

SENATE No. 786

The Commonwealth of Massachusetts

PRESENTED BY:

Brendan P. Crighton

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 to guarantee a tenant's first right of refusal.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Brendan P. Crighton</i>	<i>Third Essex</i>	
<i>José F. Tosado</i>	<i>9th Hampden</i>	<i>1/30/2019</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>1/30/2019</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>	<i>1/30/2019</i>
<i>Joseph A. Boncore</i>	<i>First Suffolk and Middlesex</i>	<i>2/1/2019</i>
<i>Edward J. Kennedy</i>	<i>First Middlesex</i>	<i>2/25/2019</i>
<i>Nick Collins</i>	<i>First Suffolk</i>	<i>2/27/2019</i>

SENATE No. 786

By Mr. Crighton, a petition (accompanied by bill, Senate, No. 786) of Brendan P. Crighton, José F. Tosado, James B. Eldridge, Daniel J. Hunt and other members of the General Court for legislation to guarantee a tenant's first right of refusal. Housing.

The Commonwealth of Massachusetts

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

An Act to guarantee a tenant's first right of refusal.

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.

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

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

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

14 “Department”, Department of Housing and Community Development, or its successor
15 agency.

16 “Designee” a nonprofit organization, established pursuant to chapter 180 of the General
17 Laws which is duly selected by members of a Tenant Association, as defined in this section.

18 “Elderly Tenant Household,” A tenant household in which one or more of the heads of
19 household are age 65 or older.

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

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

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

31 “Minimum Tenant Participation Percentage” the minimum percentage of tenants, as
32 defined below, that must participate as members of the Tenant Association, which shall be stated
33 in the municipal ordinance and shall be not less than 51 percent of the tenant-occupied housing
34 units. The percentage shall be calculated based on the number of tenant-occupied housing units
35 in a property rather than the number of individuals listed on leases as Tenants. If more than one
36 person is listed on the lease for a unit, all of the tenants on the lease for that unit must participate
37 as members of the tenant association in order for the unit to be counted towards the participating
38 percentage of units.

39 “Mortgage loan,” a loan secured wholly or partially by a mortgage on a housing
40 accommodation.

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

45 “Owner”, a person, firm, partnership, corporation, trust, organization, Limited Liability
46 Company or other entity, or its successors or assigns that holds title to real property.

47 “Purchaser”, a party who has entered into a purchase contract with an owner and who
48 will, upon performance of the purchase contract, become the new owner of the property.

49 "Purchase contract", a binding written agreement whereby an owner agrees to sell
50 property including, without limitation, a purchase and sale agreement, contract of sale, purchase
51 option or other similar instrument.

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

55 "Short-sale," sale approved by the mortgagee to a bona fide purchaser at a price that is
56 less than borrower's existing debt on the housing accommodation.

57 "Successor" , the entity through which the Tenant Association will take title to the
58 property, which may be a corporation, with the sole stockholder being the Tenant Association; a
59 housing cooperative organized under chapter 157 B of the General Laws, a limited liability
60 company in which the Tenant Association is the Member; a limited partnership in which the
61 Tenant Association is a general partner or when permitted by the municipality's ordinance, a
62 joint venture between any of such entities, and another party (i) with the requisite experience in
63 acquiring, developing and owning residential property (ii) with the financial capacity to guaranty
64 financing of the purchase transaction.

65 "Tenant", one or more natural person(s) who has entered into an express written lease or
66 rental agreement with the owner for exclusive possession of the premises for at least six months,
67 or who has paid rent to the Owner, which rent has been accepted by the Owner for at least six
68 months.

69 "Tenant Association", an unincorporated organization with a membership limited to
70 present tenants of a property and either (i) registered with the municipality that has adopted an
71 ordinance consistent with this Section 21A or (ii) a non-profit organization incorporated under
72 Chapter 180 of the General Laws

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

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

(b) A city or town may adopt this section in the manner provided in section 4 of chapter 4 of the General Laws. The acceptance of this local option by a municipality shall take effect no later than 180 days after such acceptance. A city or town may at any time revoke the acceptance of this section in the manner provided in section 4 of chapter 4 of the General Laws. The revocation shall not affect agreements relative to a tenants’ right to purchase that have already been asserted prior to the revocation. In addition, the ordinance or bylaw accepting this section may contain provisions which establish:

(1) Tenancy protections for non-elderly tenant households that do not participate in the Tenant Association; and

(2) exclusion of applicability to properties with fewer than a designated number of units; different exclusion numbers may be adopted for owner-occupied properties and properties with no owner occupancy; and

(3) criteria for qualified Designee; and

(4) Tenant Association’s ability to exercise rights hereunder through a joint venture or partnership with another entity with requisite experience in developing, owning and/or operating residential real estate or an entity that has the financial capacity to guaranty the financing of the purchase transaction; and

(5) exclusion of classes of properties not enumerated in section (k) herein.

(c) In any city or town which votes to adopt the provisions of this section, an owner of a residential building shall:

(1) notify the municipality and each tenant household, in writing by hand delivery and US mail, of the owner's intention to sell the property, with copy of the municipality's prepared summary of the ordinance adopted hereunder; and

(2) offer a Tenant Association with the Minimum Tenant Participation Percentage, an opportunity to purchase the property prior to entering into an agreement to sell such property pursuant to the time periods contained in this section, but no owner shall be under any obligation to enter into an agreement to sell such property to the tenants.

(d) A Tenant Association with the Minimum Tenant Participation Percentage may select a Successor entity or a Designee to act on its behalf as purchaser of the property and shall give the owner and the municipality notice of its selection.

(e) A Tenant Association with the Minimum Tenant Participation Percentage, or its Successor or Designee, may, within 30 days after receipt of the owner's intention to sell, submit an offer to the owner to purchase the property. Failure to submit a timely offer shall constitute an irrevocable waiver of the tenants' rights under this subsection (e) and the owner may enter into a contract sell the property to a third party, subject to subsections (f) - (i). If the owner and the Tenant Association, or its Successor, or its Designee, have not entered into an agreement within 30 days after receipt of the notice of the owner's intent to sell, the owner may enter into an agreement to sell the property to a third party, subject to subsections (f)-(i).

(f) Upon execution of any purchase contract with a third party, the owner shall, within 7 days, submit a copy of the contract along with a proposed purchase contract for execution by Tenant Association or its Successor, or Designee. If the Tenant Association, or its Successor or, its Designee, elect to purchase the property, the Tenant Association, or its Successor, or its Designee, shall within 30 days after the receipt of the third party purchase contract and the proposed purchase contract, execute the proposed purchase contract or such other agreement as is acceptable to both parties. The time periods set forth in this subsection may be extended by agreement between the owner and the Tenant Association, its Successor or its Designee. Except as otherwise specified in subsection (h), the terms and conditions of the proposed purchase contract offered to the Tenant Association, Successor, or its Designee, shall be the same as those of the executed third party purchase contract.

(g) After receipt of the third party purchase contract provided for in subsection (f), the Tenant Association or its Successor or Designee may, within the 30 day time period prescribed in said subsection (f), make a counteroffer by executing and submitting to the owner an amended proposed purchase contract. Failure by the Tenant Association, Successor or its Designee, to execute the purchase contract or submit a counteroffer within the 30 day period referenced in subsection (f) shall constitute a waiver of the tenants' right to purchase under these subsections. If the Tenant Association, Successor or its Designee, submits a counteroffer, the owner shall have 30 days from the date it receives the amended proposed purchase contract to execute the amended proposed purchase contract or reject, in writing, the counteroffer. However, if the owner rejects a counteroffer, it may not subsequently enter into any purchase contract with a third party on terms that are the same as, or materially more favorable to the proposed third party purchaser, than the economic terms and conditions in the counteroffer proposed by the Tenant

138 Association, Successor, or its Designee, unless the owner first provides a copy of such new third
139 party purchase contract, along with a new proposed purchase contract for execution by the
140 Tenant Association, Successor, or its Designee, which shall contain the same terms and
141 conditions as the newly executed third party purchase contract, except as otherwise specified by
142 subsection (h), and the Tenant Association, Successor, or its Designee, shall have 30 days from
143 the date they receive the third party purchase contract and the proposed purchase contract to
144 execute the proposed purchase contract or such other agreement as is acceptable to the owner
145 and the Tenant Association, Successor, or its Designee.

146 (h) Any purchase contract offered to, or proposed by, the Tenant Association, its
147 Successor or its Designee shall provide at least the following terms:

148 (i) the earnest money deposit shall not exceed the lesser of:

149 (1) the deposit in the third party purchase contract;

150 (2) 5 percent of the sale price; or

151 (3) \$250,000; provided, however, that the owner and the Tenant Association, or its
152 Successor, or its Designee, may agree to modify the terms of the earnest money deposit;
153 provided, further, that the earnest money deposit shall be held under commercially-reasonable
154 terms by an escrow agent selected jointly by the owner and the Tenant Association, its Successor
155 or its Designee;

156 (ii) the earnest money deposit shall be refundable for not less than 90 days from the date
157 of execution of the purchase contract or such greater period as provided for in the third party
158 purchase contract; provided, however, that if the owner unreasonably delays the buyer's ability to

conduct due diligence during the 90 day period, the earnest money deposit shall continue to be refundable for a period greater than 90 days. After the expiration of the specified time period, the earnest money deposit shall be forfeited and the right to purchase of the Tenant Association, its Successor or Designee shall be irrevocably waived.

(i) The Tenant Association or its Successor, or Designee, shall have one hundred and sixty days from execution of the purchase and sale agreement to perform all due diligence, secure financing for and close on the purchase of the building. Failure to exercise the purchase option within 160 days shall constitute a waiver of the purchase option by the Tenant Association, its Successor or, or its Designee.

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

(k) This section shall not apply to the following:

(1) property that is the subject of a government taking by eminent domain or a negotiated purchase in lieu of eminent domain;

(2) a proposed sale to a purchaser pursuant to terms and conditions that preserve affordability, as determined by the Department;

179 (3) any sale of publicly-assisted housing, as defined in section 1 of chapter 40T of the
180 General Laws;

181 (4) rental units in any hospital, skilled nursing facility, or health facility;

182 (5) rental units in a nonprofit facility that has the primary purpose of providing short term
183 treatment, assistance, or therapy for alcohol, drug, or other substance abuse provided that such
184 housing is incident to the recovery program, and where the client has been informed in writing of
185 the temporary or transitional nature of the housing;

186 (6) rental units in a nonprofit facility which provides a structured living environment that
187 has the primary purpose of helping homeless persons obtain the skills necessary for independent
188 living in a permanent housing and where occupancy is restricted to a limited and specific period
189 of time of not more than twenty-four months and where the client has been informed in writing
190 of the temporary or transitional nature of the housing at its inception;

191 (7) public housing units managed by the local housing authority;

192 (8) federal public housing units that are subsidized and regulated under federal laws, to
193 the extent such applicable federal laws expressly preempt the provisions of this section;

194 (9) any residential property where the owner is a natural person who owns six (6) or
195 fewer residential rental units in the municipality and who resides in the Commonwealth of
196 Massachusetts;

197 (10) any unit that is held in trust on behalf of a disabled individual who permanently
198 occupies the unit, or a unit that is permanently occupied by a disabled parent, sibling, child, or
199 grandparent of the owner of that unit; or

(11) any rental unit that is owned or managed by a college or university for the express purpose of housing students.

(l) The Tenant Association, Successor or its Designee must ensure that their purchase of the property will not result in the displacement of any Elderly Tenant households that choose not to participate in the purchase of the property.

(m) Short-sales.

(1) An owner shall give notice to each tenant household of a housing accommodation of the intention to sell the housing accommodation by way of short-sale to avoid foreclosure. Such notice shall be mailed by regular and certified mail, with a simultaneous copy to the attorney general, the director of housing and community development, and to the municipality adopting this Section within two (2) business days of the owner's submission of a request or application to the mortgagee for permission to sell the housing accommodation by way of short-sale or to accept a deed in lieu. This notice shall also include a notice of the rights provided by this section.

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

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

(4) A tenant group representing at least fifty-one percent of the households occupying the housing accommodation which are entitled to notice under paragraph (3) shall have the collective right to purchase, in the case of a third party offer that the mortgagee intends to accept, provided it

(i) submits to the owner reasonable evidence that the tenants of at least fifty-one percent of the occupied units in the housing accommodation have approved the purchase of the housing accommodation,

(ii) submits to the owner a proposed purchase and sale agreement on substantially equivalent terms and conditions within sixty days of receipt of notice of the offer made under paragraph (3),

(iii) obtains a binding commitment for any necessary financing or guarantees within an additional ninety days after execution of the purchase and sale agreement, and

(iv) closes on such purchase within an additional ninety days after the end of the ninety-day period under clause (iii).

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

(5) The right of first refusal created herein shall inure to the tenants for the time periods hereinbefore provided, beginning on the date of notice to the tenants under paragraph (1). The effective period for such right of first refusal shall begin anew for each different offer to purchase that the mortgagee intends to accept. The right of first refusal shall not apply with

264 respect to any offer received by the owner for which a notice is not required pursuant to said
265 paragraph (3).

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

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

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

279 (9) The attorney general shall enforce this section and shall promulgate rules and
280 regulations necessary for enforcement. The attorney general may seek injunctive, declaratory,
281 and compensatory relief on behalf of tenants and the commonwealth in a court of competent
282 jurisdiction. The attorney general shall post a sample intent to sell notice, sample proof of notice
283 to tenants, sample notice of offer, and other necessary documents.

284 (n) Foreclosures.

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

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

(3) No later than five (5) business days before the auction of a housing accommodation, the tenants shall inform the mortgagee, in writing, if a group of tenants representing at least fifty-one percent of the households occupying the housing accommodation or an entity to which they have assigned their right of first refusal intend to exercise their right of first refusal at auction and desire to receive information relating to the proposed auction.

(4) A group of tenants representing at least fifty-one percent of the households occupying the housing accommodation or their assignee may exercise their collective right to purchase the housing accommodation, in the event of a third party offer at auction that the mortgagee receives, provided that the group of tenants

(i) submits to the mortgagee reasonable evidence that the tenants of at least fifty-one percent of the occupied homes in the housing accommodation have approved the purchase of the housing accommodation,

(ii) submits to the mortgagee a proposed purchase and sale agreement on substantially equivalent terms and conditions to that received by the mortgagee in the third party offer within sixty days of receipt of notice of the bid made under paragraph (3) of this section,

(iii) obtains a binding commitment for any necessary financing or guarantees within an additional ninety days after execution of the purchase and sale agreement, and

(iv) closes on such purchase within an additional ninety days after the end of the ninety-day period under clause (iii).

No mortgagee shall unreasonably refuse to enter into, or unreasonably delay the execution or closing on a purchase and sale with tenants who have made a bona fide offer to meet the price and substantially equivalent terms and conditions of a bid received at auction. Failure of the tenants to submit such a purchase and sale agreement within the first sixty day period, to obtain a binding commitment for financing within the additional ninety day period or to close on the purchase within the second ninety-day period, shall serve to terminate the rights of such tenants to purchase. The time periods herein provided may be extended by agreement.

Nothing herein shall be construed to require a mortgagee to provide financing to such tenants. A group or association of tenants which has the right to purchase hereunder, at its election, may assign its purchase right hereunder to the city, town, housing authority, or agency of the commonwealth, nonprofit, community development corporation, affordable housing developer, or land trust for the purpose of continuing the use of the housing accommodation as permanently affordable rental housing.

If there are no third party bids at auction for the housing accommodation, the tenants shall have a right of first refusal whenever the mortgagee seeks to sell the housing

accommodation. The tenants shall be notified of any offers the mortgagee intends to accept and shall be given an opportunity to meet the price and substantially the terms of a third-party offer based on the same time line described in paragraph (4).

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

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

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

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

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

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