

10 “Affordability restriction”, a limit on rents that an owner may charge for occupancy of a rental
11 unit in a publicly assisted housing development or a limit on tenant income for persons or families
12 seeking to qualify for admission to such housing.

13 “CEDAC”, the Community Economic Development Assistance Corporation established in
14 chapter 40H.

15 “Chief executive officer”, the mayor in a city and the board of selectmen in a town unless
16 otherwise is designated by a municipal charter.

17 “Department”, the department of housing and community development or, when applicable, its
18 designee, or any successor agency of the department.

19 “Designee”, a municipality, local or regional housing authority, nonprofit or for-profit
20 corporation or other entity qualified to do business in the commonwealth and, which is selected by the
21 department to operate publicly-assisted housing that is decent, safe and sanitary affordable housing, under
22 subsection (b) of section 3.

23 “Enhanced section 8 vouchers”, vouchers provided under 42 U.S.C. 1437f(t) or other
24 substantially equivalent assistance.

25 “Extremely low income”, a household income of not more than 30 per cent of the area median
26 income, adjusted for household size, as periodically determined by the United States Department of
27 Housing and Urban Development.

28 “Government program”, a program which provides government assistance under a program set
29 forth in the definition of publicly-assisted housing.

30 “Low income”, a household income of not more than 80 per cent of the area median income,
31 adjusted for household size, as periodically determined by the United States Department of Housing and
32 Urban Development.

33 “Owner”, a person, firm, partnership, corporation, trust, organization, limited liability company or
34 other entity, or its successors or assigns, that holds title to a publicly-assisted housing development.

35 “Prepayment”, (i) the payment in full or the refinancing of a governmental-insured or
36 government-held mortgage indebtedness prior to its original maturity date; (ii) the voluntary cancellation
37 of mortgage insurance on a publicly assisted housing development; or (iii) the payment in full on a
38 government contract, any of which would have the effect of removing either: (i) the affordability
39 restrictions applicable to the publicly-assisted housing development; or (ii) a requirement to renew any
40 such affordability restrictions.

41 “Preserve affordability”, with respect to a publicly-assisted housing development, to undertake
42 reasonable and diligent actions to retain, renew or secure subsidies affecting a publicly-assisted housing
43 development in order to maintain at least the same number of units affordable to low, very low and
44 extremely low-income households, respectively, as are currently occupied by such households, and to
45 maintain as affordable to such households generally all units that are currently vacant, to the extent of
46 available subsidies and taking into account the need to ensure that the development provides quality
47 housing to its tenants.

48 “Protected low-income tenant”, a low-income tenant residing in a publicly-assisted housing
49 development on the date of termination of the government program and whose rent was restricted by that
50 government program.

51 “Publicly-assisted housing”, a housing unit or development that receives government assistance
52 under any of the following programs: (i) section 8 of the United States Housing Act of 1937 and 42
53 U.S.C. section 1437f as it applies to new construction, substantial rehabilitation, moderate rehabilitation,

54 property disposition and loan management set-aside programs or any other program providing project-
55 based rental assistance; (ii) section 42 of the Internal Revenue Code and 26 U.S.C. section 42, the federal
56 Low-Income Housing Tax Credit Program; (iii) section 101 of the Housing and Urban Development Act
57 of 1965 and 12 U.S.C. section 1701s as it applies to programs for rent supplement assistance thereunder;
58 (iv) section 202 of the Housing Act of 1959 and 12 U.S.C. section 1701q; (v) section 221(d)(3) of the
59 National Housing Act 12 U.S.C. section 1715 (d)(3) or (5), the below market interest rate program; (vi)
60 section 221(d)(4) of the National Housing Act 12 U.S.C. section 1715I (d)(4) to the extent the project's
61 rents are restricted pursuant to a government agreement; (vii) section 236 of the National Housing Act
62 and 12 U.S.C. section 1715z-1; (viii) section 515 of the Housing Act of 1949 and 42 U.S.C. section 1485;
63 (ix) section 521 of the Housing Act of 1949 and 42 U.S.C. section 1490a; (x) the Urban Development
64 Action Grant and 42 U.S.C. section 5318 to the extent that the affordability of dwelling units subject to
65 such program are restricted pursuant to a government agreement; (xi) the Housing Development Action
66 Grant, and 42 U.S.C. section 1437o to the extent the project's rents are restricted pursuant to a
67 government agreement; (xii) section 13A of chapter 708 of the acts of 1966; (xiii) the voucher program
68 provided for annually in item 7004-9024 of section 2 of the general appropriation act as that program
69 applies to project-based rental assistance; (xiv) the Massachusetts low income housing tax credit program
70 established in section 6I of chapter 62; (xv) the State Housing Assistance for Rental Production, chapter
71 established in 574 of the acts of 1983; and (xvi) chapter 121A to the extent that the affordability of
72 dwelling units are restricted pursuant to a written agreement with the affected municipality.

73 "Purchase contract", a document that purports to sell a publicly-assisted housing development
74 including, without limitation, a purchase and sale agreement, contract of sale, purchase option or other
75 similar instrument.

76 "Regulatory agreement", an affordable housing restriction that establishes an owner's obligations
77 created pursuant to the efforts of the department or its designee to preserve affordability and which is
78 consistent with section 31 of chapter 184 provided that in any project that is eligible for participation in

79 the HUD mark up to market program, the restriction, insofar as it relates to the limiting of the level of
80 rents, shall not apply to units covered by a section 8 housing assistance payment contract so long as such
81 contract is effective.

82 “Sale”, the execution of a written agreement pursuant to which the owner or the holders of an
83 ownership interest in the owner of the publicly assisted housing agrees to the disposition of the property
84 by deed or otherwise, whether through a single transaction or a series of transactions, except for a
85 disposition of such housing to an affiliate of the owner.

86 “Subsidy”, public financial assistance including, but not limited to, grants, loans, rental
87 assistance, tax credits, tax abatements, mortgage financing, mortgage insurance, assistance pursuant to
88 any government program or any other form of assistance, intended to make housing affordable to low-
89 income households, especially very low and extremely low-income households.

90 “Tenant”, a person legally entitled to possession or occupancy of a rental unit within publicly-
91 assisted housing, including a subtenant, lessee and sublessee.

92 “Tenant organization”, an organization established by the tenants of a publicly-assisted housing
93 development for the purpose of addressing issues related to their living environment and which meets
94 regularly, operates democratically, is representative of all residents in the development, is completely
95 independent of owners, management and their representatives and which has filed a notice of its existence
96 with CEDAC; provided, however, that, no owner or other third party shall be required to ascertain the
97 organization’s compliance with this definition.

98 “Termination”, the cessation, discharge or removal of an affordability restriction affecting a
99 publicly-assisted housing development in the absence of a simultaneous replacement of that restriction
100 with an equivalent affordability restriction including, but not limited to: (i) nonrenewal or termination, in
101 whole or in part, of a government program contract or mortgage; (ii) expiration, in whole or in part, of an
102 affordability restriction under a government program or the requirement to renew the restriction; (iii)

103 payment in full of a government program mortgage; or (iv) prepayment of a government program
104 mortgage or contract.

105 “Time for performance”, the date for delivery of the deed or other document evidencing a sale
106 pursuant to a purchase contract or any extension thereof.

107 “Very low income”, having a household income of not more than 60 percent of the area median
108 income, adjusted for household size, as periodically determined by the United States Department of
109 Housing and Urban Development.

110 Section 2. (a) Except with respect to property subject to an affordability restriction which has
111 less than 2 years remaining and, for which subsection (e) shall, apply, the owner shall provide written
112 notice to: (i) all tenants and the tenant organization; (ii) the chief executive officer of the affected
113 municipality; (iii) CEDAC; and (iv) the department, not less than 2 years before the termination of the
114 affordability restriction affecting publicly-assisted housing. Nothing herein shall prohibit the owner from
115 taking actions to terminate an affordability restriction during any notice period provided herein; provided,
116 however, that the owner shall comply with all of the notice terms and restrictions pursuant to subsections
117 (b) and (c). The informational notice shall provide: (1) the address of the publicly-assisted housing; (2)
118 the name and address of the owner; (3) notification that an affordability restriction may terminate; (4) the
119 date on which each affordability restriction may terminate; and (5) such other information as required by
120 the department. Where more than 1 termination may occur, the owner may send 1 written notice so long
121 as the terminations are scheduled to occur within 1 year of each other, the notice is given at least 24
122 months before the earliest termination and the notice otherwise complies with this subsection.

123 (b) An owner shall not complete a termination or allow a termination to occur unless, not less
124 than 1 year before the completion of the last termination event affecting the housing, the owner provides
125 the entities identified in subsection (a) with written notice of intent to complete termination. The notice
126 shall state: (1) the address of the publicly-assisted housing; (2) the name and address of the owner; (3) the

127 date on which the owner intends to complete termination; (4) unless section 6 applies, a statement that the
128 department has the right of offer pursuant to section 3; and (5) such other information as required by the
129 department.

130 (c) An owner shall not sell publicly-assisted housing before offering the department the
131 opportunity to purchase the property pursuant to sections 3 and 4. The owner shall notify, in writing, the
132 parties identified in subsection (a) of the owner's intention to potentially sell the property.

133 (d) A notice required by this chapter shall be deemed given when delivered in person or mailed
134 by certified or registered mail, return receipt requested, to the party to whom notice is required. A notice
135 to the affected municipality shall be awarded to the chief executive officer.

136 (e) Notwithstanding subsection (a) of section 2 of chapter 40T of the General Laws, an owner of
137 publicly assisted housing who, on the effective date of this act, has less than 2 years remaining prior to the
138 date when the affordability restriction will cease to apply to such property, shall not be required to give
139 the 2-year notice required by said subsection (a), but shall provide such notice within 90 days of the
140 effective date of this act. Notwithstanding subsection (b), an owner who, on the effective date of this act
141 has less than 1 year remaining prior to a termination shall not be required to give the 12-month notice
142 required by subsection (b), but shall provide such notice within 90 days after the effective date of this act.

143 (f) The notice requirements of this section shall not be affected by the status of an offer, purchase
144 contract or sale under section 3 or section 4.

145 Section 3. (a) An owner shall offer the department an opportunity to purchase the property prior
146 to entering into an agreement to sell the property pursuant to the time periods contained in this section,
147 but no owner shall be under any obligation to enter into an agreement to sell such property to the
148 department.

149 (b) The department may select a designee to act on its behalf as purchaser of the publicly-
150 assisted housing and shall give the owner and CEDAC written notice of its selection. The department
151 shall promptly consult with the affected municipality before selecting a designee and shall immediately
152 designate the affected municipality as its designee upon written request of the affected municipality,
153 unless the department determines that such request is not feasible for reasons set forth in the department's
154 regulations. The department shall enter into a written agreement with its selected designee providing that
155 the designee and any of its successors or assigns, agree to preserve the affordability of the publicly
156 assisted housing. Once such an agreement is executed, the designee shall assume all rights and
157 responsibilities attributable to the department as a prospective purchaser under this section and section 4.
158 At any time prior to a sale under section 3 or section 4, the department may revoke its designation and
159 assume the designee's rights and responsibilities, either in its own capacity or by selecting a new
160 designee; provided, however, that no change in a designation shall operate to extend or alter any time
161 periods for performance set forth in this chapter or in any purchase contract entered into pursuant to this
162 chapter.

163 (c) The department shall, within 90 days after it receives notice pursuant to section 2 of the
164 owner's intention to sell, submit an offer to the owner to purchase the publicly-assisted housing. Failure
165 by the department to submit a timely offer shall constitute an irrevocable waiver of the department's
166 rights under this section and the owner may sell the publicly-assisted housing subject to section 4. If the
167 owner accepts the department's initial or any revised offer, the owner and the department shall enter into
168 such other agreements as are necessary and appropriate to complete the sale. If the owner and the
169 department have not entered into an agreement to sell the property to the department within 90 days after
170 receipt of the notice pursuant to subsection (c) of section 2, the owner may enter into an agreement to sell
171 the property to a purchaser of the owner's choice, subject to the department's right of first refusal
172 pursuant to section 4.

173 (d) At any time after the notice in section 2 has been provided and within 10 days of receiving a
174 request, the owner shall make documents available to the department for review and photocopying during
175 normal business hours at the owner's principal place of business or at a commercial photocopying facility.
176 Such documents shall include, but not limited to: (1) any existing architectural plans and specifications of
177 the development; (2) itemized lists of monthly operating expenses and capital expenditures in each of the
178 2 preceding calendar years; (3) any capital needs studies or market studies that have been submitted to a
179 federal, state, or local agency in the preceding 3 years; (4) utility consumption rates for the preceding 12
180 months; (5) copies of the last 2 annual financial and physical inspection reports filed with federal, state or
181 local agencies; (6) the most recent rent roll showing then current vacancies and rent arrearages; (7) a list
182 of vacant units; and (8) a statement of the approximate annualized vacancy rate at the development for
183 each of the 2 preceding calendar years. Documents obtained pursuant to a request under this subsection
184 shall not be considered public records, as defined in clause Twenty-sixth of section 7 of chapter 4, and the
185 department shall not make such documents available to the public without the written consent of the
186 owner or pursuant to a court order, provided, however, that disclosure may be made to potential funding
187 sources, regulatory agencies or agents or consultants of the department in connection with the transaction,
188 subject to appropriate confidentiality agreements. Upon request and with appropriate notice, the owner
189 shall also permit reasonable inspections of the dwelling units, building systems, common areas, and
190 common grounds by agents, consultants and representatives of the department including, but not limited
191 to, inspections related to environmental, engineering, structural or zoning matters.

192 (e) Not later than 30 days after the department submits an offer to purchase the publicly-assisted housing
193 development pursuant to subsection (c), the department shall notify tenants in the housing development
194 and shall meet with them at least once to discuss the department's plans.

195 Section 4. (a) The department shall have a right of first refusal to purchase any publicly-assisted
196 housing development under this section. At any time after the 90 days the department has been given
197 notice pursuant to subsection (c) of section (2), but not later than the 360 days after the date of such

198 notice, the owner may execute a purchase contract with a third party to sell the publicly-assisted housing
199 development provided that the owner complies with this section. Thereafter, the owner again shall be
200 subject to the notice provision of subsection (c) of section (2).

201 (b) Upon execution of a third party purchase contract, the owner shall, within 7 days, submit a
202 copy of the contract to the department and CEDAC, along with a proposed purchase contract for
203 execution by the department. The department shall, within 30 days after receipt of the third party
204 purchase contract and the proposed purchase contract, execute the proposed purchase contract or such
205 other agreement as is acceptable to the owner and the department. The time periods set forth in this
206 subsection may be extended by agreement between the owner and the department. The proposed
207 purchase contract shall contain the same terms and conditions as the executed third party purchase
208 contract, except that the proposed purchase contract shall provide at least the following terms: (i) the
209 earnest money deposit shall not exceed the lesser of: (1) the deposit in the third party purchase contract;
210 (2) 2 per cent of the sales price; or (3) \$250,000; provided, however, that the earnest money deposit shall
211 be held under commercially-reasonable terms by an escrow agent selected jointly by the owner and the
212 department; (ii) the earnest money deposit shall be nonrefundable unless the owner fails to perform its
213 obligations with due diligence for a period of not less than 90 days from the date of execution of the
214 purchase contract or such greater period as provided for in the third party purchase contract; and (iii) the
215 time for performance shall be not less than 240 days from the date of the execution of the purchase
216 contract, or such greater period as provided for in the third party purchase contract.

217 (c) If the department fails to execute the proposed purchase contract within 30 days or such other
218 period as provided in subsection (b), the owner shall have 24 months from the last day on which the
219 department was entitled to execute the proposed purchase contract in which to complete the sale of the
220 owner's publicly-assisted housing development to a third party, except as provided in subsection (e).
221 Upon the expiration of the 24-month period, the owner shall be subject again to all of subsection (c) of
222 section 2, section 3 and this section.

223 (d) If the department executes the proposed purchase contract as provided in subsection (b) but
224 fails to perform as provided in the executed purchase contract, then the owner shall have 2 years from the
225 date on which the proposed purchase contract terminated in which to complete the sale of the owner's
226 publicly-assisted housing development to a third party on economic terms and conditions that are not
227 materially more favorable to the proposed purchaser than the economic terms and conditions in the
228 proposed purchase contract offered to the department. Upon the expiration of the 24-month period, the
229 owner shall be subject to subsection (c) of section 2, section 3 and this section.

230 (e) The department may make a counter offer by executing and submitting to the owner an
231 amended proposed purchase contract. The owner shall have 30 days from the date it receives the
232 amended proposed purchase contract to execute the amended proposed purchase contract or reject, in
233 writing, the counter offer. If the owner rejects the counter offer, it shall have 24 months from the date on
234 which the owner rejects the department's counter offer to complete the sale of the owner's publicly-
235 assisted housing development to a third party, provided, however, that if such sale is: (i) upon economic
236 terms and conditions that are materially more favorable to the proposed purchaser than the economic
237 terms and conditions in the proposed purchase contract offered to the department; or (ii) upon terms that
238 are substantially the same as was offered by the department in the counter offer, then the owner shall
239 provide a copy of the new third party purchase contract, along with a proposed purchase contract for
240 execution by the department which shall contain the same terms and conditions as the executed third party
241 purchase contract, and the department shall have 30 days from the date it receives the third party purchase
242 contract and the proposed purchase contract to execute the proposed purchase contract or such other
243 agreement as is acceptable to the owner and the department.

244 (f) The owner shall, not later than 7 days after the execution thereof, provide the department with
245 a copy of any new or amended purchase contract executed with respect to the property during the 2 year
246 period set forth in subsections (c) to (e), inclusive, and shall not later than 7 days after the recording or

247 filing thereof, provide the department with a copy of any deed or other document transferring the owner's
248 interest in the publicly-assisted housing development.

249 (g) Any submission to the department of a third party purchase contract, amended third party
250 purchase contract, deed or other document transferring the owner's interest in the publicly-assisted
251 housing development shall include a certification by the owner and, with respect to a document executed
252 by the third party buyer, the third party buyer, that the document is accurate and complete and there are
253 no other agreements between the owner and the third party buyer, or an affiliate of either of them, with
254 respect to the sale of the publicly-assisted housing development.

255 Section 5. An affected municipality shall not be subject to section 16 of chapter 30B.

256 Section 6. (a) Section 3 and 4 shall not apply to any of the following: (i) a government taking by
257 eminent domain or a negotiated purchase in lieu of eminent domain; (ii) a forced sale pursuant to a
258 foreclosure; (iii) a deed-in-lieu-of foreclosure; (iv) a proposed sale that, as determined by the department,
259 is to a purchaser pursuant to terms and conditions that preserve affordability; (v) a proposed sale of a
260 publicly-assisted development which the department has determined has section 8 contracts for all of the
261 units in the development and the buyer has agreed, in a regulatory agreement, to renew project-based
262 section 8 assistance, or any successor program, for all units in the development provided that at the time
263 of such renewal, such assistance is available to the owner on economic terms and conditions that are
264 comparable to the existing assistance contract; (vi) a proposed sale of a publicly-assisted development to
265 an affiliate of the owner that is not a termination as determined by the department; and (vii) a proposed
266 sale pursuant to an agreement in effect on the effective date of this chapter.

267 (b) An owner seeking an exemption under clause (iv), (v) or (vi) of subsection (a) shall include
268 the name and address of any tenant organization in the request and shall provide a copy of its request to
269 the chief executive officer of the affected municipality, CEDAC, the local legal services organization as
270 designated by the department and the tenant organization at the time it files its exemption request with the

271 department. The department shall provide a copy of its written determination under said clauses (iv), (v)
272 or (vi) of said subsection (a) to the owner, CEDAC, the local legal services organization and the tenant
273 organization.

274 Section 7. For 3 years after termination, the rent for a protected low-income tenant who does not
275 receive an enhanced section 8 voucher shall not be increased more than once annually by the increase in
276 the consumer price index applicable to the area in which the publicly-assisted housing development is
277 located during the preceding 12 months plus 3 per cent. The foregoing shall not apply to a low-income
278 tenant: (i) who is income eligible for an enhanced section 8 voucher but does not obtain one solely due to
279 some action or inaction of the tenant on or after the date he or she is eligible to apply for the enhanced
280 section 8 voucher; or (ii) who would be eligible for an enhanced section 8 voucher if this provision was
281 not in effect. For a period of 3 years after termination, a protected low income tenant shall not be evicted
282 or involuntarily displaced from his apartment except for good cause related to tenant fault.

283 Section 8. A purchase by the department or by its designee pursuant to this chapter shall be
284 subject to a regulatory agreement. A regulatory agreement shall not contain any terms that would preclude
285 an owner or buyer from participating in, or diminishing the benefits that an owner would otherwise
286 receive by participating in, the United States Department of Housing and Urban Development's Mark up
287 to Market Program.

288 Section 9. An owner who has complied with sections 2 and 3 which has not resulted in a
289 purchase by the department or which has resulted in a sale pursuant to section 4 may apply to the
290 department for a certificate of compliance by submitting a written request for the certificate in a form and
291 with such documentation as required by the department to establish the owner's compliance to the
292 satisfaction of the department. At the same time, the owner shall provide a copy of the request to
293 CEDAC and the chief executive officer of the affected municipality. The owner shall provide a copy of
294 the owner's request to a tenant of the publicly-assisted housing upon request. The department shall issue

295 the certificate of compliance within 30 days after receipt of the application if it determines that the owner
296 has complied with said sections 2 and 3. The certificate of compliance shall be filed with the registry of
297 deeds within 1 year after the date of issuance.

298 SECTION 2. Within 45 days after the effective date of this act, the department of housing and
299 community development shall establish a 13-member advisory committee to consist of the undersecretary
300 of the department or her designee, the executive director of the Community Economic Development
301 Assistance Corporation, 1 member selected by the Massachusetts Mayors Association, 1 member selected
302 by the Massachusetts Municipal Association, 1 member selected by Citizens Housing and Planning
303 Association, 1 member selected by the Greater Boston Real Estate Board, 1 member selected by the Real
304 Estate Bar Association for Massachusetts, 1 member selected by the Massachusetts Association of
305 Community Development Corp., 1 member selected by the Massachusetts Legal Assistance Corporation,
306 1 member affiliated with the Affordable Housing Preservation Initiative of the Local Initiatives Support
307 Corporation, 1 member selected by the Massachusetts Chapter of the National Association of Housing
308 and Redevelopment Officials, and 2 members chosen by the department to provide advice and
309 recommendations to the department regarding regulations to implement this act. The department shall
310 promulgate regulations to effectuate the purposes and implement chapter 40T of the General Laws not
311 later than 150 days after the effective date of this act.

312 SECTION 3. For the purposes of sections 3 and 4 of chapter 40T of the General Laws, housing
313 that qualified as publicly-assisted housing under any of the programs described in the definition of
314 “publicly-assisted housing” in section 1 of said chapter 40T that was not then subject to a purchase
315 contract in existence on the effective date of this act shall be subject to said chapter 40T for 4 years after
316 the date of the last event or occurrence that constituted a termination.