

HOUSE No. 1201

The Commonwealth of Massachusetts

PRESENTED BY:

David L. Flynn

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 preserving publicly assisted affordable housing.

PETITION OF:

NAME:

David L. Flynn

DISTRICT/ADDRESS:

8th Plymouth

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT PRESERVING PUBLICLY ASSISTED AFFORDABLE HOUSING.

Whereas, The deferred operation for this act would tend to defeat its purpose, which is forthwith to make , 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:

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 40S the following
2 chapter:

3 CHAPTER 40T

4 PUBLICLY ASSISTED AFFORDABLE HOUSING.

5 Section 1. As used in this chapter, the following words shall have the following meanings unless the
6 context clearly requires otherwise:

7 “Affected municipality”, a city or town in which publicly-assisted housing or a publicly-assisted housing
8 development, is located.

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

10 “Affordability restriction”, limit on rents that an owner may charge for occupancy of a rental unit in a
11 publicly assisted housing development or a limit on tenant income for persons or families seeking to
12 qualify for admission to such housing.

13 ”Affordable Units”, units in publicly assisted housing reserved for occupancy by low-income households.

14 “CEDAC”, the Community Economic Development Assistance Corporation, established in chapter 40H.

15 “Chief executive officer”, the mayor in a city and the board of selectman in a town, unless otherwise is
16 designated by a municipal charter.

17 “Department”, the department of housing and community development, or any successor agency of the
18 department.

19 “Designee”, a municipality, local or regional housing authority, nonprofit or for-profit corporation or
20 other entity qualified to do business in the Commonwealth and , which is selected by the department to
21 operate publicly-assisted housing that is decent, safe and sanitary affordable housing, under subsection (b)
22 of section 3.

23 “Enhanced section 8 vouchers”, vouchers provided under 42 U.S.C. 1437f(t), or other substantially
24 equivalent assistance.

25 “Extremely low income”, a household income of not more than 30 per cent of the area median income,
26 adjusted for household size, as periodically determined by the United States Department of Housing and
27 Urban Development.

28 “Government program”, a program which provides government financial assistance under a program set
29 forth in the definition of publicly assisted housing.

30 “Low income”, a household income of not more than 80 per cent of the area median income, adjusted for
31 household size, as periodically determined by the United States Department of Housing and Urban
32 Development.

33 “Owner”, a person, firm, partnership, corporation, trust, organization, limited liability company or other
34 entity, or its successors or assigns, that holds title to a publicly-assisted housing development.

35 “Prepayment”, (i) the payment in full or the refinancing of a governmental insured or government held
36 mortgage loan indebtedness prior to its original maturity date; (ii) or the voluntary cancellation of
37 mortgage insurance on a publicly assisted housing development; (iii) or the payment in full on a
38 government contract, any of which would have the effect of removing either: (a) the affordability
39 restrictions applicable to the publicly-assisted housing development; or (b) a requirement to renew any
40 such affordability restrictions.

41 “Preserve affordability”, with respect to a publicly-assisted housing development, to undertake reasonable
42 and diligent actions to retain, renew or secure subsidies affecting a publicly-assisted housing development
43 in order to maintain approximately the same number of affordable units, all to the extent of available

44 subsidies and taking into account the need to ensure that the development provides quality housing,
45 including mixed income housing.

46 “Protected low-income tenant,” a low-income tenant residing in a publicly assisted housing development
47 on the date of termination of the government program and whose rent was restricted by that government
48 program.

49 “Publicly-assisted housing”, a housing unit or development that receives government assistance under any
50 of the following programs: (i) section 8 of the United States Housing Act of 1937, 42 U.S.C. section
51 1437f as it applies to new construction, substantial rehabilitation, moderate rehabilitation, property
52 disposition and loan management set-aside programs or any other program providing project-based rental
53 assistance; (ii) section 42 of the Internal Revenue Code, and 26 U.S.C. section 42, the federal Low-
54 Income Housing Tax Credit Program; (iii) section 101 of the Housing and Urban Development Act of
55 1965, and, 12 U.S.C. section 1701s as it applies to programs for rent supplement assistance thereunder;
56 (iv) section 202 of the Housing Act of 1959, and 12 U.S.C. section 1701q; (v) section 221(d)(3) of the
57 National Housing Act, 12 U.S.C. section 1715 (d)(3) or (5), the below market interest rate program; (vi)
58 section 221(d)(4) of the National Housing Act, 12 U.S.C. section 1715l (d)(4) to the extent the project’s
59 rents are restricted pursuant to a federal government agreement; (vii) section 236 of the National Housing
60 Act, and 12 U.S.C. section 1715z-1; (viii) section 515 of the Housing Act of 1949, and, 42 U.S.C. section
61 1485; (ix) section 521 of the Housing Act of 1949, 42 U.S.C. section 1490a; (x) the Urban Development
62 Action Grant, 42 U.S.C. section 5318 to the extent that the affordability of dwelling units subject to such
63 program are restricted pursuant to a government agreement; (xi) the Housing Development Action Grant,
64 42 U.S.C. section 1437, to the extent the project’s rents are restricted pursuant to a government
65 agreement; (xii) section 13A of chapter 708 of the acts of 1966; (xiii) the voucher program provided for
66 annually, in item 7004-9024 of section 2 of the general appropriation act as that program applies to
67 project-based rental assistance; (xiv) the state low income housing tax credit program established in
68 section 6I of chapter 62; (xv) the State Housing Assistance for Rental Production, established in chapter
69 574 of the acts of 1983;

70 “Purchase contract”, a binding written agreement whereby an owner agrees to sell a publicly assisted
71 housing development including, without limitation, a purchase and sale agreement, contract of sale,
72 purchase option or other similar instrument.

73 “Regulatory agreement”, an affordable housing restriction that establishes an owner's obligations created
74 pursuant to the efforts of the department or its designee to preserve affordability and which is consistent
75 with section 31 of chapter 184.

76 “Sale”, the act(s) by which an owner conveys, transfers or disposes of property, by deed or otherwise,
77 whether through a single transaction or a series of transactions during any twelve month period. For

78 purposes of this Chapter, a disposition of publicly assisted housing by an owner to an affiliate of owner
79 shall not constitute a sale requiring compliance with this Chapter.

80 “Tenant”, person legally entitled to possession or occupancy of a rental unit within publicly assisted
81 housing including a subtenant, lessee and sublessee

82 “Tenant organization”, an organization established by the tenants of a publicly-assisted housing
83 development for the purpose of addressing issues related to their living environment and which meets
84 regularly, operates democratically, is representative of all residents in the development, is completely
85 independent of owners, management and their representatives and which has filed a notice of its existence
86 with CEDAC, provided however that, no owner or other third party shall be required to ascertain the
87 organization’s compliance with this definition.

88 “Termination”, the cessation, discharge or removal of an affordability restriction affecting a publicly-
89 assisted housing development in the absence of a simultaneous replacement of that restriction with an
90 equivalent affordability restriction. By way of example and not in limitation, the following constitute
91 terminations: (i) nonrenewal or termination, in whole or in part, of a government program contract; (ii)
92 expiration, in whole or in part, of an affordability restriction under a government program or the
93 requirement to renew the restriction; (iii) payment in full of a government program mortgage loan; or (iv)
94 prepayment of a government program mortgage loan.

95 “Time for performance” the date for delivery of the deed or other document evidencing a sale pursuant to
96 a purchase contract.

97 “Very low income”, having a household income of not more than 60 percent of the area median income,
98 adjusted for household size, as periodically determined by the United States Department of Housing and
99 Urban Development

100 Section 2.

101 (a) Except with respect to property subject to an affordability restriction which has less than 2 years
102 remaining and for which subsection (e) shall, apply, the owner shall provide written notice to: (i) all
103 tenants and the tenant organization, if any; (ii) the chief executive officer of the affected municipality;
104 (iii) CEDAC; and (iv) the department, not less than 2 years before the termination of the affordability
105 restriction affecting publicly-assisted housing. Nothing herein shall prohibit the owner from taking
106 actions to terminate an affordability restriction during any notice period provided herein; provided,
107 however, that the owner shall comply with all of the notice terms and restrictions pursuant to subsections
108 (b) and (c). The informational notice shall provide: (1) the address of the publicly-assisted housing; (2)
109 the name and address of the owner; (3) notification that an affordability restriction may terminate; (4) the

110 date on which each affordability restriction may terminate. Where more than 1 termination may occur,
111 the owner may send 1 written notice so long as the terminations are scheduled to occur within 1 year of
112 each other, the notice is given at least 24 months before to the earliest termination and the notice
113 otherwise complies with this subsection. Thereafter, the owner shall again be subject to the notice
114 provision of subsection (c) of section 2.

115 (b) Except with respect to property subject to an affordability restriction which has less than 1 year
116 remaining and for which subsection (e) shall apply, an owner shall not complete a termination or allow a
117 termination to occur unless, not less than 1 year before the completion of the last termination event
118 affecting the housing, the owner provides the entities identified in subsection (a) with written notice of
119 intent to complete termination. The notice shall state: (1) the address of the publicly-assisted housing; (2)
120 the name and address of the owner; (3) the date on which the owner intends to complete termination; and
121 (4) unless section 6 applies, a statement that the department has the right of offer pursuant to section 3 to
122 the extent the owner wishes to pursue a potential sale of the property in question.

123 (c) Except as provided in Section 6 an owner shall not sell publicly –assisted housing before offering the
124 department the opportunity to purchase the property pursuant to sections 3 and 4. The owner shall notify,
125 in writing, the parties identified in subsection (a) of the owner’s intention to consider whether it wishes to
126 sell the property.

127 (d) Any notice, other than to tenants, shall be deemed given when delivered in person or mailed by
128 certified or registered mail, return receipt requested, to the party to whom notice is required. Notices to
129 tenants shall be deemed given when delivered in any manner which satisfies requirements established by
130 the United States Department of Urban Development for the giving of notices to tenants regarding rent
131 increases. A notice to the affected municipality shall be sent to the chief executive officer.

132 (e). Notwithstanding subsection (a) of section 2, an owner of publicly assisted housing who, on the
133 effective date of this act, has less than 2 years remaining prior to the date when the affordability
134 restriction will cease to apply to such property, shall not be required to give the 2 year notice required by
135 said subsection (a), but shall provide such notice within 90 days of the effective date of this act, provided
136 that the affordability restrictions have more than one year remaining at the end of such 90 day period.
137 Notwithstanding subsection (b) of Section 2, an owner who, on the effective date of this act has less than
138 1 year remaining prior to a termination shall not be required to give the 12-month notice required by
139 subsection (b), but shall provide such notice within 90 days after the effective date of this act provided
140 that the affordability restriction has not terminated.

141 (f) The notice requirements of this section shall not be affected by the status of an offer, purchase
142 contract or sale under section 3 or section 4

143 Section 3.(a) An owner shall offer the department an opportunity to purchase a publicly assisted housing
144 development prior to entering into an agreement to sell such property pursuant to the time periods
145 contained in this section, but no owner shall be under any obligation to enter into an agreement to sell
146 such property to the department.

147 (b) The department may select a designee to act on its behalf as purchaser of the publicly-assisted
148 housing and shall give the owner and CEDAC written notice of its selection . The department shall
149 promptly consult with the affected municipality before selecting a designee and shall immediately
150 designate the affected municipality as its designee upon written request of the affected municipality,
151 unless the department determines that such request is not feasible for reasons set forth in the department's
152 regulations. The department shall enter into a written agreement with its selected designee providing that
153 the designee and any of its successors or assigns agree to preserve the affordability of the publicly
154 assisted housing. Once such an agreement is executed, the designee shall assume all rights and
155 responsibilities attributable to the department as a prospective purchaser under this section and section 4.
156 At any time prior to a sale under section 3 or section 4, the department may revoke its designation and
157 assume the designee's rights and responsibilities, either in its own capacity or by selecting a new
158 designee; provided, however, that no change in a designation shall operate to extend or alter any time
159 periods for performance set forth in this chapter or in any purchase contract entered into pursuant to this
160 chapter.

161 (c) The department may, within 60 days after it receives notice pursuant to section 2 (c) of the owner's
162 intention to sell, submit an offer to the owner to purchase the publicly-assisted housing. Failure by the
163 department to submit an offer within such 60 day period shall constitute an irrevocable and permanent
164 waiver of the department's rights under this section and the owner may sell the publicly-assisted housing,
165 subject only to the provisions of section 4. If the owner accepts the department's initial or any revised
166 offer, the owner and the department shall enter into such other agreements as are necessary and
167 appropriate to complete the sale. If the owner and the department have not entered into an agreement to
168 sell the property to the department within 30 days after acceptance of such offer, or if the department fails
169 to perform under such agreements, the owner may enter into an agreement to sell the property to a
170 purchaser of the owner's choice, subject only to the department's right of first refusal pursuant to section
171 4.

172 (d) At any time after the notice in section 2 has been provided, and within 10 days of receiving a request,
173 the owner shall make documents which are in its possession available to the department for review and
174 photocopying during normal business hours at the owner's principal place of business or at a commercial
175 photocopying facility. Such documents shall include: (1) any existing architectural plans and
176 specifications of the development; (2) itemized lists of capital expenditures in each of the 2 preceding
177 calendar years; (3) any capital needs studies or market studies that have been submitted to a federal, state

178 or local agency in the preceding 3 years; (4) utility consumption rates for the preceding 12 months; (5)
179 copies of the last 2 audited annual financial statements, (6) physical inspection reports filed with federal,
180 state or local agencies within the last two years, and ; (7) the most recent rent roll showing then current
181 vacancies and rent arrearages. Documents obtained pursuant to a request under this section shall not be
182 considered public records, as defined in clause 26 of section 7 of chapter 4, and the department shall not
183 make such documents available to the public without the written consent of the owner or pursuant to a
184 court order, provided, however, that disclosure may be made to potential funding sources, regulatory
185 agencies or agents or consultants of the department in connection with the transaction, subject to
186 appropriate confidentiality agreements in form and substance reasonably acceptable to the owner. Upon
187 request and with appropriate notice and upon execution of an access and confidentiality agreement in
188 form and substance reasonably acceptable to the owner with respect to matters which may include,
189 without limitation, appropriate times of inspections, limitations on invasive inspections, obligations to
190 provide copies of all reports to the owner, insurance and indemnity requirements and confidentiality
191 provisions, the owner shall also permit reasonable inspections of the dwelling units, building systems,
192 common areas and common grounds by agents, consultants and representatives of the department
193 including, but not limited to inspections related to, environmental, engineering, structural or zoning
194 matters.

195 (e) Not later than 30 days after the department submits an offer to purchase the publicly- assisted housing
196 development pursuant to subsection (c), the department shall notify tenants in the housing development
197 and shall meet with them at least once to discuss the department's plans.

198 Section 4 (a) The department shall have a right of first refusal to purchase any publicly-assisted housing
199 development under this section. At any time after the 90 days the department has been given notice
200 pursuant to subsection (c) of section (2), but not later than the 360 days after the date of such notice, the
201 owner may execute a purchase contract with a third party to sell the publicly-assisted housing
202 development provided that the owner complies with this section.

203 (b) Upon execution of a bona fide third party purchase contract, the owner shall, within 7 days, submit a
204 copy of the contract to the department and CEDAC along with a proposed purchase contract, for
205 execution by the department. The department shall within 30 days after receipt of the third party purchase
206 contract and the proposed purchase contract, execute the proposed purchase contract or such other
207 agreement as is acceptable to the owner and the department. The time periods set forth in this subsection
208 may be extended by agreement between the owner and the department. The proposed purchase contract
209 shall contain the same terms and conditions as the executed third party purchase contract, except for such
210 modifications as may be agreed to by the owner and the department.

211 (c) If the department fails to execute the proposed purchase contract within 30 days or such other period
212 as provided in subsection (b), the owner shall have 24 months from the last day on which the department
213 was entitled to execute the proposed purchase contract in which to complete the sale of the owner's
214 publicly-assisted housing development to a third party. Upon the expiration of the 24-month period, the
215 owner shall be subject again to all of subsection (c) of section 2, section 3 and this section 4.

216 (d) If the department executes the proposed purchase contract as provided in subsection (b) but fails to
217 perform as provided in the executed purchase contract, then the owner shall have 2 years from the date on
218 which the proposed purchase contract terminated in which to complete the sale of the owner's publicly-
219 assisted housing development to a third party. Upon the expiration of the 24-month period, the owner
220 shall be subject to subsection (c) of section 2, section 3 and this section 4.

221 (e) Any submission to the department of a third party purchase contract, amended third party purchase
222 contract, deed or other document transferring the owner's interest in the publicly- assisted housing
223 development shall include a certification by the owner and, with respect to a document executed by the
224 third party buyer, the third party buyer, that the document is accurate and complete and there are no other
225 agreements between the owner and the third party buyer, or an affiliate of either of them, with respect to
226 the sale of the publicly-assisted housing development.

227 Section 5. An affected municipality shall not be subject to section 16 of chapter 30B.

228 Section 6. (a) Section 3 and 4 shall not apply to any of the following: (i) a government taking by eminent
229 domain or a negotiated purchase in lieu of eminent domain; (ii) a forced sale pursuant to a foreclosure;
230 (iii) a deed-in-lieu-of foreclosure; (iv) a proposed sale to a purchaser pursuant to terms and conditions
231 which preserve affordability as determined by the department; (v) a proposed sale of a publicly-assisted
232 development which the department has determined has section 8 contracts for all of the publicly assisted
233 units in the development and the buyer has agreed, in a regulatory agreement, to renew project-based
234 section 8 assistance, or any successor program, for all of the publicly assisted units in the development
235 provided that at the time of such renewal, such assistance is available to the owner on economic terms and
236 conditions that are comparable to the existing assistance contract; (vi) a proposed sale of a publicly-
237 assisted development to an affiliate of the owner that is not a termination as determined by the
238 department; (vii) a proposed sale pursuant to agreement in effect on the effective date of this chapter;
239 (viii) a proposed sale involving a publicly assisted development in which no affordability restriction is set
240 to expire within two years of the date of the sale; and (ix) any project that is eligible for participation in
241 the United States Department of Housing and Urban Development's Mark up to Market Program so long
242 as the owner applies for a renewal of such contract for all eligible units. For the purposes of section 3 and
243 section 4, housing that, as of the effective date of this chapter, received government assistance under any
244 of these programs and was not subject to a purchase contract, but which no longer receives any such

245 government assistance shall be subject to the provisions of this chapter for 2 years from the date of the
246 last termination.

247 (b) An owner seeking an exemption under clause(iv), (v) or (vi) of subsection (a) shall include the name
248 and address of any tenant organization in the request and shall provide a copy of its request to the chief
249 executive officer of the affected municipality, CEDAC, the local legal services organization as designated
250 by the department and the tenant organization , if any, at the time it files its exemption request with the
251 department. The department shall provide a copy of its written determination under said clauses (iv), (v)
252 or (vi) of said subsection (a) to the owner, CEDAC, the local legal services organization and the tenant
253 organization.

254 Section 7. A purchase by the department or by its designee pursuant to this chapter shall be subject to a
255 regulatory agreement. A regulatory agreement with any owner shall not contain any terms which
256 preclude an owner from participating in the United States Department of Housing and Urban
257 Development's Mark up to Market Program.

258 Section 8. An owner who has complied with of sections 2 and 3 which has not resulted in a purchase by
259 the department or which has resulted in a sale pursuant to section 4 may apply to the department for a
260 certificate of compliance by submitting a written request for the certificate in a form and with such
261 documentation as required by the department to establish the owner's compliance to the satisfaction of the
262 department pursuant to regulations of the department. At the same time, the owner shall provide a copy
263 of the request to CEDAC and the chief executive officer of the affected municipality. The owner shall
264 provide a copy of the owner's request to a tenant of the publicly-assisted housing upon request of any
265 such tenant. The department shall issue the certificate of compliance within 30 days after receipt of the
266 application if it determines that the owner has complied with said sections 2 and 3. The certificate of
267 compliance shall be filed with the registry of deeds within 1 year after the date of issuance.

268 Section 9. Within 45 days after the effective date of this act, the department of housing and community
269 development shall establish a 12-member advisory committee, to consist of the undersecretary of the
270 department or her designee, the executive director of the Community Economic Development Assistance
271 Corporation, 1 member selected by the Massachusetts Mayors Association, 1 member selected by the
272 Massachusetts Municipal Association, 1 member selected by Citizens Housing and Planning Association,
273 1 member selected by the Greater Boston Real Estate Board, 1 member selected by the Real Estate Bar
274 Association for Massachusetts, 1 member selected by the Massachusetts Association of Community
275 Development Corp., 1 member selected by the Massachusetts Legal Assistance Corporation, 1 member
276 affiliated with the Affordable Housing Preservation Initiative of the Local Initiatives Support Corporation
277 and 2 members chosen by the department to provide advice and recommendations to the department
278 regarding regulations to implement this act. The department shall promulgate regulations to effectuate the

279 purposes and implement chapter 40T of the General Laws not later than within 150 after the effective date
280 of this act the passage of this chapter.