

# HOUSE . . . . . No. 1278

By Mr. Rush of Boston, petition of Michael F. Rush and Thomas M. Menino for legislation to further clarify the powers of housing receivers relative to the State Sanitary Code. Housing.

## The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT TO CLARIFY THE POWERS OF HOUSING RECEIVERS.

*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 first paragraph of Section 127A of Chapter 111  
2 of the General Laws, as appearing in the 2004 Official Edition, is  
3 hereby amended by striking out, in lines 32 and 33, the words “and,  
4 in the cities of Boston, Worcester and Cambridge, by the commis-  
5 sioner of housing inspection” and inserting in place thereof the  
6 following:—  
7 “, including any other local sanitary code enforcement agency,”.

1 SECTION 2. The second paragraph of said Section 127A of said  
2 Chapter 111, as so appearing, is hereby amended by inserting after  
3 the word “court”, in line 50, the following:— “, housing court, and  
4 district court”.

1 SECTION 3. The first paragraph of Section 127B of said Chapter  
2 111, as so appearing, is hereby amended by striking out, in lines 63  
3 to 65, inclusive, the words “or, in the cities of Boston, Worcester and  
4 Cambridge, by the commission of housing inspection” and inserting  
5 in place thereof the following:— “including any other local sanitary  
6 code enforcement agency,”.

1 SECTION 4. Said first paragraph of said Section 127B of said  
2 Chapter 111, as so appearing, is hereby further amended by inserting  
3 after the word “court”, in line 87, the following:— “, housing court,  
4 or district court,”.

1 SECTION 5. The second paragraph of said Section 127B of said  
2 Chapter 111, as so appearing, is hereby amended by striking out, in  
3 lines 130 to 132, inclusive, the words “or, in the cities of Boston,  
4 Worcester and Cambridge, the commissioner of housing inspection”  
5 and inserting in place thereof the following:— “including any other  
6 local sanitary code enforcement agency,”.

1 SECTION 6. Section 127B of said Chapter 111, as so appearing,  
2 is hereby further [MAC1]amended by striking out the words “and, in  
3 the cities of Boston, Worcester and Cambridge, by the commissioner  
4 of housing inspection, or local code enforcement agency” in the fifth  
5 paragraph and inserting in place thereof the following words:—  
6 “, including any other local sanitary code enforcement agency,”.

1 SECTION 7. The first paragraph of Section 127C of said Chapter  
2 111, as so appearing, is hereby amended by striking out, in lines 32  
3 and 33, the words “or, in the cities of Boston, Worcester and Cam-  
4 bridge, by the commissioner of housing inspection” and inserting in  
5 place thereof the following:— “including any other local sanitary  
6 code enforcement agency,”.

1 SECTION 8. Section 127E of said Chapter 111, as so appearing,  
2 is hereby amended by striking out, in lines 2 and 3, the words “or, in  
3 the cities of Boston, Worcester and Cambridge, the commissioner of  
4 housing inspection” and inserting in place thereof the following:—  
5 “including any other local sanitary code enforcement agency,”.

1 SECTION 9. The last paragraph of Section 127F of said Chapter  
2 111, as so appearing, is hereby amended by inserting after the word  
3 “twenty-seven I”, in line 37, the following:— “or may order other  
4 appropriate legal or equitable relief, or both.”

1 SECTION 10. Said Chapter 111 is hereby further amended by  
2 striking out Section 127G, as so appearing, and inserting in place  
3 thereof the following new section:—  
4 Section 127G. In lieu of the provisions of Chapter 185C, at any  
5 time within fourteen days following service of a petition or of an  
6 order of notice in a case entered in the district court, upon applica-  
7 tion by any party for removal either to the superior court or the

8 housing court and upon payment of any applicable removal fee, the  
9 clerk of the district court shall remove the case to the superior court  
10 or the housing court, and, upon payment of any applicable removal  
11 fee, the clerk of the district court shall remove the case to the supe-  
12 rior court or the housing court for further proceedings therein in the  
13 same manner and to the extent as if the petition had originally been  
14 brought in said court. The clerk of the district court shall forthwith  
15 transmit any rents held by him together with the removal fee to the  
16 clerk of the superior or housing court. In the event that a removal  
17 request is made within seven days of a previously scheduled hearing  
18 in district court, the clerk shall not remove the case until the seventh  
19 day following the hearing date. Any order entered by the district  
20 court prior to removal shall remain in effect according to its terms  
21 unless vacated or amended by the court to which the case is  
22 removed, and any such order shall be subject to appeal in the same  
23 manner as if entered by the court to which the case is removed.

1 SECTION 11. Said Chapter 111 is hereby further amended by  
2 striking out Section 127I, as so appearing, and inserting in place  
3 thereof the following new section:—

4 Section 127I. Upon the filing of a petition to enforce the provi-  
5 sions of the sanitary code, or any civil action concerning violations  
6 of the sanitary code by any affected occupants or public agency,  
7 whether begun in the district, housing or superior court, and whether  
8 brought under Section 127C or otherwise, the court may:— issue  
9 temporary restraining orders, preliminary or permanent injunctions;  
10 order payment by any affected occupants to the clerk of the court, in  
11 accordance with the provisions of Section 127F; or appoint a  
12 receiver whose rights, duties and powers shall be specified by the  
13 court in accordance with the provisions of this section.

14 Unless otherwise specifically provided herein, any service of  
15 process or notice to any person in interest or party in interest, as  
16 hereinafter defined, which is required by the terms of this section,  
17 shall be deemed sufficient if made to the last and usual address or  
18 address of record of the person in interest or party in interest.

19 At least fourteen days prior to any hearing in which the appoint-  
20 ment of a receiver is sought, the petitioner shall serve by certified or  
21 registered mail a copy of the petition and notice of hearing on all  
22 mortgagees and lienors of record and all mortgagees and lienors of

23 whom petitioners has actual knowledge. Upon motion by the peti-  
24 tioner, the court may order such shorter periods of prior notice as  
25 may be justified by the facts of the case. Any such mortgagee or  
26 lienor shall be entitled to become a party within fourteen days  
27 following such service or such other time as the court may allow, by  
28 filing an appearance and a statement setting out the mortgagee's or  
29 lienor's interest in the litigation. Thereafter, with permission of the  
30 court for good cause shown, such a mortgagee or lienor may become  
31 a party but shall not be entitled to remove the case pursuant to  
32 Section 127G; a mortgagee of a mortgage granted by the receiver  
33 shall be entitled to become a party at any time but shall not be enti-  
34 tled to remove the case pursuant to said section one hundred and  
35 twenty-seven G. A receiver shall not be appointed, except following  
36 a court hearing, until after notice has been given to all parties, mort-  
37 gagees and lienors of record.

38 Whenever a petitioner shows that violations of the sanitary code  
39 will not be promptly remedied unless a receiver is appointed and the  
40 court determines that such appointment is in the best interests of  
41 occupants who reside or in the future may reside in the property, or  
42 any abutter for whom the property poses an immediate and material  
43 risk to health or safety, the court shall appoint a receiver of the prop-  
44 erty. A receiver may be appointed for occupied or unoccupied resi-  
45 dential property, vacant lots, or commercial premises so long as the  
46 subject property poses an immediate and material risk to the health  
47 or safety of an occupant.

48 Any receiver appointed under the above paragraph may be  
49 removed by the court upon a showing that the receiver is not dili-  
50 gently carrying out the work necessary to bring the property into  
51 compliance with the code, or that it is in the best interest of any ten-  
52 ants residing in the property or any abutter thereto that removal  
53 occur. A receivership may be terminated, after hearing, upon a  
54 showing that the property has been brought into substantial compli-  
55 ance with the code and upon reasonable assurance by the owner of  
56 continued compliance, or that there is other good reason warranting  
57 termination of the receivership.

58 In determining the necessity for a receiver, the court shall deter-  
59 mine whether one or more mortgagees or lienors are willing and able  
60 to make the necessary repairs within a reasonable time as determined  
61 by the court. In the event that a state authority, state agency or

62 instrumentality thereof is a mortgagee or lienor, and the court deter-  
63 mines that it is willing and able to make the necessary repairs, the  
64 court shall permit such authority, agency or instrumentality to make  
65 the necessary repairs. If there is no such state authority, state agency  
66 or instrumentality thereof willing and able to make the repairs, the  
67 court shall permit such mortgagees or lienors the opportunity to do  
68 so upon such terms as the court deems reasonable, unless there is  
69 good cause not to give such permission. If the court determines that  
70 a mortgagee or lienor is willing and able to make said repairs and  
71 permits such mortgagee and lienor to do so, then the court shall not  
72 appoint a receiver unless the mortgagee or lienor thereafter fails to  
73 promptly make the repairs.

74 Prior to appointment, the receiver shall furnish a bond with or  
75 without sureties in an amount deemed adequate by the court unless  
76 the court waives the bond requirement for good cause shown. Upon  
77 appointment, the receiver shall record or file a copy of the appoint-  
78 ment in the registry of deeds or land registration office, as appro-  
79 priate, for the district in which the property is located, and the  
80 appointment shall be indexed in the grantor index of the registry of  
81 deeds under the name of the property owner and noted on the certifi-  
82 cate of title for the property, if the title is registered. Such appoint-  
83 ment shall not be effective with respect to third parties until such  
84 recording or filing. In the event the court appoints a receiver and  
85 general liability insurance is available and affordable, the receiver  
86 shall obtain, as soon as reasonably practicable, general liability  
87 insurance, with or without exclusion of certain risks, and the receiver  
88 shall cause the property to be repaired and brought into compliance  
89 with the state sanitary code. Until such repairs are completed, the  
90 receiver shall operate and maintain the property and may insure it  
91 against casualty, if casualty insurance is available and affordable.  
92 Upon completion of repairs and restoration of compliance with the  
93 sanitary code, the receiver shall so advise the court and all parties to  
94 the action.

95 In order to pay for repairs to the property, necessary operating and  
96 maintenance costs during repairs, taxes and other municipal charges,  
97 and for reasonable expenses of the receivership, including compen-  
98 sation of the receiver, the receiver shall be authorized to collect rents  
99 and any insurance proceeds payable on account of casualty to the  
100 property, whether such casualty is incurred before or after appoint-

101 ment of the receiver. If such collections are insufficient to pay the  
102 costs necessary for repairs to the property, necessary operating and  
103 maintenance costs during repairs, taxes and other municipal charges,  
104 and for reasonable expenses of the receivership, including compen-  
105 sation of the receiver, the receiver shall, in order to secure payment  
106 of such costs, have a lien with priority over all other liens or mort-  
107 gages except municipal liens, and such lien priority may be assigned  
108 to lenders for the purpose of securing loans for repair, operation,  
109 maintenance or management of the property. The receiver shall have  
110 full power to borrow funds and to grant security interests on the  
111 affected property as hereinafter provided, to make such contracts as  
112 the receiver may deem necessary, and, notwithstanding any special  
113 or general law to the contrary, shall not be subject to any public bid-  
114 ding law nor be considered a state, county or municipal employee  
115 for any purpose.

116 The receiver shall file a list of estimated expenses and a statement  
117 of the maximum loan amount, if any, sought by the receiver for court  
118 approval after hearing. The receiver shall provide fourteen days  
119 notice of said hearing to all parties. Upon motion of the petitioner  
120 the court may order such shorter period of prior notice as may be  
121 justified by the facts of the case. Such notice shall be accompanied  
122 by a list of estimated expenses and a statement of the maximum loan  
123 amount for which court approval is sought. If, after hearing, the  
124 court finds that the amount sought or a lesser amount appears to be  
125 fair and reasonably necessary for purposes of the receivership, the  
126 court shall enter an order authorizing the receiver to borrow funds up  
127 to such an amount and to grant a mortgage or assign its priority lien  
128 with respect to the property under receivership to secure repayment  
129 of the loan and interest thereon. Within ninety days following entry  
130 of the order or such further time as the court may order, the receiver  
131 may borrow funds up to the amount authorized and assign its pri-  
132 ority lien to the lender or grant to the lender a mortgage on the prop-  
133 erty under receivership upon such terms as are reasonable. In  
134 selecting a lender, the receiver shall give preference to the existing  
135 mortgagees and lienors in order of their priority, unless there is good  
136 cause, including uncompetitive or unreasonable loan terms, not to do  
137 so.

138 The receiver shall file with the court and with all parties on  
139 record, on a bimonthly basis, an accounting of all funds received by

140 and owed to the receiver and all funds disbursed and shall comply  
141 with such other reporting requirements mandated by the court,  
142 unless, for cause shown, the court determines that less frequent or  
143 less detailed reports are appropriate.

144 Upon assignment of the receiver's priority lien pursuant to the  
145 terms of this section, the amount of the lien assignment shall be lim-  
146 ited to the amount of funds which have been expended for repairs to  
147 the property, necessary operating and maintenance costs during  
148 repairs, taxes and other municipal charges, and for reasonable  
149 expenses of the receivership, including compensation of the receiver.

150 If the receiver grants a mortgage to borrow funds and assigns its  
151 priority lien to a lender to secure repayment of the loan with applic-  
152 able interest in accordance with the provisions of this section, such  
153 mortgage or lien assignment shall be recorded or filed within twenty  
154 days from the date of making of the loan in the registry of deeds or  
155 land registration office, as appropriate, for the district in which the  
156 property is located. No such mortgage or lien assignment shall be  
157 effective unless so recorded. If properly recorded with the registry of  
158 deeds or filed with the land registration office, as appropriate, for the  
159 district in which the property is located, such mortgage or lien  
160 assignment shall have priority over all other liens or mortgages  
161 except municipal liens and prior lien assignments and mortgages  
162 granted by the receiver or by a predecessor receiver or receivers  
163 appointed under this section. The mortgage or lien assignment shall  
164 recite:— (i) the names of the property owners, the receiver and the  
165 mortgagee or assignee; (ii) the deed to the property; (iii) the court's  
166 order creating the receivership; (iv) the court's order authorizing the  
167 borrowing; and (v) the amount and terms of the loan secured by the  
168 mortgage or lien assignment. A certified copy of the order autho-  
169 rizing such mortgage or lien assignment shall be recorded or filed  
170 with the mortgage or lien assignment.

171 The mortgage or lien assignment shall reference both the property  
172 owner and the receiver as grantors but need not be executed by the  
173 property owner. The deed shall bear a marginal reference or entry  
174 reflecting the mortgage or lien assignment and the mortgage or lien  
175 assignment shall be indexed in the grantor index of the registry of  
176 deeds under the names of the property owner and the receiver and  
177 shall also be indexed on the list of encumbrances on the certificate of  
178 title, as appropriate. In the event that a receiver grants a mortgage or

179 lien assignment to a lender pursuant to this section, prior to termina-  
180 tion of the receivership for the reasons set forth herein, the court  
181 shall enter an order obligating the owner to repay the balance of the  
182 loan with interest according to its terms.

183 Notwithstanding any other provisions of law, a lien upon land  
184 established under the terms of this section may be enforced by  
185 motion to the court which has ordered the appointment of the  
186 receiver. No such motion shall be filed until written demand for pay-  
187 ment has been made to all parties in interest, and such parties in  
188 interest have failed to make payment within thirty days of such  
189 demand. A copy of the motion shall be served upon all parties in  
190 interest at least fourteen days prior to the court's hearing of such  
191 motion, and all parties in interest may appear and have their rights  
192 determined pursuant to such motion. The terms "party in interest"  
193 and "person in interest," as used in this section, shall include mort-  
194 gagees and attaching creditors.

195 When the amount of a lien under this section has been established  
196 by the court, the court shall enter an order authorizing the sale of the  
197 real estate by public auction to satisfy such lien. An attested copy of  
198 the court's order shall be filed and recorded in the registry of deeds  
199 or land registration office, as appropriate, for the district in which  
200 the property is located, where it shall be open to public inspection.  
201 The lienor may do all acts authorized by such order, but no sale pur-  
202 suant to such order shall be effective unless, prior to such sale,  
203 notice thereof has been given in the same manner as set forth in  
204 Section 5A of Chapter 254. Unless otherwise ordered by the court,  
205 such sale of the property shall convey the property free from all  
206 existing mortgages and liens, excepting municipal liens.

207 The assignee of a priority lien created by the terms of this section  
208 who seeks to enforce his interest shall follow the same procedures  
209 set forth in this section for the enforcement of a priority lien by the  
210 assigning receiver. A mortgagee who, under the terms of this  
211 section, receives a mortgage on the property which is subject to the  
212 receivership may, upon breach of the conditions of the mortgage,  
213 foreclose on his interest pursuant to the terms set forth in Chapter  
214 244.

215 At any time during the existence of a receivership or one year  
216 following its termination, in the event the terms of the mortgage  
217 granted by the receiver are breached, the mortgagee shall be entitled

218 to foreclose the mortgage and such mortgagee may petition the court  
219 for an order limiting such mortgagee's liability on account of then  
220 existing conditions in the property. Following notice to all occupants  
221 of the property and a hearing, the court may order limitation of the  
222 mortgagee's liability on account of such conditions for a period not  
223 to exceed sixty days upon a showing by the mortgagee that existing  
224 conditions in the property are not in accordance with the state sani-  
225 tary code or applicable law, that the mortgagee must take possession  
226 in order to make the necessary repairs, and that a specified time  
227 period will be necessary for these repairs to be made. Prior to such  
228 an order limiting liability, in the event conditions in the property are  
229 unknown and a mortgage granted by the receiver is in default, upon  
230 petition by the mortgagee, following notice to all occupants and a  
231 hearing, the court may enter an order which establishes reasonable  
232 terms and conditions for the inspection of the property at the  
233 expense of the mortgagee. Following an order limiting liability, in  
234 the event the repairs are so extensive that with due diligence the  
235 repairs cannot be made within the applicable limitation period, upon  
236 petition by the mortgagee, the court, after notice to the occupants  
237 and a hearing, may extend the initial or extended period of limitation  
238 of liability for a further period of no more than sixty days.

239 No order limiting liability or extension thereof shall be interpreted  
240 to limit the right of any tenant or occupant in the mortgaged  
241 premises to:— (i) withhold rent due to any defective conditions in  
242 the premises; (ii) raise, by defense or counterclaim, any claim  
243 allowed under Section 8A of Chapter 239; or (iii) bring any petition  
244 or action to enforce the provisions of the sanitary code or other  
245 health and safety laws.

246 Nothing in this section shall be deemed to relieve the owner of  
247 property of any civil or criminal liability or any duty imposed by  
248 reason of acts or omissions of the owner, nor shall appointment of a  
249 receiver suspend any obligation the owner or any other person may  
250 have for payment of taxes, of any operating or maintenance  
251 expenses, or of mortgages or liens, or for repair of the premises.

252 The receiver shall be liable for injuries to persons and property  
253 that accrue after the date of the appointment of the receiver to the  
254 same extent that the owner would have been liable; however, such  
255 liability shall be limited to assets and income of the receivership,  
256 including any proceeds of insurance purchased by the receiver in its

257 capacity as the receiver. The receiver shall in no instance be person-  
258 ally liable for actions or inactions within the scope of the receiver's  
259 capacity as receiver. No suit shall be brought in any court against the  
260 receiver except with the permission of the court which appointed the  
261 receiver. A plaintiff shall seek such permission by filing a request for  
262 permission to file a suit against the receiver, together with a copy of  
263 the proposed complaint. If, after hearing, the court which appointed  
264 the receiver finds that the proposed suit lacks substantial merit, the  
265 court shall enter an appealable judgment disapproving the suit. If,  
266 after hearing, the court finds that the proposed suit has substantial  
267 merit, the court shall permit the suit to be filed in a court with juris-  
268 diction. While a request to file a suit against the receiver is pending  
269 or is on appeal, the applicable statute of limitations shall be tolled.  
270 Nothing herein shall be construed to limit the right of tenants to raise  
271 any counterclaims or defenses in any summary process or other  
272 action regarding possession brought by a receiver.

273 A tenant in or the owner of a condominium unit shall be entitled  
274 to file a petition under Section 127C of this chapter against the orga-  
275 nization of unit owners for conditions existing in common areas or  
276 in the common systems of the building. Following the filing of such  
277 a petition for receivership, if, after a hearing for which notice has  
278 been given to the organization of unit owners, the court determines  
279 that the allegations of the petition are nonfrivolous and concern mat-  
280 ters for which appointment of a receiver would be appropriate, the  
281 court shall enter an appropriate order for service of the petition and  
282 issue notice of hearing to all unit owners of record, all holders of  
283 mortgages on the units who have given notice thereof to the organi-  
284 zation of the unit owners pursuant to clause 5 of Section 4 of  
285 Chapter 183A, and to any holder of a mortgage or lien of record of  
286 the interest of the organization of unit owners.

287 Any owner, mortgagee or lienor receiving or entitled to receive  
288 notice of such hearing shall be entitled to become a party thereto by  
289 filing an appearance and a statement of the person's or entity's  
290 interest in the litigation within fourteen days of notice to such person  
291 or such further time as the court may allow. Thereafter, with permis-  
292 sion from the court for good cause shown, an owner, mortgagee or  
293 lienor may become a party but shall not be entitled to remove the  
294 case pursuant to said Section 127G. In determining the necessity for  
295 a receiver the court shall consider whether one or more of such

296 owners, mortgagees, or lienors are willing and able to promptly  
297 cause the necessary repairs to be made, and, if so, the court shall  
298 permit such owners, mortgagees, or lienors the opportunity to do so  
299 upon such terms as the court deems reasonable unless the court finds  
300 that there is good cause not to do so.

301 In the event a receiver is appointed hereunder for an organization  
302 of unit owners, the receiver shall have the powers provided in this  
303 section and the receiver shall have the powers and rights of the orga-  
304 nization of unit owners provided in said Chapter of 183 A. Notwith-  
305 standing the foregoing, the receiver shall not adopt a budget on  
306 which to base common expense assessments, shall not make special  
307 assessments, and shall not borrow from the organization of unit  
308 owners, except with the approval of the court after hearing and  
309 notice of the proposed budget and a determination of the court that  
310 said budget assessment or borrowing is reasonable and in the best  
311 interests of the organization of unit owners. Further, nothing under  
312 the provision of this statute is intended to create third party liability  
313 on the part of mortgagees or any other lienors of the receiver.

314 The Department of Housing and Community Development, in  
315 consultation with the State Office of the Attorney General, shall be  
316 directed to complete a study to establish suggested minimum qualifi-  
317 cations for court-appointed housing receivers and said study shall be  
318 filed with the clerk of the Housing Court, along with any proposed  
319 legislation to implement said program.

1 SECTION 12. Section 3 of Chapter 185C of the General Laws, as  
2 so appearing, is hereby amended by striking out, in line 13, the word  
3 “twenty-seven H” and inserting in place thereof the following:—  
4 “twenty-seven I”.

1 SECTION 13. Section 8A of Chapter 239 of the General Laws, as  
2 so appearing, is hereby amended by striking out, in line 74, the word  
3 “twenty-seven H” and inserting in place thereof the following:—  
4 “twenty-seven I”.

1 SECTION 15. Section 59 of Chapter 143 of the General Laws, as  
2 so appearing, is hereby amended by adding after the first paragraph,  
3 a second paragraph as follows:—

4       ”Whenever a petitioner shows that violations of the state building  
5 code will not be promptly remedied unless a receiver is appointed,  
6 and the court determines that such appointment is in the best inter-  
7 ests of public safety, the court shall appoint a receiver of the prop-  
8 erty.”

1       SECTION 16. Section 13 of Chapter 79A of the General Laws, as  
2 most recently amended, is hereby stricken and replaced with the  
3 following:—

4       Section 13. Whenever a public agency displaces one or more per-  
5 sons by enforcing Article II of the state sanitary code, pursuant to  
6 section one hundred and twenty-seven B of chapter one hundred and  
7 eleven, the owner, mortgagee, or lienor or the managing agent of  
8 said property shall be responsible for all expenses incurred by any  
9 municipality or public agency for the purpose of carrying out such  
10 an order. The municipality or public agency shall, in order to secure  
11 payment of such costs, have a lien with priority over all other non-  
12 municipal liens or mortgages. Such lien priority may be assigned to  
13 lenders for the purpose of securing loans for repair, operation, main-  
14 tenance or management of the property in instances where a receiver  
15 is appointed by the court to remedy violations of the sanitary code.