

# **Massachusetts Law Reform Institute**

**99 Chauncy Street, Suite 500, Boston, MA 02111-1703**

**PHONE 617-357-0700 ■ FAX 617-357-0777 ■ [www.mlri.org](http://www.mlri.org)**

## **State and Federal Laws Protecting Tenants After Foreclosure**

This table describes and compares three state and federal laws protecting Massachusetts tenants living in foreclosed properties.

A few comments:

Although at times the laws may appear to contradict each other, they do not – they merely apply in different circumstances. We have sought to highlight the broadest protections available under each law. The facts of each case will determine which law or laws apply.

This is only a summary and frequently uses shorthand descriptions. It should not be relied on as a substitute for the actual statutes, the texts of which are attached.

We hope this will be useful as you assist and represent tenants in foreclosed properties. We welcome feedback and look forward to improving this document with your input.

Please contact Judith Liben with questions or comments. Judith's email is [jliben@mlri.org](mailto:jliben@mlri.org).

This document was prepared by Judith Liben, Senior Housing Attorney, and Jacob Taylor, Northeastern Fellow at MLRI.

Dated: October 4, 2010

## State and Federal Laws Protecting Tenants After Foreclosure

(Federal) Protecting Tenants at Foreclosure Act of 2009 (“PTFA”) <sup>1</sup>	(Massachusetts) G.L. c. 186, §§ 13 & 13A (2007) <sup>2</sup>	(Massachusetts) Tenant Protections in Foreclosed Properties, G.L. c. 186A (2010) <sup>3</sup>	Notes
Full Text at Attachment A	Full Text at Attachment B	Full Text at Attachment C	

### How do these laws protect tenants after foreclosure?

<p>Gives most tenants more time (90 days for tenants at will or until end of lease for tenants with pre-existing leases) before new owner after foreclosure can start summary process (eviction) proceedings in court. If, however, the unit is sold to a purchaser who plans to use the unit as a primary residence, then even a tenant with a lease can be evicted after a 90-day notice period. See generally § 702(a).</p> <p>PTFA expires Dec. 31, 2014.</p>	<p>G.L. §§ 13 &amp; 13A provide that foreclosure does not terminate tenancies at will, and that unsubsidized lease tenancies become tenancies at will after foreclosure.</p> <p>§ 13A also provides that state and federally subsidized leases and subsidy contracts are assumed by new owner after foreclosure.</p>	<p>Prohibits a foreclosing owner that is a bank, mortgage lender, or a similar financial institution from evicting without “just cause” (defined in the statute) or a binding purchase &amp; sales agreement with a third party. See § 2.</p> <p>Requires these foreclosing owners to provide tenants with written notice of contact information for the owner and those responsible for maintenance. See § 3.</p> <p>Prevents these foreclosing owners from evicting for just cause if they do not comply with the notice provisions and provides fines for attempts to evict in violation of the law. See §§ 4 &amp; 6.</p>	<p>C. 186A is generally the most protective because it prohibits eviction without “just cause.”</p> <p>However, c. 186A applies only to tenants whose property is bought at foreclosure by a bank, mortgage lender, or similar financial institution. It does not protect tenants in foreclosed properties that were purchased by a private investor or owner.</p> <p>Tenants not covered by c. 186A will still generally be protected by PTFA (through 2014) and the minimal protections of G.L. c. 186, §§ 13 &amp; 13A.</p>
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<sup>1</sup> PTFA is part of the Helping Families Save Their Homes Act of 2009. The official cite is: Protecting Tenants at Foreclosure Act of 2009, 12 U.S.C. § 5220 note; Pub. L. No. 111-22, tit. VII, § 702, 123 Stat. 1632, 1660-62 (2009), as amended by Pub. L. No. 111-203, tit. XIV, § 1484 (2010).

<sup>2</sup> G.L. § 13A was recently amended by § 5 of An Act Relative to Mortgage Foreclosures, St. 2010, c. 258 (August 7, 2010).

<sup>3</sup> As of this date, this law is not yet posted as G.L. c. 186A on the official government website, <http://www.mass.gov/legis/laws/mgl/index.htm> or on Westlaw. The session law is: An Act Relative to Mortgage Foreclosures, St. 2010, c. 258 (August 7, 2010). Section 6 covers tenants after foreclosure.

<p align="center"><b>(Federal) Protecting Tenants at Foreclosure Act of 2009 (“PTFA”)</b></p> <p align="center">Full Text at Attachment A</p>	<p align="center"><b>(Massachusetts) G.L. c. 186, §§ 13 &amp; 13A (2007)</b></p> <p align="center">Full Text at Attachment B</p>	<p align="center"><b>(Massachusetts) Tenant Protections in Foreclosed Properties, G.L. c. 186A (2010)</b></p> <p align="center">Full Text at Attachment C</p>	<p align="center"><b>Notes</b></p>
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**Which types of properties are covered?**

<p>Applies to properties where “immediate successor in interest” takes title after foreclosure. The “immediate successor” can be a lender, a servicer, a business, or an individual—anyone who takes title as a result of a foreclosure sale. See § 702(a).</p>	<p>Applies to any residential rental property that goes through foreclosure.</p>	<p>Applies to properties where title is taken by a “foreclosing owner” that was a lender on the property or is engaged in the mortgage business. See § 1 (definition of “foreclosing owner”).</p>	
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**Which tenants are protected?**

<p>Protects only “bona fide” tenants. A “bona fide” tenant is one who (1) was not the child, spouse, or parent of the original mortgagor; and (2) entered the lease or tenancy via an arms-length transaction; and (3) pays rent that is not substantially less than fair market rent for the property or is a holder of a Federal, State, or local subsidy. See § 702(b).</p>	<p>Protects tenants at will and tenants with leases. Special provisions exist for tenants with federal or state rental subsidies.</p>	<p>Notice provisions apply to all occupants. Eviction provisions protect only “bona fide” tenants. A “bona fide” tenant is a tenant who (1) was not the child, spouse, or parent of the original mortgagor; and (2) entered the lease or tenancy via an arms-length transaction.</p> <p>Note: Persons who moved into their units subsequent to the foreclosure sale are not covered by the eviction provisions unless they moved in with express written permission from the foreclosing owner. See § 1 (definitions of “tenant” and “bona fide lease or bona fide tenancy”).</p>	<p>C. 186A and then PTFA are the most protective. The minimal protections of §§ 13 &amp; 13A are useful when tenants are not “bona fide” under either of the other laws or after PTFA expires in 2014.</p>
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**Can tenants be evicted after foreclosure?**

<p>Yes.</p>	<p>Yes.</p>	<p>Yes.</p>	
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**What constitutes an “eviction” under the law?**

<p>PTFA does not modify the state law definition of eviction. The law just affects</p>	<p>§§ 13 &amp; 13A do not modify the state law definition of eviction. The laws just</p>	<p>C. 186A uses an extremely broad definition of “eviction.” For the purposes of this law, a</p>	
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<p>a tenant’s status, which in turn affects when the tenant can or cannot be evicted in accordance with state law.</p>	<p>affect a tenant’s status, which in turn affects when the tenant can or cannot be evicted in accordance with state law.</p>	<p>foreclosing owner may be prohibited from not only filing a court case, but also taking any “action, without limitation...which is intended to actually or constructively evict a tenant or otherwise compel a tenant to vacate...” See § 1 (definition of “eviction”). This could include actions such as telling a tenant that they must leave or they will be evicted, or offering “cash for keys” while suggesting that the tenant will be required to leave whether or not they accept.</p>	

**Can tenants be evicted for no reason so long as owner uses proper legal process?**

<p>Yes, if tenant at will.</p> <p>No if tenant is bona fide and the unexpired lease was signed prior to the foreclosure sale. See § 702(a)(2)(A).</p>	<p>Yes (unless subsidized).</p>	<p>No, if bona fide (unless building is under contract for sale to third party). See § 2.</p>	<p>In all cases, tenants have the right to defend their cases in court. Only a court can order an eviction.</p>
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**Under what circumstances can tenant be evicted?**

<p>PTFA does not describe acceptable reasons for eviction—Massachusetts eviction law applies. PTFA does require certain types of notice be given (see “notice” section below).</p> <p>For more on evictions, go to <a href="http://www.masslegalhelp.org/housing/legal-tactics1/chapter13-evictions.pdf">http://www.masslegalhelp.org/housing/legal-tactics1/chapter13-evictions.pdf</a>.</p>	<p>For unsubsidized tenants, post-foreclosure owner can file summary process (eviction) case in court after either a 14-day notice for nonpayment of rent or 30-day (or rental period) notice for any other reason. “Just cause” is not required under this law and standard state eviction laws apply.</p> <p>For tenants with federal and state subsidies or vouchers, the lease and subsidy contracts survive foreclosure.</p> <p>For more on evictions go to <a href="http://www.masslegalhelp.org">http://www.masslegalhelp.org</a></p>	<p>Post-foreclosure owner can only evict if there is “just cause” or if foreclosing owner enters into a binding purchase and sale agreement to sell the property to a third party. “Just cause” is one of the following:</p> <ol style="list-style-type: none"> <li>1) non-payment of rent (or “use and occupancy”);</li> <li>2) material violation of lease or tenancy if tenant doesn’t cure within 30 days of notice of such violation from foreclosing owner;</li> <li>3) committing a nuisance, causing substantial damage to the unit, or substantially interfering with quiet enjoyment of other occupants;</li> </ol>	<p>The most sweeping law limiting the acceptable reasons for eviction is c. 186A. If c. 186A applies, it will generally be the most useful law for tenants.</p> <p>In c. 186A “eviction” is defined very broadly to include any act “intended to actually or constructively evict a tenant or otherwise compel a tenant to vacate...” Thus many acts other than serving a notice to quit or a summary process complaint are prohibited</p>
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<p align="center"><b>(Federal) Protecting Tenants at Foreclosure Act of 2009 (“PTFA”)</b></p> <p align="center">Full Text at Attachment A</p>	<p align="center"><b>(Massachusetts) G.L. c. 186, §§ 13 &amp; 13A (2007)</b></p> <p align="center">Full Text at Attachment B</p>	<p align="center"><b>(Massachusetts) Tenant Protections in Foreclosed Properties, G.L. c. 186A (2010)</b></p> <p align="center">Full Text at Attachment C</p>	<p align="center"><b>Notes</b></p>
	<p><a href="http://g/housing/legal-tactics1/chapter13- evictions.pdf">g/housing/legal-tactics1/chapter13- evictions.pdf</a>.</p>	<p>4) using unit for illegal purpose;            5) refusing to renew lease or tenancy agreement after written request by foreclosing owner (only applies if tenant previously had a lease and it expired after August 9, 2010);            6) refusing owner reasonable access to unit for repairs, inspection or to show unit to prospective purchaser.            See § 1 (definition of “just cause”) and § 2.            Foreclosing owner can’t evict for just cause unless it has provided certain notices (in addition to those required by PTFA and state law). See “notice” section below.</p>	<p>by c. 186A.</p>

**After foreclosure, what kind of notice must tenant get before eviction?**

<p>Under PTFA, bona fide tenants must receive at least 90-day notices to quit and those with leases can remain for the duration of their leases (as long as the property is not sold to a person who wants to move into the unit). See § 702(a).</p> <p>If new owner sells to another party who intends to use the unit as a primary residence, bona fide tenants are not entitled to finish up the lease, but still are entitled to at least 90 days notice before a summary process case is started. See § 702(a)(2)(A).</p>	<p>Under c. 186, § 13A all unsubsidized tenants after foreclosure, including those with leases, become tenants at will. Subsidized leases survive and are binding on the new owner. This law leaves unchanged the notice required by state law for the eviction of tenants at will or tenants with leases. The notice requirements of the various subsidy programs such as Section 8 and MRVP continue to apply.</p> <p>See: <a href="http://masslegalhelp.org/reciving-proper-notice">http://masslegalhelp.org/reciving-proper-notice</a>.</p>	<p>Unless there is a binding purchase and sale agreement, the foreclosing owner can only evict for just cause.</p> <p>Foreclosing owner must provide, within 30 days of the foreclosure, a contact information notice including: (1) names, addresses, and telephone numbers of both foreclosing owner and person responsible for building management/maintenance; (2) address where rent should be sent; and (3) notification that tenant has right to a court hearing prior to eviction. The notice must be posted in a prominent place inside the building where the unit is located, mailed to the tenant, and slid under the door to the tenant’s unit.</p>	<p>Under c. 186A a strong argument can be made that an owner cannot evict if it failed to comply with the notice of ownership provisions within 30 days of the foreclosure sale or if it failed to simultaneously provide the tenant with notice of their right to a court hearing. See § 3.</p>
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		<p>A foreclosing owner may not evict for any just cause reason unless it has provided this notice. See §§ 3 &amp; 4.</p> <p>A foreclosing owner cannot evict until 30 days after posting, mailing, and delivering the contact information notice for: (i) non-payment of rent (owner must also notify tenants in writing of the amount of rent and to whom it is to be paid prior to evicting); (ii) material violation of tenancy (owner must also serve tenants with notice of the violation and can evict only if tenants fail to cure within 30 days); (iii) tenants refusal to renew or extend bona fide lease or rental agreement that expired after August 9, 2010 (owner must also request that tenants renew or extend in writing prior to evicting). See § 4(a).</p> <p>There is no requirement that a foreclosing owner wait 30 days after providing the contact information notice if the just cause alleged is: (i) nuisance or substantial damage to unit or substantial interference with quiet enjoyment of other occupants; (ii) using the unit for illegal purposes; or (iii) refusing access for repairs, inspection, or to show unit to prospective purchaser or mortgagee. See § 4(b).</p>	

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**Does new owner after foreclosure have to maintain and repair the property?**

<p>Yes. Not addressed under this law but other state laws apply.</p> <p>See <a href="http://www.masslegalhelp.org/housing/landlord-tenant-relationship-after-foreclosure">http://www.masslegalhelp.org/housing/landlord-tenant-relationship-after-foreclosure</a>.</p>	<p>Yes. Not addressed under this law but other state laws apply.</p> <p>See <a href="http://www.masslegalhelp.org/housing/landlord-tenant-relationship-after-foreclosure">http://www.masslegalhelp.org/housing/landlord-tenant-relationship-after-foreclosure</a>.</p>	<p>Yes. In addition to other state law requirements, this law specifically requires foreclosing owners to give tenants written notice about whom to contact for repairs and maintenance. See § 3.</p> <p>See also, <a href="http://www.masslegalhelp.org/housing/landlord-tenant-relationship-after-foreclosure">http://www.masslegalhelp.org/housing/landlord-tenant-relationship-after-foreclosure</a>.</p>	<p>C. 186A also prohibits “constructive evictions” without just cause. Failing to repair serious code violations may be a “constructive eviction.”</p>
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**Does new owner have to notify tenants about whom to contact for repair and maintenance?**

<p>Yes. Although PTFA doesn’t address repairs, under Massachusetts law an owner must post information about whom to contact for repair and maintenance.</p> <p>See State Sanitary Code (SSC), 105 C.M.R. § 410.481; G.L. c. 186A, § 3.</p>	<p>Yes. Although §§ 13 &amp; 13A do not directly address repairs, under Massachusetts law an owner has to post contact information about whom to contact for repair and maintenance.</p> <p>See SSC, 105 C.M.R. § 410.481; G.L. c. 186A, § 3.</p>	<p>Yes. Foreclosing owner must deliver written contact information notice within 30 days of foreclosure including: name, address and telephone number of the foreclosing owner and the building manager as well as address where rent is to be sent. This notice must be posted in prominent place, mailed to the tenant, and slid under door of each unit.</p> <p>See § 3. See also 105 C.M.R. § 410.481.</p>	
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**How much rent should tenants pay to new owner after foreclosure?**

<p>Law doesn't address how much rent should be paid to the new owner. Generally, the rent in effect prior to foreclosure is appropriate. See G.L. c. 186A, § 5.</p>	<p>Law doesn't address how much rent should be paid to the new owner. Generally, the rent in effect prior to foreclosure is appropriate. See G.L. c. 186A, § 5.</p>	<p>After receiving the contact information notice, tenant should pay the rent in effect prior to foreclosure. If foreclosing owner disagrees, it can go to court to set the rent, but the rent in effect before foreclosure is presumed to be reasonable. See § 5. Owner cannot evict for non-payment unless it has informed tenant in writing of how much rent to pay and 30 days have passed since delivery of contact information notice.</p>	
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**How do tenants know where to send the rent?**

<p>Not addressed.</p>	<p>Not addressed.</p>	<p>Tenants should be notified about where to send rent within 30 days of foreclosure. This notice must be: (1) posted in a prominent place inside the building where the unit is located, (2) mailed to the tenant, and (3) slid under the door to the tenant's unit. A foreclosing owner may not evict for just cause unless it has provided this notice. See §§ 3 &amp; 4.</p>	
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**What happens if the property is sold to a third party?**

<p>If the sale is to a purchaser who will occupy the property as a primary residence, then the lease may be terminated prior to its expiration. Otherwise lease stays in effect. In all cases the 90-day notice provision still applies. See § 702(a)(2).</p>	<p>Under §§ 13 &amp; 13A a “tenant at will” retains this status regardless of any transfer of the property, including foreclosure.</p>	<p>If the foreclosing owner enters into a binding purchase and sale agreement with a “bona fide third party” then the owner can evict without just cause. See § 2.</p> <p>Note: Bona fide third party is not defined. Presumably a parent company of a bank, a subsidiary, or another closely related entity would not qualify.</p>	
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**What are the special rules for Section 8, Massachusetts Rental Voucher Program (MRVP) and Alternative Housing Voucher Program (AHVP) tenants?**

<p>Tenants with state and federal subsidies will generally qualify as bona fide tenants. See § 702(b)(3). However, tenants who rent from family members with the permission of subsidy agency may not be covered.</p> <p>Bona fide tenants will be protected by their leases and subsidy agreements while property is held by the immediate successor in interest. See § 702(a)(2).</p> <p>A desire to have unit vacant is not “other good cause” for terminating HCVP lease during lease term. See § 703.</p>	<p>Federal and state subsidized leases survive foreclosure and the new owner is bound by both the previous lease as well as Section 8, MRVP and AHVP contracts with the subsidy provider. See § 13A (as amended).</p>	<p>Tenants with state and federal subsidies will generally qualify as bona fide tenants. However, tenants who rent from family members with the permission of subsidy agency may not be covered. See § 1 (definition of “bona fide lease or bona fide tenancy”).</p> <p>There are no special provisions for tenants with subsidies, but, like other tenants, subsidized tenants cannot be “evicted” without “just cause” or an agreement to sell the unit. Because of the broad definition of eviction this law may function to prevent a bank from refusing/terminating participation in a subsidy program. See § 1 (definition of “eviction”) &amp; § 2.</p>	<p>All three laws provide broad protection for subsidized tenants. C. 186A will likely be the most useful for subsidized tenants whose leases have expired. PTFA and § 13A will be most useful in cases where the post foreclosure owner refuses to participate in a subsidy program.</p>
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**What remedies are provided for owner’s failure to comply?**

<p>PTFA may be used as a defense to a summary process (eviction) action. See § 702(a). A violation may also be actionable under the Massachusetts Consumer Protection Act, G.L. c. 93A, and other state and federal laws, depending on facts.</p>	<p>§§ 13 &amp; 13A may be used as defenses to a summary process (eviction) action. A violation may also be actionable under c. 93A and other state and federal laws depending on facts.</p>	<p>C. 186A may be used as a defense to summary process (eviction) action and provides fine of \$5,000 for each act that constitutes a wrongful attempt to evict or cause tenant to vacate. See §§ 2, 3, 4, &amp; 6, as well as (broad) definition of “eviction” in § 1. A violation may also be actionable under c. 93A and other state and federal laws, depending on facts.</p>	<p>Remember: where c. 186A applies (foreclosing owner is a “bank” and tenant is “bona fide”) it generally provides the broadest protections and remedies.</p>
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## Attachment A

### Public Law 111-22, (May 20, 2009) (as amended 2010)<sup>4</sup> TITLE VII--PROTECTING TENANTS AT FORECLOSURE ACT (PTFA)

#### **SEC. 701. SHORT TITLE.**

This title may be cited as the 'Protecting Tenants at Foreclosure Act of 2009'.

#### **SEC. 702. EFFECT OF FORECLOSURE ON PREEXISTING TENANCY.**

(a) In General- In the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property after the date of enactment of this title, any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to--

- (1) the provision, by such successor in interest of a notice to vacate to any bona fide tenant at least 90 days before the effective date of such notice; and
- (2) the rights of any bona fide tenant--

(A) under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90 day notice under paragraph (1); or

(B) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90 day notice under subsection (1), except that nothing under this section shall affect the requirements for termination of any Federal- or State-subsidized tenancy or of any State or local law that provides longer time periods or other additional protections for tenants.

(b) Bona Fide Lease or Tenancy- For purposes of this section, a lease or tenancy shall be considered bona fide only if--

- (1) the mortgagor or the child, spouse, or parent of the mortgagor under the contract is not the tenant;
- (2) the lease or tenancy was the result of an arms-length transaction; and
- (3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a Federal, State, or local subsidy.

(c) Definition-

For purposes of this section, the term 'federally-related mortgage loan' has the same meaning as in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602).

For purposes of this section, the date of a notice of foreclosure shall be deemed to be the date on which complete title to a property is transferred to a successor entity or person as a result of an order of a court or pursuant to provisions in a mortgage, deed of trust, or security deed.

#### **SEC. 703. EFFECT OF FORECLOSURE ON SECTION 8 TENANCIES.**

Section 8(o)(7) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(7)) is amended--

- (1) by inserting before the semicolon in subparagraph (C) the following: 'and in the case of an owner who is an immediate successor in interest pursuant to foreclosure during the term of the lease vacating the property prior to sale shall not constitute other good cause, except that the owner may terminate the tenancy effective on the date of transfer of the unit to the owner if the owner—

(i) will occupy the unit as a primary residence; and

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<sup>4</sup> The PTFA was clarified and extended in section 1484 of P.L. 111-203 (July 21, 2010). The statute is codified at 12 U.S.C. § 5220 note.

(ii) has provided the tenant a notice to vacate at least 90 days before the effective date of such notice.'; and

(2) by inserting at the end of subparagraph (F) the following: `In the case of any foreclosure on any federally-related mortgage loan (as that term is defined in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602)) or on any residential real property in which a recipient of assistance under this subsection resides, the immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to the lease between the prior owner and the tenant and to the housing assistance payments contract between the prior owner and the public housing agency for the occupied unit, except that this provision and the provisions related to foreclosure in subparagraph (C) shall not shall not affect any State or local law that provides longer time periods or other additional protections for tenants.

**SEC. 704. SUNSET.**

This title, and any amendments made by this title are repealed, and the requirements under this title shall terminate, on December 31, 2014.

## **Attachment B**

### **M.G.L. Chapter 186, Section 13 - RECOVERY OF POSSESSION AFTER TERMINATION OF TENANCY AT WILL**

...A tenancy at will of property occupied for dwelling purposes shall not be terminated by operation of law by the conveyance, transfer or leasing of the premises by the owner or landlord thereof or by foreclosure.

### **M.G.L. Chapter 186, Section 13A - TENANTS DEEMED TO BE AT WILL UPON FORECLOSURE OF RESIDENTIAL REAL PROPERTY; STATUS OF TENANCY AGREEMENTS WHERE RENTAL PAYMENT SUBSIDIZED UNDER STATE OR FEDERAL LAW**

Upon a foreclosure of residential real property pursuant to chapter 244, a tenant, occupying a dwelling unit under an unexpired term for years or a lease for a definite term in effect at the time of the foreclosure by sale, shall be deemed a tenant at will. Foreclosure shall not affect the tenancy agreement of a tenant whose rental payment is subsidized under state or federal law *and the foreclosing entity shall assume the lease and rental subsidy contract with the rental subsidy administrator.*<sup>5</sup>

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<sup>5</sup> The italicized language was added by Section 5 of St. 2010, c. 258, An Act Relative to Mortgage Foreclosures (August 7, 2010). The amended version is not yet on the official Massachusetts website as of October 4, 2010.

## Attachment C

### M.G.L. Chapter 186A<sup>6</sup> TENANT PROTECTIONS IN FORECLOSED PROPERTIES.

#### Section 1.

(a) As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Bona fide lease or bona fide tenancy”, a lease or tenancy shall not be considered bona fide unless: (1) the mortgagor, or the child, spouse or parent of the mortgagor under the contract, is not the tenant; and (2) the lease or tenancy was the result of an arms-length transaction.

“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”, an action, without limitation, by a foreclosing owner of a housing accommodation which is intended to actually or constructively evict a tenant or otherwise compel a tenant to vacate such housing accommodation.

“Foreclosing owner”, an entity that holds title in any capacity, directly or indirectly, without limitation, whether in its own name, as trustee or as beneficiary, to a housing accommodation that has been foreclosed upon and either: (1) held or owned a mortgage or other security interest in the housing accommodation at any point prior to the foreclosure of the housing accommodation or is the subsidiary, parent, trustee, or agent thereof; or (2) is an institutional mortgagee that acquires or holds title to the housing accommodation within 3 years of the filing of a foreclosure deed on the housing accommodation; or (3) is the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

“Foreclosure”, a legal proceeding to terminate a mortgagor's interest in property, instituted by the mortgagee, and regulated under chapter 244.

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

“Institutional mortgagee”, an entity or an entity which is the subsidiary, parent, trustee or agent thereof or otherwise related to such entity, that holds or owns

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<sup>6</sup> As of this date, this law is not yet posted as G.L. c. 186A on the official government website, <http://www.mass.gov/legis/laws/mgl/index.htm> or on Westlaw. The session law is: An Act Relative to Mortgage Foreclosures, St. 2010, c. 258 (August 7, 2010). Section 6 of c. 258 creates G.L. c. 186A which covers tenants after foreclosure.

mortgages or other security interests in 3 or more housing accommodations or that acts as a mortgage servicer of 3 or more mortgages of housing accommodations.

“Just cause”, 1 of the following: (1) the tenant has failed to pay the rent in effect prior to the foreclosure or failed to pay use and occupancy charges, as long as the foreclosing owner notified the tenant in writing of the amount of rent or the amount of use and occupancy that was to be paid and to whom it was to be paid; (2) the tenant has materially 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 30 days after having received written notice thereof from the foreclosing owner; (3) the tenant is committing a nuisance in the unit, is permitting a nuisance to exist in the unit, is causing substantial damage to the unit or is creating a substantial interference with the quiet enjoyment of other occupants; (4) the tenant is using or permitting the unit to be used for any illegal purpose; (5) the tenant who had a written bona fide lease or other rental agreement which terminated, on or after August 10, 2010, 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 this chapter; (6) the tenant has refused the foreclosing owner reasonable access to the unit for the purpose of making necessary repairs or improvement required by the laws of the United States, the commonwealth or any subdivision thereof, or for the purpose of inspection as permitted or required by agreement or by law or for the purpose of showing the unit to a prospective purchaser or mortgagee provided. Nothing in the section shall limit the rights of a third-party owner to evict a tenant at the expiration of an existing lease.

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

“Mortgage servicer”, an entity which administers or at any point administered the mortgage; provided, however that such administration shall include, but not be limited to, calculating principal and interest, collecting payments from the mortgagor, acting as escrow agent or foreclosing in the event of a default.

“Tenant”, a person or group of persons who at the time of foreclosure is entitled to occupy a housing accommodation pursuant to a bona fide lease or tenancy or a tenancy at will. A person who moves into the housing accommodation owned by the foreclosing owner, subsequent to the foreclosure sale, without the express written permission of the foreclosing owner shall not be considered a tenant under this chapter.

“Unit” or “residential unit”, the room or group of rooms within a housing accommodation which is used or intended for use as a residence by 1 household.

## **Section 2.**

Notwithstanding any general or special law to the contrary, a foreclosing owner shall not evict a tenant except for just cause or unless a binding purchase and sale agreement has been executed for a bona fide third party to purchase the housing accommodation from a foreclosing owner.

### **Section 3.**

Within 30 days of the foreclosure, the foreclosing owner shall post 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 shall be sent. This requirement shall be satisfied if the foreclosing owner or someone acting on his behalf has: (i) posted in a prominent location in the building; (ii) mailed by first class mail to each unit; (iii) and slid under the door of each unit in the building a document stating the names, addresses, 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 shall be sent.

A foreclosing owner shall not evict a tenant for actions that constitute just cause unless the foreclosing owner has delivered to each tenant at the time of delivery of written notice pursuant to this section, a written disclosure of the tenant's right to a court hearing prior to eviction.

### **Section 4.**

(a) A foreclosing owner shall not evict a tenant for the following actions that constitute just cause until 30 days after the notice required by section 3 is posted and delivered: (i) the tenant has failed to pay the rent in effect prior to the foreclosure or failed to pay use and occupancy charges, as long as the foreclosing owner notified the tenant in writing of the amount of rent or the amount of use and occupancy that was to be paid and to whom it was to be paid; (ii) the tenant has materially 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 30 days after having received written notice thereof from the foreclosing owner; and (iii) the tenant who had a written bona fide lease or other rental agreement which terminated, on or after August 10, 2010, 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 this chapter.

(b) A foreclosing owner shall not evict a tenant for the following actions that constitute just cause until the notice required by section 3 is posted and delivered: (i) the tenant is committing a nuisance in the unit, is permitting a nuisance to exist in the unit, is causing substantial damage to the unit or is creating a substantial interference with the quiet enjoyment of other occupants; (ii) the tenant is using or permitting the unit to be used for any illegal purpose; and (iii) the tenant has refused the foreclosing owner reasonable access to the unit for the purpose of making necessary repairs or improvement required by the laws of the United States, the commonwealth or any subdivision thereof, or for the

purpose of inspection as permitted or required by agreement or by law or for the purpose of showing the unit to a prospective purchaser or mortgagee provided.

#### **Section 5.**

If a foreclosing owner disagrees with the amount of rent or use and occupancy rates that a tenant-at-will or lessee pays to the foreclosing owner, the foreclosing owner may bring a claim in district or superior court or the housing court to claim that the rent is unreasonable and set a new use and occupancy rate. A bona fide lease between the foreclosed-upon owner and the lessee or proof of rental payment to the foreclosed-upon owner shall be presumed reasonable.

#### **Section 6.**

A foreclosing owner that evicts a tenant in violation of this chapter or any ordinance or by-law adopted pursuant to this chapter, shall be punished by a fine of not less than \$5,000. Each such illegal eviction shall constitute a separate offense.

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