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Summary of Tenant Protection Provisions in New Massachusetts Foreclosure Law, “An Act to Stabilize Neighborhoods,” St. 2010, c. 258

“A Bill to Stabilize Neighborhoods,” St. 2010, c. 258, was signed into law by Governor Patrick on August 7, 2010.

The new law addresses several aspects of the worsening foreclosure crisis in Massachusetts, where there have been 7,431 foreclosures through the first six months of 2010—a 56.7% percent increase over the same time period in 2009.¹

- Requires 150-day cure period unless lender negotiates in good faith to modify the loan, in which case the cure period is 90 days. Starting January 1, 2016, only a 90-day cure period is required.
- Provides eviction protections to tenants in foreclosed properties who pay rent and comply with tenancy obligations (details below).
- Provides additional consumer protections for reverse mortgages.
- Allows exemption from property taxes for nonprofits that rehabilitate foreclosed properties.
- Criminalizes mortgage fraud.

Section 6 of the new law, “Tenant Protections in Foreclosed Properties,” adds a new Chapter 186A to the General Laws and is effective immediately upon signing (August 7, 2010).

The new Chapter 186A substantially amends Massachusetts landlord/tenant and eviction law and allows most tenants in foreclosed rental properties who pay their rent and comply with traditional tenancy obligations to remain in their homes until there is a binding purchase and sale agreement on the property. The foreclosing owner may not “evict” without “just cause” as defined in this law and must notify tenants about whom to contact for maintenance, repair, and payment of rent.

¹ **CAVEAT:** This is a **summary** only. The full text of the new law is available at <http://www.mass.gov/legis/laws/seslaw10/sl500258.htm>. The text of Section 6, “Tenant Protections in Foreclosed Property,” is attached here for convenience.

1. G.L. c. 186A, §1, provides definitions (summary of selected definitions only).

- “Tenant” is a person or persons who at the time of foreclosure (but not after foreclosure unless with permission of foreclosing owner) occupies a housing accommodation under a bona fide lease, tenancy, or tenancy at will.
- “Bona fide lease or tenancy” is a tenancy protected by c. 186A. The definition does not include a lease or tenancy where the mortgagor or immediate family is the tenant or where the tenancy was not the result of an arms-length transaction.
- “Housing accommodation” is “a building 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.” This broad definition includes rental apartments, condos, and single-family rented homes.
- “Foreclosing owner” is the entity that obtains title after foreclosure and must comply with the requirements of c. 186A (may evict only for “just cause” and must provide the notices described in this law). A foreclosing owner is an “entity” (defined broadly to include almost any business organization) that holds title to foreclosed rental property and that either: (a) held a mortgage on the property itself or through agents or related entities; (b) is an “institutional mortgagee” (an entity holding or servicing mortgages for three or more housing accommodations) that takes title to the property within three years of the filing of the foreclosure deed; or (c) is Fannie Mae or Freddie Mac. (This means that a lender who takes back rental property at foreclosure cannot quickly avoid the requirements of this law by transferring title to a related entity or an entity in the mortgage business.)
- “Eviction” is broadly defined as “an action, *without limitation*, by a foreclosing owner of a housing accommodation which is intended to actually or constructively evict or otherwise compel a tenant to vacate such housing accommodation” (emphasis added).
- “Just cause” is one of the following six grounds for which a foreclosing owner might attempt to evict: (1) failure to pay rent (or “use and occupancy charges”) in effect prior to foreclosure *if* foreclosing owner provided written notice of amount of rent and to whom it was to be paid; (2) material violation of lease or tenancy *if* tenant doesn’t cure within 30 days of notice of the violation from foreclosing owner; (3) committing a nuisance or causing substantial damage to the unit, or substantially interfering with quiet enjoyment of other occupants; (4) using unit for illegal purpose; (5) refusing to enter into lease or tenancy agreement extension after request by foreclosing owner; (6) refusing owner reasonable access to unit to make repairs, improvements, inspection or showing unit to prospective purchaser or mortgagee.
- “Unit” or “residential unit” is “the room or group of rooms within a housing accommodation which is used or intended for use as a residence by 1 household.”

2. G.L. c. 186A, § 2, requires just cause or a binding purchase and sale agreement to evict.

“Notwithstanding any general or special law to the contrary, a foreclosing owner shall not evict a tenant except for just cause [see definition above] 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.”

3. G.L. c. 186A, § 3, requires certain notices be provided by foreclosing owner.

Within *30 days* of foreclosure, a foreclosing owner must provide written notice to tenants stating name, address, telephone of foreclosing owner, building manager or others responsible for management, and also state where rent should be sent and that tenant has the right to a court hearing prior to eviction. The notice must be posted in a prominent place and mailed and slid under the door of each unit. A foreclosing owner shall not evict for just cause unless it has provided this notice.

4. G.L. c. 186A, §§ 4(a) and (b), require certain notices before eviction.

A foreclosing owner cannot evict until *30 days* after posting and delivery of notice required by Section 3 for: (i) failure to pay rent in effect prior to foreclosure (so long as foreclosing owner notified tenant in writing of the amount of rent and to whom it was to be paid); (ii) material violation of tenancy if tenant does not cure such violation within 30 days after receiving notice of the violation; (iii) tenant refuses to extend bona fide lease or rental agreement.

There is no requirement that a foreclosing owner wait 30 days after providing the required notices if the just cause alleged is: (i) nuisance or substantial damage in unit or substantial interference with quiet enjoyment of other occupants; (ii) using the unit for illegal purposes; (iii) refusing access for repairs, inspection, or to show unit to prospective purchaser or mortgagee.

5. G.L. c. 186A, § 5, allows foreclosing owner to dispute rent.

If the foreclosing owner disagrees with amount of rent (or use and occupancy) paid by the tenant, it may bring a claim in district, superior, or housing court that the rent is unreasonable and may request new “use and occupancy” rate. A “bona fide” lease or proof of rent paid to the foreclosed owner is presumed to be reasonable.

6. G.L. c. 186A, § 6, provides sanctions for violations of the law.

A foreclosing owner shall be fined not less than \$5,000 for each illegal eviction done in violation of this law or a local ordinance adopted pursuant to this law. District, superior, and housing courts have jurisdiction over violations, including jurisdiction to restrain violations of the law. Violation of this law shall be a defense in an eviction proceeding.

Chapter 258 of the Acts of 2010

AN ACT RELATIVE TO MORTGAGE FORECLOSURES.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to protect forthwith the citizens and neighborhoods of the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

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SECTION 6. The General Laws are hereby amended by inserting after chapter 186 the following chapter:-

CHAPTER 186A. 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 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.