

By Mr. Fitzgerald of Boston, petition of Kevin W. Fitzgerald, other members of the House and another that provision be made for protection of tenants threatened with eviction created by the effect of conversion of rental units into condominiums and other non-rental housing. Housing and Urban Development.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Eighty-Two.

AN ACT TO PRESERVE THE RENTAL HOUSING STOCK AND TO PROVIDE PROTECTION FOR TENANTS THREATENED WITH EVICTION FROM RENTAL HOUSING ACCOMMODATIONS BY REASON OF CONVERSION FROM RENTAL HOUSING USE.

1     *Whereas*, The deferred operation of this act would tend to  
2 defeat its purpose which is, in part, to alleviate a serious public  
3 emergency existing with respect to the housing of a substantial  
4 number of citizens throughout the Commonwealth, which emer-  
5 gency is detrimental to the public peace, health, safety and conven-  
6 ience, therefore this act is hereby declared to be an emergency law,  
7 necessary for the immediate preservation of the public peace,  
8 health, 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. DECLARATION OF EMERGENCY. The gen-  
2 eral court finds and declares that a serious public emergency exists  
3 within the Commonwealth with respect to the housing of a sub-  
4 stantial number of the citizens of the Commonwealth. This rental  
5 housing emergency has been created by prolonged increases in  
6 housing costs at a rate substantially exceeding increases in personal  
7 income, by housing demolition, by insufficient new housing con-  
8 struction, by increased costs of construction and finance, and by

9 increased residential mortgage interest rates. It has also been creat-  
10 ed by the effect of conversion of rental housing into condomini-  
11 ums, cooperatives and other non-rental housing use reducing the  
12 stock of rental housing otherwise available. A substantial and  
13 increasing shortage of rental housing accommodations, especially  
14 for persons and families of low and moderate income, has been and  
15 will continue to be the result of this emergency. Unless the available  
16 stock of rental housing, and the tenants who reside therein, receive  
17 further protection from the consequences of conservation of said  
18 accommodations to condominiums and other non-rental use than  
19 the law now affords, this rental housing shortage will generate  
20 serious threats to the public health, safety and general welfare of  
21 the citizens of the Commonwealth, particularly individuals and  
22 families of low and moderate income. It is necessary that such  
23 emergency be met by the Commonwealth immediately.

1 SECTION 2. Chapter 183A of the General Laws is hereby  
2 amended by adding after Section 21, as added by Section 3 of the  
3 chapter 709 of the Acts of 1972, the following new Section: —

4 *Section 22.* Restriction on conversion of residential property to  
5 non-rental use.

6 (a) If real property in the Commonwealth has been rented for  
7 residential purposes at any time since April 1, 1981, no such  
8 property shall be converted to create a condominium, cooperative,  
9 realty trust, unincorporated association or any other form of prop-  
10 erty ownership which would remove such property from rental  
11 residential use unless the vacancy rate for rental housing in the city  
12 or town in which the property is located is in excess of eight  
13 percent.

14 "Vacancy rate" as used in this Chapter shall mean the ratio of  
15 rental vacancies to rental housing stock.

16 "Rental housing stock" as used in this chapter shall include only  
17 units in habitable condition and shall exclude the following: Sea-  
18 sonal housing occupied on a regular basis less than six months of  
19 the year, boarding houses, nursing homes, dormitories, hotels and  
20 motels.

21 The Board of Selectmen in each town and the Chief Executive  
22 Official(s) of each City shall designate the planning board, plan-

23 ning department or other appropriate body to determine the va-  
24 cancy rate. The planning board or other designated body, hereinaf-  
25 ter, "Board", shall determine the vacancy rate annually in March  
26 according to a procedure it has developed which may include the  
27 use of a survey based on a scientific random sample, provides such  
28 survey methodology is certified by the Department of Community  
29 Affairs.

30 (b) If the Board determines that the vacancy rate is in excess of  
31 eight percent, no conversions of rental residential property shall be  
32 permitted until each of the following steps has been completed:

33 (i) Within thirty (30) days following such initial determination  
34 and with appropriate notice to the public, the Board shall conduct  
35 a public hearing on that rate and, based upon the record of such  
36 hearing, shall certify a final vacancy rate.

37 (ii) The Board shall then post such rate in appropriate places in  
38 the city or town and publish a notice in a local paper of general  
39 circulation from four consecutive weeks. Such posting and notices  
40 shall include a brief description of the method used to determine  
41 the rate, a summary of the comments received at the hearing and  
42 shall state that a finding of a vacancy rate in excess of eight percent  
43 will permit conversion of rental housing to non-rental use.

44 (iii) Following the postings and notices as required in (ii), the  
45 Board shall then submit its determination to the Department of  
46 Community Affairs for certification that the vacancy rate is above  
47 eight percent (8%).

48 (iv) If the Department of Community Affairs finds that the  
49 vacancy rate is above eight percent (8%), it shall certify such  
50 finding to the city or town and shall give public notice of such  
51 certification by both publishing notice in a local newspaper of  
52 general circulation and by posting notice in the city or town hall or  
53 other appropriate place.

54 (v) Thirty (30) days after the Department has certified the vacan-  
55 cy rate and publicized such certification, as provided in paragraph  
56 (iv), above, conversions may again occur, provided, however, that  
57 within this thirty (30) day period any resident of the city or town  
58 may appeal the validity of such rate to the Superior Court of the  
59 county in which the city or town is located by filing a complaint.

1 SECTION 3. Chapter 183A of the General Laws is hereby  
2 further amended by adding the following new Section: —

3 *Section 23.* Prohibition of eviction of tenants from existing  
4 rental housing undergoing conversion to non-rental use.

5 (a) If real property subject to this Chapter has been rented for  
6 residential purposes at any time since April 1, 1981 the Developer  
7 shall take no action to evict any tenant of any dwelling unit in such  
8 property except as set out in subparagraphs (b) of this Section,  
9 following a finding and certification that conversion is permitted in  
10 accordance with Section 22 (b) of this Chapter.

11 (b) Any of the dwelling units of such real property which is  
12 occupied by a tenant who desires to remain as a tenant shall be  
13 retained by the owner or owners of the real property as rental units  
14 for the purposes of ensuring the continued occupancy for the term  
15 of the natural life of such tenant. Such tenancy shall expire only  
16 upon the death of such tenant or of the last surviving member of  
17 tenant's household living there at the time the building was con-  
18 verted.

19 A tenant may terminate the tenancy without penalty on thirty  
20 (30) days notice to the owner or owners of such unit.

21 Such tenants shall not be evicted in any case except for non-pay-  
22 ment of rent or violation of any obligation or covenant of the  
23 tenancy, other than the obligation to surrender possession upon  
24 proper notice, which the tenant failed to cure after having received  
25 written notice thereof from the landlord.

26 (c) The owner or owners of such a unit, and not the tenant, shall  
27 be responsible for payment of common expenses.

28 (d) If, during any twelve (12) month period after the effective  
29 date of this Act there is an increase, or increases in the aggregate, of  
30 rent and/or of any tenancy related charges including but not  
31 limited to parking or service charges, which is an increase greater  
32 than the tenant's proportional share of increased heat and utility  
33 costs, plus proportional tax increases, such increases shall be pre-  
34 sumed to be an attempt to regain possession of such premises by  
35 force without benefit of judicial process and a violation of M.G.L.  
36 c. 186, section 14 which may only be rebutted by clear and convinc-  
37 ing evidence that the owner's costs associated with the tenant's unit  
38 have risen, that the increase to the tenant reflects only such in-

39 creased costs and is not an attempt to regain possession of the  
40 premises.

41 This subsection concerning rent increases is not intended to  
42 override local Rent Control protections. For any unit in any city or  
43 town which would be subject to Rent Control but for this subsection,  
44 the local Rent Control provisions concerning rent increases  
45 apply and supersede this subsection.

1 SECTION 4. Chapter 183A of the General Laws is hereby  
2 further amended by adding the following new Section: —

3 *Section 24.* Rights of tenants of existing rental housing being  
4 converted to non-rental use to purchase such units.

5 If at the time of filing the deed which converts any property  
6 subject to this Chapter to non-rental use, there are tenants in any  
7 units of such property, the Developer shall give to each tenant in  
8 such property, in writing, the first option to purchase the unit  
9 which the tenant occupies. The term of the option shall be one-  
10 hundred and twenty (120) days after the date on which the Devel-  
11 oper shall have given written notice to the tenant or tenant's option  
12 hereunder. If the tenant fails to purchase the unit during that 120  
13 day period, the Developer shall not offer to dispose of any interest  
14 in that unit during the following 120 day period at a lower price or  
15 on more favorable terms than those offered to the tenant.

16 Notice of such option shall be given by certified mail to the  
17 tenants of each affected dwelling unit.

18 A tenant may rescind a purchase agreement of a unit offered for  
19 sale under this Section by delivering to the Developer at the  
20 address stated in the purchase agreement by registered or certified  
21 U.S. Mail, postage pre-paid, a written notice of rescission within  
22 five (5) days of execution of such an agreement by the tenant. Upon  
23 receipt of such a notice of rescission the Developer shall promptly  
24 refund any earnest money received without deduction therefrom or  
25 interest thereon; after which the purchase agreement shall become  
26 null and void.

1 SECTION 5. Chapter 183A of the General Laws is hereby  
2 further amended by adding the following new Section: —

3 *Section 25.* Payment of relocation expenses for tenants who  
4 choose to move and notice to landlord in such cases.

5 (a) If a tenant in a rental housing unit undergoing conversion  
6 within the scope of Section 23(a) of this chapter locates suitable  
7 housing or desires voluntarily to move, such tenant may terminate  
8 the lease without penalty on thirty (30) days notice to the owner or  
9 owners of such unit.

10 (b) The owner or owners of a rental housing unit within the scope  
11 of Section 23(b) of this chapter, shall pay, in advance unless the  
12 tenant specifies otherwise in writing, for each tenant of such unit,  
13 the actual costs of moving and other costs associated with reloca-  
14 tion up to a maximum of seven hundred and fifty dollars (\$750) per  
15 household.

1 SECTION 6. Chapter 183A of the General Laws is hereby  
2 further amended by adding the following new Section: —

3 *Section 26. Requirements for notice to tenants of existing rental*  
4 *housing.*

5 At the time of filing the deed with the Registry of Deeds which  
6 would convert the housing to non-rental use, or if required, at the  
7 time of submission of a notice of intent to a local planning board or  
8 other authority, whichever occurs earlier, the Developer shall serve  
9 upon tenants of existing rental housing units notice of the Develop-  
10 er's intent to convert such units.

11 The notice must inform each tenant of the following:

12 (i) the intended conversion of the unit;

13 (ii) the tenant's right to remain as a tenant as set out in Section  
14 23;

15 (iii) the tenant's right to a 120 day option to purchase;

16 (iv) the tenant's right to terminate the lease without penalty on  
17 thirty day notice;

18 (v) the limitations on eviction as described in Section 23(b), (c)  
19 and (d);

20 (vi) the tenant's right to relocation costs as set out in Section 25.

21 After the date on which notice has been given to existing tenants,  
22 notice of intent to convert shall be given to all subsequent prospec-  
23 tive tenants expressing an interest in renting the unit when it  
24 becomes vacant.

25 Failure to provide such comprehensive and timely notice to a  
26 tenant or tenants of existing rental units subjects the Developer to

27 liability under Chapter 93A of the General Laws as constituting an  
28 unfair or deceptive act or practice in the conduct of trade or  
29 commerce.

1 SECTION 7. Chapter 183A of the General Laws is hereby  
2 further amended by adding the following new Section: —

3 *Section 27. Regulation by cities or towns.*

4 The provisions for protection of tenants and of the available  
5 stock of rental housing contained in Sections 22 through 26 of this  
6 chapter shall constitute the minimum level of protection to be  
7 afforded, but shall not in any manner limit the ability of cities or  
8 towns to respond, in a manner consistent with this chapter, to  
9 particular local manifestations of the crisis created by conversion  
10 of existing rental housing units. Upon a finding by the appropriate  
11 local legislative body for the city or town that local conditions  
12 require such further control of the conversion process, the city or  
13 town may adopt an ordinance or bylaw by a majority vote of a  
14 special or annual town meeting, or by a majority vote of the city  
15 council, whichever is applicable, requiring that prior to any further  
16 conversions the Developer shall obtain a permit from the planning  
17 board or from such authorized body as has been designated by the  
18 local ordinance or bylaw. The ordinance or bylaw shall establish  
19 procedures and criteria for the issuance or denial of such a permit  
20 which reflect the local conditions necessitating the permit proce-  
21 dures. Such procedures, and criteria may be recommended to the  
22 town meeting or the city council by the designated authority of the  
23 city or town.

24 Any city or town which has, prior to the effective date of this Act,  
25 passed such ordinance or bylaw and appropriate procedures and  
26 criteria shall be considered within the scope of this section.

1 SECTION 8. Chapter 239 of the General Laws is hereby  
2 amended by inserting after Section 1A of the following new Sec-  
3 tion: —

4 *Section 1B.* In any summary process action, the landlord must  
5 plead and prove as an element of his prima facie case that the  
6 termination of tenancy is not for purposes of converting the unit  
7 from rental housing use.

1 SECTION 9. Section 38 of chapter 59 of the General Laws, as  
2 most recently amended by Section one of chapter 576 of the Acts of  
3 1978, is hereby further amended by adding at the end of the first  
4 paragraph the following new words: — ; in the case of a rental unit  
5 provided for in Section 23 of chapter 183A such fair cash valuation  
6 shall be based upon a capitalization of income derived from such  
7 unit for the fiscal year immediately prior to the filing of a Master  
8 Deed or other deed which converts the property to non-rental use,  
9 or, if required, submission of a notice of intent to the planning  
10 board or department, whichever occurs earlier.

1 SECTION 10. Chapter 183A of the General Laws is hereby  
2 further amended by adding the following new Section: —

3 *Section 28. Enforcement.*

4 Any person who converts property in violation of Section 2 or  
5 attempts to evict or evicts a tenant in violation of Section 3 shall be  
6 punished by a fine of not less than three thousand dollars  
7 (\$3,000.00) or by imprisonment for not less than sixty (60) days or  
8 both. Each rental unit converted in violation of Section 2 shall  
9 constitute a separate offense.

10 Any person who violates Sections 4, 5 and 6 of this Act shall be  
11 punished by a fine of not less than eight hundred dollars (\$800.00)  
12 or by imprisonment of not less than thirty (30) days or both.

13 The District, and Superior Courts and the Housing Courts of  
14 Boston and Hampden County shall have jurisdiction over an  
15 action or complaint arising from any violation of this Act and shall  
16 have jurisdiction in equity to restrain such violations.

17 The provisions of this Section shall be enforced by the Attorney  
18 General but this shall not limit any private right of action by any  
19 person aggrieved by a violation of this Act.