

HOUSE No. 4833

By Ms. Malia of Boston, petition of Elizabeth A. Malia and Dianne Wilkerson (with the approval of the mayor and city council) for legislation to regulate evictions on certain foreclosed residential property in the city of Boston. Housing. [Local Approval Received.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Eight.

AN ACT RELATIVE TO EVICTIONS ON CERTAIN FORECLOSED RESIDENTIAL PROPERTY IN THE CITY OF BOSTON.

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 to
11 vacate or to be constructively evicted from such housing accommo-
12 dation.

13 “Foreclosing owner”, an entity that both (i) held or owned a mort-
14 gage or other security interest in the housing accommodation at any
15 point prior to the foreclosure of the housing accommodation or is the
16 subsidiary, parent, or agent of, or otherwise is related to any entity
17 which held or owned the mortgage or other security interest in the
18 housing accommodation at any time prior to the foreclosure of the
19 housing accommodation; and (ii) holds title to this housing accom-
20 modation 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 3 years, and by
39 sale under the power of sale in a mortgage as described in Chapter
40 244 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, located in the City of Boston, together with all
49 services connected with the use or occupancy of such property.

50 “Institutional mortgagee”, any entity that holds or owns mort-
51 gages or other security interest in 3 or more properties in the City of
52 Boston or acts as a mortgage servicer of 3 or more mortgages of
53 properties in the City of Boston, or is the subsidiary, parent, or agent
54 of, or otherwise related to any entity which holds or owns mortgages
55 or other security interests in 3 or more properties in the City of
56 Boston or acts as a mortgage servicer of 3 or more mortgages of
57 properties in the City of Boston.

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

59 (i) the tenant has failed to pay the rent in effect prior to the fore-
60 closure, but only if the foreclosing owner notified the tenant in
61 writing of the amount of rent that was to be paid and to whom it was
62 to be paid;

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

68 (iii) the tenant is committing or permitting to exist a nuisance in,
69 or is causing substantial damage to, the unit, or is creating a substan-
70 tial interference with the quiet enjoyment of other tenants;

71 (iv) the tenant is convicted of using or permitting the unit to be
72 used for any illegal purpose;

73 (v) the tenant who had a written lease or other rental agreement
74 which terminated on or after this Act has taken effect, has refused,
75 after written request or demand by the foreclosing owner to execute
76 a written extension or renewal thereof for a further term of like dura-
77 tion and in such terms that are not inconsistent with or violative of
78 any provisions of this Act; or

79 (vi) the tenant has refused the foreclosing owner reasonable
80 access to the unit for the purpose of making necessary repairs or
81 improvement required by the laws of the United States, the Com-
82 monwealth or any subdivision thereof, or for the purpose of inspec-
83 tion as permitted or required by agreement or by law or for the
84 purpose of showing the rental housing unit to a prospective pur-
85 chaser or mortgagee.

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

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

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

98 “Tenant”, means any person or group of persons that occupied a
99 housing accommodation prior to foreclosure pursuant to a written
100 lease, tenancy at will, or tenancy at sufferance, exclusive of a home-
101 owner that was also the defaulting mortgagor.

102 “Unit” or “residential unit”, the room or group of rooms within a
103 housing accommodation, located in the City of Boston, which is
104 used or intended for use as a residence 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 from a
3 housing accommodation located in the City of Boston except for just
4 cause. This eviction limitation shall only be in effect for the duration
5 of this Act as outlined in Section 8 or until title is properly trans-
6 ferred to a bona fide purchaser, whichever is sooner. If the fore-
7 closing owner exercises their option to immediately sell said housing
8 accommodation to a subsequent purchaser, other than an institutional
9 mortgagee, a summary process action may be initiated for any
10 reason, including no fault, against any tenant upon transfer of title.

1 SECTION 3. Leases, or other rental agreements, of the fore-
2 closing housing accommodation entered into by a foreclosing owner,
3 mortgagee in possession, or receiver shall be binding on all parties,
4 including the mortgagor after redemption or the purchaser of the
5 housing accommodation pursuant to foreclosure.

1 SECTION 4. Any foreclosing owner that evicts tenants in viola-
2 tion of any provisions of this Act shall be punished by a fine of not
3 less than \$10,000. dollars. Each eviction done in violation of this
4 Act constitutes a separate offense on a per unit basis.

1 SECTION 5. The Boston Municipal Court, Suffolk Superior
2 Court, and Boston Housing Court shall have jurisdiction over an
3 action arising from this Act and shall have jurisdiction in equity to
4 restrain any such violation. No tenant shall be evicted in violation of
5 any provision of this Act. It shall be a defense to eviction that the
6 foreclosing owner attempted to evict a tenant in violation of any pro-
7 vision of this Act.

1 SECTION 6. Any provision of federal law relating to rental units
2 owned, operated or subsidized by the federal government which are
3 inconsistent with or contrary to the provisions of this Act shall
4 supersede the provisions of this Act. Where not inconsistent, the

5 provisions of federal law shall apply in conjunction with the provi-
6 sions of this Act.

1 SECTION 7. If any provision of this Act or the application of
2 such provision to any person or circumstance shall be held invalid,
3 the validity of the remainder of this Act and the applicability of such
4 provision to other persons or circumstances shall not be affected
5 thereby.

1 SECTION 8. The provisions of this Act shall be effective imme-
2 diately upon passage and shall cease to have effect 2 years after pas-
3 sage. Within the 3 months immediately proceeding the expiration
4 date of this Act, the Boston City Council may, by majority vote, vote
5 to pass a 1-year extension of this Act, subject to Mayoral approval.