

SENATE, No. 2355

[Senate, April 1, 2010 - New draft of Senate, Nos. 621, 637 and 1379 reported from the committee on Housing.]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND TEN

AN ACT TO STABILIZE NEIGHBORHOODS.

Whereas, the deferred operation of this act would tend to defeat its purpose, which is to protect the citizens and neighborhoods of the commonwealth, 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, as appearing in the 2008
- 2 Official Edition, is hereby amended by inserting after clause fifty-five the following clause:-
- 3 Fifty sixth. Real estate owned by or held in trust for a charitable organization for the
- 4 purpose of creating community housing, as defined in section 2 of chapter 44B, where the

charitable organization purchased said property from an entity that acquired the property pursuant to section 14 of chapter 244, from the date of such real estate's acquisition by the charitable organization until such real estate is leased, rented, or otherwise disposed of; provided, however, that said exemption for such real property shall not extend beyond a total period of 7 years. This clause shall take effect upon its acceptance by any city or town.

SECTION 2. Chapter 184 of the General Laws is hereby amended by inserting after section 17B ½ the following section:-

Section 17B 3/4. (a) As used in this section the following words shall, unless the context clearly requires otherwise, have the following meanings:

‘Commissioner’, means the Commissioner of the Massachusetts Division of Banks

‘Reverse Mortgage’, a nonrecourse mortgage loan in which: (1) a mortgage, deed of trust, or equivalent consensual security interest securing one or more advances is created in the Consumer's principal dwelling located in Massachusetts; and (2) any principal, interest, or shared appreciation or equity is due and payable (other than in the case of default) only after: (i) the Consumer dies; (ii) the dwelling is transferred; or (iii) the Consumer ceased to occupy the dwelling as a principal dwelling.

(b). No mortgagee who makes a reverse mortgage loan to a borrower shall make a reverse mortgage loan unless the mortgagor affirmatively opts in writing for the reverse mortgage and has received certification from a counselor with a third-party organization that the mortgagor has received counseling in person on the suitability of the loan transaction; provided further that said third party organization shall have been approved by: (1) the United States Department of Housing and Urban Development; (2) the Massachusetts Executive Office of Elder Affairs. At or

before closing such a loan, the mortgagee shall obtain evidence that the mortgagor has completed an approved counseling program. If such reverse mortgage loan is made by a mortgagee in violation of this section, the terms of the loan shall not be enforceable. The Commissioner of Banks shall issue guidelines or adopt regulations to administer and carry out this section and to further define the terms used in this section.

SECTION 3. Section 13A of chapter 186 of the General Laws, as so appearing, is hereby amended by inserting after the word “law” the following words:-and the foreclosing entity shall assume the lease and rental subsidy contract with the rental subsidy administrator.

SECTION 4. The general laws are hereby amended by adding after chapter 186, the following new chapter:-

Chapter 186A. Tenant protections in foreclosed properties

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

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

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

47 ‘Foreclosing owner’, an entity that holds title, in any capacity, directly or indirectly,
48 without limitation, whether in its own name, as trustee, or as beneficiary, to a housing
49 accommodation that has been foreclosed upon, and either (1) held or owned a mortgage or other
50 security interest in the housing accommodation at any point prior to the foreclosure of the
51 housing accommodation or is the subsidiary, parent, trustee, or agent of, or otherwise is related
52 to any entity which held or owned the mortgage or other security interest in the housing
53 accommodation at any time prior to the foreclosure of the housing accommodation; or (2) is an
54 institutional mortgagee that acquires or holds title to the housing accommodation within three
55 years of the filing of a foreclosure deed on the housing accommodation.

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

61 ‘Housing accommodation’, any building or buildings, structure or structures, or part
62 thereof or land appurtenant thereto, or any other real or personal property used, rented or offered
63 for rent for living or dwelling purposes, together with all services connected with the use or
64 occupancy of such property.

65 ‘Institutional mortgagee’, any entity, or any entity which is the subsidiary, parent, trustee,
66 or agent of, or otherwise related to any such entity, that holds or owns mortgages or other
67 security interest in three or more housing accommodations, or acts as a mortgage servicer of
68 three or more mortgages of housing accommodations.

'Just Cause', at least one of the following: (a) the tenant has failed to pay the rent in effect prior to the foreclosure or failed to pay use and occupancy charges, but only if the foreclosing owner notified the tenant in writing of the amount of rent or use and occupancy that was to be paid and to whom it was to be paid; provided that such failure to pay rent or use and occupancy charges shall not be deemed to be just cause unless the foreclosing owner, within 30 days of the foreclosure, posted in a prominent location in the building in which the rental housing unit is located a written notice stating the names, addresses, telephone numbers and telephone contact information of the foreclosing owner, the building manager, or other representative of the foreclosing owner responsible for the management of such building and stating the address to which rent and use and occupancy charges must be sent; and provided further that the foreclosing owner has delivered such written notice individually to each tenant of said building, and to the inspection services department, or its equivalent, for the city or town in which the rental housing unit is located (b) the tenant has violated an obligation or covenant of the tenancy or occupancy other than the obligation to surrender possession upon proper notice and has failed to cure such violation within a reasonable time after having received written notice thereof from the foreclosing owner; (c) the tenant is committing or permitting to exist a nuisance in, or is causing substantial damage to, the unit, or is creating a substantial interference with the quiet enjoyment of other occupants; (d) the tenant is convicted of using or permitting the unit to be used for any illegal purpose; (e) the tenant who had a written lease or other rental agreement which terminated on or after the effective date of this chapter, has refused, after written request or demand by the foreclosing owner, to execute a written extension or renewal thereof for a further term of like duration and in such terms that are not inconsistent with the provisions of this chapter; (f) the tenant has refused the foreclosing owner reasonable access to the unit for the

92 purpose of making necessary repairs or improvement required by the laws of the United States,
93 the Commonwealth or any subdivision thereof, or for the purpose of inspection as permitted or
94 required by agreement or by law or for the purpose of showing the rental housing unit to a
95 prospective purchaser or mortgagee provided that none of the preceding events shall be deemed
96 just cause unless the foreclosing owner has delivered to each tenant at the time of the delivery of
97 the aforementioned written notice specified in sub-clause (a) above, a written disclosure of the
98 tenant's right to a court hearing prior to eviction.

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

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

106 'Tenant' any person or group of persons who at the time of foreclosure is entitled to
107 occupy a housing accommodation pursuant to a written lease or tenancy at will. Any person who
108 moves into the housing accommodation owned by the foreclosing owner following the filing of
109 the foreclosure deed without the express written permission of the owner shall not be considered
110 a tenant under this statute.

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

Section 2. Notwithstanding any other special or general law to the contrary, a foreclosing owner shall not evict a tenant except for just cause, or in the event that there is a binding purchase and sale agreement for a bona fide third party to purchase said housing accommodation from a foreclosing owner.

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

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

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

SECTION 5. Section 35A of chapter 244 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out subsection (a) and inserting in place thereof the following 2 subsections:-

(a). As used in this section and section 35B, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Borrower”, a mortgagor of a mortgage loan.

“Borrower’s representative”, an employee of a HUD-certified non-profit organization located in the commonwealth; provided, however, that borrower’s representative shall not include a person or entity which is compensated by the borrower.

“Creditor”, any person or entity that holds or controls, partially, wholly, indirectly, directly, or in a nominee capacity, a mortgage loan securing a residential property, including, without limitation, an originator, holder, investor, assignee, successor, trust, trustee, nominee holder, Mortgage Electronic Registration System, or mortgage servicer. This definition shall also include any servant, employee, or agent of a creditor.

"Creditor’s Representative”, a person who has the authority to negotiate and modify the mortgage loan.

“Mortgage loan”, a loan to a natural person made primarily for personal, family or household purposes secured wholly or partially by a mortgage on residential property.

“Net Present Value”, calculation using the federal Home Affordable Modification Program Base Net Present Value Model that compares the expected economic outcome of a loan with or without a loan modification.

“Residential property", real property located in the commonwealth having thereon a dwelling house with accommodations for four or less separate households and occupied, or to be occupied, in whole or in part by the obligor on the mortgage debt. This definition shall be limited to the principal residence of a person, and not an investment property or second home.

(a ½) Any mortgagor of residential real property located in the commonwealth consisting of a dwelling house with accommodations for 4 or less separate households and occupied in whole or in part by the mortgagor, shall have a 150 day right to cure a default of a required payment as provided in the residential mortgage or note secured by the residential real property by full payment of all amounts that are due without acceleration of the maturity of the unpaid balance of the mortgage; provided, however, that if a lender certifies (i) that it has engaged in a good faith effort to resolve the issue of the amounts currently due with the homeowner; (ii) that its good faith effort has involved at least one meeting between a creditor's representative and the homeowner and the homeowner's attorney or borrower's representative; and (iii) after such meeting the homeowner and the lender were not successful in resolving their dispute, then the lender may begin proceedings after a right to cure period lasting only 90 days. The right to cure a default of a required payment shall be granted once during any 3 year period, regardless of the mortgage holder.

SECTION 6. Section 35A of chapter 244 of the General Laws is hereby amended by striking out subsection (a ½) and inserting in place thereof the following subsection:-

(a ½). Any mortgagor of residential real property located in the commonwealth consisting of a dwelling house with accommodations for 4 or less separate households and occupied in whole or in part by the mortgagor, shall have a 90 day right to cure a default of a required payment as provided in such residential mortgage or note secured by such residential real property by full payment of all amounts that are due without acceleration of the maturity of the unpaid balance of such mortgage. The right to cure a default of a required payment shall be granted once during any 5 year period, regardless of the mortgage holder.

179 **SECTION 7.** Subsection (c) of said section 35A of said chapter 244, as so appearing, is
180 amended by inserting after clause (6) the following 5 clauses:-

181 (8) the mortgagor has the right to sell the property prior to the foreclosure sale and use
182 the proceeds to pay off the loan;

183 (9) the mortgagor has the right to redeem the property by paying the total amount due,
184 prior to the foreclosure sale;

185 (10) the mortgagor has the right to request from the residential mortgage lender a
186 negotiated agreement to repay the mortgage on terms that are different from or alternative to the
187 original terms of the mortgage including, but not limited to, copies of the mortgage, note,
188 disclosure statement, and payment records.

189 (11) the mortgagor may have the following additional rights, depending on the terms of
190 the residential mortgage:

191 (a) to transfer the property to a third party subject to the security interest held by the
192 residential mortgage lender and the transferee's right, if any, to cure the default;

193 (b) to refinance the obligation by obtaining a loan which would fully repay the
194 residential mortgage debtor; and

195 (c) to voluntarily grant a deed to the residential mortgage lender in lieu of foreclosure.
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197 **SECTION 8.** Chapter 244 of the General Laws is hereby amended by inserting, after
198 section 35A, the following section:-

199 Section 35B. (a) For purposes of section 35A, the determination as to whether a creditor
200 has made a good faith effort to negotiate and agree upon a commercially reasonable alternative
201 to foreclosure shall mean that the creditor has considered, without limitation: (i) an assessment

of the borrower's current circumstances, including without limitation the borrower's current income, debts and obligations; (ii) the net present value of receiving payments pursuant to a modified mortgage loan as compared to the anticipated net recovery following foreclosure and (iii) the interests of the creditor, including, without limitation, investors and taxpayers, in the event the creditor has received federal or state money.

(b) A creditor shall be deemed to comply with the requirement to engage in a good faith effort to negotiate and agree upon a commercially reasonable alternative to foreclosure set forth in section 35A, if, 10 days prior to the mediation, the creditor sends to the borrower:

(1) Sends to the borrower a determination of a borrower's current ability to make affordable monthly payments, reasonably taking into account the borrower's current circumstances including income, debts and obligations and consistent with federal Home Affordable Modification Program Guidelines determined by the United States Department of the Treasury.

(2) identifies a loan modification that achieves the borrower's affordable monthly payment ("modified loan"), which loan modification may include one or more of the following: reduction in principal, reduction in interest rate, or an increase in the loan term period but not more than a ten year increase and to not more than a forty year period.

(3) conducts an analysis comparing the net present value of the modified loan and the creditor's anticipated net recovery that would result from foreclosure,

(4) either (a) in all circumstances where the net present value of the modified loan exceeds the anticipated net recovery at foreclosure, offers and agrees to modify the loan in a manner that provides the affordable monthly payment, or (b) in circumstances where the net present

value of the modified loan is less than the anticipated net recovery of the foreclosure, the creditor provides the borrower with the decision that no loan modification will be offered and a summary of the creditor's net present value analysis, and applicable inputs in that analysis; and

(5) If the borrower is ineligible for a loan modification pursuant to subsection Section 3 (i)-(iv) or as requested by a borrower, (i) a creditor shall assess a borrower's requested short sale or deed-in-lieu of foreclosure offer, and accept such offer if the net present value of accepting the short sale offer or deed-in-lieu of foreclosure offer is greater than the anticipated net recovery of the foreclosure, or (ii) in circumstances where the net present value of the short sale offer or deed-in-lieu of foreclosure offer is less than the anticipated net recovery of the foreclosure, the creditor must provide the borrower with a summary of the creditor's net present value analysis, and applicable inputs in that analysis.

(c) For purposes of this section and section 35A, except as specified in a contract a servicer of pooled residential mortgages may determine whether the net present value of the payments on the loan, as modified, is likely to be greater than the anticipated net recovery that would result from foreclosure to all investors and holders of beneficial interests in such investment, but not to any individual or groups of investors or beneficial interest holders, and shall be deemed to act in the best interests of all such investors or holders of beneficial interests if the servicer agrees to or implements a loan modification or takes reasonable loss mitigation actions that comply with this Section.

(d) Prior to ending the right to cure period, the creditor must certify compliance with this Section in an affidavit, listing the time and place of the mediation, parties attending, relief offered to the borrower, and summary of the creditor's net present analysis and applicable inputs

of the analysis, if applicable pursuant to subsection (a)(1) and certify modification or any option offered complies with current federal law or policy. A creditor shall provide a copy of the affidavit to the homeowner and also file a copy of the affidavit required by this Section with the Land Court in advance of initiating any foreclosure by entry, action or sale.

(e) The Attorney General may adopt, amend or repeal rules and regulations to aid in the administration and enforcement of this Section, including regulations that assist in the implementation of the requirement for the parties to engage in a good faith effort to negotiate and agree upon a commercially reasonable alternative to foreclosure as set forth in subsection (a).

SECTION 9. Section 33 of chapter 266 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out, in lines 5 to 10, inclusive the words “(2) whoever, with intent to defraud, by a false statement in writing respecting the financial condition, or means or ability to pay, of himself or of any other person, obtains credit from any bank or trust company or any banking institution or any retail seller of goods or services accustomed to give credit in any form whatsoever shall be guilty of larceny” and inserting in place thereof the following words:- “ (2) whoever, with intent to defraud, by a false statement in writing respecting the financial condition, or means or ability to pay, of himself or of any other person, obtains for himself or for any other person credit from any bank or trust company or any banking institution or any mortgage lender, as defined in section 1 of chapter 255E or any retail seller of goods or services accustomed to give credit in any form whatsoever shall be guilty of larceny.

Whoever violates this section shall be punished by imprisonment in jail for not more than 1 year or by a fine of not more than \$300, or, if the value of the benefit obtained by a violation of clause (1) or if the dollar amount of credit obtained by a violation of clause (2) exceeds \$250

shall be punished by imprisonment in the state prison for not more than 5 years, or by a fine of not more than \$25,000 and imprisonment in the house of correction for not more than 2 years.

SECTION 10. Said chapter 266 is hereby further amended by striking out section 34, as so appearing, and inserting in place thereof the following section:--

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

SECTION 11. Chapter 266 of the General Laws is amended by inserting after Section 35 the following section:-

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

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

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

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

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

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

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

(b) Whoever: (1) makes or causes to be made any material statement that is false or any statement that contains a material omission, knowing the same to be false or to contain a material omission, during or in connection with the mortgage lending process, with the intent that such statement be relied upon by a mortgage lender, borrower or any other party to the mortgage lending process; (2) uses, or facilitates the use of, any material statement that is false or any statement that contains a material omission, knowing the same to be false or to contain a material

omission, during or in connection with the mortgage lending process, with the intent that such statement be relied upon by a mortgage lender, borrower or any other party to the mortgage lending process; (3) receives any proceeds or any other funds in connection with a residential mortgage closing, knowing such proceeds or funds were obtained in violation of clause (1) or (2); or (4) files, or causes to be filed, with a registrar of deeds any document that contains a material statement that is false or a material omission, knowing such document to contain a material statement that is false or a material omission, shall be punished by imprisonment in the state prison for not more than 5 years or by imprisonment in the house of correction for not more than 2 ½ years or by a fine of not more than \$10,000 in the case of a natural person or not more than \$100,000 in the case of any other person, or by both such fine and imprisonment.

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

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

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

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

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

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

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

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

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

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

(e) It shall be a rebuttable presumption that a borrower in the residential mortgage lending process did not make a false material statement or a material omission. Two or more

single incidents or occurrences of fraud in the mortgage lending process shall sufficient to overcome this rebuttable presumption.

SECTION 12: Notwithstanding any general or special law to the contrary, the attorney general shall establish a two year pilot program to implement a state “Massachusetts abandoned property registry”, hereinafter referred to as MAP. Such registry shall require all property owners, including lenders, trustees, and service companies, to properly register and maintain vacant and/or foreclosing properties located in the state.

The attorney general shall have enforcement authority of the pilot program, and shall establish rules governing the implementation and administration of the MAP pilot program.

The MAP pilot program shall be implemented 120 days after passage, and shall expire two years thereafter.

SECTION 13. Section 6 shall take effect on January 1, 2016.