
75 and US mail, of the Owner's intention to sell the property for the price offered; together with a
76 copy of the municipality's prepared summary of the ordinance or bylaw and any associated
77 forms adopted hereunder;

78 (2) The Tenants of a Residential Property with six (6) or fewer units shall, within fifteen
79 (15) business days of said notification, either form a Tenant Association, or notify the Owner
80 that they do not wish to purchase the property or assign their right to do so. The Tenants of a
81 Residential Property with seven (7) or greater units shall, within thirty (30) calendar days of said
82 notification, either form a Tenant Association, or notify the Owner that they do not wish to
83 purchase the property or assign their right to do so.

84 (3) A Tenant Association may by written agreement select a Designee to act on its behalf
85 as purchaser of the property. Tenant Association shall give the Owner and the municipality
86 written notice of its selection of a Designee within two (2) business days.

87 (4) The Owner shall, if notified of the formation of a Tenant Association, offer said
88 Tenant Association, or its Designee, the opportunity to purchase the property by meeting the
89 offered price. The Tenant Association or its Designee shall within five (5) business days accept
90 or reject such offer. Failure to accept a timely within such five (5) business days shall constitute
91 an irrevocable waiver of the tenants' rights under this section.

92 (5) If the Tenant Association, or its Designee accept the Owner's offer, then both parties
93 shall in good faith negotiate a purchase contract within ten (10) business days, following
94 acceptance of the offer.

95 (6) The proposed purchase contract shall provide at least the following terms: (i) the
96 earnest money deposit shall not exceed the lesser of: (1) the deposit in the third party purchase
97 contract, if any; (2) 5 percent of the sale price; or (3) \$250,000; provided, however, that the
98 Owner and the Tenant Association, or its Designee, may agree to modify the terms of the earnest
99 money deposit; provided, further, that the earnest money deposit shall be held under
100 commercially-reasonable terms by an escrow agent selected jointly by the Owner and the Tenant
101 Association, or its Designee; (ii) the earnest money deposit shall be refundable for not less than
102 ninety 90 days from the date of execution of the purchase contract or such greater period as
103 provided for in the third party purchase contract; provided, however, that if the Owner
104 unreasonably delays the buyer's ability to conduct due diligence during the ninety 90 day period,
105 the earnest money deposit shall continue to be refundable for a period greater than ninety 90
106 days; and (iii) the time for performance shall be not more than sixty 60 days from the date of the
107 execution of the purchase contract, or such greater period as provided for in the third party
108 purchase contract.

109 (7) The time periods set forth in this section may be extended by agreement between the
110 Owner and the Tenant Association or its Designee.

111 (d) Any notice required by this section shall be deemed to have been provided when
112 delivered in person or mailed by certified or registered mail, return receipt requested, to the party
113 to whom notice is required. Notice shall be deemed to have been provided when either: (1) the
114 notice is delivered in hand to the Tenant or an adult member of the Tenant's household; or (2)
115 the notice is sent by first class mail and a copy is left in or under the door of the Tenant's
116 dwelling unit. A notice to the affected municipality shall be sent to the chief executive officer.

117 (e) In a municipality which accepts this section, no lease or other agreement for tenancy
118 executed after the date of such acceptance may contain provisions, nor can any landlord require a
119 Tenant, to release their rights under this section.

120 (f) This section shall not apply to the following:

121 i. property that is the subject of a government taking by eminent domain or a negotiated
122 purchase in lieu of eminent domain;

123 ii. a proposed sale to a purchaser pursuant to terms and conditions that preserve
124 affordability, as determined by the Department;

125 iii. any sale of publicly-assisted housing, as defined in section 1 of chapter 40T of the
126 General Laws;

127 iv. rental units in any hospital, skilled nursing facility, or health facility

128 v. rental units in a nonprofit facility that has the primary purpose of providing short term
129 treatment, assistance, or therapy for alcohol, drug, or other substance abuse provided that such
130 housing is incident to the recovery program, and where the client has been informed in writing of
131 the temporary or transitional nature of the housing.

132 vi. Rental units in a nonprofit facility which provides a structured living environment that
133 has the primary purpose of helping homeless persons obtain the skills necessary for independent
134 living in a permanent housing and where occupancy is restricted to a limited and specific period
135 of time of not more than twenty-four months and where the client has been informed in writing
136 of the temporary or transitional nature of the housing at its inception.

137 vii. Rental units in a residential property where the owner of record occupies a unit in the
138 same property as his or her principal residence and regularly shares in the use of kitchen or bath
139 facilities with the tenants of such rental units. For the purposes of this subsection, the term
140 “owner” in subsection (a) shall not include any person who claims a real estate property tax
141 exemption on any other residential real property in the Commonwealth of Massachusetts.

142 viii. Public housing units managed by the local housing authority.

143 ix. Federal public housing units that are subsidized and regulated under federal laws, to
144 the extent such applicable federal laws expressly preempt the provisions of this section.

145 x. Any residential property where the owner is a natural person and owns six (6) or fewer
146 residential rental units in the municipality and the owner resides in the Commonwealth of
147 Massachusetts

148 xi. Any units which are held in trust on behalf of a developmentally disabled individual
149 who permanently occupies the unit, or a unit that is permanently occupied by a developmentally
150 disabled parent, sibling, child, or grandparent of the owner of that unit.

151 xii. Any rental unit that is owned or managed by a college or university for the express
152 purpose of housing students;

153 (j) In the event that this Section 21A of chapter 184 is repealed in its entirety or in part in
154 the future, any municipal ordinance adopted pursuant to section (b) herein, above shall continue
155 to have the full force of law.