

SENATE NO. 754



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:*

1 SECTION 1. Chapter 183 of the General Laws is hereby amended by adding the following
2 new sections:

3 Section 17A. Statutory Form of Housing Restriction.

4 A deed, covenant or restriction (“restriction”) in substance following the form entitled Deed with
5 Statutory Housing Restriction or the form entitled Statutory Housing Restriction shall when duly
6 executed have the force and effect of an affordable housing restriction as defined in section 31 of
7 chapter 184, without limitation as to enforcement thereof as stated in section 32 of chapter 184, to the
8 use of the holder and its successors and assigns with statutory housing covenants, upon the statutory
9 housing condition and with the statutory housing power to sell, as defined in the following sections
10 17B, 17C and 17D, to secure the performance of the statutory housing restriction and any obligation

11 therein specified related thereto. The parties may insert in such restriction any other lawful agreement
12 or condition reasonably related to the creation, maintenance and preservation of the premises as
13 statutory housing.

14 Section 17B. Meaning of "Statutory Housing Covenants".

15 In a conveyance of real estate the words "Statutory Housing Covenants" shall have the full force,
16 meaning and effect of the following words, and shall be applied and construed accordingly: "The
17 grantor, for the grantor and the grantor's heirs, executors, administrators and successors, and assigns
18 covenants with the holder and its successors and assigns,

19 a) that the granted premises are free from all encumbrances made by the grantor,

20 b) that the grantor will, and the grantor's heirs, executors, administrators, successors and
21 assigns shall, warrant and defend the same to the holder and its successors and assigns forever against
22 the lawful claims and demands of all persons claiming by, through or under the grantor, but against
23 none other;

24 c) that the grantor and the grantor's heirs, successors or assigns, during their respective
25 ownership of the statutory housing premises, will comply fully with the statutory housing condition;
26 and

27 d) that the grantor and the grantor's heirs, successors or assigns, in case a sale shall be made
28 under the statutory housing power to sell, will, upon request, execute, acknowledge and deliver to the
29 purchaser or purchasers a deed or deeds of release confirming such sale, and that the holder and the
30 holder's successors and assigns are appointed and constituted the attorney or attorneys-in-fact
31 irrevocable of the said grantor to execute and deliver to the said purchaser such deed or deeds and a
32 full transfer of all policies of insurance on the buildings upon the land covered by the statutory housing
33 restriction at the time of such sale.

34 Section 17C. Meaning of "Statutory Housing Condition".

35 The following "condition" shall be known as the "Statutory Housing Condition", and may be
36 incorporated in any deed, covenant or restriction by reference:

37 The grantor intends, declares, and covenants on behalf of the grantor and grantor's heirs, successors
38 and assigns that the grantor and the grantor's heirs, successors and assigns shall:

39 (a) except as may be authorized in writing by the holder, occupy the dwelling unit on the statutory
40 housing premises as the principal residence of the grantor and the grantor's eligible household;

41 (b) pay and discharge when due and payable all debts secured by the statutory housing premises,
42 including without limitation taxes, mortgages and other voluntary liens, and judgments and other
43 involuntary liens;

44 (c) not encumber the statutory housing premises or any portion thereof in an amount in excess of their
45 affordable value, nor convey, transfer or otherwise dispose of the statutory housing premises or any
46 portion thereof other than as statutory housing; and

47 (d) unless otherwise authorized in writing by the holder, upon disposition, convey any fee interest in
48 the statutory housing premises only to one or more members of an eligible household approved in
49 writing by the holder for consideration not exceeding the affordable value thereof at the time of the
50 conveyance; provided however that a continuing or newly acquired ownership, with continued
51 occupancy as principal residence during his or her lifetime, by the surviving spouse of a qualified
52 owner in the eligible household who resided at said premises as his or her principal residence at the
53 time of the qualified owner's death, without regard to the surviving spouse's income, shall not
54 constitute a breach of this condition.

55 Section 17D. Meaning of "Statutory Housing Power to Sell".

56 The following "power" shall be known as the "Statutory Housing Power to Sell", and may be
57 incorporated in any deed, covenant or restriction by reference:

58 But upon any default in the performance or observance of the foregoing or other condition reasonably
59 related to maintaining the premises as statutory housing, the holder or its successors or assigns may
60 sell the statutory housing premises or such portion thereof as may remain subject to the statutory
61 housing restriction in case of any partial release thereof, together with all improvements that may be
62 thereon, by deed, first complying with the statutes relating to the holder's sale of statutory housing by
63 the exercise of the statutory housing power to sell, and may convey the same by proper deed or deeds
64 to the purchaser or purchasers absolutely and in fee simple but subject always to the statutory housing
65 covenants, on the statutory housing condition and with the statutory housing power to sell, and to full
66 satisfaction of such mortgages and other liens on said premises securing such debt as in the aggregate
67 did not exceed the affordable value when recorded; and such sale shall forever bar the grantor and all
68 persons claiming rights of fee simple ownership under the grantor or claiming mortgages or other liens
69 against the statutory housing premises in excess of such affordable value from all right and interest in
70 said premises, whether at law or in equity.

71 Section 17E. Definitions Related to Statutory Form of Housing Restriction.

72 Affordable Value Defined The "Affordable Value" of the statutory housing premises under the
73 statutory housing condition and the statutory housing power to sell, unless otherwise defined in the
74 restriction, shall be equal to the consideration paid by the grantor for the said premises subject to the
75 statutory housing restriction adjusted in proportion to any increase of the area median income from the
76 date the grantor acquired said premises to the date next preceding the sale for which such information
77 is publicly available. In a restriction stating an alternate means of determining the value of the

78 statutory housing premises, affordable value shall be the amount determined as stated in that
79 restriction.

80 Area Median Income Defined “Area Median Income” means the median income for the standard
81 metropolitan statistical area in which the statutory housing premises are located, adjusted for
82 household size, published by the United States Department of Housing and Urban Development, or
83 such other standard established by Massachusetts or the federal government to measure individual and
84 household incomes in Massachusetts.

85 Eligible Household Defined "Eligible Household" means the grantor and all persons residing
86 together and with the grantor at the statutory housing premises and whose household income
87 determined in connection with their acquisition of said premises subject to the statutory housing
88 restriction did not exceed the maximum household income established by the holder at the time of
89 such acquisition, or in the absence of the establishment of a maximum household income in the deed,
90 covenant or restriction, did not exceed 80% of the area median income, adjusted for the number of
91 individuals in the eligible household. The term “grantor” includes any person granting a covenants on
92 the statutory housing condition and with the statutory housing power to sell, and also any individual
93 acquiring the premises subject to such a restriction previously granted.

94 Household Income Defined “Household income” means the aggregate combined gross income of all
95 members of a household stated as a percentage of area median income under standards established by
96 the United States Department of Housing and Urban Development, or such other standard established
97 by Massachusetts or the federal government to measure individual and household incomes in
98 Massachusetts.

99 Statutory Housing Premises Defined “Statutory housing premises” means residential real property
100 subject to the terms of sections 17B, 17C or 17D.

101 Section 17F. Entities Eligible to be Holder of Statutory Housing Restriction.

102 The entities eligible to be a holder of a statutory housing restriction shall be a governmental body,
103 churches, universities or other charitable corporation or trust whose purposes include creating or
104 retaining or assisting in the creation or retention of affordable housing under government sponsored
105 federal, state or local subsidy programs for occupancy by persons or families of low or moderate
106 income, and any other entity so authorized by the Massachusetts Department of Housing and
107 Community Development (or any successor agency); provided, however, that no restriction granted on
108 statutory housing covenants with the statutory housing condition and on the statutory housing power to
109 sell shall be invalid by reason of being held by other than an eligible entity provided that it is assigned
110 to an eligible entity prior to exercise of the statutory housing power to sell. "Governmental body", as
111 referred to in this section means the United States or the commonwealth, acting through any of its
112 departments, divisions, commissions, boards or agencies, or any political subdivision or public
113 instrumentality thereof or any public authority or any quasi-public entity or any instrumentality created
114 pursuant to chapter forty F, whether acting for its own account, or as agent or designee for or assignees
115 of any private individual or private entity which has been required to place such restriction in its chain
116 of title as a condition to receiving financial or other assistance from the United States or the
117 commonwealth.

118 A city or town, acting, for cities, by the mayor, unless otherwise provided by charter, ordinance, or
119 vote of the city council, and for towns, by the board of selectmen, unless otherwise provided by
120 charter, bylaw, or vote of the town, may acquire by gift, purchase, grant, bequest, devise, lease or
121 otherwise a statutory housing restriction on real property resulting from regulatory action or funding
122 by the city or town, or otherwise authorized by the city or town, and shall have authority to hold and

123 exercise all the holder's rights, including the authority to acquire and re-convey the real property as
124 statutory housing, and otherwise administer and enforce the statutory housing restriction.

125 Section 17G. Holder's Obligation to Issue Affordable Value Certificate.

126 On written notice from any owner of statutory housing premises, or from any mortgagee,
127 proposed mortgagee or other person holding a lien on said premises, the holder shall state in writing
128 the affordable value of the statutory housing premises as of the nearest date for which such
129 determination can be made from public record. The holder may charge a reasonable fee for providing
130 said certificate.

131 Section 17H Term. Termination of Statutory Housing Restriction.

132 A statutory housing restriction shall continue until terminated by agreement of the holder, or by
133 legislative or judicial action, or otherwise according to law unless a term of years is stated in the
134 restriction, On termination of a statutory housing restriction for any reason prior to its stated term, and
135 after payment of the affordable value to the owner, mortgagees and other lien holders according to the
136 priority established by law, the holder (and no other person) shall be entitled to receive the difference
137 between the affordable value of the statutory housing premises immediately before termination
138 (assuming the statutory housing restriction to have been perpetual) and the fair market value of those
139 premises immediately after termination. Such amount shall be considered a first priority lien in the
140 event that the statutory housing restriction is terminated by judicial action in a bankruptcy proceeding.
141 The statutory housing covenants, statutory housing condition and statutory housing power to sell shall
142 not be subject to section 23 and sections 26 through 30 and shall have the benefits of section 32
143 without approval otherwise required thereunder, but all other provisions of a statutory housing
144 restriction shall remain subject to section 23 and sections 26 through 30 and shall have the benefits of
145 section 32 only if approved as stated therein.

146 Section 17I. Effect of Mortgage or Other Foreclosure or Sale on Statutory Housing Restriction.

147 Unless otherwise agreed in an instrument appearing of record, following a mortgagee's
148 foreclosure by a regulated for-profit, not-for-profit or governmental mortgagee holding a first
149 mortgage, to sell the statutory housing premises in satisfaction of a debt which was subordinate to a
150 housing restriction established by deed, covenant or other form of restriction that included the
151 statutory housing covenants, statutory housing condition or statutory housing power to sell, only the
152 statutory housing covenants, the statutory housing condition and the statutory housing power to sell, as
153 defined in sections 17B, 17C and 17D, appearing in the restriction shall continue in effect binding the
154 premises at the affordable value for ownership and occupancy by an eligible household as established
155 in the housing restriction, and all other provisions of the restriction shall be extinguished, but the
156 foregoing shall not affect the right of the holder to establish, or agree to with an eligible household,
157 other affordable housing restrictions and provisions thereafter.

158 Section 17J. Ownership of Statutory Housing by Holder, Mortgagee or Other Lien Holder.

159 Ownership of premises subject to a statutory housing restriction, either by the holder or by a
160 mortgagee or other lien holder, or its designee, pursuant to exercise of lawful remedies against the
161 owner, shall not constitute a violation of the statutory housing covenants or the statutory housing
162 condition so long as the premises are being held for re-sale to, and are re-sold to, an eligible household
163 as statutory housing for an amount not exceeding the affordable value.