

SECTION 120H. Section 87DDD1/2 of said chapter 112 is hereby amended by striking out, in line 3, as so appearing, the word “salesman” and inserting in place thereof the following word:- salesperson.

And further amend the bill by inserting after section 133 the following section:-

SECTION 133A. Chapter 184 of the General Laws is hereby amended by adding the following section:-

Section 36. (a) For the purposes of this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Affiliate”, an entity owned or controlled by an owner or under common control with an owner.

“Auction” or “public auction”, the sale of a housing accommodation under power of sale in a mortgage loan by public bidding.

“Borrower”, a mortgagor of a mortgage loan.

“Deed in lieu,” a deed for the collateral property or the housing accommodation that the mortgagee accepts from the borrower in exchange for the release of the borrower’s obligation under the mortgage loan.

“Designee”, a nonprofit organization, established pursuant to chapter 180, which is selected by members of a tenant association.

“Elderly tenant household”, a tenant household in which 1 or more of the residents are age 65 or older.

“Executive office”, the executive office of housing and livable communities established in chapter 23B.

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

“Housing accommodation”, a building, structure or part thereof, rented or offered for rent for living or dwelling purposes, including, but not limited to, a house, apartment, condominium unit, cooperative unit and other multi-family residential dwelling; provided, that a housing accommodation shall not include a group residence, homeless shelter, lodging house, orphanage, temporary dwelling structure or transitional housing; and provided further, that a housing accommodation shall not include a borrower-occupied housing accommodation if the borrower is domiciled in the housing accommodation at the initiation of the short-sale, deed in lieu or foreclosure process.

“Member”, a natural person who is a member of a tenant association.

“Minimum tenant participation percentage”, the minimum percentage of tenants who shall participate as members of a tenant association as defined by the city or town in a municipal ordinance or by-law; provided, that the minimum tenant participation percentage shall be not less than 51 per cent of the tenant-occupied housing units. The percentage shall be calculated based on the number of tenant-occupied housing units in a property. If more than 1 person is a lessee in a unit, all of the tenants who are lessees for that unit shall participate as members of the tenant association for the unit to be counted toward the participating percentage of units.

“Mortgagee”, an entity to whom property is mortgaged, 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 loan”, a loan secured wholly or partially by a mortgage on a housing accommodation.

“Owner”, a person, firm, partnership, corporation, trust, organization, limited liability company or other entity, or its successors or assigns that holds title to real property.

“Purchase contract”, a binding written agreement whereby an owner agrees to sell property, including, but not limited to, a purchase and sale agreement, contract of sale, purchase option or other similar instrument.

“Purchaser”, a party who has entered into a purchase contract with an owner and who will, upon performance of the purchase contract, become the new owner of the property.

“Sale”, an act by which an owner conveys, transfers or disposes of property by deed or otherwise, whether through a single transaction or a series of transactions; provided, that a disposition of housing by an owner to an affiliate of such owner shall not constitute a sale.

“Short-sale”, a sale approved by the mortgagee to a bona fide purchaser at a price that is less than the borrower’s existing debt on the housing accommodation.

“Successor”, an entity through which a tenant association may take title to the property, which may be a corporation with the sole stockholder being the tenant association, a housing cooperative organized under chapter 157B, a limited liability company in which the tenant association is the member, a limited partnership in which the tenant association is a general partner or when permitted by the municipality’s ordinance, a joint venture between any of such entities and another party with: (i) the requisite experience in acquiring, developing and owning residential property; and (ii) the financial capacity to guaranty financing of the purchase transaction.

“Tenant”, a natural person who has: (i) entered into an express written lease or rental agreement with the owner for exclusive possession of the premises for at least 6 months; or (ii) paid rent to the owner and the owner has accepted said rent for at least 6 months.

“Tenant association”, an organization with a membership limited to present tenants of a property that is: (i) registered with the municipality that has adopted an ordinance or by-law consistent with this section; or (ii) a non-profit organization incorporated under chapter 180.

“Third-party offer”, an offer to purchase the mortgaged property for valuable consideration by an arm’s length purchaser; provided, that a third-party offer shall not include an offer by the borrower or tenants.

“Third-party purchaser”, a purchaser who is not a tenant association, a designee or an affiliate.

(b)(1) A city or town may accept this section, in the manner provided in section 4 of chapter 4, through ordinance or by-law, to establish a tenant right to purchase property. This section shall take effect no later than 180 days after such acceptance. A city or town may at any time revoke its acceptance of this section by vote of the legislative body, subject to the charter of the municipality. The revocation shall not affect agreements relative to tenants’ right to purchase that have already been asserted prior to the revocation.

(2) A municipal ordinance or by-law may contain provisions that establish:

(i) tenancy protections for non-elderly tenant households that do not participate in the tenant association;

(ii) exclusion of applicability to properties with fewer than a designated number of units; provided, that different exclusion numbers may be adopted for owner-occupied properties and properties with no owner occupancy;

(iii) criteria for designees;

(iv) a tenant association’s ability to exercise rights pursuant to this section through a joint venture or partnership with another entity with experience in developing, owning or operating residential real estate or an entity that has the financial capacity to guaranty the financing of the purchase transaction; and

(v) exclusion of classes of properties in addition to the classes of properties enumerated in subsection (k).

(c) In any city or town that votes to adopt this section, an owner of a residential building shall: (i) notify the municipality and each tenant household, in writing by hand delivery and United States mail, of the owner’s intention to sell the property, with copy of the municipality’s prepared summary of the ordinance adopted hereunder; and (ii) provide a tenant association with the minimum tenant participation percentage an opportunity to make an offer to purchase the property prior to entering into an agreement to sell such property pursuant to the time periods in this section; provided, that no owner shall be under any obligation to enter into an agreement to sell such property to the tenants.

(d) A tenant association with the minimum tenant participation percentage may select a successor or a designee to act on its behalf as purchaser of the property and shall give the owner and the municipality notice of its selection.

(e)(1) A tenant association with the minimum tenant participation percentage, or its successor or designee, may, within 15 days after receipt of the notice of the owner’s intention to sell, submit an offer to the

owner to purchase the property.

(2) A tenant association, successor or designee's failure to submit a timely offer under paragraph (1) shall constitute an irrevocable waiver of the tenants' rights under this section. If the owner and the tenant association, successor or designee, have not entered into an agreement within 15 days after receipt of the notice of the owner's intent to sell, the owner may enter into an agreement to sell the property to a third party, subject to subsections (f) to (i), inclusive.

(f) Upon execution of any purchase contract with a third party, the owner shall, within 7 days, submit a copy of the contract along with a proposed purchase contract for execution by the tenant association, successor or designee. If the tenant association, successor or designee elect to purchase the property, the tenant association, successor or designee shall within 30 days after the receipt of the third-party purchase contract and the proposed purchase contract, execute the proposed purchase contract or such other agreement as is acceptable to both parties. The time periods set forth in this subsection may be extended by agreement between the owner and the tenant association, successor or designee. Except as otherwise specified in subsection (h), the terms and conditions of the proposed purchase contract offered to the tenant association, successor or designee shall be the same as those of the executed third-party purchase contract.

(g) After receipt of the third-party purchase contract pursuant to subsection (f), the tenant association, successor or designee may, within the 15-day time period prescribed in said subsection (f), make a counteroffer by executing and submitting to the owner an amended proposed purchase contract. Failure by the tenant association, successor or designee to execute the purchase contract or submit a counteroffer within the 15-day period in subsection (f) shall constitute a waiver of the tenants' right to purchase. If the tenant association, successor or designee submits a counteroffer, the owner shall have 15 days from the date it receives the amended proposed purchase contract to execute the amended proposed purchase contract or reject, in writing, the counteroffer; provided, however, that if the owner rejects a counteroffer, it shall not subsequently enter into any purchase contract with a third party on terms that are the same as, or materially more favorable to the proposed third party purchaser, than the economic terms and conditions in the counteroffer proposed by the tenant association, successor or designee, unless the owner first provides a copy of such new third-party purchase contract and a new proposed purchase contract for execution by the tenant association, successor or designee, which shall contain the same terms and conditions as the newly executed third party purchase contract, except as otherwise specified by subsection (h), and the tenant association, successor or designee shall have 30 days from the date they receive the third-party purchase contract and the proposed purchase contract to execute the proposed purchase contract or such other agreement as is acceptable to the owner and the tenant association, successor or designee.

(h) Any purchase contract offered to, or proposed by, the tenant association, successor or designee shall include at a minimum the following terms:

(i) the earnest money deposit shall not exceed the lesser of: (A) the deposit in the third-party purchase contract; (B) 5 per cent of the sale price; or (C) \$250,000; provided, however, that the owner and the tenant association, successor or designee may agree to modify the terms of the earnest money deposit; and provided, further, that the earnest money deposit shall be held under commercially-reasonable terms by an escrow agent selected jointly by the owner and the tenant association, successor or designee;

(ii) the earnest money deposit shall be refundable for not less than 90 days from the date of execution of the purchase contract or such greater period as provided for in the third-party purchase contract; provided, however, that if the owner unreasonably delays the buyer's ability to conduct due diligence during the 90-day period, the earnest money deposit shall continue to be refundable for a period greater than 90 days. After the

expiration of the specified time period, the earnest money deposit shall be forfeited and the right to purchase of the tenant association, successor or designee shall be irrevocably waived.

(i) The tenant association, successor or designee shall have 160 days from execution of the purchase and sale agreement to perform all due diligence, secure financing and close on the purchase of the property. Failure to exercise the purchase option within 160 days shall constitute a waiver of the purchase option by the tenant association, successor or designee.

(j) Any notice required by this section shall be deemed to have been provided when delivered in person or mailed by certified or registered mail, return receipt requested, to the party to whom notice is required. Notice shall be deemed to have been provided when either: (i) the notice is delivered in hand to the tenant or an adult member of the tenant's household; or (ii) the notice is sent by first class mail and a copy is left in, or under the door of, the tenant's dwelling unit. A notice to the affected municipality shall be sent to the chief executive officer of the municipality.

(k) This section shall not apply to:

(i) property that is the subject of a government taking by eminent domain or a negotiated purchase in lieu of eminent domain;

(ii) a proposed sale to a purchaser pursuant to terms and conditions that preserve affordability, as determined by the executive office;

(iii) any sale of publicly-assisted housing, as defined in section 1 of chapter 40T;

(iv) rental units in any hospital, skilled nursing facility or health facility;

(v) rental units in a nonprofit facility that has the primary purpose of providing short-term treatment, assistance or therapy for alcohol, drug or other substance abuse; provided, that such housing is incident to the recovery program; and provided further, that the client has been informed in writing of the temporary or transitional nature of the housing;

(vi) rental units in a nonprofit facility: (A) that provides a structured living environment that has the primary purpose of helping homeless persons obtain the skills necessary for independent living in permanent housing; (B) where occupancy is restricted to a limited and specific period of time of not more than 24 months; and (C) where the client has been informed in writing of the temporary or transitional nature of the housing at its inception;

(vii) public housing units managed by the local housing authority;

(viii) federal public housing units that are subsidized and regulated under federal law, to the extent such applicable federal law expressly preempts this section;

(ix) any residential property where the owner is a natural person who owns not more than 6 residential rental units in the municipality and who resides in the commonwealth;

(x) any unit that is held in trust on behalf of a disabled individual who permanently occupies the unit, or a unit that is permanently occupied by a disabled parent, sibling, child or grandparent of the owner of that unit; or

(xi) any rental unit that is owned or managed by a college or university for the express purpose of housing students.

(l) The tenant association, successor or designee shall ensure that its purchase of the property will not result in the displacement of any elderly tenant households that choose not to participate in the purchase of the property.

(m)(1) An owner shall give notice to each tenant household of a housing accommodation of the intention to sell the housing accommodation by way of short-sale to avoid foreclosure or its intention of accepting a deed in lieu. Such notice shall be mailed by regular and certified mail, with a simultaneous copy to the attorney general, the secretary of the executive office and to the municipality adopting this section, within 2 business days of the owner's submission of a request or application to the mortgagee for permission to sell the housing accommodation by way of short-sale or to accept a deed in lieu. This notice shall also include a statement of the rights provided by this section.

(2) No mortgagee shall accept any third party offers or deem the owner's application for short-sale submitted for review unless and until the mortgagee receives documentation in a form approved by the attorney general demonstrating that the tenants of the housing accommodation have been informed of the owner's intent to seek a short-sale or deed in lieu and the tenants have expressed their interest in exercising a right of first refusal within 60 days, assigning that right of first refusal, or the tenants have waived those rights. If the tenants have not affirmatively expressed their interest in exercising a right of first refusal or in assigning that right within 60 days or have not affirmatively waived that right within 60 days, the tenants' rights shall be deemed waived.

(3) Before a housing accommodation may be transferred by short-sale or deed in lieu, the owner shall notify each tenant household, with a simultaneous copy to the attorney general, the secretary of the executive office and the municipality adopting this section, by regular and certified mail, of any bona fide offer that the mortgagee intends to accept. Before any short-sale or transfer by deed in lieu, the owner shall give each tenant household such a notice of the offer only if households constituting at least 51 per cent of the households occupying the housing accommodation notify the owner, in writing, that they collectively desire to receive information relating to the proposed sale. Tenants may indicate this desire within the same notice described in paragraph (2). Any notice of the offer required to be given under this subsection shall include the price, calculated as a single lump sum amount, of any promissory notes offered in lieu of cash payment.

(4) A group of tenants representing at least 51 per cent of the households occupying the housing accommodation that are entitled to notice under paragraph (3) shall have the collective right to purchase, in the case of a third party offer that the mortgagee intends to accept, provided that the group of tenants shall:

(A) submit to the owner reasonable evidence that the tenants of at least 51 per cent of the occupied units in the housing accommodation have approved the purchase of the housing accommodation;

(B) submit to the owner a proposed purchase and sale agreement on substantially equivalent terms and conditions within 60 days of receipt of notice of the offer made under paragraph (3);

(C) obtain a binding commitment for any necessary financing or guarantees within an additional 90 days after execution of the purchase and sale agreement; and

(D) close on such purchase within an additional 90 days after the end of the 90-day period in clause (C).

(5) No owner shall unreasonably refuse to enter into or unreasonably delay the execution or closing on a purchase and sale with tenants who have made a bona fide offer to meet the price and substantially equivalent terms and conditions of an offer for which notice is required to be given pursuant to paragraph (3). Failure of the tenants to submit such a purchase and sale agreement within the first 60-day period, to obtain a binding commitment for financing within the additional 90-day period or to close on the purchase within the second 90-day period, shall serve to terminate the rights of such tenants to purchase. The time periods provided in this paragraph may be extended by agreement. Nothing herein shall be construed to require an owner to provide financing to such tenants. A group or association of tenants that has the right to purchase pursuant to this subsection, at its election, may assign its purchase right pursuant to this subsection to the city or town in which the housing accommodation is located, or the housing authority of the city or town in which the housing accommodation is located, or an agency of the commonwealth, nonprofit, community development corporation, affordable housing developer, or land trust, for the purpose of permanently continuing the use of the housing accommodation as affordable rental housing.

(6) The right of first refusal created in this subsection shall inure to the tenants for the time periods provided in paragraph (4), beginning on the date of notice to the tenants under paragraph (1). The effective period for such right of first refusal shall begin anew for each different offer to purchase that the mortgagee intends to accept. The right of first refusal shall not apply with respect to any offer received by the owner for which a notice is not required pursuant to paragraph (3).

(7) In any instance where the tenants are not the successful purchaser of the housing accommodation, the mortgagee shall provide evidence of compliance with this section by filing an affidavit of compliance with the attorney general, the secretary of the executive office and the registry of deeds for the county and district where the property is located within 7 days of the sale.

(8) An owner shall not evict a tenant to avoid application of this subsection.

(9) An aggrieved tenant may seek damages under chapter 93A and may file a complaint with the attorney general. A tenant may seek damages, including compensatory relief in the form of a percentage of the sales price, injunctive relief in the form of specific performance to compel transfer of the property or both compensatory and injunctive relief. Nothing in this subsection shall be construed to limit or constrain the rights tenants currently have under applicable laws, including, but not limited to, chapters 186 and 186A. At all times, all parties shall negotiate in good faith.

(10) The attorney general shall enforce this subsection and shall promulgate rules and regulations necessary for enforcement. The attorney general may seek injunctive, declaratory and compensatory relief on behalf of tenants and the commonwealth in a court of competent jurisdiction. The attorney general shall post a

sample intent to sell notice, sample proof of notice to tenants, sample notice of offer and other necessary documents.

(n)(1) When a mortgagee seeks judicial determination of the right to foreclose, the mortgagee shall provide a copy of the complaint by regular and certified mail to the tenants of the housing accommodation and to the municipality adopting this section. The mortgagee shall also provide tenants and the municipality, by regular and certified mail, with a copy of any order of notice issued by the land court, if applicable, within 5 days of issuance.

(2) The mortgagee shall provide each tenant household and the municipality adopting this section, by regular and certified mail, a copy of all notices of sale published pursuant to section 14 of chapter 244. A copy shall be provided simultaneously with the successive publication notices.

(3) Not later than 5 business days before the auction of a housing accommodation, the tenants shall inform the mortgagee, in writing, if a group of tenants representing at least 51 per cent of the households occupying the housing accommodation or an entity to which they have assigned their right of first refusal intend to exercise their right of first refusal at auction and desire to receive information relating to the proposed auction.

(4)(A) A group of tenants representing at least 51 per cent of the households occupying the housing accommodation or an entity to which they have assigned their right of first refusal may exercise their collective right to purchase the housing accommodation, in the event of a third party offer at auction that the mortgagee receives; provided, that the group of tenants shall:

(i) submit to the mortgagee reasonable evidence that the tenants of at least 51 per cent of the occupied homes in the housing accommodation have approved the purchase of the housing accommodation;

(ii) submit to the mortgagee a proposed purchase and sale agreement on substantially equivalent terms and conditions to that received by the mortgagee in the third-party offer within 60 days of receipt of notice of the bid made under paragraph (3);

(iii) obtain a binding commitment for any necessary financing or guarantees within an additional 90 days after execution of the purchase and sale agreement; and

(iv) close on such purchase within an additional 90 days after the end of the 90-day period under clause (iii).

(B) No mortgagee shall unreasonably refuse to enter into, or unreasonably delay, the execution or closing on a purchase and sale with tenants who have made a bona fide offer to meet the price and substantially equivalent terms and conditions of a bid received at auction. Failure of the tenants to submit such a purchase and sale agreement within the first 60-day period, to obtain a binding commitment for financing within the additional 90-day period or to close on the purchase within the second 90-day period, shall serve to terminate the rights of such tenants to purchase. The time periods provided in this paragraph may be extended by agreement.



(C) Nothing herein shall be construed to require a mortgagee to provide financing to such tenants. A group or association of tenants that has the right to purchase hereunder, at its election, may assign its purchase right hereunder to the city, town, housing authority, or agency of the commonwealth, nonprofit, community development corporation, affordable housing developer, or land trust for the purpose of permanently continuing the use of the housing accommodation as affordable rental housing.

(D) If there are no third-party bids at auction for the housing accommodation, the tenants shall have a right of first refusal whenever the mortgagee seeks to sell the housing accommodation. The tenants shall be notified of any offers the mortgagee intends to accept and shall be given an opportunity to meet the price and substantially the terms of a third-party offer based on the same timeline described in paragraph (4).

(5) The right of first refusal created herein shall inure to the tenants for the time periods herein before provided, beginning on the date of notice to the tenants under paragraph (1).

(6) In any instance where the tenants are not the successful purchaser of the housing accommodation, the seller of such unit shall provide evidence of compliance with this section by filing an affidavit of compliance with the attorney general, the secretary of the executive office and the registry of deeds for the county and district where the property is located within 7 days of the sale.

(7) An owner shall not evict a tenant to avoid application of this subsection.

(8) An aggrieved tenant may seek damages under chapter 93A and may file a complaint with the attorney general. A tenant may seek damages including a percentage of the sales price or injunctive relief in the form of specific performance to compel transfer of property, or both compensatory and injunctive relief. Nothing in this subsection shall be construed to limit or constrain in any way the rights tenants currently have under applicable laws, including, but not limited to, chapters 186 and 186A. At all times, all parties shall negotiate in good faith.

(9) The attorney general shall enforce this subsection and shall promulgate rules and regulations necessary for enforcement. The attorney general may seek injunctive, declaratory, and compensatory relief on behalf of tenants and the commonwealth in a court of competent jurisdiction. The attorney general shall post a sample intent to sell notice, sample proof of notice to tenants, sample notice of offer, and other necessary documents.

And further amend the bill by inserting after section 141 the following 2 sections:-

SECTION 141A. Subsection (a) of section 280 of said chapter 238 is hereby amended by striking out the definition of “Tolling period” and inserting in place thereof the following definition:-

“Tolling period”, the period from January 1, 2023 to January 1, 2027, inclusive.

SECTION 141B. Paragraph (1) of subsection (b) of said section 280 of said chapter 238 is hereby amended by striking out the words “2 years” and inserting in place thereof the following words:- 4 years.