

HOUSE No. 3522

By Ms. Malia of Boston, a petition (accompanied by bill, House, No. 3522) of Elizabeth A. Malia and others for legislation to protect tenants of certain residential properties subject to foreclosure proceedings. The Judiciary.

The Commonwealth of Massachusetts

PRESENTED BY:

Elizabeth A. Malia

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 to protect and preserve neighborhoods.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Thomas M. Menino	Mayor
Elizabeth A. Malia	11th Suffolk
Kevin G. Honan	17th Suffolk
Gloria L. Fox	7th Suffolk
Willie Mae Allen	6th Suffolk
Denise Provost	27th Middlesex
Michael J. Moran	18th Suffolk
Barbara A. L'Italien	18th Essex
Timothy J. Toomey, Jr.	26th Middlesex
Linda Dorcena Forry	12th Suffolk
Jennifer M. Callahan	18th Worcester
Marie P. St. Fleur	5th Suffolk
Paul McMurtry	11th Norfolk
Karen E. Spilka	Second Middlesex and Norfolk
Ellen Story	3rd Hampshire

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO PROTECT AND PRESERVE NEIGHBORHOODS.

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. The General Laws, as appearing in the 2006 Official Edition, are hereby
2 Chapter 186A. Tenant protections in foreclosed properties.
- 3 Section 1. As used in this chapter, the following words shall, unless the context clearly requires
4 otherwise, have the following meanings:
- 5 'Entity', a business organization, or any other kind of organization, including without limitation, a
6 corporation, partnership, trust, limited liability corporation, limited liability partnership, joint
7 venture, sole proprietorship, or any other category of organization, and any employee, agent,
8 servant or other representative of such entity.
- 9 'Eviction', any action, without limitation, by a foreclosing owner of a housing accommodation
10 which is intended to compel a tenant to vacate or to be constructively evicted from such housing
11 accommodation.
- 12 "Foreclosing owner", an entity that holds title, in any capacity, directly or indirectly, without
13 limitation, whether in its own name, as trustee, or as beneficiary, to a housing accommodation
14 that has been foreclosed upon, and either (1) held or owned a mortgage or other security interest
15 in the housing accommodation at any point prior to the foreclosure of the housing
16 accommodation or is the subsidiary, parent, trustee, or agent of, or otherwise is related to any
17 entity which held or owned the mortgage or other security interest in the housing accommodation
18 at any time prior to the foreclosure of the housing accommodation; or (2) is an institutional
19 mortgagee that acquires or holds title to the housing accommodation within three years of the
20 filing of a foreclosure deed on the housing accommodation.
- 21 'Foreclosure', a legal proceeding to terminate a mortgagor's interest in property, instituted by the
22 mortgagee, either to gain title or to force a sale in order to satisfy the unpaid debt secured by the
23 property, including, without limitation, foreclosure by auction, by bill in equity, by entry and

24 continuation of possession for three years, and by sale under the power of sale in a mortgage as
25 described in chapter 244.

26 'Housing accommodation', any building or buildings, structure or structures, or part thereof or
27 land appurtenant thereto, or any other real or personal property used, rented or offered for rent
28 for living or dwelling purposes, together with all services connected with the use or occupancy of
29 such property.

30 'Institutional mortgagee', any entity, or any entity which is the subsidiary, parent, trustee, or
31 agent of, or otherwise related to any such entity, that holds or owns mortgages or other security
32 interest in three or more housing accommodations, or acts as a mortgage servicer of three or
33 more mortgages of housing accommodations.

34 'Just Cause', at least one of the following: (a) the tenant has failed to pay the rent in effect prior
35 to the foreclosure or failed to pay use and occupancy charges, but only if the foreclosing owner
36 notified the tenant in writing of the amount of rent or use and occupancy that was to be paid and
37 to whom it was to be paid; (b) the tenant has violated an obligation or covenant of the tenancy or
38 occupancy other than the obligation to surrender possession upon proper notice and has failed to
39 cure such violation within a reasonable time after having received written notice thereof from the
40 foreclosing owner; (c) the tenant is committing or permitting to exist a nuisance in, or is causing
41 substantial damage to, the unit, or is creating a substantial interference with the quiet enjoyment
42 of other occupants; (d) the tenant is convicted of using or permitting the unit to be used for any
43 illegal purpose; (e) the tenant who had a written lease or other rental agreement which terminated
44 on or after the effective date of this chapter, has refused, after written request or demand by the
45 foreclosing owner, to execute a written extension or renewal thereof for a further term of like
46 duration and in such terms that are not inconsistent with the provisions of this chapter; (f) the
47 tenant has refused the foreclosing owner reasonable access to the unit for the purpose of making
48 necessary repairs or improvement required by the laws of the United States, the Commonwealth
49 or any subdivision thereof, or for the purpose of inspection as permitted or required by
50 agreement or by law or for the purpose of showing the rental housing unit to a prospective
51 purchaser or mortgagee.

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

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

59 'Tenant' any person or group of persons who at the time of foreclosure is entitled to occupy a
60 housing accommodation pursuant to a written lease or tenancy at will. Any person who moves

61 into the housing accommodation owned by the foreclosing owner following the filing of the
62 foreclosure deed without the express written permission of the owner shall not be considered a
63 tenant under this statute.

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

66 Section 2. Notwithstanding any other special or general law to the contrary, a foreclosing owner
67 shall not evict a tenant except for just cause, or in the event that there is a binding purchase and
68 sale agreement for a bona fide third party to purchase said housing accommodation from a
69 foreclosing owner, a foreclosing owner may provide the tenant with a notice to quit and serve the
70 tenant with a summary process summons and complaint tenant to evict said tenant within 45
71 days of the closing date of said agreement.

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

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

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

87 SECTION 2. Chapter 244 of the General Laws, as amended by Chapter 206 of the Acts of 2007,
88 is hereby amended by inserting after section 35A the following section-
89 Section 35B. The chief justice for administration and management, in consultation with the city
90 of Boston, shall establish and promulgate rules for a pilot program within the county of Suffolk
91 to identify best practices for case management of cases involving owner-occupied residential
92 properties which are subject to foreclosure proceedings. Said program shall include at least one
93 mediation session to take place during said 90 day right to cure period as established by section
94 35A.

95 SECTION 3. Chapter 255 of the General Laws is hereby amended by inserting after section 12
96 the following section-

97 Section 13.

98 (a) For purposes of this section, the following terms shall have the following meanings unless the
99 context clearly requires otherwise:

100 "Abandoned", any structure or building that is not legally occupied for a period of 60 days or has
101 visible signs of physical distress, including boarded windows, fire damage, exposure to the
102 elements, susceptibility to unauthorized entry or where mortgage or property tax payments are
103 delinquent for 60 days.

104 "Commissioner", the municipality's building inspector or commissioner or other administrative
105 chief in a town responsible under M.G.L. c. 134 § 3 for administering and enforcing the state
106 building code.

107 "Days", consecutive calendar days.

108 "Conclusion of the foreclosure process", means the date at which a mortgage foreclosure process
109 is finalized as evidenced by the filing of a foreclosure deed with the Registry of Deeds

110 "Owner", every person, entity, association, corporation, fiduciary, service company, property
111 manager or realtor who alone or severally has legal or equitable title or any interest in any real
112 property or is a trustee or agent appointed by the courts or is a mortgagee in possession.

113 "Residential Property", any property that contains one or more dwelling units used, intended, or
114 designed to be occupied for living purposes.

115 (b) Any city or town which accepts the provisions of this section may impose an abandoned
116 property registration program as provided in this chapter. All owners must register abandoned
117 and/or foreclosed residential properties with Commissioner on forms provided by the
118 Commissioner. All registrations must state the individual owner or agent's phone number and
119 Mailing address. This registration must also certify that the property was inspected and identify
120 whether the property is abandoned. If the property is abandoned, the registration must designate
121 a local individual or local property management company responsible for the security and
122 maintenance of the property. This designation must state the individual or company's name,
123 phone number and local mailing address. This registration must be received within sixty days of
124 abandonment or within sixty days of the conclusion of the foreclosure process.

125 All property registrations are valid for one year. An annual registration fee, not to exceed one-
126 hundred dollars and no cents (\$100.00) must accompany the registration form. The fee and
127 registration are valid for the calendar year, or remaining portion of the calendar year in which the
128 registration was initially required. Subsequent registrations and fees are due January 1st of each
129 year and must certify whether the foreclosed property remains abandoned.

130 Once the property is sold or is no longer abandoned, the owner must provide proof of sale or
131 written notice of occupancy to the Commissioner.

132 (c) Properties subject to this section must be maintained in accordance with all applicable
133 Sanitary, Building Codes, and local regulations. The local owner or local property management
134 company must inspect and maintain the property on a monthly basis for the duration of the
135 abandonment.

136 The property must contain a posting with the name and 24-hour contact phone number of the
137 local individual or property management company responsible for the maintenance. This sign
138 must be clearly visible from the street.

139 Compliance with this section shall not relieve the property owner of any other obligation set
140 forth in statute, regulation, covenant conditions and restrictions and/or homeowners' association
141 rules and regulations.

142 (d) The Commissioner shall have the authority and the duty to inspect properties subject to this
143 section for compliance and to issue citations for any violations. The Commissioner shall have
144 the discretion to determine when and how such inspections are to be made, provided that their
145 policies are reasonably calculated to ensure the enforcement of this section.

146 (e) Failure to initially register with the Commissioner is punishable by a fine, not to exceed of
147 five hundred dollars and no cents (\$500.00).

148 If applicable, failure to properly identify the name of the local individual or property
149 management company is punishable by a fine, not to exceed five hundred dollars and no cents
150 (\$500.00).

151 Failure to maintain the property is punishable by a fine, not to exceed hundred dollars and no
152 cents (\$500.00) for each month the property remains out of compliance or is otherwise not
153 maintained.

154 Violations of this chapter shall be treated as a strict liability offence regardless of intent.

155 This section shall only take effect in a city or town accepting the provisions of this section by a
156 majority vote of the city council with the approval of the mayor, in the case of a city with a Plan
157 A, Plan B, or Plan F charter, by a majority vote of the city council, in the case of a city with a
158 Plan C, Plan D, or Plan E charter, by a majority vote of the annual town meeting or a special
159 meeting called for that purpose, in the called-for purpose, in the case of a municipality with a
160 town meeting form of government; or by a majority of the town council, in the case of a
161 municipality with a town form of government. The provisions of this section shall take effect on
162 the first day of the first calendar month following days after such acceptance; provided further
163 that if such day is at least 15 days after such acceptance; and provided further, that if such day is
164 less than 15 days after such acceptance, it shall take effect on the first day of the second calendar
165 month following such acceptance.

166 SECTION 4. Chapter 255 of the General Laws is hereby amended by inserting after section 12
167 the following section-

168 Section 13. Foreclosed property, registration.

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171 visible signs of physical distress, including boarded windows, fire damage, exposure to the
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175 chief in a town responsible under M.G.L. c. 134 § 3 for administering and enforcing the state
176 building code.

177 “Days”, consecutive calendar days.

178 “Conclusion of the foreclosure process”, means the date at which a mortgage foreclosure process
179 is finalized as evidenced by the filing of a foreclosure deed with the Registry of Deeds

180 “Owner”, every person, entity, association, corporation, fiduciary, service company, property
181 manager or realtor who alone or severally has legal or equitable title or any interest in any real
182 property or is a trustee or agent appointed by the courts or is a mortgagee in possession.

183 “Residential Property”, any property that contains one or more dwelling units used, intended, or
184 designed to be occupied for living purposes.

185 (b) Any city or town which accepts the provisions of this section may impose an abandoned
186 property registration program as provided in this chapter. All owners must register abandoned
187 and/or foreclosed residential properties with Commissioner on forms provided by the
188 Commissioner. All registrations must state the individual owner or agent’s phone number and
189 Mailing address. This registration must also certify that the property was inspected and identify
190 whether the property is abandoned. If the property is abandoned, the registration must designate
191 a local individual or local property management company responsible for the security and
192 maintenance of the property. This designation must state the individual or company’s name,
193 phone number and local mailing address. This registration must be received within sixty days of
194 abandonment or within sixty days of the conclusion of the foreclosure process.

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196 hundred dollars and no cents (\$100.00) must accompany the registration form. The fee and
197 registration are valid for the calendar year, or remaining portion of the calendar year in which the
198 registration was initially required. Subsequent registrations and fees are due January 1st of each
199 year and must certify whether the foreclosed property remains abandoned.

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201 written notice of occupancy to the Commissioner.

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203 Sanitary, Building Codes, and local regulations. The local owner or local property management
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205 abandonment.

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