SENATE DOCKET, NO. 188 FILED ON: 1/11/2023

SENATE . . . . . No. 994

The Commonwealth of Massachusetts

PRESENTED BY:

Adam Gomez

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 preventing unnecessary vacancies in foreclosed homes.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Adam Gomez	*Hampden*

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SENATE . . . . . No. 994

By Mr. Gomez, a petition (accompanied by bill, Senate, No. 994) of Adam Gomez for legislation to prevent unnecessary vacancies in foreclosed homes. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *1047* OF 2021-2022.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act preventing unnecessary vacancies in foreclosed homes.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to protect citizens of the Commonwealth involved in the mortgage foreclosure crisis, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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

SECTION 1. Chapter 186A of the General Laws is hereby amended by striking out sections 1 and 2 in their entirety and inserting in place thereof the following:-

Section 1. (a) As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:—

"Entity", a business organization, or any other kind of organization including, without limitation, a corporation, partnership, trust, limited liability corporation, limited liability

partnership, joint venture, sole proprietorship or any other category of organization and any employee, agent, servant or other representative of such entity.

"Eviction", an action, without limitation, by a foreclosing owner of a housing accommodation which is intended to actually or constructively evict a tenant or otherwise compel a tenant to vacate such housing accommodation.

“Fair Market Rent,” an amount equal to that established by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. section 1437f(c), as it exists or may be amended, for a unit of comparable size in the area in which the property is located.

‘'Foreclosing owner", an entity that holds title in any capacity, directly or indirectly, without limitation, whether in its own name, as trustee or as beneficiary, to a housing accommodation that has been foreclosed upon and either: (1) held or owned a mortgage or other security interest in the housing accommodation at any point prior to the foreclosure of the housing accommodation or is the subsidiary, parent, trustee, or agent thereof; or (2) is an institutional mortgagee that acquires or holds title to the housing accommodation within 3 years of the filing of a foreclosure deed on the housing accommodation; or (3) is the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation or the Federal Deposit Insurance Corporation.

"Foreclosure", a legal proceeding to terminate a mortgagor's interest in property, instituted by the mortgagee, and regulated under chapter 244.

“Foreclosure Sale Purchaser” or “purchaser”, either a foreclosing owner or a person or entity which purchases a housing accommodation from a foreclosing owner, not intending to

reside or have a family member reside in such housing accommodation as the primary residence of such person or individual in control of such entity.

"Housing accommodation", a building or structure, or part thereof or land appurtenant thereto, and any other real or personal property used, rented or offered for rent for living or dwelling purposes, together with all services connected with the use or occupancy of such property.

"Institutional mortgagee", an entity or an entity which is the subsidiary, parent, trustee or agent thereof or otherwise related to such entity, that holds or owns mortgages or other security interests in 3 or more housing accommodations or that acts as a mortgage servicer of 3 or more mortgages of housing accommodations.

"Just cause", 1 of the following: (1) the tenant has failed to pay the rent in effect prior to the foreclosure or, in the case of the former mortgagor and any household members, monthly rent payments in an amount agreed to by the mortgagor and purchaser or, in the absence of such agreement, a Fair Market Rent as long as the foreclosure sale purchaser notified the tenant in writing of the amount of rent, the agreed upon monthly rent payments or Fair Market Rent that was to be paid and to whom it was to be paid; (2) the tenant has materially violated an obligation or covenant of the tenancy or occupancy, other than the obligation to surrender possession upon proper notice, and has failed to cure such violation within 30 days after having received written notice thereof from the foreclosing owner; (3) the tenant is committing a nuisance in the unit, is permitting a nuisance to exist in the unit, is causing substantial damage to the unit or is creating a substantial interference with the quiet enjoyment of other occupants; (4) the tenant is using or permitting the unit to be used for any illegal purpose; (5) the tenant who had a written bona fide

lease or other rental agreement which terminated, on or after August 10, 2010, has refused, after written request or demand by the foreclosing owner, to execute a written extension or renewal thereof for a further term of like duration and in such terms that are not inconsistent with this chapter; (6) the tenant has refused the foreclosing owner reasonable access to the unit for the purpose of making necessary repairs or improvement required by the laws of the United States, the commonwealth or any subdivision thereof, or for the purpose of inspection as permitted or required by agreement or by law or for the purpose of showing the unit to a prospective purchaser or mortgagee provided. Nothing in the section shall limit the rights of a third-party owner to evict a tenant at the expiration of an existing lease.

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

"Mortgage servicer", an entity which administers or at any point administered the mortgage; provided, however that such administration shall include, but not be limited to, calculating principal and interest, collecting payments from the mortgagor, acting as escrow agent or foreclosing in the event of a default.

“Tenant”, a person or group of persons who at the time of foreclosure is an occupant of such housing accommodation. A person who moves into the housing accommodation owned by the foreclosure sale purchaser, subsequent to the foreclosure sale, without the express written permission of the foreclosure sale purchaser shall not be considered a tenant under this chapter.

"Unit" or "residential unit", the room or group of rooms within a housing accommodation which is used or intended for use as a residence by 1 household.

Section 2. Notwithstanding any general or special law to the contrary, if a mortgage of real estate is foreclosed by a sale under a power contained therein, or otherwise, and a foreclosure sale purchaser has a valid title to such estate, that foreclosure sale purchaser shall not evict a tenant except for just cause or unless a binding purchase and sale agreement has been executed for a bona fide third party to purchase the housing accommodation from a foreclosure sale purchaser.

SECTION 2. Said chapter 186A of the General Laws, as appearing in the 2016 Official Edition, is hereby further amended in sections 3,4,5, and 6 by striking out each appearance of the words “foreclosing owner” and inserting in place thereof the following words:- foreclosure sale purchaser.

SECTION 3. Section 3 of said chapter 186A of the General Laws, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- Within 30 days of the foreclosure, the foreclosure sale purchaser shall post in a prominent location in the building a written notice stating the names, addresses, telephone numbers and telephone contact information of the foreclosure sale purchaser, the building manager or other representative of the foreclosure sale purchaser responsible for the management of such building and stating the address to which the rent, or, in the case of the former mortgagor and any household members, the agreed upon monthly rent payments or Fair Market Rent shall be sent.

SECTION 4. Section 4 of said chapter 186A of the General Laws, as so appearing, is hereby amended in subsection (a) by striking out clause (i) and inserting in place thereof the following clause:-

(i) the tenant has failed to pay the rent in effect prior to the foreclosure or, in the case of the former mortgagor and any household members, the agreed upon monthly rent payments or Fair Market Rent, as long as the foreclosing owner notified the tenant in writing of the amount of rent that was to be paid and to whom it was to be paid;

SECTION 5. Section 5 of said chapter 186A of the General Laws, as so appearing, is hereby amended by striking out the second sentence and inserting in place thereof the following sentence:-

A bona fide lease between the foreclosed-upon owner and the lessee or proof of rental payment to the foreclosed-upon owner or a Fair Market Rent shall be presumed reasonable.

SECTION 6. Section 6 of said chapter 186A of the General Laws, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

A foreclosure sale purchaser that evicts a tenant in violation of this chapter or any ordinance or by-law adopted pursuant to this chapter, shall be punished by penalty of not less than $5,000 to be paid to the tenant upon order of the court. Each such illegal eviction shall constitute a separate offense.

SECTION 7. Section 13 of said Chapter 186 of the General Laws, as so appearing, is hereby amended by inserting, in line 18, after the word “foreclosure” the following;- “shown to be valid.”

SECTION 8. Section 6 of Chapter 239 of the General Laws, as so appearing is hereby amended by striking the first sentence and inserting in place thereof the following:-

If the action is for the possession of land after foreclosure of a mortgage thereon by a sale under a power contained therein, or otherwise, and the person having a valid title to such estate, the condition of the bond shall be for the entry of the action and payment to the plaintiff, if final judgment is in his favor, of all costs and of a reasonable amount as rent of the land from the day when the mortgage was foreclosed until possession of the land is obtained by the plaintiff.