

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Kevin G. Honan

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 stabilize neighborhoods through the protection of tenants in foreclosed properties.

PETITION OF:

NAME:

Kevin G. Honan

DISTRICT/ADDRESS:

17th Suffolk

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO STABILIZE NEIGHBORHOODS THROUGH THE PROTECTION OF TENANTS IN FORECLOSED PROPERTIES.

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

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. Section 5 of chapter 59 of the general laws is hereby amended by inserting after
2 clause fifty-five the following clause:-

3 Fifty sixth. Real estate owned by or held in trust for a charitable organization for the purpose of creating
4 community housing, as defined in section 2 of chapter 44B, where the charitable organization purchased
5 said property from an entity that acquired the property pursuant to section 14 of chapter 244 of the
6 general laws, from the date of such real estate's acquisition by the charitable organization until such real
7 estate is leased, rented, or otherwise disposed of; provided said exemption for such real property shall
8 not extend beyond a total period of one year. This clause shall take effect upon its acceptance by any
9 city or town.

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

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

14 SECTION 3. The general laws are hereby amended by adding after chapter 186, the following new
15 chapter:-

16 Chapter 186A. Tenant protections in foreclosed properties

17 Section1. As used in this chapter, the following words shall, unless the context clearly requires
18 otherwise, have the following meanings:

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

23 'Eviction', any action, without limitation, by a foreclosing owner of a housing accommodation which is
24 intended to compel a tenant to vacate or to be constructively evicted from such housing
25 accommodation.

26 “Foreclosing owner”, an entity that holds title, in any capacity, directly or indirectly, without limitation,
27 whether in its own name, as trustee, or as beneficiary, to a housing accommodation that has been
28 foreclosed upon, and either (1) held or owned a mortgage or other security interest in the housing
29 accommodation at any point prior to the foreclosure of the housing accommodation or is the subsidiary,
30 parent, trustee, or agent of, or otherwise is related to any entity which held or owned the mortgage or
31 other security interest in the housing accommodation at any time prior to the foreclosure of the housing

32 accommodation; or (2) is an institutional mortgagee that acquires or holds title to the housing
33 accommodation within three years of the filing of a foreclosure deed on the housing accommodation.

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

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

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

46 'Just Cause', at least one of the following: (a) the tenant has failed to pay the rent in effect prior to the
47 foreclosure or failed to pay the newly established rent pursuant to subsection (3) herein, but only if the
48 foreclosing owner notified the tenant in writing of the amount of rent that was to be paid and to whom
49 it was to be paid; (b) the tenant has violated an obligation or covenant of the tenancy or occupancy
50 other than the obligation to surrender possession upon proper notice and has failed to cure such
51 violation within a reasonable time after having received written notice thereof from the foreclosing
52 owner; (c) the tenant is committing or permitting to exist a nuisance in, or is causing substantial damage
53 to, the unit, or is creating a substantial interference with the quiet enjoyment of other occupants; (d)
54 the tenant is convicted of using or permitting the unit to be used for any illegal purpose; (e) the tenant

55 who had a written lease or other rental agreement which terminated on or after the effective date of
56 this chapter, has refused, after written request or demand by the foreclosing owner, to execute a
57 written extension or renewal thereof for a further term of like duration and in such terms that are not
58 inconsistent with the provisions of this chapter; (f) the tenant has refused the foreclosing owner
59 reasonable access to the unit for the purpose of making necessary repairs or improvement required by
60 the laws of the United States, the Commonwealth or any subdivision thereof, or for the purpose of
61 inspection as permitted or required by agreement or by law or for the purpose of showing the rental
62 housing unit to a prospective purchaser or mortgagee.

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

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

70 'Tenant' any person or group of persons who at the time of foreclosure is entitled to occupy a housing
71 accommodation pursuant to a written lease or tenancy at will. Any person other than a legal dependent
72 or spouse of the person or group of persons entitled to occupy the housing accommodation at the time
73 of the foreclosure that moves into the housing accommodation owned by the foreclosing owner
74 following the filing of the foreclosure deed without the express written permission of the owner shall
75 not be considered a tenant under this statute.

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

78

79 Section 2. Notwithstanding any other special or general law to the contrary, a foreclosing owner shall
80 not evict a tenant except for just cause, or in the event that there is a binding purchase and sale
81 agreement for a bona fide third party to purchase said housing accommodation from a foreclosing
82 owner, a foreclosing owner may provide the tenant with a notice to quit and serve the tenant with a
83 summary process summons and complaint to evict said tenant within 45 days of the closing date of
84 said agreement.

85 Section 3. In the event that a foreclosing owner disagrees with the amount of rent that the tenant-at-
86 will or lessee pays to the foreclosing owner, the foreclosing owner may bring a claim in district or
87 superior courts, or the housing court to claim that the rent is unreasonable and set a new rent. A lease
88 between the foreclosed upon owner and the lessee or proof of rental payment to the foreclosed-upon
89 owner shall have a presumption of reasonableness.

90 Section 4. Any foreclosing owner that evicts a tenant in violation of any provisions of this Act, or any
91 ordinance or by-law adopted pursuant to this Act, shall be punished by a fine of not less than ten
92 thousand dollars. Each eviction done in violation of this Act constitutes a separate offense.

93

94 The district and superior courts, and the housing courts in the Commonwealth, shall have jurisdiction
95 over an action arising from any violation of this Act, or any ordinance, or by-law adopted pursuant to
96 this Act, and shall have jurisdiction in equity to restrain any such violation. It shall be a defense to
97 eviction that the foreclosing owner attempted to evict a tenant in violation of any provision of this Act,
98 or any ordinance or by-law adopted pursuant to this Act.

99 Section 5. This Act shall cease to have effect on December 31, 2013.

100 SECTION 4. Section 35A of chapter 244 of the general laws is hereby amended by deleting the word “90”
101 and inserting in its place the following:- “150”.

102 SECTION 5. Section 33 of chapter 266 of the General Laws, as so appearing, is hereby amended by
103 striking out, in lines 5 to 10, inclusive the words “(2) whoever, with intent to defraud, by a false
104 statement in writing respecting the financial condition, or means or ability to pay, of himself or of
105 any other person, obtains credit from any bank or trust company or any banking institution or any
106 retail seller of goods or services accustomed to give credit in any form whatsoever shall be guilty of
107 larceny” and inserting in place thereof the following words:-- “ (2) whoever, with intent to defraud,
108 by a false statement in writing respecting the financial condition, or means or ability to pay, of
109 himself or of any other person, obtains for himself or for any other person credit from any bank or
110 trust company or any banking institution or any mortgage lender, as defined in section 1 of chapter
111 255E or any retail seller of goods or services accustomed to give credit in any form whatsoever shall
112 be guilty of larceny.

113
114 Whoever violates this section shall be punished by imprisonment in jail for not more than 1 year or
115 by a fine of not more than \$300, or, if the value of the benefit obtained by a violation of clause (1) or
116 if the dollar amount of credit obtained by a violation of clause (2) exceeds \$250 shall be punished by
117 imprisonment in the state prison for not more than 5 years, or by a fine of not more than \$25,000 and
118 imprisonment in the house of correction for not more than 2 years.

119 SECTION 6. Said chapter 266 is hereby further amended by striking out section 34, as so appearing,
120 and inserting in place thereof the following section:--

121 Section 34. Whoever, with intent to defraud and by a false pretence, induces another to part with
122 property of any kind or with any of the benefits described in section 33 shall be guilty of larceny.

123 Whoever violates this section shall be punished by imprisonment in jail for not more than 1 year

124 or by a fine of not more than \$300, or, if the value of the benefit obtained by a violation of clause
125 (1) or if the dollar amount of credit obtained by a violation of clause (2) exceeds \$250 shall be
126 punished by imprisonment in the state prison for not more than 5 years, or by a fine of not more
127 than \$25,000 and imprisonment in the house of correction for not more than 2 years.

128 SECTION 7. Chapter 266 is amended by inserting after Section 35 the following new section:

129 Section 35A. Residential Mortgage Fraud

130 Section 35A. (a) As used in this section, the following words shall have the following meanings,
131 unless the context otherwise requires:--

132

133 “Funds”, shall include, but not be limited to, a commission, fee, yield spread premium or
134 compensation in any form.

135

136 “Material omission”, the omission or concealment of a material fact necessary in order to make the
137 statement made, in the light of the circumstances under which it is made, not misleading.

138

139 “Mortgage lending process”, the process through which a person seeks or obtains a residential
140 mortgage loan including, but not limited to, solicitation, application, or origination, negotiation of
141 terms, third-party provider services, underwriting, signing and closing, and funding of the loan.

142 Documents involved in the mortgage lending process include, but shall not limited to: uniform
143 residential loan applications or other loan applications; appraisal reports; HUD-1 settlement
144 statements; supporting personal documentation for loan applications such as W-2 forms, verification
145 of income and employment, bank statements, tax returns and payroll stubs; and any required
146 disclosures.

147

148 “Pattern of residential mortgage fraud”, the violation of subsection (b) in connection with 3 or more
149 residential properties.

150

151 “Person”, a natural person, corporation, company, limited liability company, partnership, real estate
152 trust, association or any other entity.

153

154 “Residential mortgage loan”, a loan or agreement to extend credit made to a person, which loan is
155 secured by a mortgage, security interest, deed to secure debt, deed of trust, or other document
156 representing a security interest or lien upon any interest in a 1- to-4 family residential property
157 located in the commonwealth, including the renewal or refinancing of any such loan.

158

159 (b) Whoever: (1) makes or causes to be made any material statement that is false or any statement
160 that contains a material omission, knowing the same to be false or to contain a material omission,
161 during or in connection with the mortgage lending process, with the intent that such statement be
162 relied upon by a mortgage lender, borrower or any other party to the mortgage lending process; (2)
163 uses, or facilitates the use of, any material statement that is false or any statement that contains a
164 material omission, knowing the same to be false or to contain a material omission, during or in
165 connection with the mortgage lending process, with the intent that such statement be relied upon by a
166 mortgage lender, borrower or any other party to the mortgage lending process; (3) receives any
167 proceeds or any other funds in connection with a residential mortgage closing, knowing such
168 proceeds or funds were obtained in violation of clause (1) or (2); or (4) files, or causes to be filed,
169 with a registrar of deeds any document that contains a material statement that is false or a material
170 omission, knowing such document to contain a material statement that is false or a material omission,
171 shall be punished by imprisonment in the state prison for not more than 5 years or by imprisonment

172 in the house of correction for not more than 2 ½ years or by a fine of not more than \$10,000 in the
173 case of a natural person or not more than \$100,000 in the case of any other person, or by both such
174 fine and imprisonment.

175
176 Any person who engages in a pattern of residential mortgage fraud shall be punished by
177 imprisonment in the state prison for not more than 15 years or by a fine of not more than \$50,000, or
178 in the case of a natural person, not more than \$500,000 in the case of any other person, or by both
179 such fine and imprisonment.

180
181 (c) Any violation of this section may be prosecuted and punished in: the county in which the
182 residential property for which a mortgage loan is being sought is located; any county in which any
183 act was performed in furtherance of the violation; in any county in which any person alleged to have
184 violated this section had control or possession of any proceeds of, or other funds received as a result
185 of, the violation; any county in which a closing on the mortgage loan occurred; any county in which a
186 document containing a deliberate misstatement, misrepresentation or omission is filed with a registrar
187 of deeds.

188
189 (d) It shall be an affirmative defense if a defendant charged with a violation of this section as a result
190 of conduct or an omission by an employee or agent of the defendant if the defendant demonstrates
191 the following by a preponderance of the evidence:

192
193 (1) the defendant had in force, at the time of the violation and continues to have in force, a written
194 policy that includes:

- 195 (i) A prohibition against conduct that violates this section by employees and agents of the defendant;
196 (ii) Penalties or discipline for violation of the policy;

197 (iii) A process for educating employees and agents concerning the policy and consequences of a
198 violation; and

199 (iv) A requirement for a criminal history check before employing an employee or engaging an agent
200 and a requirement that the defendant will not employ or engage an individual whose criminal history
201 check reveals a previous conviction of a crime involving fraud;

202

203 (2) the defendant demonstrates that it enforces the written policy described in clause (1); and

204

205 (3) Before the violation of this section the defendant communicated the written policy described in
206 clause (1) and the consequences for violating the policy to the employee or agent who committed the
207 violation.

208

209 (e) It shall be a rebuttable presumption that a borrower in the residential mortgage lending
210 process did not make a false material statement or a material omission. Two or more single
211 incidents or occurrences of fraud in the mortgage lending process shall sufficient to overcome
212 this rebuttable presumption.

213

214 SECTION 8. Chapter 255 of the General Laws is hereby amended by inserting after section 12 the
215 following section-

216 Section 13.

217 (a) For purposes of this section, the following terms shall have the following meanings unless the
218 context clearly requires otherwise:

219 “Abandoned”, any structure or building that is not legally occupied for a period of 60 days or has visible
220 signs of physical distress, including boarded windows, fire damage, exposure to the elements,
221 susceptibility to unauthorized entry or where mortgage or property tax payments are delinquent for 60
222 days.

223 “Commissioner”, the municipality’s building inspector or commissioner or other administrative chief in a
224 town responsible under M.G.L. c. 134 § 3 for administering and enforcing the state building code.

225 “Days”, consecutive calendar days.

226 “Conclusion of the foreclosure process”, means the date at which a mortgage foreclosure process is
227 finalized as evidenced by the filing of a foreclosure deed with the Registry of Deeds

228 “Owner”, every person, entity, association, corporation, fiduciary, service company, property manager
229 or realtor who alone or severally has legal or equitable title or any interest in any real property or is a
230 trustee or agent appointed by the courts or is a mortgagee in possession.

231 “Residential Property”, any property that contains one or more dwelling units used, intended, or
232 designed to be occupied for living purposes.

233 (b) Any city or town which accepts the provisions of this section may impose an abandoned property
234 registration program as provided in this chapter. All owners must register abandoned and/or foreclosed
235 residential properties with Commissioner on forms provided by the Commissioner. All registrations
236 must state the individual owner or agent’s phone number and Mailing address. This registration must
237 also certify that the property was inspected and identify whether the property is abandoned. If the
238 property is abandoned, the registration must designate a local individual or local property management
239 company responsible for the security and maintenance of the property. This designation must state the
240 individual or company’s name, phone number and local mailing address. This registration must be

241 received within sixty days of abandonment or within sixty days of the conclusion of the foreclosure
242 process.

243 All property registrations are valid for one year. An annual registration fee, not to exceed one-hundred
244 dollars and no cents (\$100.00) must accompany the registration form. The fee and registration are valid
245 for the calendar year, or remaining portion of the calendar year in which the registration was initially
246 required. Subsequent registrations and fees are due January 1st of each year and must certify whether
247 the foreclosed property remains abandoned.

248

249 Once the property is sold or is no longer abandoned, the owner must provide proof of sale or written
250 notice of occupancy to the Commissioner.

251 (c) Properties subject to this section must be maintained in accordance with all applicable Sanitary,
252 Building Codes, and local regulations. The local owner or local property management company must
253 inspect and maintain the property on a monthly basis for the duration of the abandonment.

254 The property must contain a posting with the name and 24-hour contact phone number of the local
255 individual or property management company responsible for the maintenance. This sign must be clearly
256 visible from the street.

257

258 Compliance with this section shall not relieve the property owner of any other obligation set forth in
259 statute, regulation, covenant conditions and restrictions and/or homeowners' association rules and
260 regulations.

261 (d) The Commissioner shall have the authority and the duty to inspect properties subject to this section
262 for compliance and to issue citations for any violations. The Commissioner shall have the discretion to

263 determine when and how such inspections are to be made, provided that their policies are reasonably
264 calculated to ensure the enforcement of this section.

265 (e) Failure to initially register with the Commissioner is punishable by a fine, not to exceed of five
266 hundred dollars and no cents (\$500.00).

267 If applicable, failure to properly identify the name of the local individual or property management
268 company is punishable by a fine, not to exceed five hundred dollars and no cents (\$500.00).

269 Failure to maintain the property is punishable by a fine, not to exceed hundred dollars and no cents
270 (\$500.00) for each month the property remains out of compliance or is otherwise not maintained.

271 Violations of this chapter shall be treated as a strict liability offence regardless of intent.

272 This section shall only take effect in a city or town accepting the provisions of this section by a
273 majority vote of the city council with the approval of the mayor, in the case of a city with a Plan
274 A, Plan B, or Plan F charter, by a majority vote of the city council, in the case of a city with a
275 Plan C, Plan D, or Plan E charter, by a majority vote of the annual town meeting or a special
276 meeting called for that purpose, in the called-for purpose, in the case of a municipality with a
277 town meeting form of government; or by a majority of the town council, in the case of a
278 municipality with a town form of government. The provisions of this section shall take effect on
279 the first day of the first calendar month following days after such acceptance; provided further
280 that if such day is at least 15 days after such acceptance; and provided further, that if such day is
281 less than 15 days after such acceptance, it shall take effect on the first day of the second calendar
282 month following such acceptance.

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