

SENATE No. 785

The Commonwealth of Massachusetts

PRESENTED BY:

Anthony W. Petruccelli

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 passage of the accompanying bill:

An Act regulating the maintenance of vacant and foreclosing residential properties.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Anthony W. Petruccelli	First Suffolk and Middlesex
Carlo P. Basile	1st Suffolk

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT REGULATING THE MAINTENANCE OF VACANT AND FORECLOSING RESIDENTIAL PROPERTIES.

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. The General Laws are hereby amended by inserting after chapter 244 the
2 following chapter:-

CHAPTER 244A

4 MAINTENANCE OF VACANT AND FORECLOSING RESIDENTIAL PROPERTIES

5 Section 1. Purpose: It is the intent of this legislation to protect and preserve public safety,
6 security, and quiet enjoyment of occupants, abutters, and neighborhoods by (i) requiring all
7 residential property owners, including lenders, trustees, and service companies, to properly
8 maintain vacant or foreclosing properties, and (ii) regulating the maintenance of vacant or
9 foreclosing, residential properties to prevent blighted and unsecure residences. The city's
10 designated inspector of buildings or buildings commissioner has enforcement authority under
11 section 3 of chapter 143 of the General Laws, the State Building Code, and the local city zoning
12 code.

13 SECTION 2. As used in this chapter, unless a contrary intention clearly appears, the
14 following terms shall have the following meanings:

15 “City”, a city or town of the Commonwealth.

16 “Commissioner”, a city’s designated inspector of buildings or building commissioner.

17 “Days”, consecutive calendar days.

18 “Foreclosing”, the process by which a property, placed as security for a real estate loan, is
19 prepared for sale to satisfy the debt if the borrower defaults.

20 “Initiation of the foreclosure process”, any of the following actions: (i) taking possession of a
21 residential property under section 1 of chapter 244 of the General Laws; (ii) delivering the
22 mortgagee’s notice of intention to foreclose to the borrower under 17B of chapter 244 of the
23 General Laws; or (iii) commencing a foreclosure action on a property in either land court or a
24 county’s superior court.

25 “Local”, within twenty (20) driving miles distance of the property in question.

26 “Mortgagee”, the creditor, including but not limited to, service companies, lenders in a mortgage
27 agreement and any agent, servant, or employee of the mortgagee, or any successor in interest or
28 assignee of the mortgagee’s rights, interests or obligations under the mortgage agreement.

29 “Owner”, every person, entity, service company, property manager or real estate broker, who
30 alone or severally with others:

31 (1) has legal or equitable title to any dwelling, dwelling unit, mobile dwelling unit, or
32 parcel of land, vacant or otherwise, including a mobile home park; or

33 (2) has care, charge or control of any dwelling, dwelling unit, mobile dwelling unit, or
34 parcel of land, vacant or otherwise, including a mobile home park, in any capacity
35 including but not limited to agent, executor, executrix, administrator, administratrix,
36 trustee or guardian of the estate of the holder of legal title; or

37 (3) is a mortgagee in possession of this property; or

38 (4) is an agent, trustee or other person appointed by the courts and vested with
39 possession or control of this property; or

40 (5) is an officer or trustee of the association of unit owners of a condominium. Each of
41 these persons is bound to comply with the provisions of these minimum standards as
42 if he were the owner. However, this ordinance shall not apply to a condominium
43 association created under chapter 138A of the General Laws to the extent that this
44 association forecloses on or initiates the foreclosure process for unpaid assessments
45 due or owing to the association. "Owner" also means every person who operates a
46 rooming house; or

47 (6) is a trustee who holds, owns or controls mortgage loans for mortgage backed
48 securities transactions and has initiated the foreclosure process.

49 "Property", any real, residential property, or portion thereof, located in the Commonwealth,
50 including buildings or structures situated on the property. For purposes of this chapter only,
51 property does not include property owned or subject to the control of a Commonwealth city or
52 any of that city's governmental bodies.

53 "Residential Property", any property that contains one or more dwelling units used, intended, or
54 designed to be occupied for living purposes.

55 "Securing", measures that assist in making the property inaccessible to unauthorized persons.

56 “Vacant”, any property not currently legally occupied and not properly maintained or secured.

57 SECTION 3. All owners must register vacant or foreclosing properties with the city
58 commissioner on forms provided by the commissioner. All registrations must state the
59 individual owner’s or agent’s phone number and mailing address located within the
60 Commonwealth as required by section 57D of chapter 59 of the General Laws, section 5.02 of
61 chapter 156D of the General Laws, and 950 CMR 113.20. The mailing address may not be a
62 P.O. Box. This registration must also certify that the property was inspected and identify
63 whether the property is vacant at the time of filing. If the property is vacant, the owner or
64 registrant must designate and retain a local individual or local property management company
65 responsible for the security and maintenance of the property. This designation must state the
66 individual’s name, phone number and local mailing address. The mailing address may not be a
67 P.O. Box. If the property is in the process of foreclosure, then the registration must be received
68 within seven days of the initiation of the foreclosure process, as defined in Section 2. If the
69 commissioner determines that the property is vacant and the foreclosure proceedings have not
70 been initiated, the registration must be received within 14 days of the commissioner’s first
71 citation for improper maintenance.

72 All property registrations are valid for one calendar year. An annual registration fee of \$100
73 must accompany the registration form. Subsequent annual registrations and fees are due within
74 30 days of the expiration of the previous registration and must certify whether the foreclosing or
75 foreclosed property remains vacant or not.

76 Once the property is no longer vacant or is sold, the owner must provide proof of sale or written
77 notice and proof of occupancy to the commissioner.

78 SECTION 4. Properties subject to this chapter must be maintained in accordance with
79 the relevant sanitary codes, building codes and local regulations. The owner, local individual or
80 local property management company must inspect and maintain the property on a monthly basis
81 for the duration of the vacancy.

82 The property must contain a posting with the name and 24-hour contact phone number of the
83 local individual or property management company responsible for the maintenance. This sign
84 must be posted on the front of the property so it is clearly visible from the street.

85 Adherence to this chapter does not relieve the owner of any applicable obligations set forth in
86 code regulations, covenant conditions and restrictions, or home owner association rules and
87 regulations.

88 SECTION 5. The commissioner's department shall have the authority and the duty to
89 inspect properties subject to this chapter for compliance and to issue citations for any violations.
90 The commissioner's department shall have the discretion to determine when and how such
91 inspections are to be made, provided that their policies are reasonably calculated to ensure that
92 this chapter is enforced.

93 SECTION 6. Failure to initially register with the commissioner is punishable by a fine of
94 \$300.

95 If applicable, failure to properly identify the name of the local individual or local property
96 management company is punishable by a fine of \$300.

97 Failure to maintain the property is punishable by a fine of not more than \$300 for each week the
98 property is not maintained.

99 Violations of this chapter shall be treated as a strict liability offense regardless of intent.

100 All monies collected pursuant to this chapter shall be directed to a specific commissioner's
101 enforcement fund.

102 SECTION 7. Any person aggrieved by the requirements of this chapter or by a decision
103 issued under this chapter by the commissioner, may seek relief in any court of competent
104 jurisdiction as provided by the laws of the Commonwealth.

105 SECTION 8. If any provision of this chapter imposes greater restrictions or obligations
106 than those imposed by any other general law, special law, regulation, rule, ordinance, by-law,
107 order or policy, then the provisions of this chapter control.

108 SECTION 9. The commissioner has the authority to promulgate rules and regulations
109 necessary to implement and enforce this chapter.

110 SECTION 10. The provisions of this chapter are effective immediately upon passage and
111 all provisions shall be enforced immediately but no monetary fine shall be imposed under this act
112 until 90 days after passage.

113 SECTION 11. A copy of this ordinance is to be mailed to all owners of residential
114 property located in the city. In addition, a copy of this ordinance is to be mailed to all loan
115 institutions, banks, real estate offices and management companies located in or having legal or
116 equitable interest in residential property located in the city.