

**HOUSE . . . . . No. 00386**

The Commonwealth of Massachusetts

PRESENTED BY:

*Ellen Story and*

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 housing rights for victims of domestic violence.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Aaron Michlewitz</i>	<i>3rd Suffolk</i>
<i>John D. Keenan</i>	<i>7th Essex</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>John P. Fresolo</i>	<i>16th Worcester</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Gloria L. Fox</i>	<i>7th Suffolk</i>
<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>
<i>David B. Sullivan</i>	<i>6th Bristol</i>
<i>Susan C. Fargo</i>	<i>Third Middlesex</i>
<i>Alice K. Wolf</i>	<i>25th Middlesex</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Cynthia S. Creem</i>	<i>First Middlesex and Norfolk</i>

*Linda Dorcena Forry*

*12th Suffolk*

# HOUSE . . . . . No. 00386

By Ms. Ellen Story of Amherst, petition (accompanied by bill, House, No. 00386) of Linda Dorcena Forry and others relative to housing rights for victims of domestic violence. Joint Committee on Housing.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE  
□ SENATE  
□ , NO. 2274 OF 2009-2010.]

## The Commonwealth of Massachusetts

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**In the Year Two Thousand Eleven**  
\_\_\_\_\_

An Act relative to housing rights for victims of domestic violence.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

- 1 SECTION 1. Chapter 186 of the General Laws, as appearing in the 2008 Official Edition is
- 2 hereby amended by adding the following section;-
- 3 Section 23. (a) For the purposes of this section the following words shall have the following
- 4 meanings:-
- 5 “Actual and imminent threat”, a physical danger that is real, would occur within an immediate
- 6 time frame and could result in death or serious bodily harm.
- 7 “Co-tenant”, a person who shares the legal obligation to pay rent or use and occupancy for the
- 8 premises with a tenant and who occupies the premises.

9 "Domestic violence", the same meaning as "abuse" in section 1 of chapter 209A.

10 "Housing subsidy provider", a local housing authority, agency, or other entity providing or  
11 administering a federal or state rental subsidy within the Commonwealth in accordance with  
12 applicable law.

13 "Member of the household", a person residing with the tenant or co-tenant as an authorized  
14 occupant of the premises. In the case of an application for housing, such term shall include a  
15 proposed household member who would be living with the tenant or co-tenant in the premises.

16 "Owner", the same meaning as "owner" as set forth at 105 C.M.R. 410.020.

17 "Qualified third party", a police officer or law enforcement professional including but not limited  
18 to a district attorney, a victim witness advocate from a district attorney's office, probation or  
19 parole officer; an employee of Victims Services Unit of the Department of Criminal Justice  
20 Information Services; an Application Assistant certified by the Secretary of State for the  
21 Address Confidentiality Project pursuant to section 2 of Chapter 9A of the General Laws; a  
22 licensed medical care provider; an employee of the Department of Children and Families or the  
23 Department of Transitional Assistance who is charged with providing direct service to clients, or  
24 is a manager, or is designated as a domestic violence or abuse advocate; a member of the clergy;  
25 a licensed social worker; a licensed mental health professional; a sexual assault counselor as  
26 defined in section 20J of chapter 233; or a domestic violence victims' counselor as defined in  
27 section 20K of said chapter 233 .

28 "Quitting date", the date of a tenant's or co-tenant's surrender of his or her interest in the  
29 premises. Such date shall be determined as: (a) the date notice is given to the owner of the intent  
30 to abandon the premises and not to return, if the tenant or co-tenant already vacated the premises

31 without notice; or (b) either the effective date of the tenant or co-tenant's notice to vacate or the  
32 actual date that the tenant or co-tenant has vacated after providing such notice, whichever is  
33 later, if the tenant or co-tenant has not yet vacated the premises.

34 "Rape", as set forth in sections 22, 22A, 23, 24 or 24B of chapter 265 of the General Laws or  
35 sections 2, 3 or 17 of chapter 272 of the General Laws.

36 "Sexual assault", as set forth in sections 13B, 13F, 13H or 13K of chapter 265 of the General  
37 Laws or section 35A of chapter 272 of the General Laws.

38 "Stalking", as set forth in sections 43 or 43A chapter 265 of the General Laws.

39 "Tenant", a person who has entered into a lease or rental agreement with the owner (whether oral  
40 or written) or that of a tenant at sufferance who holds over after termination of tenancy or  
41 expiration of a lease.

42 "Tenant screening service provider", a business that for a fee collects, maintains, and  
43 disseminates to owners data on applicants for housing.

44 (b) (1) A tenant or co-tenant may terminate a rental agreement or tenancy and quit the premises  
45 upon written notification to the owner that a member of the household is a victim of domestic  
46 violence, rape, sexual assault or stalking, provided such written notification occurs within three  
47 months of the most recent acts or events or circumstances that gave rise to the domestic violence,  
48 rape, sexual assault or stalking; or provided a member of the tenant's household has an ongoing  
49 risk of domestic violence, rape, sexual assault or stalking due to such violence in the past. An  
50 owner shall have the right to request proof of the status as a victim of domestic violence rape,

51 sexual assault or stalking including the name of the perpetrator, if known, as provided in  
52 subsection (c).

53 (2) A tenant or co-tenant who terminates a rental agreement or tenancy pursuant to this  
54 subsection shall quit the premises within three months of the written notification to the owner,  
55 along with any household member who is not or was not the perpetrator of the domestic  
56 violence, rape, sexual assault or stalking. If the tenant or co-tenant fails to quit the premises  
57 within three months, the notice to terminate the rental agreement or tenancy is void.

58 (3) A tenant or co-tenant protected under this subsection shall be discharged from liability for  
59 rent or use and occupancy for the longer of any period following thirty days or one full rental  
60 period after the quitting date to the extent that a rental agreement and applicable law may  
61 otherwise impose such liability beyond the quitting date. Such tenant or co-tenant shall be  
62 entitled to a refund of any prepaid rent for any period thereafter. The tenant or co-tenant shall  
63 receive a full and specific statement of the basis for retaining any of the security deposit together  
64 with any refund due in compliance with section 15B of chapter one hundred and eighty-six of the  
65 General Laws.

66 (4) Any other tenant or co-tenant who is a party to the rental agreement shall not be released  
67 from such tenant's or co-tenant's obligations under the rental agreement or other obligations  
68 under Chapter 186. If the tenant or co-tenant vacates but leaves belongings and does not indicate  
69 that they can be treated as abandoned, responsibility for such belongings and for use and  
70 occupancy until such belongings are disposed of shall be determined in accordance with  
71 applicable law. If the tenant or co-tenant vacates but there are remaining persons in the premises  
72 other than another tenant or co-tenant, nothing in this provision shall affect the owner's rights

73 and obligations with regard to such other persons. A landlord who in good faith initiates an  
74 action against remaining tenant, co-tenant, or household member, or a housing subsidy provider  
75 who terminates or denies a rental subsidy to a remaining co-tenant or household member, or  
76 takes any other action pursuant to this chapter, shall not be subject to a claim of retaliation or any  
77 other claim pursuant to this chapter.

78 (c) Where relief is sought because of recent or ongoing domestic violence, rape, sexual assault,  
79 or stalking, proof may be requested to show that an order or third party verification is in effect,  
80 or was obtained within the prior three months, or shows an ongoing risk due to such violence in  
81 the past. For purposes of entitlement to protection under this section, proof of status as a victim  
82 of domestic violence, rape, sexual assault or stalking shall be made by any one of the following:

83 (1) a copy of a valid order for protection under chapter 209A or under chapter 258E of the  
84 General Laws obtained by the tenant, co-tenant, or member of the household;

85 (2) a record from a federal, state or local court or police of an act of domestic violence, rape,  
86 sexual assault or stalking and the name of the perpetrator if known;

87 (3) a written verification from any other qualified third party to whom the tenant, co-tenant or  
88 member of her or his household reported the domestic violence, rape, sexual assault, or stalking;  
89 provided the verification shall include the name of the organization, agency, clinic or  
90 professional service provider and include the date of the domestic violence, rape, sexual assault,  
91 or stalking, and the name of the perpetrator if known; and that any adult victim who has the  
92 capacity to do so shall provide a statement, under the penalty of perjury, that the incident  
93 described in the verification is true and correct.

94 (d) An owner or housing subsidy provider who obtains written proof of status as a victim of  
95 domestic violence, rape, sexual assault or stalking shall keep the documentation confidential and  
96 shall not provide or allow access to it in any way to any other persons or agencies except with  
97 the written authorization of the victim or to the extent required by court order or applicable  
98 regulations or governmental audit requirements.

99 (e) (1) An owner shall not terminate a tenancy, fail to renew a tenancy, or refuse to enter into a  
100 rental agreement, based on a tenant's or co-tenant's or a member of the household's status as a  
101 victim of domestic violence, rape, sexual assault or stalking or based upon an act or omission  
102 that resulted from such domestic violence, rape, sexual assault or stalking.

103 (2) A housing subsidy provider shall not deny or terminate rental assistance, based on a tenant's  
104 or co-tenant's or applicant's or a member of the household's status as a victim of domestic  
105 violence, rape, sexual assault or stalking or based upon an act or omission that resulted from  
106 such domestic violence, rape, sexual assault or stalking.

107 (3) Nothing in this subsection shall be construed to limit the authority of an owner or a housing  
108 subsidy provider, when notified, to honor court orders addressing rights of access to or control of  
109 the property, including civil protection orders issued to protect the victim and issued to address  
110 the distribution or possession of property among the household members in cases where a  
111 household breaks up.

112 (4) Nothing in this subsection shall be construed to limit any otherwise available authority of an  
113 owner to evict a tenant, or of a housing subsidy provider to deny or terminate rental assistance,  
114 for any violation of a lease or any other subsidy requirements not premised on the act or acts of  
115 violence in question against the tenant, co-tenant or a member of the tenant's household,



116 provided that the owner or provider does not subject an individual who is or has been a victim of  
117 domestic violence, rape, sexual assault or stalking to a more demanding standard than other  
118 tenants in determining whether to evict or to deny or terminate assistance.

119 (5) Nothing in this subsection shall be construed to limit the authority of an owner to terminate  
120 the tenancy of any tenant, or of a housing subsidy provider to deny or terminate rental assistance,  
121 if the owner or provider can demonstrate an actual and imminent threat to other tenants or those  
122 employed at or providing service to the property, if that tenant's tenancy is not terminated, or if  
123 such assistance is not denied or terminated. Any eviction or termination of assistance as  
124 provided in this paragraph should be utilized only when there are no other actions that could be  
125 taken to reduce or eliminate the threat.

126 (6) An owner shall not refuse to enter into a rental agreement, nor shall a housing subsidy  
127 provider deny assistance, based on an applicant having terminated a rental agreement under  
128 subsection (b).

129 (7) Neither an owner or housing subsidy provider shall inquire or cause a written or oral inquiry  
130 or record to be made concerning the status of an applicant or a member of the applicant's  
131 household as a victim of domestic violence, rape, sexual assault or stalking or history of such  
132 status, unless an applicant: (i) seeks a priority or preference from an owner or housing subsidy  
133 provider based upon such status;

134 (ii) asks that the owner or housing subsidy provider not contact certain past references or make  
135 certain inquiries that would normally be made regarding past history based on such status and the  
136 safety risk that may be created by such contact for the applicant or a member of the applicant's  
137 household; or

138 (iii) claims that there are mitigating circumstances regarding negative past history which are  
139 related to such status.

140 In such cases as described in clauses (e)(7)(i)-(iii) above, the owner or housing subsidy provider  
141 may request documentation of the domestic violence, rape, sexual assault or stalking, and may  
142 ask for alternative forms of verification to establish suitability for tenancy which would not put  
143 the applicant or a member of the applicant's household at risk.

144 (8) (4) Neither a tenant screening service provider, an owner nor a housing subsidy provider may  
145 include information in a written or oral report to a prospective owner or housing subsidy  
146 provider indicating that the subject of the report is a victim of domestic violence, rape, sexual  
147 assault or stalking, or that the subject of the report has terminated a rental agreement under  
148 subsection (b) except as may otherwise be required by law, by court order, by regulatory  
149 authority, or by governmental audit requirements. Nothing in this provision, however, shall bar  
150 an applicant from authorizing such a disclosure to overcome negative history, to confirm status  
151 as may be necessary to establish a priority or preference for housing, or to correct inaccurate  
152 information in a report.

153 (f) (1) A tenant or co-tenant who is or has been a victim of domestic violence, rape, sexual  
154 assault or stalking may bring a civil action against an owner for violation of subsection (e) above  
155 or assert a defense based on a violation of subsection (e) above in a civil action filed by an  
156 owner. There shall be a rebuttable presumption that domestic violence, rape, sexual assault or  
157 stalking that occurred more than six months before the commencement of the action or defense  
158 brought under this section is not subject to the protections provided by subsection (e) above.

159 (2) An applicant who is or has been a victim of domestic violence, rape, sexual assault or  
160 stalking may bring a civil action against a subsidy provider for violation of subsection (e) above  
161 where there exists no pre-existing statutory remedy. Such action must be brought no later than  
162 90 days after the subsidy provider has denied or terminated the subsidy or made an inquiry into  
163 the status of an applicant or the status of a member of the applicant's household as a victim of  
164 domestic violence, rape, sexual assault or stalking, or history of such status, except as provided  
165 in subsections (d) and (e).

166 (3) Nothing in this section shall interfere with any rights or remedies, not proscribed herein and  
167 available to an owner or housing subsidy provider under existing law, to make appropriate  
168 inquiries from applicants, enforce the rental agreement, exercise appropriate discretion regarding  
169 the housing subsidy, protect other persons lawfully on the premises or protect the premises from  
170 physical damage, including but not limited to rights for appropriate injunctive relief.

171 (4) The subject of a report issued in violation of section (e) (8) above may bring a civil action  
172 for damages sustained, costs and reasonable attorney's fees against the tenant screening service  
173 provider, owner or housing subsidy provider who issued the report

174 (g) (1) An owner shall, upon the request of a tenant, co-tenant, or a member of the tenant's or  
175 co-tenant's household, change the locks of the individual dwelling unit in which the tenant, co-  
176 tenant, or member of the tenant household lives if the tenant, co-tenant, or member of the  
177 household reasonably believes that he or she or a member of the household is under an imminent  
178 or ongoing threat of domestic violence, rape, sexual assault or stalking at the premises. The  
179 owner shall have the right to request, in good faith, evidence to support a claim of domestic  
180 violence, rape, sexual assault or stalking.

181 (2) If the threat of domestic violence, rape, sexual assault or stalking is posed by a person who is  
182 a tenant, co-tenant, or member of the tenant household, notice to the owner requesting a change  
183 of locks shall be accompanied by: (i) a copy of a protective order issued under chapter 209A or  
184 chapter 258E of the General Laws; or, (ii) a court record indicating which tenant, co-tenant or  
185 member of the household is posing the threat of domestic violence, rape, sexual assault or  
186 stalking.

187 (3) An owner who has received notice of a request for change of locks under this section shall,  
188 within two business days, make a good faith effort to change the locks or give the tenant, co-  
189 tenant, or member of the tenant household permission to change the locks. If the owner changes  
190 the locks, the owner shall make a good faith effort to give a key to the new locks to the tenant,  
191 co-tenant or member of the household requesting the lock change as soon as possible but within  
192 the same two business day period.

193 (4) An owner may charge a fee for the expense of changing the locks. The fee shall not exceed  
194 the reasonable price customarily charged for changing such locks in that community.

195 (5) If an owner fails to change the locks under this section within two business days, the tenant,  
196 co-tenant or member of the tenant household may change the locks without the owner's  
197 permission. If the rental agreement requires that the owner retain a key to the leased residential  
198 premises and where the tenant, co-tenant or member of the household changes the locks, the  
199 tenant, co-tenant or member of the household shall make a good faith effort to provide a key to  
200 the new locks to the owner within two business days of the locks being changed. If a tenant, co-  
201 tenant or member of the household changes the locks without the owner's permission, the tenant,  
202 co-tenant or member of the household shall do so in a workmanlike manner with locks of

203 similar or better quality than the original locks. An owner may replace a lock installed by the  
204 tenant, co-tenant, or member of the tenant household or seek reimbursement for additional costs  
205 if the owner believes that the locks were not of proper quality or were not installed properly.

206 (6) If the locks are changed pursuant to this section, the tenant shall not voluntarily give the new  
207 key to the perpetrator.

208 (7) An owner who takes action to prevent the tenant, co-tenant or member of the tenant  
209 household who has complied with paragraph (1) from changing the locks, or any owner who  
210 changes the locks and does not make a good faith effort to provide a key to the tenant, co-tenant  
211 or member of the household requesting the lock change as provided in paragraph (3), shall be  
212 liable for actual and consequential damages or three months' rent, whichever is greater, and the  
213 costs of the action including reasonable attorneys' fees, all of which may be applied in setoff or  
214 recoupment against any claim for rent owed or owing for use and occupancy. Damages shall  
215 not be imposed if the court determines that the owner acted in good faith.

216 (8) The superior court, housing court, district court and Boston municipal court shall have  
217 jurisdiction in equity to restrain violations of this section. Section 18 of this chapter and section  
218 2A of chapter 239 shall apply to an act taken in reprisal against a person for requesting the locks  
219 be changed in accordance with this subsection.

220 (9) Notwithstanding the preceding paragraphs, if a court has issued an order under said chapter  
221 209A of the General Laws or any other provision of law, vacating a tenant, co-tenant or member  
222 of the tenant household from the dwelling unit, the owner shall not interfere with the order and  
223 upon a request to change the locks as described in this section, shall comply with the request

224 (10) A waiver of this provision in any lease or other rental agreement, except with respect to any  
225 restriction specified or imposed by the United States or any agency thereof or the commonwealth  
226 or any agency or political division, shall be void and unenforceable.

227 (11) An owner complying with this section or with the requirements of an order under chapter  
228 209A of the General Laws or other order, shall be relieved of any liability to the vacated tenant,  
229 co-tenant or member of the tenant's household, or to any other third party on account of the  
230 owner's good faith compliance with the court order or the owner's good faith changing of the  
231 locks as provided in this section. Damages shall not be imposed if the court determines that the  
232 matter was one of a good faith dispute

233 SECTION 2. Section 2A of chapter 239 of the General Laws, as appearing in the 2008 Official  
234 Edition is hereby amended by inserting after the words, "eighty-three A", in line 14, the  
235 following words:- , or the taking of action by a tenant, co-tenant or a member of the tenant  
236 household under section 3 of chapter 209A or section 3 of chapter 258E of the General Laws or  
237 seeking relief under section 23 of chapter 186, or reporting to any police officer or law  
238 enforcement professional any incident of domestic violence, rape, sexual assault or stalking  
239 against the tenant, co-tenant or member of the household, or reporting to any police officer or  
240 law enforcement professional the violation of an order issued under said section 3 of said chapter  
241 209A or section 3 of said chapter 258E of the General Laws or any act of abuse as set forth in  
242 section 8 of said chapter 209A or any act of harassment as defined in chapter 258E of the  
243 General Laws directed against the tenant, co-tenant or member of the household.