

HOUSE No. 1232

The Commonwealth of Massachusetts

PRESENTED BY:
Elizabeth A. Malia

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 to protect tenants in foreclosed properties from evictions.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Elizabeth A. Malia	11th Suffolk
Harriette L. Chandler	
Joyce A. Spiliotis	12th Essex
Sarah K. Peake	4th Barnstable
Brian P. Wallace	4th Suffolk
Alice K. Wolf	25th Middlesex
Linda Dorcena Forry	12th Suffolk
Barbara A. L'Italien	18th Essex
Kay Khan	11th Middlesex
Carlo P. Basile	1st Suffolk
William N. Brownsberger	24th Middlesex
Rosemary Sandlin	3rd Hampden
Frank I. Smizik	15th Norfolk
Stephen L. DiNatale	3rd Worcester
Christine E. Canavan	10th Plymouth
Martin J. Walsh	13th Suffolk
Angelo J. Puppolo, Jr.	12th Hampden
Martha M. Walz	8th Suffolk
James B. Eldridge	Middlesex and Worcester
Willie Mae Allen	6th Suffolk
Gloria L. Fox	7th Suffolk
David B. Sullivan	6th Bristol
William Lantigua	16th Essex
Patricia D. Jehlen	Second Middlesex
Matthew C. Patrick	3rd Barnstable
Elizabeth Poirier	14th Bristol
Theodore C. Speliotis	13th Essex
Bruce E. Tarr	First Essex and Middlesex
Denise Provost	27th Middlesex
Jeffrey Sánchez	15th Suffolk

Cheryl A. Coakley-Rivera	10th Hampden
Benjamin Swan	11th Hampden
Kate Hogan	3rd Middlesex
Tom Sannicandro	7th Middlesex
Antonio F.D. Cabral	13th Bristol
Carl M. Sciortino, Jr.	34th Middlesex
Geraldo Alicea	6th Worcester
Steven J. D'Amico	4th Bristol
Michael F. Rush	10th Suffolk
Mark V. Falzone	9th Essex
Peter v. Kocot	1st Hampshire
Robert L. Rice, Jr.	2nd Worcester
John W. Scibak	2nd Hampshire
Jay R. Kaufman	15th Middlesex
James J. O'Day	14th Worcester District
Pam Richardson	6th Middlesex
Ellen Story	3rd Hampshire
Timothy J. Toomey, Jr.	26th Middlesex
Bill Bowles	2nd Bristol
Jennifer Benson	37th Middlesex
Steven M. Walsh	11th Essex
Kathi-Anne Reinstein	16th Suffolk
Jennifer M. Callahan	18th Worcester
Jennifer L. Flanagan	Worcester and Middlesex
Jason Lewis	31st Middlesex
Anne M. Gobi	5th Worcester
John F. Quinn	9th Bristol
Byron Rushing	9th Suffolk
Linda Dean Campbell	15th Essex
Thomas P. Kennedy	Second Plymouth and Bristol
Robert M. Koczera	11th Bristol
Sean Garballey	23rd Middlesex
Vincent A. Pedone	15th Worcester
John P. Fresolo	16th Worcester
John J. Binienda	17th Worcester
Paul McMurtry	11th Norfolk
Timothy Madden	Barnstable, Dukes and Nantucket
Denis E. Guyer	2nd Berkshire
Kevin Aguiar	7th Bristol
Jonathan Hecht	29th Middlesex
Christopher J. Donelan	2nd Franklin
Karen E. Spilka	Second Middlesex and Norfolk
Gale D. Candaras	First Hampden and Hampshire
Carolyn Dykema	8th Middlesex
Kevin G. Honan	17th Suffolk
Stephen R. Canessa	12th Bristol
Paul J. Donato	35th Middlesex
Katherine Clark	32nd Middlesex

The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine
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AN ACT TO PROTECT TENANTS IN FORECLOSED PROPERTIES FROM EVICTIONS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

WHEREAS the deferred operation of this act would tend to defeat its purpose which is to protect citizens of the Commonwealth, therefore it is hereby declared to be an emergency law necessary for the immediate protection of the public.

SECTION 1. The general laws are hereby amended by adding after chapter 186, the following new chapter:-

Chapter 186A. Tenant protections in foreclosed properties.

Section 1. As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:

'Entity', a business organization, or any other kind of organization, including without limitation, a corporation, partnership, trust, limited liability corporation, limited liability partnership, joint venture, sole proprietorship, or any other category of organization, and any employee, agent, servant or other representative of such entity.

'Eviction', any action, without limitation, by a foreclosing owner of a housing accommodation which is intended to compel a tenant or former owner-occupant, now tenant at sufferance, to vacate or to be constructively evicted from such housing accommodation.

'Foreclosing owner', an entity that holds title, in any capacity, directly or indirectly, without limitation, whether in its own name, as trustee, or as beneficiary, to a housing accommodation that has been foreclosed upon, and either (1) held or owned a mortgage or other security interest in the housing accommodation at any point prior to the foreclosure of the housing accommodation or is the subsidiary, parent, trustee, or agent of, or otherwise is related to any entity which held or owned the mortgage or other security interest in the housing accommodation at any time prior to the foreclosure of the housing accommodation; or (2) is an institutional mortgagee that acquires or holds title to the housing accommodation within three years of the filing of a foreclosure deed on the housing accommodation.

'Foreclosure', a legal proceeding to terminate a mortgagor's interest in property, instituted by the mortgagee, either to gain title or to force a sale in order to satisfy the unpaid debt secured by the property, including, without limitation, foreclosure by action, by bill in equity, by entry and continuation of possession for three years, and by sale under the power of sale in a mortgage as described in chapter 244 of the general laws.

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

'Institutional mortgagee', any entity, or any entity which is the subsidiary, parent, trustee, or agent of, or otherwise related to any such entity, that holds or owns mortgages or other security interest in three or more housing accommodations, or acts as a mortgage servicer of three or more mortgages of housing accommodations.

'Just Cause', at least one of the following: (a) the tenant has failed to pay a reasonable rent to the foreclosing owner, but only if the foreclosing owner notified the tenant in writing of the amount of such reasonable rent and to whom it was to be paid; (b) the tenant has violated an obligation or covenant of the tenancy or occupancy other than the obligation to surrender possession upon proper notice and has failed to cure such violation within a reasonable time after having received written notice thereof from the foreclosing owner; (c) the tenant is committing or permitting to exist a nuisance in, or is causing substantial damage to, the unit, or is creating a substantial interference with the quiet enjoyment of other occupants; (d) the tenant is convicted of using or permitting the unit to be used for any illegal purpose; (e) the tenant who had a written lease or other rental agreement which terminated on or after the effective date of this chapter, has refused, after written request or demand by the foreclosing owner, to execute a written extension or renewal thereof for a further term of like duration and in such terms that are not inconsistent with the provisions of this chapter; (f) the tenant has refused the foreclosing owner reasonable access to the unit for the purpose of making necessary repairs or improvement required by the laws of the United States, the Commonwealth or any subdivision thereof, or for the purpose of inspection as permitted or required by agreement or by law or for the purpose of showing the rental housing unit to a prospective purchaser or mortgagee; (g) a binding purchase and sale contract with a purchaser who intends to occupy the housing accommodation as such purchaser's primary residence and who is not a foreclosing owner, where such agreement requires the housing accommodation or some portion thereof to be conveyed vacant

'Mortgagee', an entity to whom property is mortgaged; the mortgage creditor, or lender, including, but not limited to, mortgage servicers, lenders in a mortgage agreement and any agent, servant, or employee of the mortgagee, or any successor in interest or assignee of the mortgagee's rights, interests or obligations under the mortgage agreement.

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

'Reasonable Rent', for a tenant shall be the amount paid by such tenant immediately prior to the foreclosure as demonstrated by a lease, a rental agreement or other evidence of agreed-upon rent or rental payments. Reasonable rent for a tenant who is a former owner-occupant shall be the Fair Market Rent as established by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. c § 1437f(o), as it exists or may be amended, for a unit of comparable size in the area in which the housing accommodation is located or as otherwise agreed to by the parties.

'Tenant' any person or persons who at the time of foreclosure is entitled to occupy a housing accommodation pursuant to a written lease, tenancy at will, or tenancy at sufferance including a former owner-occupant who held legal title to a housing accommodation immediately prior to a foreclosure of such housing accommodation and who individually or with other legal occupants remains in possession of such housing accommodation after foreclosure. Any person other than a legal dependent or spouse of the person or group of persons entitled to occupy the housing accommodation at the time of the foreclosure who moves into the housing accommodation owned by the foreclosing owner following the filing of the foreclosure deed without the express written permission of the foreclosing owner shall not be considered a tenant under this statute

'Unit' or 'residential unit', the room or group of rooms within a housing accommodation which is used or intended for use as a residence by one household.

Section 2. Notwithstanding any other special or general law to the contrary, the foreclosing owner shall not evict a tenant or former owner-occupant except for just cause.

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

The district and superior courts, and the housing courts in the Commonwealth, shall have jurisdiction over

an action arising from any violation of this Act, or any ordinance, or by-law adopted pursuant to this Act, and shall have jurisdiction in equity to restrain any such violation. It shall be a defense to eviction that the foreclosing owner attempted to evict a tenant in violation of any provision of this Act, or any ordinance or by-law adopted pursuant to this Act.

Section 4. This Act shall cease to have effect on December 31, 2013.

SECTION 2. Section 13A of chapter 186 is hereby amended by inserting after the words "federal law" the following:--

and the foreclosing entity shall assume the lease and rental subsidy contract with the rental subsidy administrator.