

SENATE NO. 1776

AN ACT ESTABLISHING THE MARTHA'S VINEYARD HOUSING BANK

*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. For the purposes of this act, the words and phrases set forth in this section shall have the
2 following meanings:

3 "Community Housing", rental and home ownership housing units for use by those residents of
4 Martha's Vineyard earning 150% or less of the median household income for Dukes county as
5 calculated and adjusted for household size annually by the federal Department of Housing and Urban
6 Development (HUD); this percentage of median income, should economic conditions warrant a
7 change, can be adjusted by a majority vote of both the housing bank commission and four or more of
8 the six town advisory boards.

9 "Eligible Applicants", non-profit and for-profit corporations and organizations, individuals, and public
10 entities.

11 "Fund", shall refer to the Martha's Vineyard Housing Bank Fund established under section 7.

12 "Housing Bank", the Martha's Vineyard housing bank, established by section 2.

13 "Housing bank commission", the Martha's Vineyard housing bank commission, established by section
14 3.

15 "Legal representative", with respect to any person, shall mean any other person acting under a written
16 power-of-attorney executed by that person, but any affidavit attesting to the true and complete

17 purchase price of real property, submitted to the housing bank commission pursuant to section 9, may
18 also be signed on behalf of that person by an attorney admitted to practice in the commonwealth.

19 "Purchaser", the transferee, grantee or recipient of any real property interests.

20 "Purchase price", all consideration paid or transferred by or on behalf of a purchaser to a seller or a
21 seller's nominee, or for the seller's benefit, for the transfer of any real property interest, and shall
22 include, but not be limited to, all cash or other property paid or transferred by or on behalf of the
23 purchaser to discharge or reduce any obligation of the seller; the principal amount of all notes or their
24 equivalent, or other deferred payments, given or promised to be given by or on behalf of the purchaser
25 to the seller or the seller's nominee; the outstanding balance of all obligations of the seller which are
26 assumed by the purchaser or to which the real property interest transferred remains subject after the
27 transfer, determined at the time of transfer but excluding real estate taxes or other municipal liens or
28 assessments which are not overdue at the time of the transfer; and the fair market value at the time of
29 transfer of any other consideration or thing of value paid or transferred by or on behalf of the
30 purchaser, including, but not limited to, any property, goods or services paid, transferred or rendered in
31 exchange for such real property interest.

32 "Real property interest", any present or future legal or equitable interest in or to real property, and any
33 beneficial interest in real property, including the interest of any beneficiary in a trust which holds any
34 legal or equitable interest in real property, but shall not include any interest which is limited to any or
35 all of the following: the dominant estate in any easement or right of way; the right to enforce any
36 restriction; any estate at will or at sufferance, and any estate for years having a term of less than thirty
37 years; the reversionary right, condition, or right of entry for condition broken; the interest of a
38 mortgagee or other secured party in any mortgage or security agreement; and the interest of a
39 stockholder in a corporation, or a partner in a partnership, unless any real property interest has been

40 transferred to the corporation or partnership for the purpose of evading the fee imposed by section 9.
41 "Seller", the transferor, grantor or immediate former owner of any real property interests.

42 "Time of transfer", of any real property interest shall mean, the time that such transfer is legally
43 effective as between the parties to the transfer, and, in any event, with respect to a transfer evidenced
44 by an instrument recorded with the appropriate registry of deeds or filed with the assistant recorder of
45 the appropriate registry district, not later than the time of the recording or filing.

46 "Town advisory board" (TAB), a town board created in each of the towns of Aquinnah, Chilmark,
47 Edgartown, Oak Bluffs, Tisbury and West Tisbury to assist the housing bank commission in
48 administering this act, such advisory board to consist of 7 members; 1 representative duly appointed,
49 either from its membership or a designee, by each of the following town boards: board of selectmen,
50 conservation commission, planning board and board of health; 2 members appointed by the housing
51 committee with preference given to the town representative to the regional housing authority; and one
52 member from either the Highway Department, Department of Public Works, or Water Department, or
53 a designee from one of said departments. Should a position become vacant, a member appointed by the
54 respective board to complete the unexpired term shall fill said vacancy. Members shall hold 3- year
55 staggered, renewable terms, with the length of the initial terms to be designated by the board of
56 selectmen.

57 SECTION 2. There is hereby established a Martha's Vineyard housing bank, to be administered by a
58 housing bank commission established by section 3; for the purpose of providing funding for
59 community housing as set forth in section 5. The housing bank is hereby constituted a body politic and
60 corporate and a public instrumentality and the exercise of the powers herein conferred upon the
61 housing bank shall be deemed to be the performance of an essential governmental function.

62 SECTION 3. The housing bank shall be administered by a housing bank commission consisting of 7
63 voting persons.

64 3.1 Membership: There shall be one member who is a legal resident of each of the towns of Aquinnah,
65 Chilmark, Edgartown, Oak Bluffs, Tisbury and West Tisbury, each person to be elected to a 3-year
66 term, in the same manner as other elected town officials, and one member who will be appointed by
67 the director of the Massachusetts Department of Housing and Community Development (DHCD). The
68 six town boards of selectmen shall appoint the initial 6 members to serve from the effective date of this
69 act until the first elections of the regular members at each town's regular or special town election after
70 the effective date of this act. The initial terms, which will be drawn by lot by the initial six appointed
71 members, shall be staggered so that two members are elected each year, following the initial election.

72 3.2 Vacancies: Should a vacancy occur during the term of any elected town member, the town housing
73 committee and the board of selectmen shall jointly appoint an interim member to serve until the next
74 scheduled town election.

75 3.3 Administration: Members shall serve without compensation. The initial appointed members shall
76 adopt temporary rules and regulations to the extent necessary to conduct business until the regular
77 members are elected. The housing bank commission shall elect a chairman and a vice chairman from
78 among its regular members and shall elect a secretary and a treasurer who may be the same person, but
79 who need not be members of the housing bank commission. The members of the housing bank
80 commission shall adopt, after holding a public hearing and after requesting recommendations from the
81 town advisory board of each of the six member towns that comprise the commission, rules and
82 regulations for conducting its internal affairs and procedural guidelines for carrying out its
83 responsibilities under this act.

84 3.4 Quorum: A quorum shall be 4 or more members. Decisions of the housing bank commission shall

85 be by majority vote at a meeting where a quorum is present. The housing bank commission shall make
86 rules regarding attendance. The housing bank commission shall keep accurate records of its meetings
87 and actions and shall file an annual report that shall be distributed with the annual report of each
88 member town.

89 SECTION 4A. The housing bank commission shall, subject to this act, have the power authority, and
90 responsibility to (a) provide funding in the form of grants, loans, loan guarantees, lines of credit,
91 interest subsidies, rental assistance or any other means determined to further the goals of the housing
92 bank for eligible community housing activities as cited in section 5 of this act, provided that any such
93 funding shall require the approval of the town advisory board of any town or towns in which the
94 eligible activities shall be located; (b) accept gifts of funds to further the purposes of the housing bank;
95 (c) prepare an annual budget, which shall be subject to approval by the town advisory boards of the
96 majority of the member towns of the housing bank commission; (d) hire such staff and obtain such
97 professional services as are necessary in order to perform its duties; (e) adopt such regulations and
98 procedures it deems necessary or appropriate, subject to this act, regarding the use and investment of
99 its funds and the keeping of records and accounts; (f) adopt such procedures it deems necessary or
100 appropriate to provide funding for the implementation of any and all programs cited in section 5 of this
101 act; and (g) enter into and enforce such contracts it deems necessary to achieve the goals of this
102 legislation.

103 SECTION 4B. Each member town is hereby authorized to appropriate money to be deposited the fund
104 as provided in section 7A.

105 SECTION 4C. The housing bank is authorized to issue bonds and notes to further the purpose of the
106 housing bank but only if the issuance of these bonds or notes has been approved by all of the member
107 towns by a majority vote at a town meeting.

108 SECTION 4D. The housing bank revenues and income will be used solely for the furtherance of its
109 public purposes and shall be exempt from taxation.

110 SECTION 5. The Martha's Vineyard housing bank is a funding agency only. Upon receiving
111 applications from eligible applicants in a competitive process which will include public notice of
112 funding availability, and in a form prescribed by the commission, the housing bank will provide
113 funding for eligible community housing activities as defined below, while respecting special Vineyard
114 habitats and rural character. The Housing Bank shall, wherever possible, give preference to a) the
115 reuse of existing buildings, and b) construction of new buildings on previously developed sites.
116 Eligible community housing activities for receipt of funding shall include, but not be limited to, the
117 following:

- 118 (a) Purchase and rehabilitation of existing structures for rental or home ownership;
- 119 (b) Construction of rental or home ownership housing and necessary on-site or off site infrastructure,
120 including mixed use development;
- 121 (c) Purchase of land, and any and all improvements including easements;
- 122 (d) Down payment assistance, grants and soft second loans;
- 123 (e) Rental assistance programs;
- 124 (f) Modernization and capital improvements of existing rental and ownership housing;
- 125 (g) Creation of apartments and other ancillary housing;
- 126 (h) Housing counseling, predevelopment costs and technical assistance associated with creating

127 community housing projects and programs; and

128 (i) Mixed -use development projects.

129 SECTION 6. All housing units created by means of funding from the housing bank under this act shall
130 be deed restricted in perpetuity for use as community housing as defined in section 1 of this act, except
131 in cases when the housing bank commission determines that such deed restriction is not feasible, and
132 except in cases when the housing bank commission determines that it is beneficial to support rental
133 housing that does not have permanent restrictions.

134 SECTION 7A. The housing bank commission shall meet its financial obligations by drawing upon a
135 fund to be set up as a revolving or sinking account of the housing bank commission. Deposits into the
136 fund shall include (a) funds appropriated, borrowed or transferred to be deposited into the fund by vote
137 of the county commissioners of the county of Dukes county or of town meetings of the towns
138 represented in the housing bank commission; (b) voluntary contributions of money and other liquid
139 assets to the fund; and (c) revenues from fees imposed upon the transfer of real property interests
140 under section 9 occurring after the effective date of this act as set forth in section 15. Grants or gifts of
141 money or other assets to the housing bank shall be subject to any restrictions or limitations imposed by
142 the grantor or donor.

143 All expenses lawfully incurred by the housing bank commission in carrying out this act shall be
144 evidenced by proper vouchers and shall be paid by the treasurer of the housing bank commission only
145 upon submission of warrants duly approved by the housing bank commission. The housing bank
146 commission treasurer shall prudently invest available assets of the fund in accordance with the
147 regulations and procedures adopted by the housing bank commission under Section 4A (f) and all
148 income from its investments shall accrue to the fund.

149 SECTION 7B. An individual account shall be established by the housing bank commission for each
150 member town of the housing bank. The treasurer of the housing bank commission shall administer all
151 transactions for the individual town accounts. Of the revenues collected under this act, 50 per cent
152 shall remain in the fund, to be directly administered by the housing bank commission under this act.
153 The remaining 50 per cent of the revenues collected shall be transferred to the individual town
154 accounts in proportion to the amount of collected housing bank revenues derived from transfer of any
155 real property interest in any real property within each respective town. Money in the individual town
156 account of each member town may be expended by the housing bank commission, subject to the
157 approval of a majority of the members of the town advisory board of such town, for purposes
158 permitted by this act, within or outside the borders of such town.

159 SECTION 8. The housing bank commission shall keep a full and accurate account of its actions
160 including a record as to when, from or to whom, and on what account money has been paid or received
161 under this act. These records or accounts shall be subject to examination by the director of accounts or
162 the director's agent pursuant to section 45 or chapter 35 of the General Laws, and there shall be an
163 annual audit conducted by a duly recognized accounting firm and a copy of said audit distributed to all
164 member towns.

165 SECTION 9. There is hereby imposed a fee equal to 1 per cent of the purchase price upon the transfer
166 of any real property interest in any real property situated in a member town or towns. The fee shall be
167 the liability of the seller of the real property interest, and any agreement between the purchaser and the
168 seller or any other person with reference to the allocation of the responsibility for bearing this fee shall
169 not affect the liability of the seller. This fee shall be paid to the housing bank commission or its
170 designee, and shall be accompanied by a copy of the deed or other instrument evidencing such

171 transfer, if any, and an affidavit signed under oath or under the pains and penalties of perjury by the
172 seller or the seller's legal representative, attesting to the true and complete purchase price and the
173 basis, if any, upon which the transfer is claimed to be exempt in whole or in part from the fee imposed.
174 The housing bank commission, or its designee, shall promptly thereafter execute and issue a certificate
175 indicating that the appropriate fee has been paid or that the transfer is exempt from the fee, stating the
176 basis for the exemption. The register of deeds for the county of Dukes county, and the assistant
177 recorder for the registry district of the county of Dukes county, shall not record or register, or receive
178 or accept for recording or registration, any deed, except a mortgage deed, relative to any real property
179 interest situated in any town that is a member of the housing bank commission to which has not been
180 affixed such a certificate, executed by the housing bank commission or its designee. Failure to comply
181 with this requirement shall not affect the validity of any instrument. The housing bank commission
182 shall deposit all fees received under this section with its treasurer as part of the fund established by
183 section 7. The fee imposed under this section shall be due at the time of transfer of the real property
184 interest.

185 SECTION 10. At any time within 7 days following the issuance of the certificate of payment of the fee
186 imposed by section 9, the seller or the seller's legal representative may return said certificate to the
187 housing bank commission or its designee for cancellation, together with an affidavit signed under oath
188 or under the pains and penalties of perjury that the transfer, with respect to which such certificate was
189 issued, has not been consummated, and thereupon the fee paid with respect to such transfer shall be
190 forthwith returned to the seller or the seller's legal representative.

191 SECTION 11. The following transfers of real property interests shall be exempt from the fee
192 established by section 9. Except as otherwise provided, the seller shall have the burden of proof that

193 any transfer is exempt under this section:

194 a) transfers made by a charitable organization as defined in clause three of section 5 of chapter 59 of
195 the General Laws, or by any nonprofit organization which is exempt from income tax under section
196 501(c)(3) of the Internal Revenue Code, Title 26 of the United States Code;

197 b) transfers which, without additional consideration, confirm, correct, modify or supplement a transfer
198 previously made;

199 c) transfers made as gifts without consideration; in any proceedings to determine the amount of any fee
200 due under this clause, it shall be presumed that any transfer for consideration of less than fair market
201 value of the real property interests transferred was made as a gift without consideration to the extent of
202 the difference between the fair market value of the real property interests transferred and the amount of
203 consideration claimed by the purchaser to have been paid or transferred, if the purchaser shall have
204 been at the time of transfer the spouse, the lineal descendant or the lineal ancestor of the seller, by
205 blood or adoption; otherwise it shall be presumed that consideration was paid in an amount equal to
206 the fair market value of the real property interests transferred, at the time of transfer;

207 d) transfer to the trustees of a trust in exchange for a beneficial interest received by the seller in such
208 trust; distribution by the trustees of a trust to the beneficiaries of such trust; schedules of beneficiaries
209 shall be submitted to the housing bank collection agent, at the discretion of such agent, without
210 becoming part of the public record;

211 e) transfers by operation of law without actual consideration, including but not limited to transfers
212 occurring by virtue of the death or bankruptcy of the owner of a real property interest;

213 f) transfers made in partition of land and improvements to it, under chapter 241 of the General Laws,
214 but any portion of a partition for which consideration has been paid is not exempt;

215 g) transfers without consideration to any charitable organization as defined in clause third of section 5

216 of chapter 59 of the General Laws, or to any nonprofit organization which is exempt from income tax
217 under section 501(c)(3) of the Internal Revenue Code, Title 26 of the United States Code, provided
218 that the real property interests transferred shall be held by the organization solely for its public,
219 charitable or religious purposes, and provided that any portion of the transaction for which any
220 consideration may have been paid is not exempt;

221 h) transfers to a mortgagee in foreclosure of the mortgage held by the mortgagee, and transfers of the
222 property subject to a mortgage to the mortgagee in consideration of the forbearance of the mortgagee
223 from foreclosing the mortgage, including sheriffs sales;

224 i) transfers made to a corporation or partnership at the time of its formation, in which no gain or loss is
225 recognized under section 351 of the Internal Revenue Code, Title 26 of the United States Code;

226 j) transfers made to a stockholder of a corporation in liquidation of the corporation, and transfers made
227 to a partner of a partnership in dissolution of the partnership;

228 k) transfers consisting of the division of marital assets under the provisions of section thirty-four of
229 chapter two hundred and eight of the Mass General Laws or other provisions of law of any state in the
230 U.S.;

231 l) transfers of property consisting in part of real property interests situated within a town that is a
232 member of the housing bank commission and in part of other property interests, to the extent that the
233 property transferred consists of property other than real property situated within a town that is a
234 member of the housing bank commission, but the seller shall furnish the housing bank commission
235 with such information as it shall require or request in support of the claim of exemption and manner of
236 allocation of the consideration for the transfers;

237 m) the first \$750,000 of the sale price of all transfers of real estate, or a higher exemption to be

238 adjusted for inflation as determined tri-annually by vote of the majority of the housing bank
239 commission and the majority of the six town advisory boards.

240 SECTION 12. A seller who fails to pay all or any portion of the fee established by section 9 on or
241 before the time when the fee is due shall be liable for the following additional payments in addition to
242 said fee:

243 a) Interest. The seller shall pay interest on the unpaid amount of the fee to be calculated from the time
244 of transfer at a rate equal to prime rate plus 1 per cent per annum.

245 b) Penalties. Any person who, without fraud or willful intent to defeat or evade a fee imposed by
246 section 9, fails to pay all or a portion of the fee within 30 days after the time of transfer, shall pay a
247 penalty equal to 5 per cent of the outstanding fee as determined by the housing bank commission for
248 each month or portion of a month that the fee is not paid in full, but in no event shall the amount of
249 any penalty imposed hereunder exceed 25 per cent of the unpaid fee due at the time of transfer.

250 Whenever the housing bank commission determines that all or a portion of a fee due under section 9
251 was unpaid due to fraud with intent to defeat or evade the fee, a penalty equal to the amount of the fee
252 as determined by the housing bank commission shall be paid by the seller in addition to the fee.

253 SECTION 13. (a) The housing bank commission shall notify a seller by registered or certified mail of
254 any failure to discharge in full the amount of the fee due under section 9 and any penalty or interest
255 assessed. The housing bank commission shall grant a hearing on the matter of the imposition of the
256 fee, or of any interest or penalty assessed, if a petition requesting a hearing is received by the housing
257 bank commission within 30 days after the mailing of the notice. The housing bank commission shall
258 notify the seller in writing by registered or certified mail of its determination concerning the
259 deficiency, penalty or interest within 15 days after the hearing. Any party aggrieved by a

260 determination of the housing bank commission concerning a deficiency, penalty or interest may, after
261 payment of the deficiency, appeal to the district or superior court within 3 months after the mailing of
262 notification by the housing bank commission.

263 Upon the failure to timely petition for a hearing, or appeal to the court, within the time limits hereby
264 established, the seller shall be bound by the terms of the notification, assessment or determination, and
265 shall be barred from contesting the fee or any interest and penalty, as determined by the housing bank
266 commission. All decisions of these courts shall be subject to appeal. Every notice to be given under
267 this section by the housing bank commission shall be effective if mailed by certified or registered mail
268 to the seller at any available legal address of the seller, or at the address stated in a recorded or
269 registered instrument by virtue of which the seller holds any interest in land, the transfer of which
270 gives rise to the fee which is the subject of such notice; and if no such address is stated or if such
271 transfer is not evidenced by an instrument recorded or registered in the public records in the county of
272 Dukes County, such notice shall be effective when so mailed to the seller in care of any person
273 appearing of record to have a fee interest in such land, at the address of such person as set forth in an
274 instrument recorded or registered in the county of Dukes County.

275 (b) All fees, penalties and interest required to be paid under this act shall constitute a personal debt of
276 the seller and may be recovered in an action of contract or in any other appropriate action, suit or
277 proceeding brought by the housing bank commission subject to chapter 260 of the General Laws.

278 (c) Sellers applying for an exemption pursuant to
279 Section 11(a-1) above shall be required at the time of application for exemption to execute a legally
280 binding agreement 1) assuming complete liability for any fee, plus interest and penalties if any, waived
281 on account of an allowed exemption subsequently determined to have been invalid, and 2) submitting
282 to the jurisdiction of the Massachusetts Department of the Trial Court sitting in the County of Dukes

283 County. Fees, plus interest and penalties if any, shall be calculated as of the date of the initial property
284 transfer. Execution of the above-described agreement shall not be required of any mortgagee, pledgee,
285 purchaser or judgment creditor unless notice thereof has been filed by the housing bank commission.
286 The housing bank commission, without waiving any of its rights, may direct a civil action to be filed
287 in the Massachusetts Department of the Trial Court District or Superior Court Division sitting in the
288 County of Dukes County to enforce the agreement of the housing bank commission under this section
289 with respect to this liability or to subject any property of whatever nature of the delinquent, or in
290 which the delinquent has any right, title or interest, to the payment of this liability.

291 The housing bank commission may issue a waiver or release of any agreement imposed by this section
292 with the approval of the town advisory board of the town or towns in which the property subject to the
293 agreement is located. Such waiver or release shall be conclusive evidence that the agreement is
294 extinguished.

295 SECTION 13A. This act, being necessary for the welfare of the member towns and the county of
296 Dukes County and their inhabitants, shall be liberally construed to effect its purposes.

297 SECTION 14. Any time after 5 years from the effective date of this act, any town that is a member of
298 the housing bank may withdraw from it by the affirmative vote of a majority of the voters at any
299 regular or special town election. A town that has withdrawn may renew its membership by the
300 affirmative vote of a majority of the voters at any regular or special town election at which the
301 question of acceptance has been placed on the ballot. Upon the withdrawal of a town from the housing
302 bank, all funds then held in the account established for such town pursuant to section 7B, after
303 payment or provision of payment has been made in full on all funding commitments made by the
304 housing bank prior to receipt by the housing bank commission of written notice that an election has

305 been called by the town to vote upon the question of withdrawal, shall be transferred to the fund
306 established by section 7A.

307 If the housing bank is reduced to fewer than 3 member towns, the housing bank shall be dissolved, but
308 the fee imposed by section 9 shall continue to be imposed in each member town until all funding
309 commitments, including repayment of any bonds or notes, have been paid in full, and the housing bank
310 shall continue in existence during this time for the sole purpose of collecting and administering these
311 fees. Upon dissolution of the housing bank, title to all funds and other properties held by the housing
312 bank shall vest in the towns of Dukes county as herein provided after provision is made for payment of
313 all bonds, notes and other obligations of the housing bank. Funds shall be transferred to each town in
314 proportion to the fees generated by lands situated within that town over the life of the housing bank
315 under this act. The housing bank commission shall not submit an amendment of this act to the general
316 court unless the amendment has been approved by two-thirds of the member towns by the affirmative
317 vote of a majority of the voters at a town meeting.

318 SECTION 15. Acceptance of this act, by each of the towns of Aquinnah, Chilmark, Edgartown, Oak
319 Bluffs, Tisbury and West Tisbury shall be by the affirmative vote of a majority of the voters at any
320 regular or special town election at which the question of acceptance has been placed on the ballot. This
321 act shall become effective on the date on which acceptance by all of these towns has been effected.