

**HOUSE . . . . . No. 3692**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Martin J. Walsh**

*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 Relative to Stabilizing Communities .**

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Martin J. Walsh	13th Suffolk
Jennifer Benson	37th Middlesex
Christopher J. Donelan	2nd Franklin

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT RELATIVE TO STABILIZING COMMUNITIES .

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

*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 clause  
2 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 general  
6 laws, from the date of such real estate's acquisition by the charitable organization until such real estate is  
7 leased, rented, or otherwise disposed of; provided said exemption for such real property shall not extend  
8 beyond a total period of one year. This clause shall take effect upon its acceptance by any city or town.

9 SECTION 2. Section 13A of chapter 186 is hereby amended by inserting after the words "federal law"  
10 the following:--and the foreclosing entity shall assume the lease and rental subsidy contract with the  
11 rental subsidy administrator.

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

14 Chapter 186A. Tenant protections in foreclosed properties

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

17 'Entity', a business organization, or any other kind of organization, including without limitation, a  
18 corporation, partnership, trust, limited liability corporation, limited liability partnership, joint venture,

19 sole proprietorship, or any other category of organization, and any employee, agent, servant or other  
20 representative of such entity.

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

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

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

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

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

42 'Just Cause', at least one of the following: (a) the tenant has failed to pay the rent in effect prior to the  
43 foreclosure or failed to pay the newly established rent pursuant to subsection (3) herein, but only if the  
44 foreclosing owner notified the tenant in writing of the amount of rent that was to be paid and to whom it  
45 was to be paid; (b) the tenant has violated an obligation or covenant of the tenancy or occupancy other  
46 than the obligation to surrender possession upon proper notice and has failed to cure such violation within  
47 a reasonable time after having received written notice thereof from the foreclosing owner; (c) the tenant is  
48 committing or permitting to exist a nuisance in, or is causing substantial damage to, the unit, or is creating  
49 a substantial interference with the quiet enjoyment of other occupants; (d) the tenant is convicted of using  
50 or permitting the unit to be used for any illegal purpose; (e) the tenant who had a written lease or other  
51 rental agreement which terminated on or after the effective date of this chapter, has refused, after written  
52 request or demand by the foreclosing owner, to execute a written extension or renewal thereof for a  
53 further term of like duration and in such terms that are not inconsistent with the provisions of this chapter;  
54 (f) the tenant has refused the foreclosing owner reasonable access to the unit for the purpose of making  
55 necessary repairs or improvement required by the laws of the United States, the Commonwealth or any  
56 subdivision thereof, or for the purpose of inspection as permitted or required by agreement or by law or  
57 for the purpose of showing the rental housing unit to a prospective purchaser or mortgagee.

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

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

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

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

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

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

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

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

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

92 SECTION 4. Section 35A of chapter 244 of the general laws is hereby amended by deleting the word  
93 "90" and inserting in its place the following:- "150".

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

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

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

112 Section 34. Whoever, with intent to defraud and by a false pretence, induces another to part with  
113 property of any kind or with any of the benefits described in section 33 shall be guilty of larceny.  
114 Whoever violates this section shall be punished by imprisonment in jail for not more than 1 year  
115 or by a fine of not more than \$300, or, if the value of the benefit obtained by a violation of clause  
116 (1) or if the dollar amount of credit obtained by a violation of clause (2) exceeds \$250 shall be  
117 punished by imprisonment in the state prison for not more than 5 years, or by a fine of not more  
118 than \$25,000 and imprisonment in the house of correction for not more than 2 years.

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

120 Section 35A. Residential Mortgage Fraud

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

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

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

127 “Mortgage lending process”, the process through which a person seeks or obtains a residential  
128 mortgage loan including, but not limited to, solicitation, application, or origination, negotiation of  
129 terms, third-party provider services, underwriting, signing and closing, and funding of the loan.  
130 Documents involved in the mortgage lending process include, but shall not limited to: uniform  
131 residential loan applications or other loan applications; appraisal reports; HUD-1 settlement  
132 statements; supporting personal documentation for loan applications such as W-2 forms, verification  
133 of income and employment, bank statements, tax returns and payroll stubs; and any required  
134 disclosures.

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

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

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

143 (b) Whoever: (1) makes or causes to be made any material statement that is false or any statement  
144 that contains a material omission, knowing the same to be false or to contain a material omission,  
145 during or in connection with the mortgage lending process, with the intent that such statement be  
146 relied upon by a mortgage lender, borrower or any other party to the mortgage lending process; (2)  
147 uses, or facilitates the use of, any material statement that is false or any statement that contains a  
148 material omission, knowing the same to be false or to contain a material omission, during or in  
149 connection with the mortgage lending process, with the intent that such statement be relied upon by a  
150 mortgage lender, borrower or any other party to the mortgage lending process; (3) receives any  
151 proceeds or any other funds in connection with a residential mortgage closing, knowing such  
152 proceeds or funds were obtained in violation of clause (1) or (2); or (4) files, or causes to be filed,  
153 with a registrar of deeds any document that contains a material statement that is false or a material  
154 omission, knowing such document to contain a material statement that is false or a material omission,  
155 shall be punished by imprisonment in the state prison for not more than 5 years or by imprisonment  
156 in the house of correction for not more than 2 ½ years or by a fine of not more than \$10,000 in the  
157 case of a natural person or not more than \$100,000 in the case of any other person, or by both such  
158 fine and imprisonment.

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

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

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

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

175 (i) A prohibition against conduct that violates this section by employees and agents of the defendant;

176 (ii) Penalties or discipline for violation of the policy;

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

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

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

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

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

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

192 Section 13. (a) For purposes of this section, the following terms shall have the following meanings  
193 unless the context clearly requires otherwise:

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

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

200 “Days”, consecutive calendar days.

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

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

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

208 (b) Any city or town which accepts the provisions of this section may impose an abandoned property  
209 registration program as provided in this chapter. All owners must register abandoned and/or foreclosed  
210 residential properties with Commissioner on forms provided by the Commissioner. All registrations must  
211 state the individual owner or agent’s phone number and Mailing address. This registration must also  
212 certify that the property was inspected and identify whether the property is abandoned. If the property is  
213 abandoned, the registration must designate a local individual or local property management company  
214 responsible for the security and maintenance of the property. This designation must state the individual  
215 or company’s name, phone number and local mailing address. This registration must be received within  
216 sixty days of abandonment or within sixty days of the conclusion of the foreclosure process.

217 All property registrations are valid for one year. An annual registration fee, not to exceed one-hundred  
218 dollars and no cents (\$100.00) must accompany the registration form. The fee and registration are valid  
219 for the calendar year, or remaining portion of the calendar year in which the registration was initially

220 required. Subsequent registrations and fees are due January 1<sup>st</sup> of each year and must certify whether the  
221 foreclosed property remains abandoned.

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

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

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

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

233 (d) The Commissioner shall have the authority and the duty to inspect properties subject to this section for  
234 compliance and to issue citations for any violations. The Commissioner shall have the discretion to  
235 determine when and how such inspections are to be made, provided that their policies are reasonably  
236 calculated to ensure the enforcement of this section.

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

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

241 Failure to maintain the property is punishable by a fine, not to exceed hundred dollars and no cents  
242 (\$500.00) for each month the property remains out of compliance or is otherwise not maintained.

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

244 This section shall only take effect in a city or town accepting the provisions of this section by a  
245 majority vote of the city council with the approval of the mayor, in the case of a city with a Plan  
246 A, Plan B, or Plan F charter, by a majority vote of the city council, in the case of a city with a  
247 Plan C, Plan D, or Plan E charter, by a majority vote of the annual town meeting or a special  
248 meeting called for that purpose, in the called-for purpose, in the case of a municipality with a  
249 town meeting form of government; or by a majority of the town council, in the case of a  
250 municipality with a town form of government. The provisions of this section shall take effect on  
251 the first day of the first calendar month following days after such acceptance; provided further  
252 that if such day is at least 15 days after such acceptance; and provided further, that if such day is  
253 less than 15 days after such acceptance, it shall take effect on the first day of the second calendar  
254 month following such acceptance.