

HOUSE No. 4734

By Ms. Malia of Boston, petition of Elizabeth A. Malia and others for legislation to further regulate the eviction of tenants or occupants of foreclosed properties. The Judiciary.

The Commonwealth of Massachusetts

PETITION OF:

Elizabeth A. Malia	Denise Provost
Dianne Wilkerson	Antonio F. D. Cabral
Alice K. Wolf	Rachel Kaprielian
Carl M. Sciortino, Jr.	Denis E. Guyer
Steven J. D’Amico	Brian P. Wallace
Paul McMurtry	William Lantigua
Jennifer M. Callahan	Matthew C. Patrick
Byron Rushing	Kay Khan
Gloria L. Fox	Sarah K. Peake
Willie Mae Allen	Linda Dean Campbell
Anthony J. Verga	Barbara A. L’Italien
Cheryl A. Coakley-Rivera	Thomas P. Kennedy
Michael F. Rush	Geraldo Alicea
Patricia D. Jehlen	Benjamin Swan
James J. O’Day	Jeffrey Sanchez
Frank I. Smizik	Pam Richardson
David B. Sullivan	Tom Sannicandro
James B. Eldridge	Jay R. Kaufman
Timothy J. Toomey, Jr.	William N. Brownsberger
Christine E. Canavan	

In the Year Two Thousand and Eight.

AN ACT REQUIRING JUST CAUSE FOR EVICTION IN FORECLOSED PROPERTIES.

1 *WHEREAS*, The deferred operation of this act would tend to
2 defeat its purpose which is to protect citizens of the Common-
3 wealth, therefore it is hereby declared to be an emergency law nec-
4 essary for the immediate protection of the public.

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. As used in this Act, the following words shall,
2 unless the context clearly requires otherwise, have the following
3 meanings:—

4 “Entity”, a business organization, or any other kind of organiza-
5 tion, including without limitation, a corporation, partnership, trust,
6 limited liability corporation, limited liability partnership, joint ven-
7 ture, sole proprietorship, or any other category of organization, and
8 any employee, agent, servant or other representative of such entity.

9 “Eviction”, any action, without limitation, by a foreclosing owner
10 of a housing accommodation which is intended to compel a tenant or
11 occupant to vacate or to be constructively evicted from such housing
12 accommodation.

13 “Foreclosing owner”, an entity that both (1) held or owned a
14 mortgage or other security interest in the housing accommodation at
15 any point prior to the foreclosure of the housing accommodation or
16 is the subsidiary, parent, or agent of, or otherwise is related to any
17 entity which held or owned the mortgage or other security interest in
18 the housing accommodation at any time prior to the foreclosure of
19 the housing accommodation; and (2) holds title to this housing
20 accommodation that it acquired at a foreclosure sale or by any other
21 method of foreclosure.

22 For purpose of this definition, the phrase “holds title” shall
23 include an entity which holds title in any capacity, directly or indi-
24 rectly, without limitation, whether in its own name, as trustee, or as
25 beneficiary. Any entity which attempts to evict tenants from the
26 housing accommodation, whether in its own name, as trustee, as
27 mortgage servicer, or as beneficiary, or in any other role, without
28 limitation, shall be considered to ‘hold title’ for the purpose of this
29 definition.

30 Any institutional mortgagee that holds title to a housing accom-
31 modation that has been foreclosed upon within the last three years
32 shall be considered to be a foreclosing owner for the purpose of this
33 Act.

34 “Foreclosure”, a legal proceeding to terminate a mortgagor’s
35 interest in property, instituted by the mortgagee, either to gain title or
36 to force a sale in order to satisfy the unpaid debt secured by the
37 property, including, without limitation, foreclosure by action, by bill
38 in equity, by entry and continuation of possession for three years,
39 and by sale under the power of sale in a mortgage as described in
40 Chapter 244 of the General Laws.

41 “Foreclosure sale”, the foreclosure of a mortgage by sale of a
42 housing accommodation pursuant to a power of sale in a mortgage

43 deed, as described in Section 14 of Chapter 244 of the General
44 Laws.

45 “Housing accommodation”, any building or buildings, structure
46 or structures, or part thereof or land appurtenant thereto, or any other
47 real or personal property used, rented or offered for rent for living or
48 dwelling purposes, together with all services connected with the use
49 or occupancy of such property.

50 “Institutional mortgagee”, any entity that holds or owns mort-
51 gages or other security interest in three or more properties in the
52 Commonwealth, or acts as a mortgage servicer of three or more
53 mortgages of properties in the Commonwealth, or is the subsidiary,
54 parent, or agent of, or otherwise related to any entity which holds or
55 owns mortgages or other security interests in three or more proper-
56 ties in the Commonwealth or acts as a mortgage servicer of three or
57 more mortgages of properties in the Commonwealth.

58 “Just Cause”, shall be at least one of the following:—

59 (a) the tenant or occupant has failed to pay the rent in effect prior
60 to the foreclosure or failed to pay use and occupancy charges, but
61 only if the foreclosing owner notified the tenant or occupant in
62 writing of the amount of rent or use and occupancy that was to be
63 paid and to whom it was to be paid;

64 (b) the tenant or occupant has violated an obligation or covenant
65 of the tenancy or occupancy other than the obligation to surrender
66 possession upon proper notice and has failed to cure such violation
67 within a reasonable time after having received written notice thereof
68 from the foreclosing owner;

69 (c) the tenant or occupant is committing or permitting to exist a
70 nuisance in, or is causing substantial damage to, the unit, or is cre-
71 ating a substantial interference with the quiet enjoyment of other
72 occupants;

73 (d) the tenant or occupant is convicted of using or permitting the
74 unit to be used for any illegal purpose;

75 (e) the tenant or occupant who had a written lease or other rental
76 agreement which terminated on or after this Act has taken effect, has
77 refused, after written request or demand by the foreclosing owner to
78 execute a written extension or renewal thereof for a further term of
79 like duration and in such terms that are not inconsistent with or
80 violative of any provisions of this Act; (f) the tenant or occupant has
81 refused the foreclosing owner reasonable access to the unit for the

82 purpose of making necessary repairs or improvement required by the
83 laws of the United States, the Commonwealth or any subdivision
84 thereof, or for the purpose of inspection as permitted or required by
85 agreement or by law or for the purpose of showing the rental
86 housing unit to a prospective purchaser or mortgagee;

87 “Mortgagee”, an entity to whom property is mortgaged; the mort-
88 gage creditor, or lender, including, but not limited to, mortgage ser-
89 vicers, lenders in a mortgage agreement and any agent, servant, or
90 employee of the mortgagee, or any successor in interest and/or
91 assignee of the mortgagee’s rights, interests or obligations under the
92 mortgage agreement.

93 “Mortgage Servicer”, an entity which administers or at any point
94 administered the mortgage, including, but not limited to, calculating
95 principal and interest, collecting payments from the mortgagor,
96 acting as an escrow agent, and foreclosing in the event of a default.

97 “Post-foreclosure eviction”, an eviction of a tenant by a fore-
98 closing owner.

99 “Tenant or occupant”, any person or group of persons entitled to
100 occupy a housing accommodation pursuant to a written lease, ten-
101 ancy at will, tenancy at sufferance or otherwise.

102 “Unit’ or” residential unit”, the room or group of rooms within a
103 housing accommodation which is used or intended for use as a resi-
104 dence by one household.

1 SECTION 2. Notwithstanding any other special or general law to
2 the contrary, the foreclosing owner shall not evict a tenant or occu-
3 pant except for just cause.

1 SECTION 3. Any foreclosing owner that evicts tenants or occu-
2 pants in violation of any provisions of this Act, or any ordinance or
3 by-law adopted pursuant to this Act, shall be punished by a fine of
4 not less than ten thousand dollars. Each eviction done in violation of
5 this Act constitutes a separate offense.

6 The district and superior courts, and the housing courts in the
7 Commonwealth, shall have jurisdiction over an action arising from
8 any violation of this Act, or any ordinance, or by-law adopted pur-
9 suant to this Act, and shall have jurisdiction in equity to restrain any
10 such violation. No tenant shall be evicted in violation of any provi-
11 sion of this Act, or any ordinance or by-law adopted pursuant to this

12 act. It shall be a defense to eviction that the foreclosing owner
13 attempted to evict tenants in violation of any provision of this Act,
14 or any ordinance or by-law adopted pursuant to this Act.

1 SECTION 4. This Act shall cease to have effect on
2 December 31, 2013.