

HOUSE No. 655

The Commonwealth of Massachusetts

PRESENTED BY:

Daniel Cullinane

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 adoption of the accompanying bill:

An Act regarding right of first refusal in the event of foreclosure and short sales and deeds in lieu.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Daniel Cullinane</i>	<i>12th Suffolk</i>
<i>Evandro C. Carvalho</i>	<i>5th Suffolk</i>
<i>Daniel J. Hunt</i>	<i>13th Suffolk</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Chynah Tyler</i>	<i>7th Suffolk</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>
<i>Jack Lewis</i>	<i>7th Middlesex</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Adrian Madaro</i>	<i>1st Suffolk</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Brendan P. Crighton</i>	<i>11th Essex</i>

HOUSE No. 655

By Mr. Cullinane of Boston, a petition (accompanied by bill, House, No. 655) of Daniel Cullinane and others relative to right of first refusal in the event of foreclosure and short sales and deeds. Housing.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act regarding right of first refusal in the event of foreclosure and short sales and deeds in lieu.

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. (a) As used in these sections, the following words shall, unless the context
2 clearly requires otherwise, have the following meanings:

3 “Auction” or “Public auction,” the sale of a housing accommodation, under power of sale
4 in a mortgage loan, by public bidding.

5 “Borrower,” a mortgagor of a Mortgage Loan.

6 “Mortgage loan,” a loan secured wholly or partially by a mortgage on a housing
7 accommodation.

8 “Mortgagee,” an entity to whom property is mortgaged, the mortgage creditor or lender
9 including, but not limited to, mortgage servicers, lenders in a mortgage agreement and any agent,
10 servant or employee of the mortgagee or any successor in interest or assignee of the mortgagee's
11 rights, interests or obligations under the mortgage agreement.

12 “Housing accommodation,” a building or buildings, structure or structures, or part
13 thereof, rented or offered for rent for living or dwelling purposes, including, without limitation,
14 houses, apartments, condominium units, cooperative units and other multi-family residential
15 dwellings, but excluding a group residence, homeless shelter, lodging house, orphanage,
16 temporary dwelling structure, and transitional housing. The provisions of this section shall not
17 apply to a borrower-occupied housing accommodation so long as the borrower is domiciled in
18 the housing accommodation at the initiation of the short-sale, deed-in-lieu, or foreclosure
19 process.

20 “Foreclosure,” a legal proceeding to terminate a borrower’s interest in property, instituted
21 by the mortgagee, and regulated under chapter 244.

22 “Short-sale,” sale approved by the mortgagee to a bona fide purchaser at a price that is
23 less than borrower’s existing debt on the housing accommodation.

24 “Deed in lieu,” a deed for the collateral property, the housing accommodation, that the
25 mortgagee accepts from the borrower in exchange for the release of the borrower’s obligation
26 under the mortgage loan.

27 “Tenant,” a person or group of persons who at the time of the short-sale or foreclosure is
28 entitled to occupy the housing accommodation pursuant to a bona fide lease or tenancy at will,
29 the right to occupy having been established for no less than one year at the time of short-sale or
30 foreclosure process or deed-in-lieu transfer. This definition shall not exclude former owners who
31 have a negotiated tenancy with a financial institution.

32 “Bona fide lease or bona fide tenancy,” a lease or tenancy shall not be considered bona
33 fide unless: (1) the borrower, or the child, spouse or parent of the Borrower under the contract, is

34 not the tenant; (2) the lease or tenancy was the result of an arms-length transaction, and (3) the
35 tenant is current on all rental payments and there are no outstanding claims for breach of lease or
36 property damage.

37 “Notice of Sale,” a notice in the form specified in section 14 of chapter 244 of the
38 General Laws.

39 “Notice of Intention to Foreclose,” a notice in the form specified in chapter 244, section
40 17B of chapter 244 of the General Laws.

41 “Third Party Offer,” an offer to purchase the mortgaged property for valuable
42 consideration by an arm’s length purchaser, not including the borrower or the tenants.

43 “Owner,” a borrower who is not domiciled in the housing accommodation.

44 SECTION 2. Short-sales.

45

46 (a) An owner shall give notice to each tenant of a housing accommodation of the
47 intention to sell the housing accommodation by way of short-sale to avoid foreclosure. Such
48 notice shall be mailed by regular and certified mail, with a simultaneous copy to the attorney
49 general and the director of housing and community development, within two (2) business days of
50 the owner’s submission of a request or application to the mortgagee for permission to sell the
51 housing accommodation by way of short-sale or to accept a deed in lieu. This notice shall also
52 include a notice of the rights provided by this section.

53 (b) No mortgagee may accept any third party offers or deem the owner’s application for
54 short-sale submitted for review unless and until the mortgagee receives documentation in a form

55 approved by the attorney general demonstrating that the tenants of the housing accommodation
56 have been informed of the owner's intent to seek a short-sale or deed in lieu and the tenants have
57 expressed their interest in exercising a right of first refusal within 60 days, assigning that right of
58 first refusal, or the tenants have waived those rights. If tenants have not affirmatively expressed
59 their interest in exercising a right of first refusal or in assigning that right within 60 days, or have
60 not affirmatively waived that right within 60 days, the tenants' rights are deemed waived.

61 (c) Before a housing accommodation may be transferred by short-sale or deed-in-lieu, the
62 owner shall notify each tenant, with a simultaneous copy to the attorney general and the director
63 of housing and community development, by regular and certified mail, of any bona fide offer
64 that the mortgagee intends to accept. Before any short-sale or transfer by deed-in-lieu, the owner
65 shall give each tenant such a notice of the offer only if households constituting at least fifty-one
66 percent of the households occupying the housing accommodation notify the owner, in writing,
67 that they collectively desire to receive information relating to the proposed sale. Tenants may
68 indicate this desire within the same notice described in paragraph (b). Any notice of the offer
69 required to be given under this subsection shall include the price, calculated as a single lump sum
70 amount and of any promissory notes offered in lieu of cash payment.

71 (d) A tenant group representing at least fifty-one percent of the households occupying the
72 housing accommodation which are entitled to notice under paragraph (c) shall have the collective
73 right to purchase, in the case of a third party offer that the mortgagee intends to accept, provided
74 it (1) submits to the owner reasonable evidence that the tenants of at least fifty-one percent of the
75 occupied units in the housing accommodation have approved the purchase of the housing
76 accommodation, (2) submits to the owner a proposed purchase and sale agreement on
77 substantially equivalent terms and conditions within sixty days of receipt of notice of the offer

78 made under subsection (c) of this section, (3) obtains a binding commitment for any necessary
79 financing or guarantees within an additional ninety days after execution of the purchase and sale
80 agreement, and (4) closes on such purchase within an additional ninety days after the end of the
81 ninety-day period under clause (3).

82 No owner shall unreasonably refuse to enter into, or unreasonably delay the execution or
83 closing on a purchase and sale with tenants who have made a bona fide offer to meet the price
84 and substantially equivalent terms and conditions of an offer for which notice is required to be
85 given pursuant to paragraph (c). Failure of the tenants to submit such a purchase and sale
86 agreement within the first sixty day period, to obtain a binding commitment for financing within
87 the additional ninety day period or to close on the purchase within the second ninety-day period,
88 shall serve to terminate the rights of such tenants to purchase. The time periods herein provided
89 may be extended by agreement. Nothing herein shall be construed to require an owner to provide
90 financing to such tenants. A group or association of tenants which has the right to purchase
91 hereunder, at its election, may assign its purchase right hereunder to the city or town in which the
92 housing accommodation is located, or the housing authority of the city or town in which the
93 housing accommodation is located, or an agency of the commonwealth, nonprofit, community
94 development corporation, affordable housing developer, or land trust, for the purpose of
95 continuing the use of the housing accommodation as permanently affordable rental housing.

96 (e) The right of first refusal created herein shall inure to the tenants for the time periods
97 hereinbefore provided, beginning on the date of notice to the tenants under paragraph (a). The
98 effective period for such right of first refusal shall begin anew for each different offer to
99 purchase that the mortgagee intends to accept. The right of first refusal shall not apply with

100 respect to any offer received by the owner for which a notice is not required pursuant to said
101 paragraph (c).

102 (f) In any instance where the tenants are not the successful purchaser of the housing
103 accommodation, the mortgagee shall provide evidence of compliance with this section by filing
104 an affidavit of compliance with the attorney general, the director of housing and community
105 development, and the official records of the county where the property is located within seven
106 days of the sale.

107 (g) It is illegal for the owner to evict a tenant or tenants in order to avoid application of
108 this law.

109 (h) Aggrieved tenants may seek damages under chapter 93A and may file a complaint
110 with the attorney general. Tenants may seek damages including a percentage of the sales price
111 and/ or injunctive relief in the form of specific performance to compel transfer of property.
112 Nothing in this act shall be construed to limit or constrain in any way the rights tenants currently
113 have under applicable laws, including but not limited to chapters 186 and 186A. At all times, all
114 parties must negotiate in good faith.

115 (i) The attorney general shall enforce this section and shall promulgate rules and
116 regulations necessary for enforcement. The attorney general may seek injunctive, declaratory,
117 and compensatory relief on behalf of tenants and the commonwealth in a court of competent
118 jurisdiction. The attorney general shall post a sample intent to sell notice, sample proof of notice
119 to tenants, sample notice of offer, and other necessary documents.

120 SECTION 3. Foreclosures. (a) When a mortgagee seeks judicial determination of the
121 right to foreclose, then the mortgagee shall provide a copy of the complaint by regular and

122 certified mail to the tenants of the housing accommodation. The mortgagee shall also provide
123 tenants, by regular and certified mail, with a copy of any Order of Notice issued by the Land
124 Court, if applicable, within five (5) days of issuance.

125 (b) The mortgagee shall provide each tenant, by regular and certified mail, a copy of any
126 and all Notices of Sale published pursuant to Section 14 of chapter 244. A copy should be
127 provided simultaneously with the successive publication notices.

128 (c) No later than five (5) business days before the auction of a housing accommodation,
129 the tenants shall inform the mortgagee, in writing, if a group of tenants representing at least fifty-
130 one percent of the households occupying the housing accommodation intend to exercise their
131 collective right of first refusal at auction and desire to receive information relating to the
132 proposed auction.

133 (d) A group of tenants representing at least fifty-one percent of the households
134 occupying the housing accommodation may exercise their collective right to purchase the
135 housing accommodation, in the event of a third party offer at auction that the mortgagee
136 receives, provided that the group of tenants (1) submits to the mortgagee reasonable evidence
137 that the tenants of at least fifty-one percent of the occupied homes in the housing accommodation
138 have approved the purchase of the housing accommodation, (2) submits to the mortgagee a
139 proposed purchase and sale agreement on substantially equivalent terms and conditions to that
140 received by the mortgagee in the third party offer within sixty days of receipt of notice of the bid
141 made under subsection (c) of this section, (3) obtains a binding commitment for any necessary
142 financing or guarantees within an additional ninety days after execution of the purchase and sale

143 agreement, and (4) closes on such purchase within an additional ninety days after the end of the
144 ninety-day period under clause (3).

145 No mortgagee shall unreasonably refuse to enter into, or unreasonably delay the
146 execution or closing on a purchase and sale with tenants who have made a bona fide offer to
147 meet the price and substantially equivalent terms and conditions of a bid received at auction.
148 Failure of the tenants to submit such a purchase and sale agreement within the first sixty day
149 period, to obtain a binding commitment for financing within the additional ninety day period or
150 to close on the purchase within the second ninety-day period, shall serve to terminate the rights
151 of such tenants to purchase. The time periods herein provided may be extended by agreement.
152 Nothing herein shall be construed to require a mortgagee to provide financing to such tenants. A
153 group or association of tenants which has the right to purchase hereunder, at its election, may
154 assign its purchase right hereunder to the city, town, housing authority, or agency of the
155 commonwealth, nonprofit, community development corporation, affordable housing developer,
156 or land trust for the purpose of continuing the use of the housing accommodation as permanently
157 affordable rental housing.

158 If there are no third party bids at auction for the housing accommodation, the tenants
159 shall have a right of first refusal whenever the mortgagee seeks to sell the housing
160 accommodation. The tenants shall be notified of any offers the mortgagee intends to accept and
161 shall be given an opportunity to meet the price and substantially the terms of a third-party offer
162 based on the same time line described in paragraph (d).

163 (e) The right of first refusal created herein shall inure to the tenants for the time periods
164 hereinbefore provided, beginning on the date of notice to the tenants under paragraph (a).

165 (f) In any instance where the tenants are not the successful purchaser of the housing
166 accommodation, the seller of such unit shall provide evidence of compliance with this section by
167 filing an affidavit of compliance with the attorney general, the director of housing and
168 community development, and the official records of the county where the property is located
169 within seven days of the sale.

170 (g) It is illegal for the owner to evict a tenant or tenants in order to avoid application of
171 this law.

172 (h) Aggrieved tenants may seek damages under General Law Chapter 93A and may file
173 a complaint with the attorney general. Tenants may seek damages including a percentage of the
174 sales price and/or injunctive relief in the form of specific performance to compel transfer of
175 property. Nothing in this Act shall be construed to limit or constrain in any way the rights
176 tenants currently have under applicable laws, including but not limited to chapters 186 and 186A.
177 At all times, all parties must negotiate in good faith.

178 (i) The attorney general shall enforce this section and shall promulgate rules and
179 regulations necessary for enforcement. The attorney general may seek injunctive, declaratory,
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182 to tenants, sample notice of offer, and other necessary documents.