

SENATE No. 891

The Commonwealth of Massachusetts

PRESENTED BY:

Patricia D. Jehlen

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 to prevent COVID-19 evictions and foreclosures and promote an equitable housing recovery..

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	
<i>Adam Gomez</i>	<i>Hampden</i>	<i>2/18/2021</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>2/24/2021</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/24/2021</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>2/24/2021</i>
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>2/26/2021</i>
<i>Erika Uytterhoeven</i>	<i>27th Middlesex</i>	<i>2/26/2021</i>
<i>Carlos González</i>	<i>10th Hampden</i>	<i>2/26/2021</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>3/2/2021</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>3/4/2021</i>
<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>	<i>3/9/2021</i>
<i>Adam G. Hinds</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>	<i>3/9/2021</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>	<i>4/6/2021</i>
<i>John Cronin</i>	<i>Worcester and Middlesex</i>	<i>4/6/2021</i>
<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>4/6/2021</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>4/6/2021</i>

Sonia Chang-Diaz

Second Suffolk

4/6/2021

Nick Collins

First Suffolk

4/6/2021

SENATE No. 891

By Ms. Jehlen, a petition (accompanied by bill, Senate, No. 891) of Patricia D. Jehlen, Adam Gomez, Mike Connolly, Jack Patrick Lewis and other members of the General Court for legislation to prevent COVID-19 evictions and foreclosures and promote an equitable housing recovery.. Housing.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act to prevent COVID-19 evictions and foreclosures and promote an equitable housing recovery..

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to establish forthwith ongoing stabilization of the housing market for renters and homeowners during the COVID-19 emergency and recovery, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety and 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. As used in this act, the following words shall, unless the context clearly
2 requires otherwise, have the following meanings:

3 “Borrower,” a mortgagor of a mortgage loan.

4 “Emergency Declaration,” the Governor’s March 10, 2020 emergency declaration
5 designated as executive order number 591 and declaring a State of Emergency in the
6 Commonwealth of Massachusetts on the basis of the spread of COVID-19.

7 "Eviction" , any action, without limitation, by an owner or lessor or manager of a housing
8 accommodation which is intended to evict a tenant, actively or constructively, or otherwise
9 compels a tenant to vacate such housing accommodation.

10 "Forbearance," a temporary suspension of payments, including principal and interest and
11 any escrowed payments required to be paid in the mortgage contract.

12 "GSE loan," loans owned or guaranteed by the Federal National Mortgage Association
13 ("Fannie Mae") or the Federal Home Loan Mortgage Corporation ("Freddie Mac").

14 "Housing accommodation," a building or structure, or part thereof or land appurtenant
15 thereto, and any other real or personal property used, rented or offered for rent for living or
16 dwelling purposes, together with all services connected with the use or occupancy of such
17 property.

18 "Just cause," one of the following: (a) the tenant has failed to pay the rent, subject to the
19 procedures of Section 2, below; (b) the tenant has materially violated an obligation or covenant
20 of the tenancy or occupancy, other than the obligation to surrender possession upon proper
21 notice, and has failed to cure such violation within 30 days after having received written notice
22 thereof from the owner; (c) the tenant is committing a nuisance in the unit, is permitting a
23 nuisance to exist in the unit, is causing substantial damage to the unit or is creating a substantial
24 interference with the quiet enjoyment of other occupants; (d) the tenant is using or permitting the
25 unit to be used for any illegal purpose; or (e) the owner intends to make bona fide personal use of
26 the unit within 180 days, including use of the unit as the owner's primary residence or the use of
27 the unit by a member of the owner's family as a primary residence.

28 “Loss Mitigation Guidelines,” a protocol established by the owner, guarantor, and/or
29 investor for a mortgage loan describing the sequence and content of loss mitigation options that a
30 servicer must follow in reviewing a borrower for alternatives to foreclosure. The term includes
31 the guidelines for loss mitigation developed by the GSEs, the Federal Housing Administration,
32 the Department of Veterans Affairs, the Department of Agriculture, as well as guidelines and
33 protocols applicable to private label mortgage loans through securitization agreements or other
34 contractual terms. For federally-backed mortgage loans, the guidelines include COVID-19
35 forbearance and post-forbearance loss mitigation options, waterfalls, borrower contact
36 requirements, fee limits, foreclosure prohibitions, and timelines.

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

39 “Residential property,” real property located in the commonwealth, on which there is a
40 dwelling house with accommodations for 4 or fewer separate households.

41 “Servicer,” a person or entity who directly services a loan or who is responsible for
42 interacting with the borrower, managing the loan account on a daily basis, including engaging in
43 loss mitigation, collecting and crediting periodic loan payments, managing any escrow account,
44 or enforcing the note and security instrument, either as the current owner of the promissory note
45 or as the current owner’s authorized agent. For purposes of this law, servicer includes the
46 creditor, investor, guarantor, owner, and/or mortgagor of the loan when acting as servicer of the
47 loan.

48 “Tenant,” a person or group of persons who is entitled to occupy a housing
49 accommodation pursuant to a lease, sublease, tenancy, tenancy at will, or rental agreement, or a
50 former homeowner residing in a property that has been foreclosed on.

51 SECTION 2. (a) This Section shall govern all proceedings under chapter 239, or any
52 other complaint seeking an eviction of a tenant, brought at any time, where the plaintiff’s
53 complaint is based upon or includes any claim for rent or use and occupancy due and payable
54 during the period from the issuance of the Emergency Declaration, March 10, 2020, until the
55 date the Emergency Declaration is rescinded. Hereinafter, such an eviction shall be designated a
56 “COVID-19 Eviction”.

57 (b) Notwithstanding chapters 186 or 239 or any general or special law to the contrary, no
58 landlord or property owner may commence a COVID-19 eviction unless it establishes that (1)
59 the parties have exhausted all available opportunities, and worked in good faith, to obtain short-
60 term emergency rental assistance (as defined at Section 2(a) of Chapter 257 of the Acts of 2020)
61 for which the landlord and tenant are eligible and have not obtained sufficient funds through
62 such programs to cure the arrearage through no fault of the landlord; (2) as of the date the
63 complaint is filed, no administrative orders to correct violations of the State Sanitary and
64 Building Codes, nor any civil or criminal proceedings to enforce uncorrected violations of said
65 Codes, are pending with respect to the rental unit; and (3) the landlord has provided notice to the
66 tenant of the availability of the COVID defense provided below in subsection (d). No court shall
67 accept a COVID-19 eviction for filing unless it is accompanied by an affidavit from the landlord
68 stating that it has satisfied the requirements of this subsection.

69 (c) The Executive Office of Housing and Economic Development shall create the form
70 affidavit described above within one week of the enactment of this legislation, and such form
71 affidavit shall be the only acceptable form of affidavit used for the purpose of subsection (b).

72 (d) A defendant in any COVID-19 Eviction shall have a complete defense (“COVID
73 defense”) to a claim to recover possession where any portion of the non-payment of rent or use
74 and occupancy, or any portion of the mortgage loan payment was due to a financial hardship
75 related to or exacerbated by the COVID-19 emergency; and either (1) eviction would likely
76 result in the defendant becoming homeless, needing to move into a homeless shelter, or needing
77 to move into a new residence shared by other people who live in close quarters; or (2) the
78 defendant household includes a minor child, a handicapped person (as defined at Section 9 of
79 Chapter 239 of the General Laws), an individual sixty years of age or older, or an individual with
80 any medical condition the Centers for Disease Control has deemed to cause increased risk of
81 experiencing severe illness from a COVID-19 infection.

82 (e) In any COVID-19 Eviction, no court may issue an order for interim payment of rent
83 and/or use and occupancy due and payable during the period from the issuance of the Emergency
84 Declaration, March 10, 2020, until the Emergency Declaration is rescinded without conducting a
85 hearing and explicitly finding that the tenant is not reasonably likely to establish the defense set
86 out at subsection (d).

87 SECTION 3. Notwithstanding any general or special law or rule or regulation to the
88 contrary, Section 2 of Chapter 257 of the Acts of 2020 is hereby amended by striking out Section
89 2(b) and inserting in place thereof the following subsection:

90 (b) Notwithstanding chapter 239 of the General Laws or any other general or special law,
91 rule, regulation or order to the contrary, during the COVID-19 emergency, a court having
92 jurisdiction over an action for summary process under said chapter 239, including the Boston
93 municipal court department, shall grant a continuance for a time period until the application is
94 approved or denied if, either at the time the answer is timely filed or on the date the trial is
95 scheduled to commence: (1) the plaintiff's complaint for possession of a residential dwelling unit
96 is based upon or includes any claim for rent or use and occupancy due and payable during the
97 period from the issuance of the Emergency Declaration, March 10, 2020, until the date the
98 Emergency Declaration is rescinded (2) the non-payment of rent or use and occupancy was due
99 to a financial hardship related to or exacerbated by the COVID-19 emergency; and (3) the
100 defendant demonstrates, to the satisfaction of the court, a pending application for short-term
101 emergency rental assistance; provided, however, notwithstanding this subsection, the court may
102 consider any meritorious counterclaim brought in said action for summary process; provided
103 further, that the court shall issue a stay of execution on a judgment for possession if the
104 requirements in clauses (1) to (3), inclusive, are met; and provided further, that the court shall
105 not enter a judgment or issue an execution, or allow the levy on an execution, before the
106 application has been approved or denied.

107 SECTION 4. Notwithstanding any general or special law to the contrary, during the
108 state of the Emergency Declaration and for 12 months after the Emergency Declaration is
109 rescinded, no person shall attempt to commence, or commence, an eviction, except for just
110 cause. Any waiver of any provision of this section shall be against public policy and void. This
111 section shall not be applicable to owner-occupied buildings composed of four or fewer rental
112 units.

113 SECTION 5. From the effective date of this law and continuing for 180 days from the
114 declared end of the Emergency Declaration or 180 days from the termination of a borrower’s
115 final forbearance period under Section 6, whichever is later, and notwithstanding any general or
116 special law or rule or regulation to the contrary, a servicer shall not, for the purposes of
117 foreclosure of a residential property that is not vacant or abandoned: (a) cause notice of a
118 foreclosure sale to be published pursuant to said section 14 of said chapter 244; (b) exercise a
119 power of sale; (c) exercise a right of entry; (d) initiate a judicial or non-judicial foreclosure
120 process; (e) file a complaint to determine the military status of a mortgagor under the federal
121 Servicemembers Civil Relief Act, 50 USC sections 3901 to 4043; (f) commence or continue
122 post-foreclosure eviction proceedings, including the filing of a complaint, entry of judgment, and
123 execution of judgment; and/or (g) send notice of a borrower's right to cure under either their
124 mortgage contract or General Law Chapter 244, section 35A or a borrower’s right to modify
125 their mortgage loan under General Law Chapter 244, section 35B . For foreclosure or eviction
126 actions already pending in the courts, all proceedings, including filing of motions, entry of
127 judgment, and the scheduling or conduct of a foreclosure sale shall be stayed. Any foreclosure
128 actions taken in violation of this statute shall be against public policy and void.

129 SECTION 6. (a) A servicer shall comply with all applicable federal loss mitigation
130 guidelines regarding COVID-19 related forbearances and post-forbearance loss mitigation
131 options.

132 (b) Within thirty days of the law’s effective date, a servicer shall send each
133 Massachusetts borrower with a mortgage loan it services a Notice of COVID-19 Mortgage Relief
134 (“Notice”) setting forth the general loss mitigation guidelines that apply to the borrower’s loan.
135 The Notice must include: (1) The identity of the entity that owns the loan and the identity of any

136 federal entity that owns, insures, or guarantees the loan; (2) A summary of the forbearance and
137 post-forbearance loss mitigation options that are available for the loan, including references to
138 where the complete loss mitigation guidelines are available to the public; and (3) Information on
139 how to request the available forbearance and post-forbearance loss mitigation options.

140 (c) The Attorney General’s Office will create a template of the Notice in English and
141 Spanish and it shall clearly indicate “This is an Important Notice. Please have it translated” in the
142 seven most commonly spoken languages spoken in the Commonwealth. The envelope containing
143 the Notice must state in minimum size 12 font “Important Notice” in the three most commonly
144 spoken languages in the Commonwealth. In addition to the requirements described in Section 5,
145 after the expiration of the moratorium in Section 5, the servicer must also provide the borrower
146 with the information described in Section 6(b), above, as part of or simultaneously with the
147 notices required by M.G.L.A. ch. 244 §§ 14, 35A, and 35B.

148 (d) The servicer shall disclose and implement COVID-19 forbearance and post-
149 forbearance loss mitigation options that either: (1) Are consistent with the COVID-19 loss
150 mitigation guidelines for forbearance and post-forbearance relief applicable to loans owned or
151 insured by a GSE, the Federal Housing Administration, the Veterans Administration, or the
152 Rural Housing Service whenever one of these federal entities owns or insures the loan or (2) If
153 the loan is not owned or insured by a federal agency, for all options that are consistent with the
154 loss mitigation guidelines for a GSE loan, including any amendments, updates, or revisions to
155 that guidance;

156 (e) A servicer that claims investor guidelines, applicable law, or other restrictions prohibit
157 it from implementing the forbearance and/or post-forbearance options described in Section 6(d),

158 above, must provide to the Massachusetts Attorney General's Office and all affected borrowers
159 documentation of the specific guidelines and laws that it contends support its inability to
160 implement the options described in Section 6(d). A borrower shall have the opportunity to
161 dispute the claim. The Attorney General's office is authorized to exercise oversight over and
162 investigate such disputes and shall have authority to assess appropriate penalties in instances
163 where a servicer makes a claim of exemption not substantially justified in law or fact. A servicer
164 is presumed to have the ability to comply with section 6(d) unless the servicer has documented in
165 accordance with this Section that investor guidelines, applicable law, or other restrictions
166 prohibit it from implementing the forbearance and/or post-forbearance options described in
167 Section 6(d) and this documentation is not disputed. Assertion of an unjustified claim for
168 exemption shall constitute an unfair and deceptive act for which the borrower may seek remedies
169 under Chapter 93A.

170 (f) If the servicer claims an inability to implement Section 6(d), the servicer shall provide
171 notice to the borrower of all forbearance and post-forbearance options available for the loan that
172 are consistent with this law to the extent that it is within the servicer's contractual authority to do
173 so. Specifically, the servicer that intends to offer only lump sum repayment or short-term
174 repayment plans as options for reinstatement after forbearance must clearly and conspicuously
175 disclose that these will be the affected borrower's limited options before the borrower enters into
176 a forbearance plan or if the borrower is in a forbearance plan on the effective date of this law,
177 within 30 days of the effective date of this law.

178 (g) Servicers shall ask borrowers what language they prefer to communicate in, shall
179 document that language preference in the servicing file, and shall provide oral interpretation or a

180 bilingual representative fluent in that language when communicating about loss mitigation
181 pursuant to the requirements of Section 6.

182 (h) A servicer must attach to a notice of sale recorded and served in connection with a
183 foreclosure a certification of service of the disclosures described in Section 6(b) above. A
184 servicer shall not record or serve a notice of sale; schedule, publish notice of, or conduct a
185 foreclosure sale; or file a complaint for judicial foreclosure unless the servicer has: (1) Provided
186 the disclosures with the content described in Sections 6(b) and in accordance with the time frame
187 described Section 6(b) and (2) Considered each borrower who expressed an interest in COVID-
188 19 mortgage relief for the options available under the loss mitigation guidelines described in the
189 disclosures provided under Section 6(d).

190 (i) Remedies for violations of this Section shall be as followed: (1) A borrower who is
191 harmed by a material violation of this title may bring an action to obtain injunctive relief,
192 damages, restitution, and any other remedy to redress the violation; (2) A court may award a
193 prevailing borrower reasonable attorney's fees and costs in any action based on any violation of
194 this title in which injunctive relief against a sale, including a temporary restraining order, is
195 granted. A court may award a prevailing borrower reasonable attorney's fees and costs in an
196 action for a violation of this article in which relief is granted but injunctive relief against a sale is
197 not granted; (3) The rights, remedies, and procedures provided to borrowers by this Section are
198 in addition to and independent of any other rights, remedies, or procedures under any other law.
199 This Section shall not be construed to alter, limit, or negate any other rights, remedies, or
200 procedures provided to borrowers by law.

201 (j) Any waiver by a borrower of the provisions of this article is contrary to public policy
202 and shall be void.

203 (k) It is the intent of the Legislature that a servicer offer a borrower forbearance and post-
204 forbearance loss mitigation options that are consistent with the mortgage servicer's contractual
205 and regulatory authority.

206 (l) In addition to the time frame for the Moratoriums described in Section 2 and 5, above,
207 the terms of this law shall remain in effect from (the operational date of this title) to December
208 31, 2022.

209 SECTION 7. The office of the attorney general shall develop and promulgate regulations
210 and standardized forms for the written documentation required in Section 6; provided, however,
211 that the absence of such forms shall not render this act inoperable.

212 SECTION 8. Violations of this act shall constitute unfair or deceptive acts or practices
213 for the purposes of Section 2 of chapter 93A of the General Laws and shall be enforceable by the
214 attorney general as well as by aggrieved tenants, homeowners or other occupants in the same
215 manner and to the same extent as other violations of said chapter 93A. All the remedies of said
216 chapter 93A shall be available for violations of any Section of this act.

217 SECTION 9. (a) The department of housing and community development shall distribute
218 short-term funds for rental and mortgage arrearages or stipends, or other housing related costs ,
219 consisting of direct appropriations, funds from federal sources, and all other appropriate public
220 and private sources, for the purpose of providing assistance to property owners of residential
221 dwelling units and tenants or occupants of residential dwelling units unable to pay housing and

222 housing-related costs for reasons related directly or indirectly to the COVID-19 emergency, in
223 accordance with this Section.

224 (b) The department shall take steps to prioritize the most vulnerable residents and those
225 hardest hit by the COVID-19 emergency in the distribution of funds, adopting to the extent
226 legally possible, the following principles:

227 (1) prioritize applicants who reside in communities with the highest incidence of COVID-
228 19 infection per capita, as determined by the Department of Public Health,

229 (2) prioritize owner-occupant landlords, elderly landlords on fixed incomes,
230 non-profit landlords, and owners of residential dwelling units who own no more than 15
231 residential dwelling units and demonstrate financial hardship due to the deprivation of rental
232 income during the COVID-19 state of emergency,

233 (3) prioritize landlords who own more than 15 residential dwelling units only where they
234 can demonstrate to the satisfaction of the department that funds will be used to preserve
235 tenancies, agree to forgive no less than twenty percent (20%) of the rental arrearage that can be
236 attributed to the COVID-19 emergency, and agree to not give a termination notice without cause
237 or for nonpayment during the pendency of the application,

238 (4) permit landlords who own more than 15 residential dwelling units to apply for and
239 receive rental assistance in bulk, provided that they meet the criteria in subsection (3) above,

240 (c) The department shall take steps to maximize flexibility and minimize administrative
241 burdens in allocation of funds to the fullest extent permitted by law, including by:

242 (1) eliminating uniform statewide caps on rental assistance awards, instead adopting a
243 flexible formula that takes into account family size, geographic location, amount of arrears,
244 determination of need for forward rent, and the priorities outlined in subsections (1)-(4) above.

245 (2) providing language accessible application processes statewide, with multiple
246 application entry points.

247 (3) allowing self-certification to minimize the amount of documentation required from
248 applicants.

249 (4) providing a system through which applicants can check on the status of their
250 application.

251 (5) where a landlord declines to participate in the rental assistance application process
252 initiated by a tenant, permitting direct payment of the approved amount directly to the tenant.

253 SECTION 10. If any provision or provisions of this chapter is or are declared
254 unconstitutional or inoperative by a final judgment, order or decree of the supreme court of the
255 United States or of the supreme judicial court of the commonwealth, the remaining parts of said
256 chapter shall not be affected thereby.