SENATE . . . . . No. 2399

The Commonwealth of Massachusetts

Senate, July 30, 2012.

BILL #: S00587

BILL STATUS: Favorable with Amendment

DISSENTERS:

None

ACCOMPANIED BILLS:

None

For the committee,

STEPHEN M. BREWER

SENATE . . . . . No. 2399

The committee on Ways and Means, to whom was referred the Senate bill relative to creating a statutory housing restriction and providing remedies related to statutory housing (Senate, No. 587); reports, recommending that the same ought to pass with an amendment substituting a new draft of the same title (Senate, No. 2399).

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act relative to creating a statutory housing restriction and providing remedies related to statutory housing.

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. Subsection (b) of section 1 of chapter 30B of the General Laws, as amended by section 4 of chapter 176 of the acts of 2011, is hereby further amended by adding the following clause:-

(35) contracts or other actions to acquire or dispose of statutory housing premises as defined in section 17A of chapter 183, including exercise of the statutory housing power to sell, following which the statutory housing restriction continues in force and effect as to the premises as before.

SECTION 2. Chapter 183 of the General Laws is hereby amended by adding the following 7 sections:-

Section 17A. As used in this section and sections 17B to 17G, inclusive, the following words shall have the following meanings unless the context clearly requires otherwise:

12 "Affordable value", the affordable value of the statutory housing premises under the
13 statutory housing condition and the statutory housing power to sell, unless otherwise defined in
14 the restriction, equal to the consideration paid for the the premises by the eligible household
15 owning the premises, subject to the statutory housing restriction adjusted in proportion to any
16 increase of the area median income from the date the eligible household acquired the premises to
17 the date next preceding the sale for which such information is publicly available; provided,
18 however, that in a restriction stating an alternate means of determining the value of the statutory
19 housing premises, the “affordable value” shall be the amount determined as stated in that
20 restriction.

21 "Area median income", the median income for the standard metropolitan statistical area
22 or equivalent area for the statutory housing premises in which the statutory housing premises are
23 located, adjusted for household size, published by the United States Department of Housing and
24 Urban Development, or such other standard adopted by the department of housing and
25 community development to measure individual and household incomes.

26 "Conforming mortgage", a statutory housing restriction having priority over all
27 mortgages, any mortgage which, when aggregated with all then existing mortgages senior to
28 such mortgage, does not secure principal exceeding the affordable value of the statutory housing
29 premises.

30 "Eligible household", the owner and all persons residing together with the owner at the
31 statutory housing premises and whose household income determined in connection with the
32 acquisition of the statutory housing premises does not exceed the maximum household income
33 established by the holder at the time of such acquisition as stated in the deed, covenant or

34 restriction restricting the statutory housing premises, or if no maximum household income is
35 stated in a deed, covenant or restriction, did not exceed 80 per cent of the area median income,
36 adjusted for the number of individuals in the eligible household.

37 "Governmental body", the United States or the commonwealth, acting through any of its
38 departments, divisions, commissions, boards or agencies, or a political subdivision or public
39 instrumentality thereof or a public authority or quasi-public entity or a municipal affordable
40 housing trust or an instrumentality created pursuant to chapter 40F, whether acting for its own
41 account or as an agent or designee for or as assignees of a private individual or private entity
42 which has been required to place such restriction in its chain of title as a condition of receiving
43 financial or other assistance from the governmental body.

44 "Grantor", a person granting a restriction on the statutory housing condition and with the
45 statutory housing power to sell, and an individual acquiring the premises subject to such a
46 restriction previously granted.

47 "Household income", the aggregate combined gross income of all members of a
48 household under standards established by the United States Department of Housing and Urban
49 Development or such other standards established by the department of housing and community
50 development to measure individual and household incomes.

51 "Statutory housing condition", a condition that may be incorporated in a deed, covenant
52 or restriction by reference, whereby the grantor intends, declares and covenants on behalf of the
53 grantor and grantor's heirs, successors and assigns that the grantor and the grantor's heirs,
54 successors and assigns shall:

55 (i) occupy the dwelling unit on the statutory housing premises as the principal residence
56 of the grantor and the grantor's eligible household;

57 (ii) pay and discharge, when due and payable, all debts secured by the statutory housing
58 premises including, without limitation, taxes, mortgages and other voluntary liens and judgments
59 and reimburse the holder on demand for all amounts paid by the holder to discharge such debts,
60 with interest thereon, until reimbursement at the rate applicable to damages in actions for breach
61 of contract obligations.

62 (iii) not encumber the statutory housing premises or any portion of the statutory housing
63 premises in an amount in excess of its affordable value, nor convey, transfer or otherwise dispose
64 of the statutory housing premises or any portion of the statutory housing premises other than as
65 statutory housing premises; and

66 (iv) upon disposition, convey a fee interest in the statutory housing premises only to a
67 member of an eligible household, approved in writing by the holder, for consideration not
68 exceeding the affordable value of the statutory housing premises at the time of the conveyance;
69 provided, however, that a continuing or newly-acquired ownership, with continued occupancy as
70 a principal residence by the surviving spouse of a qualified owner in the eligible household who
71 resided at the statutory housing premises as the surviving spouse’s last principal residence before
72 the qualified owner's death, without regard to the surviving spouse's income, shall not constitute
73 a breach of this condition.

74 "Statutory housing covenant", in a conveyance of real estate:

75 (i) the grantor, for the grantor and the grantor's heirs, executors, administrators,
76 successors and assigns, covenants with the holder and its successors and assigns that: (a) the

77 granted statutory housing premises are free from all encumbrances made by the grantor; (b) the
78 grantor and the grantor's heirs, executors, administrators, successors and assigns shall warrant
79 and defend the same to the holder and the holder's successors and assigns forever against the
80 lawful claims and demands of all persons claiming by, through or under the grantor, but against
81 none other; (c) the grantor and the grantor's heirs, successors or assigns, during their respective
82 ownership of the statutory housing premises, shall comply fully with the statutory housing
83 condition; and (d) the grantor and the grantor's heirs, successors or assigns, in case a sale shall be
84 made under the statutory housing power to sell, shall, upon request, execute, acknowledge and
85 deliver to any purchaser a deed of release confirming such sale and that the holder and the
86 holder's successors and assigns are appointed and constituted the attorneys-in-fact irrevocable of
87 the the grantor to execute and deliver to any such purchaser a deed and a full transfer of all
88 policies of insurance on the buildings upon the land covered by the statutory housing restriction
89 at the time of sale.

90 "Statutory housing power to sell", the authority of the holder or its successors or assigns,
91 which may be incorporated in a deed, covenant or restriction by reference, upon a default in the
92 performance or observance of the foregoing or other condition reasonably related to maintaining
93 the premises as statutory housing premises, to sell the statutory housing premises or such portion
94 of the statutory housing premises as may remain subject to the statutory housing restriction,
95 together with all improvements thereon, by deed, first complying with the General Laws relating
96 to the holder's sale of statutory housing premises by the exercise of the statutory housing power
97 to sell, and may convey the same by proper deed to the purchaser absolutely and in fee simple,
98 but subject always to the statutory housing covenants on the statutory housing condition and with
99 the statutory housing power to sell; provided, however, that such sale shall forever bar the

100 grantor and all persons claiming rights of fee simple ownership under the grantor or claiming
101 mortgages or other liens against the statutory housing premises in excess of the affordable value
102 from all right and interest in the statutory housing premises, whether at law or in equity.

103 "Statutory housing premises", residential real property subject to a statutory housing
104 restriction.

105 "Statutory housing restriction", a restriction containing the statutory housing covenants,
106 the statutory housing condition or the statutory housing power to sell.

107 Section 17B. A deed, covenant or restriction in substance following the form entitled
108 Deed with Statutory Housing Restriction or the form entitled Statutory Housing Restriction shall,
109 when duly executed, have the force and effect of an affordable housing restriction as defined in
110 section 31 of chapter 184, without limitation as to the enforcement thereof as stated in section 32
111 of said chapter 184, to the use of the holder and the holder's successors and assigns with statutory
112 housing covenants, upon the statutory housing condition and with the statutory housing power to
113 sell, to secure the performance of the statutory housing restriction and any obligation therein
114 specified. The parties may insert in such restriction any other lawful agreement or condition
115 reasonably related to the creation, maintenance and preservation of the premises as statutory
116 housing premises.

117 Section 17C. The following entities shall each be eligible to be a holder of a statutory
118 housing restriction: a governmental body or an agency thereof, a nonprofit organization, a
119 church, employer, university or other entity that is otherwise administering government-
120 sponsored, federal, state or local subsidy programs and any other entity so authorized by the
121 department of housing and community development or a successor agency; provided, however,

122 that no restriction granted on the statutory housing power to sell shall be invalid by reason of
123 being held by other than an eligible entity provided that it is assigned to an eligible entity before
124 the exercise of the statutory housing power to sell.

125 A city, by the mayor, unless otherwise provided by charter, ordinance or vote of the city
126 council, and a town, by the board of selectmen, unless otherwise provided by charter, by-law, or
127 vote of the town, may acquire by gift, purchase, grant, bequest, devise, lease or otherwise a
128 statutory housing restriction on real property resulting from regulatory action or funding by the
129 city or town, or otherwise authorized by the city or town, and may hold and exercise all the
130 holder's rights, including the authority to acquire and reconvey the real property as statutory
131 housing premises and otherwise administer and enforce the statutory housing restriction.

132 Section 17D. On written notice from an owner of statutory housing premises or from a
133 mortgagee, proposed mortgagee or other person holding a lien on such premises, the holder shall
134 state in writing the affordable value of the statutory housing premises as of the nearest date for
135 which such determination can be made from public record and such other facts known to the
136 holder necessary to establish whether the owner or other person is in compliance with the
137 statutory housing restriction. Such certificate shall be conclusive as to a mortgagee or other
138 person relying thereon and providing value to the owner within the affordable value or
139 transferring the property pursuant to the statutory housing restriction. The holder may charge a
140 reasonable fee for providing the certificate.

141 Section 17E. A statutory housing restriction shall continue until terminated by agreement
142 of the holder, or by legislative or judicial action, or otherwise according to law unless a term of
143 years is stated in the restriction. On termination of a statutory housing restriction for any reason

144 prior to expiration of its term and after payment of the affordable value to the owner, mortgagees
145 and other lienholders according to the priority established by la, or such greater amount as is
146 payable under section 3 of chapter 244A, as to holders of conforming mortgages, the holder
147 alone shall be entitled to receive the difference between the affordable value of the statutory
148 housing premises immediately before termination, regardless of the remaining term of the
149 statutory housing restriction, and the fair market value of those premises immediately after
150 termination. Such amount shall be considered a first priority lien in the event that the statutory
151 housing restriction is terminated by judicial action in a bankruptcy proceeding.

152 The statutory housing covenants, statutory housing condition and statutory housing
153 power to sell shall not be subject to section 23 and sections 26 to 30, inclusive, of chapter 184
154 and shall have the benefits of section 32 of said chapter 184 without approval otherwise required
155 thereunder, but all nonstatutory provisions of a statutory housing restriction shall remain subject
156 to said section 23 and said sections 26 to 30, inclusive, of said chapter 184 and shall have the
157 benefits of said section 32 of said chapter 184 only if approved as stated therein.

158 Section 17F. Unless otherwise agreed in an instrument appearing of record, following a
159 mortgagee's foreclosure by a regulated for-profit, not-for-profit or governmental mortgagee
160 holding a first mortgage on statutory housing premises which was subordinate to a statutory
161 housing restriction, in addition to remaining restricted at the affordable value for eligible
162 households as stated in the restriction, only the statutory housing covenants, the statutory
163 housing condition and the statutory housing power to sell, to the extent appearing in the statutory
164 housing restriction, and the statutory obligations of the holder to mortgagees holding conforming
165 mortgages, shall continue in effect, binding the statutory housing premises, and all other
166 provisions of the restriction shall be extinguished.

167 Section 17G. Ownership of statutory housing premises, either by the executor or
168 administrator of an owner in an eligible household, or by the holder or by a mortgagee or other
169 lienholder, or its designee, or by an entity eligible to be a holder of a statutory housing
170 restriction, pursuant to exercise of lawful remedies against the owner, shall not constitute a
171 violation of the statutory housing covenants or the statutory housing condition so long as the
172 premises are being held for resale to, and are resold to, an eligible household as statutory housing
173 premises for an amount not exceeding the affordable value or, in the case of a holder of a
174 conforming mortgage, such greater amount as payable to the mortgagee under section 3 of
175 chapter 244A; provided, however, that the premises shall not be rented, leased or otherwise
176 occupied by a household that is not an eligible household during the period in which the
177 premises are being held for resale.

178 SECTION 3. Said chapter 183 is hereby further amended by inserting after section 22 the
179 following section:-

180 Section 22A. No restriction that has been purchased with state or municipal funds or
181 which has been granted in consideration for a loan or grant made with state or municipal funds
182 shall be released unless it is repurchased by the landowner at its then current fair market value.

183 SECTION 4. The appendix to said chapter 183, as appearing in the 2010 Official
184 Edition, is hereby amended by adding the following 8 forms:

185 (17) Deed with Statutory Housing Restrictions -------- of --------, -------- County, --------
186 for consideration of -------- dollars paid, grant to -------- of -------- with quitclaim covenants and
187 with statutory housing covenants, upon the statutory housing condition, for any breach of which
188 the holder shall have the statutory housing power to sell the land in -------- (description and

encumbrances, if any). Witness -------- hand and seal this -------- day of --------. (Here add acknowledgment.)

(18) Statutory Housing Restriction of --------, -------- County, -------- for consideration paid, grant to -------- of -------- with statutory housing covenants, the land in -------- (description and encumbrances, if any) upon the statutory housing condition, for any breach of which the holder shall have the statutory housing power to sell. Witness -------- hand and seal this -------- day of --------. (Here add acknowledgment.)

(19) Extension of Statutory Housing Restriction ------, holder of a statutory housing restriction by -------- to -------- dated -------- recorded -------- with -------- Deeds, book --------, page --------, and -------- owner of the equity of redemption of the premises, agree each for -------- sel --------, heirs, representatives and assigns, that the term of said housing restriction is hereby extended to --------, and said owner agrees to perform and observe the condition and covenants of said housing restriction as so extended. Witness -------- hand and seal this -------- day of --------. (Here add acknowledgment.)

(20) Assignment of Statutory Housing Restriction. ------- holder of a statutory housing restriction from -------- to -------- dated -------- recorded with -------- Deeds, book --------, page --------, assign said statutory housing restriction to --------. Witness -------- hand and seal this -------- day of --------. (Here add acknowledgment.)

(21) Statutory Deed under Statutory Housing Power to Sell. --------- holder of a statutory housing restriction from -------- to -------- dated -------- recorded with -------- Deeds, book --------, page --------, by the power conferred by said housing restriction and every other power, for -------- dollars paid, grant to -------- the premises conveyed by said housing restriction, subject to said

211 housing restriction and also to (description and encumbrances, if any) upon the statutory housing
212 condition, for any breach of which the holder shall have the statutory housing power to sell. .
213 Witness -------- hand and seal this -------- day of --------. (Here add acknowledgment.)

214 (22) Termination of Statutory Housing Restriction ----------, holder of a statutory
215 housing restriction from -------- to -------- dated -------- recorded with -------- Deeds, book --------,
216 page --------, releases the same. Witness -------- hand and seal this -------- day of --------. (Here
217 add acknowledgment.)

218 (23) Affidavit of Sale under Statutory Housing Power to Sell -------- named in the
219 foregoing deed, make oath and say that the statutory housing restriction was breached, and that I
220 published on the -------- day of -------- 20--------, in the --------, a newspaper published or by its
221 title page purporting to be published in -------- aforesaid and having a circulation therein, a notice
222 of which the following is a true copy: -------- (Insert advertisement.) --------. Pursuant to said
223 notice at the time and place therein appointed, I sold the premises in accordance with the
224 statutory housing power to sell, for -------- dollars, being not in excess of the Affordable Value
225 therefor. Witness -------- hand and seal this -------- day of --------. (Here add acknowledgement.)

226 (24) Certificate of Compliance under Statutory Housing Power to Sell ----------,
227 holder of a statutory housing restriction from -------- to -------- dated -------- recorded with --------
228 Deeds, book --------, page --------, states that a) ---------- is a member of an eligible household
229 with respect the residential real property described in the restriction who are obligated to occupy
230 those statutory housing premises as their principal residence, b) the present affordable value of
231 said property is [insert affordable value] and c) to the best of the undersigned's knowledge and

232 belief the owner is otherwise in compliance with said restriction. Witness -------- hand and seal
233 this -------- day of --------. (Here add acknowledgement.)

234 SECTION 5. Section 32 of chapter 184 of the General Laws, as so appearing, is hereby
235 amended by inserting after the word "state", in lines 64 and 65, each time it appears, the words
236 following words:- or municipal.

237 SECTION 6. Section 27 of chapter 236 of the General Laws, as so appearing, is hereby
238 amended by adding the following paragraph:-

239 When selling a property subject to a statutory housing restriction under section 17A to
240 17G, inclusive, of chapter 183, or other affordable housing restriction as defined in section 31 of
241 chapter 184 which will remain in effect following foreclosure, the officer may instead make the
242 sale and convey by deed either:

243 (i) at public auction only among eligible households as defined in said section 17A of
244 said chapter 183, together with the holder of the housing restriction or its designee or any entity
245 eligible to be a holder of a statutory housing restriction, for an amount not exceeding the
246 affordable value applicable to the statutory housing premises or for such higher amount as may
247 be required to pay each holder of a conforming mortgage as provided in section 3 of chapter
248 244A, in which event, if more than 1 eligible household or entity qualified as a bidder has bid at
249 or in excess of the affordable value, then bidding shall be capped at the affordable value and the
250 bidder to whom the property is sold shall be selected by chance from among those bidding and
251 willing to pay the affordable value; or

252 (ii) if the holder of the restriction tenders the affordable value or such higher amount as
253 may be required to pay each holder of a conforming mortgage as stated in said section 3 of said
254 chapter 244A, then by deed to the holder.

255 SECTION 7. Chapter 244 of the General Laws is hereby amended by inserting after
256 section 14A the following section:-

257 Section 14B. In the case of sale by foreclosure under a power of sale in a mortgage of a
258 property subject to a statutory housing restriction, statutory housing condition, statutory housing
259 power to sell or other affordable housing restriction as defined in section 31 of chapter 184
260 which will remain in effect following foreclosure, the property may, if the mortgagee so
261 determines, be auctioned only to an eligible household as defined in section 17A of chapter 183,
262 together with the mortgagee or its designee and the holder of the housing restriction or its
263 designee or any entity eligible to be a holder of a statutory housing restriction, for an amount not
264 exceeding the affordable value applicable to the property or such higher amount as may be
265 required to pay each holder of a conforming mortgage as stated in section 3 of chapter 244A, in
266 which event, if more than 1 eligible household or entity qualified as a bidder has bid at or in
267 excess of the affordable value, then bidding shall be capped at the affordable value and the
268 bidder to whom the property is sold shall be selected by chance from among those bidding who
269 are willing to pay the affordable value.

270 In lieu of conducting bidding, the mortgagee may elect to sell the property at the
271 affordable value or at such higher amount required to pay each holder of a conforming mortgage
272 as stated in section 3 of chapter 244A, by a lottery that includes all eligible households who have
273 been qualified to bid for the property at the public auction. At the request of the mortgagee, the

274 holder shall confirm the status as members of an eligible household or as an entity eligible to be
275 a holder of a statutory housing restriction of any person or entity identified to it by the
276 mortgagee.

277 If the holder of the restriction tenders the affordable value, then the premises shall be sold
278 to the holder.

279 SECTION 8. The General Laws are hereby amended by inserting after chapter 244 the
280 following chapter:-

281 CHAPTER 244A.

282 FORECLOSURE AND REDEMPTION OF STATUTORY HOUSING
283 RESTRICTIONS

284 Section 1. The statutory housing power to sell shall be governed by this chapter.

285 Section 2. The holder of a restriction with the statutory housing power to sell may recover
286 possession of the statutory housing premises and foreclose the right of redemption while the
287 breach of condition continues by entry or action in the manner prescribed in and subject to
288 sections 1 to 4, inclusive, 6, 8, 11, 12 and 13 of chapter 244, substituting holder for mortgagee,
289 owner for mortgagor, statutory housing restriction for mortgage and statutory housing power to
290 sell for power of sale; provided, however, that (i) if an entry for breach of condition is made
291 without a judgment, then in addition to the requirements of section 2, the holder shall give
292 written notice thereof to the owner and each mortgagee and other lienholder of record within 30
293 days after entry and the same shall be recorded in the manner required for the memorandum of
294 entry; (ii) only an owner entitled to occupy the statutory housing premises shall have the right to

295 oppose entry under section 1 and to redeem without the consent of the plaintiff under section 4;
296 (iii) commencement of foreclosure or other legal proceedings by the holder of a conforming
297 mortgage or other lien or claim within the affordable value shall stay the holder's foreclosure by
298 entry; (iv) completion of the conforming mortgagee's foreclosure or judgment in favor of such
299 other lienor or claimant shall extinguish the holder's entry; (v) that the court shall determine the
300 performance due to the plaintiff and each mortgagee and other lienholder of record under section
301 5; (vi) an owner who regains possession by performance as ordered by the court shall do so
302 subject to the statutory housing restriction; (vii) a person residing in or claiming an interest in the
303 real property subject to the restriction may be joined as a defendant irrespective of such person's
304 estate in the statutory housing premise, but if such person has no estate in the statutory housing
305 premises and makes no defense to the action, such shall not be liable for costs; (viii) a mortgagee
306 or other lienholder of record may be joined as a defendant but if such mortgagee or other
307 lienholder makes no defense to the action, such mortgagee or other lienholder shall not be liable
308 for costs; and (ix) any sale by order of the court shall be subject to the terms of the statutory
309 housing restriction.

310 Section 3. The holder of a statutory housing restriction with respect to statutory housing
311 premises, a person authorized by a power to sell or the attorney duly authorized by a writing
312 under seal by the holder or person acting in the name of such holder or person, may, upon breach
313 of condition and without action, do all the acts authorized or required by the power to convey the
314 premises as statutory housing; provided, however, that no sale under such power to sell shall be
315 effective to foreclose the statutory housing restriction and convey the statutory housing premises,
316 unless, prior to such sale, notice thereof has been sent by registered mail to any owners of record
317 of the equity of redemption in the statutory housing premises as of 90 days prior to the sale, at

318 the premises and also to any other address of any other owners appearing on the records of the
319 holder, not less than 3 times at intervals of not less than 7 days, beginning not later than 60 days
320 prior to the date of sale and ending not later than 30 days prior to the date of sale, and notice
321 thereof shall be published once a week for 3 consecutive weeks in a newspaper published in the
322 town in which the statutory housing premises lies or, in none, in a newspaper of general
323 circulation in the town in which the statutory housing premises lies, the first publication of which
324 shall be not less than 21 days before the date of sale, and such notice shall be sent by registered
325 mail to any owners of record of the statutory housing premises as of 30 days prior to the date of
326 sale and such notice shall be mailed at least 14 days prior to the date of sale to the owners at the
327 addresses as set forth in section 61 of chapter 185, if the statutory housing premises is then
328 registered or, in the case of unregistered premises, to the last address of the owners of the equity
329 of redemption appearing on the records of the holder of the statutory housing restriction, if any,
330 or, if none, to the address of any owners as given on the deed of the holder or person authorized
331 by a power to sell, or the attorney duly authorized by a writing under seal by the holder or a
332 person acting in the name of such holder or person or on the petition for probate by which any
333 such holder, attorney or other person acquired title, if any, or if in either case no address appears,
334 then to the address to which the tax collector last sent the tax bill for the statutory housing
335 premises to be sold, or if no tax bill has been sent for the last preceding 3 years, then to the
336 statutory housing premises; provided, however, that unless a copy of the notice of sale has been
337 sent by registered mail to all mortgagees and other persons of record as of 30 days prior to the
338 date of sale holding an interest in the property being foreclosed, such notice shall be mailed at
339 least 14 days prior to the date of sale to each such person at the address of that person as set forth
340 in any document evidencing the interest or to the last address of such person known to the

341 holder. A person of record as of 30 days prior to the date of sale holding an interest in the
342 property being foreclosed may waive at any time, whether prior or subsequent to the date of sale,
343 the right to receive notice by mail under this section and such waiver shall constitute compliance
344 with this notice requirement for all purposes. If no newspaper is published in any such town or if
345 there is no newspaper of general circulation published any such town where the statutory housing
346 premises are located, notice may be published in a newspaper published in the county in which
347 the statutory housing premises are located and this provision shall be implied in every restriction
348 containing the statutory housing power to sell in which it is not expressly set forth. A newspaper
349 which, by its title page, purports to be printed or published in such town, city or county, and
350 having a circulation therein, shall be sufficient for the purpose.

351 The following form of notice may be used and may be altered as circumstances require;
352 provided, however, that nothing herein shall be construed to prevent the use of other forms.

353 (Form.)

354 STATUTORY HOUSING RESTRICTION HOLDER'S SALE OF REAL ESTATE

355 By virtue and in execution of the statutory housing power to sell contained in a certain
356 statutory housing restriction given by _____ to _____ dated _____ and recorded with
357 _____Deeds, book _____, page _____, of which housing restriction the
358 undersigned is the present holder,

359 (If by assignment, or in any fiduciary capacity, give reference.) for breach of the
360 conditions of said housing restriction and for the purpose of the foreclosing and conveying the
361 same, whether directly or through an intermediary qualified to hold statutory housing
362 restrictions, to an eligible household as its principal residence, will be sold by (specify either

363 Public Auction or Sale to the Holder or its Designee) at _____ o'clock, __.M. on the
364 _____ day of _____ A.D. (insert year), at _____ (insert place) all and singular the
365 premises described in said housing restriction, subject to the statutory housing covenants,
366 statutory housing condition and statutory housing power to sell contained therein,

367 To wit: "(Description as in said housing restriction, including all references to title,
368 restrictions, encumbrances, etc., as made in said housing restriction)"

369 having an affordable value of $_____ : (State the amount of the affordable value)

370 Terms of sale: (State here the amount, if any, to be paid in cash by the purchaser at the
371 time and place of the sale, and the times for payment of the balance or the whole as the case may
372 be.)

373 Other terms to be announced at the sale.

374 (Signed)

375 Present holder of said housing restriction.

376 A notice of sale in the above form, published in accordance with the statutory housing
377 power to sell in the statutory housing restriction and this chapter, together with such other or
378 further notice, if any, as is required by the statutory housing restriction, shall be a sufficient
379 notice of the sale and the statutory housing premises shall be deemed to have been sold and the
380 deed thereunder shall convey those premises, subject to and with the benefit of the statutory
381 housing covenants, on the statutory housing condition and with the statutory housing power to
382 sell, but no other provisions of any housing restriction applicable to such premises, and also
383 subject to and with the benefit of all other restrictions, easements, improvements, outstanding tax

384 titles, municipal or other public taxes, assessments, liens or claims in the nature of liens and
385 existing encumbrances of record to the extent they secure debt, whether created prior or
386 subsequent to the statutory housing restriction, that, together with the portion of the affordable
387 value paid at sale, in the aggregate, do not exceed the affordable value at the time of sale and are
388 not paid at sale, whether or not reference to such restrictions, easements, improvements, liens or
389 encumbrances is made in the deed; provided, however, that no purchaser at a sale by public
390 auction shall be bound to complete the purchase if there are encumbrances which will remain
391 following such payment at sale, other than those included in the notice of sale, which are not
392 stated at the sale and included in the auctioneer's contract with the purchaser.

393 Exercise of the statutory housing power to sell may be by public auction or purchase as
394 provided in this section.

395 In the case of sale at public auction, bidding shall be capped at the affordable value or
396 such higher amount required to pay each holder of a conforming mortgage as stated in this
397 section, in either case net of outstanding tax titles, municipal or other public taxes, assessments,
398 liens or claims in the nature of liens and existing encumbrances of record to the extent they
399 secure debt, not being paid at sale, and if more than 1 qualified bidder has bid such affordable
400 value or such higher amount, the premises shall be sold to such bidder as is selected by chance.

401 A purchase of the premises by the holder or its designee under the exercise of the
402 statutory housing power to sell, in lieu of sale by public auction, shall be for the affordable value
403 or such higher amount required to pay each holder of a conforming mortgage as stated in this
404 section, in either case net of outstanding tax titles, municipal or other public taxes, assessments,
405 liens or claims in the nature of liens, and existing encumbrances of record to the extent they

406 secure debt, not being paid at sale. The holder may assign its right to acquire the premises at the
407 affordable value or such higher amount to an eligible household appearing on a list of eligible
408 households established for the purpose or maintained by or utilized by the holder generally. The
409 eligible household shall be selected by chance, seniority or otherwise in accordance with
410 applicable law, as the holder determines.

411 All proceeds from the exercise of the statutory housing power to sell shall be paid to
412 mortgagees and other lienholders subordinate to the statutory housing restriction appearing of
413 record immediately prior to the exercise of the power according to their rights of priority and any
414 amount within the affordable value remaining shall first be paid to the holder as reimbursement
415 of the holder's reasonable expenses of exercising the power and thereafter to the owner;
416 provided, however, that when foreclosing by public auction or by purchase, a holder of a
417 conforming mortgage shall be paid principal, accrued interest, all future advances and all
418 reasonable costs and expenses secured by its mortgage, notwithstanding such payment may
419 exceed the affordable value. A lien on the premises which, in the aggregate with senior liens,
420 exceeds the proceeds from the exercise of the statutory housing power to sell shall be
421 extinguished by the exercise of the statutory housing power to sell to the extent it exceeds the
422 proceeds from the exercise of the power.

423 Section 15 of chapter 244, substituting statutory housing restriction for mortgage deed
424 and statutory power to sell for power of sale, shall apply in case of foreclosure by sale under this
425 section.

426 A holder conveying title to statutory housing premises under this chapter shall, within 30
427 days after conveying title, notify all residential tenants of the premises and the office of the

428 assessor or collector of taxes of the municipality in which the premises are located and any
429 persons, companies, districts, commissions or other entities of any kind which provide water or
430 sewer service to the premises, of such conveying of title.

431 Section 4. An owner of statutory housing premises under a statutory housing restriction
432 may, after breach of the statutory housing condition, have redemption in the manner prescribed
433 in and subject to sections 18, 19, 22 to 27, inclusive, and 32 of chapter 244, substituting "owner"
434 for "mortgagor", "holder" for "mortgagee", "statutory housing power to sell" for "power of
435 sale", "restriction or restricted" for "mortgage or mortgaged" and "performance under the
436 restriction" for "amount due on the mortgage"; provided, however, that (i) the person entitled to
437 redeem shall perform or tender performance of every condition contained in the restriction and,
438 if there has been an action to recover the property, shall pay or tender the costs of such action if
439 unpaid; (ii) the tender shall be made before a sale pursuant to the statutory power to sell
440 contained in the restriction and, if in compliance with the terms of the restriction, shall be
441 accepted by the holder; and (iii) following redemption the property shall continue to be subject to
442 the statutory housing restriction.