

HOUSE No. 3839

The Commonwealth of Massachusetts

PRESENTED BY:

Dylan A. Fernandes

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 protecting buyers from unknowingly purchasing property in a flood zone.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|---------------------------|--|------------------|
| <i>Dylan A. Fernandes</i> | <i>Barnstable, Dukes and Nantucket</i> | <i>2/16/2021</i> |

HOUSE No. 3839

By Mr. Fernandes of Falmouth, a petition (accompanied by bill, House, No. 3839) of Dylan A. Fernandes relative to protecting buyers from unknowingly purchasing property in flood zones. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

An Act protecting buyers from unknowingly purchasing property in a flood zone.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 183 of the General Laws is hereby amended by adding the following section:-

2 Section 70. (a) As used in this section the following terms shall, unless the context clearly
3 requires otherwise, have the following meanings:

4 “FEMA”, the Federal Emergency Management Agency.

5 “Flood insurance rate map”, the flood insurance rate maps produced by the FEMA
6 administrator in accordance with 42 U.S.C. § 4101 et seq.

7 “Flood zone”, geographic areas defined by FEMA to have risk of flood.

8 “Owner”, any person who alone or jointly or severally with others: (i) has legal title to a
9 premises; (ii) has charge or control of any premises as an agent who has authority to expend
10 money for compliance with the state sanitary code, executor, administrator, trustee or guardian of
11 the estate or the holder of legal title; (iii) is an estate or trust of which such premises is a part, or

the grantor or beneficiary of such an estate or trust; or (iv) is the association of unit owners of a condominium or cooperative; provided, however, that the term “owner” shall not include a secured lender unless and until the secured lender has acquired legal title pursuant to applicable law and takes actual physical possession.

“Premises”, any residential property or dwelling unit.

(b) The director of the Massachusetts emergency management agency shall prepare a standard notification form and such other materials as may be necessary to inform prospective purchasers, lessees and renters about the potential hazards of living in a flood zone. The form shall include, but not be limited to:

(i) if flooding has previously occurred on the premises and if so, the frequency and amount of any damage claims filed through the National Flood Insurance Program or private insurance;

(ii) whether the premises are located in a special flood hazard areas identified on the flood insurance rate map;

(iii) the zone designation of the premises as identified on the flood insurance rate map and the most recent description of the level of risk associated with each zone designation as published by FEMA;

(iv) if the owner has ever been required to purchase flood insurance by a mortgagor; and

(v) if, due to the receipt of federal disaster aid from FEMA, the United States Small Business Administration or any other federal disaster flood assistance for flood damage to the property, a requirement to maintain flood insurance on the property exists.

(c) All owners selling premises shall, prior to accepting an offer for purchase, provide a copy of the form and other materials prepared pursuant to subsection (b) to the prospective purchaser. All owners leasing premises with an option to purchase such premises shall, prior to the signing of the lease with an option to purchase, provide a copy of the form and other materials prepared pursuant to subsection (b) to the lessee-prospective purchaser. In addition to and at the time of providing said form, the seller and any real estate agent involved in the sale shall disclose to the prospective purchaser any information known to the seller or real estate agent about the history of flooding and flood insurance for the premises.

(d) All owners renting premises shall, prior to entering into a tenancy agreement or signing an agreement to rent premises, provide (i) a copy of the form and other materials prepared pursuant to subsection (b) to the prospective tenant; and (ii) 2 copies of a statement certifying that the prospective tenant received said form and materials, 1 copy of which is to be retained by the tenant and 1 by the owner. The owner may include the statement certifying that the prospective tenant received said form as a provision in a written tenancy agreement.

(e) Any owner or real estate agent who fails to comply with this section shall be liable for all damages caused by the failure to comply and shall be subject to a penalty not to exceed \$1000. A violation of this section by a person engaged in trade or commerce shall be an unfair and deceptive act or practice as defined in section 2 of chapter 93A. A real estate agent involved with a sale, lease with an option to purchase or rental as described in subsections (c) and (d) shall not be liable for any fraud that takes place by or on behalf of the owner.