SENATE DOCKET, NO. 68 FILED ON: 1/14/2011

SENATE . . . . . No. 587

The Commonwealth of Massachusetts

PRESENTED BY:

James B. Eldridge

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:

An Act relative to creating a statutory housing restriction and providing remedies related to statutory housing.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
James B. Eldridge	
	☐ *[District]*
	☐

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SENATE . . . . . No. 587

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 587) of James B. Eldridge for legislation to create a statutory housing restriction and providing remedies related to statutory housing. Housing.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
SENATE
, NO. *635* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act relative to creating a statutory housing restriction and providing remedies related to statutory housing.

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

SECTION 1. Chapter 183 of the General Laws is hereby amended by adding the following new sections:

Section 17A. Statutory Form of Housing Restriction.

A deed, covenant or restriction in substance following the form entitled Deed with Statutory Housing Restriction or the form entitled Statutory Housing Restriction shall when duly executed have the force and effect of an affordable housing restriction as defined in section 31 of chapter 184, without limitation as to enforcement thereof as stated in section 32 of chapter 184, to the use of the holder and the holder's successors and assigns with statutory housing covenants, upon the statutory housing condition and with the statutory housing power to sell, as defined in the following sections 17B, 17C and 17D, to secure the performance of the statutory housing restriction and any obligation therein specified. The parties may insert in such restriction any other lawful agreement or condition reasonably related to the creation, maintenance and preservation of the premises as statutory housing premises.

Section 17B. Meaning of "Statutory Housing Covenants".

In a conveyance of real estate the words "statutory housing covenants" shall have the full force, meaning and effect of the following words, and shall be applied and construed accordingly: "The grantor, for the grantor and the grantor's heirs, executors, administrators, successors and assigns, covenants with the holder and its successors and assigns,

a) that the granted statutory housing premises are free from all encumbrances made by the grantor,

b) that the grantor will, and the grantor's heirs, executors, administrators, successors and assigns shall, warrant and defend the same to the holder and the holder's successors and assigns forever against the lawful claims and demands of all persons claiming by, through or under the grantor, but against none other;

c) that the grantor and the grantor's heirs, successors or assigns, during their respective ownership of the statutory housing premises, will comply fully with the statutory housing condition; and

d) that the grantor and the grantor's heirs, successors or assigns, in case a sale shall be made under the statutory housing power to sell, will, upon request, execute, acknowledge and deliver to the purchaser or purchasers a deed or deeds of release confirming such sale, and that the holder and the holder's successors and assigns are appointed and constituted the attorney or attorneys-in-fact irrevocable of the said grantor to execute and deliver to the said purchaser or purchasers such deed or deeds and a full transfer of all policies of insurance on the buildings upon the land covered by the statutory housing restriction at the time of such sale.

Section 17C. Meaning of "Statutory Housing Condition".

The following "condition" shall be known as the "Statutory Housing Condition", and may be incorporated in any deed, covenant or restriction by reference:

The grantor intends, declares, and covenants on behalf of the grantor and grantor's heirs, successors and assigns that the grantor and the grantor's heirs, successors and assigns shall:

(a) occupy the dwelling unit on the statutory housing premises as the principal residence of the grantor and the grantor's eligible household;

(b) pay and discharge when due and payable all debts secured by the statutory housing premises, including without limitation taxes, mortgages and other voluntary liens, and judgments and other involuntary liens, and reimburse the holder on demand for all amounts paid by the holder to discharge such debts with interest thereon until reimbursement at the rate applicable to damages in actions for breach of contract obligations.

47 (c) not encumber the statutory housing premises or any portion thereof in an amount in
48 excess of their affordable value, nor convey, transfer or otherwise dispose of the statutory
49 housing premises or any portion thereof other than as statutory housing premises; and

50 (d) upon disposition, convey any fee interest in the statutory housing premises only to
51 one or more members of an eligible household approved in writing by the holder for
52 consideration not exceeding the affordable value thereof at the time of the conveyance; provided
53 however that a continuing or newly acquired ownership, with continued occupancy as principal
54 residence during his or her lifetime, by the surviving spouse of a qualified owner in the eligible
55 household who resided at said statutory housing premises as his or her last principal residence
56 prior to the qualified owner's death, without regard to the surviving spouse's income, shall not
57 constitute a breach of this condition.

58 Section 17D. Meaning of "Statutory Housing Power to Sell".

59 The following "power" shall be known as the "Statutory Housing Power to Sell", and
60 may be incorporated in any deed, covenant or restriction by reference:

61 But upon any default in the performance or observance of the foregoing or other
62 condition reasonably related to maintaining the premises as statutory housing premises, the
63 holder or its successors or assigns may sell the statutory housing premises or such portion thereof
64 as may remain subject to the statutory housing restriction, together with all improvements that
65 may be thereon, by deed, first complying with the statutes relating to the holder's sale of
66 statutory housing premises by the exercise of the statutory housing power to sell, and may
67 convey the same by proper deed or deeds to the purchaser or purchasers absolutely and in fee
68 simple but subject always to the statutory housing covenants, on the statutory housing condition
69 and with the statutory housing power to sell; and such sale shall forever bar the grantor and all
70 persons claiming rights of fee simple ownership under the grantor or claiming mortgages or other
71 liens against the statutory housing premises in excess of such affordable value from all right and
72 interest in said statutory housing premises, whether at law or in equity.

73 Section 17E. Definitions Related to Statutory Form of Housing Restriction.

74 Affordable Value Defined The "Affordable Value" of the statutory housing premises
75 under the statutory housing condition and the statutory housing power to sell, unless otherwise
76 defined in the restriction, shall be equal to the consideration paid for the said premises by the
77 eligible household owning said premises subject to the statutory housing restriction adjusted in
78 proportion to any increase of the area median income from the date the eligible household
79 acquired said premises to the date next preceding the sale for which such information is publicly
80 available. In a restriction stating an alternate means of determining the value of the statutory
81 housing premises, affordable value shall be the amount determined as stated in that restriction.

82 Area Median Income Defined "Area median income" means the median income for the
83 standard metropolitan statistical area or equivalent area for the statutory housing premises in
84 which the statutory housing premises are located, adjusted for household size, published by the
85 United States Department of Housing and Urban Development, or such other standard adopted
86 by the Massachusetts Department of Housing and Community Development to measure
87 individual and household incomes in Massachusetts.

88 Conforming Mortgage Defined "Conforming mortgage" means, with respect to a
89 statutory housing restriction having priority senior to all mortgages, any mortgage which, when
90 aggregated with all then existing mortgages senior to such mortgage, does not secure principal
91 exceeding the affordable value of the statutory housing premises.

92 Eligible Household Defined "Eligible household" means the owner and all persons
93 residing together with the owner at the statutory housing premises and whose household income
94 determined in connection with the acquisition of said statutory housing premises did not exceed
95 the maximum household income established by the holder at the time of such acquisition as
96 stated in the deed, covenant or restriction restricting the statutory housing premises, or if no
97 maximum household income is stated in a deed, covenant or restriction, did not exceed 80% of
98 the area median income, adjusted for the number of individuals in the eligible household. The
99 term "grantor" includes any person granting a restriction on the statutory housing condition and
100 with the statutory housing power to sell, and also any individual acquiring the premises subject
101 to such a restriction previously granted.

102 Household Income Defined "Household income" means the aggregate combined gross
103 income of all members of a household under standards established by the United States
104 Department of Housing and Urban Development, or such other standards established by the
105 Massachusetts Department of Housing and Community Development to measure individual and
106 household incomes in Massachusetts.

107 Statutory Housing Premises Defined "Statutory housing premises" means residential
108 real property subject to a statutory housing restriction.

109 Statutory Housing Restriction Defined "Statutory housing restriction" means a
110 restriction containing the statutory housing covenants, the statutory housing condition or the
111 statutory housing power to sell.

112 Section 17F. Entities Eligible to be Holder of Statutory Housing Restriction.

113 The entities eligible to be a holder of a statutory housing restriction shall be a
114 governmental body or any agency thereof, nonprofit organizations, churches, employers,
115 universities or entities that are otherwise administering government sponsored, federal, state, or
116 local subsidy programs, and any other entity so authorized by the Massachusetts Department of
117 Housing and Community Development (or any successor agency); provided, however, that no

118 restriction granted on the statutory housing power to sell shall be invalid by reason of being held
119 by other than an eligible entity provided that it is assigned to an eligible entity prior to exercise
120 of the statutory housing power to sell. "Governmental body", as referred to in this section, means
121 the United States or the commonwealth, acting through any of its departments, divisions,
122 commissions, boards or agencies, or any political subdivision or public instrumentality thereof or
123 any public authority or any quasi-public entity or any municipal affordable housing trust or any
124 instrumentality created pursuant to chapter forty F, whether acting for its own account, or as
125 agent or designee for or assignees of any private individual or private entity which has been
126 required to place such restriction in its chain of title as a condition to receiving financial or other
127 assistance from the United States or the commonwealth.

128 A city or town, acting, for cities, by the mayor, unless otherwise provided by charter,
129 ordinance, or vote of the city council, and for towns, by the board of selectmen, unless otherwise
130 provided by charter, bylaw, or vote of the town, may acquire by gift, purchase, grant, bequest,
131 devise, lease or otherwise a statutory housing restriction on real property resulting from
132 regulatory action or funding by the city or town, or otherwise authorized by the city or town, and
133 shall have authority to hold and exercise all the holder's rights, including the authority to acquire
134 and re-convey the real property as statutory housing premises, and otherwise administer and
135 enforce the statutory housing restriction.

136 Section 17G. Holder's Obligation to Issue Affordable Value Certificate.

137 On written notice from any owner of statutory housing premises, or from any mortgagee,
138 proposed mortgagee or other person holding a lien on said premises, the holder shall state in
139 writing the affordable value of the statutory housing premises as of the nearest date for which
140 such determination can be made from public record and such other facts known to the holder
141 necessary to establish whether the owner or other person is in compliance with the statutory
142 housing restriction, and such certificate shall be conclusive as to any mortgagee or other person
143 relying thereon and providing value to the owner within the affordable value or transferring the
144 property pursuant to the statutory housing restriction. The holder may charge a reasonable fee for
145 providing said certificate.

146 Section 17H Term. Termination of Statutory Housing Restriction.

147 A statutory housing restriction shall continue until terminated by agreement of the holder,
148 or by legislative or judicial action, or otherwise according to law unless a term of years is stated
149 in the restriction. On termination of a statutory housing restriction for any reason prior to
150 expiration of its term, and after payment of the affordable value to the owner, mortgagees and
151 other lien holders according to the priority established by law, or such greater amount as is
152 payable under chapter 244A, section 3 as to holders of conforming mortgages, the holder (and no
153 other person) shall be entitled to receive the difference between the affordable value of the
154 statutory housing premises immediately before termination (regardless of the remaining term of

155 the statutory housing restriction) and the fair market value of those premises immediately after
156 termination. Such amount shall be considered a first priority lien in the event that the statutory
157 housing restriction is terminated by judicial action in a bankruptcy proceeding.

158 The statutory housing covenants, statutory housing condition and statutory housing
159 power to sell shall not be subject to section 23 and sections 26 through 30 of chapter 184 and
160 shall have the benefits of section 32 of chapter 184 without approval otherwise required
161 thereunder, but all non-statutory provisions of a statutory housing restriction shall remain subject
162 to section 23 and sections 26 through 30 and shall have the benefits of section 32 only if
163 approved as stated therein.

164 Section 17I. Effect of Mortgage or Other Foreclosure or Sale on Statutory Housing
165 Restriction.

166 Unless otherwise agreed in an instrument appearing of record, following a mortgagee's
167 foreclosure by a regulated for-profit, not-for-profit or governmental mortgagee holding a first
168 mortgage on statutory housing premises which was subordinate to a statutory housing restriction,
169 in addition to remaining restricted at the affordable value for eligible households as stated in the
170 restriction, only the statutory housing covenants, the statutory housing condition and the
171 statutory housing power to sell, to the extent appearing in the statutory housing restriction, and
172 the statutory obligations of the holder to mortgagees holding conforming mortgages, shall
173 continue in effect binding the statutory housing premises and all other provisions of the
174 restriction shall be extinguished.

175 Section 17J. Ownership of Statutory Housing Premises by Holder, Mortgagee or Other
176 Lien Holder.

177 Ownership of statutory housing premises, either by the executor or administrator of an
178 owner in an eligible household, or by the holder or by a mortgagee or other lien holder, or its
179 designee, or by any entity eligible to be a holder of a statutory housing restriction, pursuant to
180 exercise of lawful remedies against the owner, shall not constitute a violation of the statutory
181 housing covenants or the statutory housing condition so long as the premises are being held for
182 re-sale to, and are re-sold to, an eligible household as statutory housing premises for an amount
183 not exceeding the affordable value, or in the case of a holder of a conforming mortgage, such
184 greater amount as payable to the mortgagee under chapter 244A, section 3, provided that said
185 premises may not be rented, leased or otherwise occupied by a household that is not an eligible
186 household during the period in which said premises are being held for re-sale.

187 Appendix to G.L. c 183

188 The following new forms 17, 18, 19, 20, 21, 22, 23 and 24 are added to the Appendix
189 Statutory Forms of Instruments Relating to Real Estate following chapter 183:

(17) Deed with Statutory Housing Restrictions -------- of --------, -------- County, -------- for consideration of -------- dollars paid, grant to -------- of -------- with quitclaim covenants and with statutory housing covenants, upon the statutory housing condition, for any breach of which the holder shall have the statutory housing power to sell the land in -------- (description and encumbrances, if any). Witness -------- hand and seal this -------- day of --------. (Here add acknowledgment.)

(18) Statutory Housing Restriction of --------, -------- County, -------- for consideration paid, grant to -------- of -------- with statutory housing covenants, the land in -------- (description and encumbrances, if any) upon the statutory housing condition, for any breach of which the holder shall have the statutory housing power to sell. Witness -------- hand and seal this -------- day of --------. (Here add acknowledgment.)

(19) Extension of Statutory Housing Restriction ------, holder of a statutory housing restriction by -------- to -------- dated -------- recorded -------- with -------- Deeds, book --------, page --------, and -------- owner of the equity of redemption of the premises, agree each for -------- sel --------, heirs, representatives and assigns, that the term of said housing restriction is hereby extended to --------, and said owner agrees to perform and observe the condition and covenants of said housing restriction as so extended. Witness -------- hand and seal this -------- day of --------. (Here add acknowledgment.)

(20) Assignment of Statutory Housing Restriction. ------- holder of a statutory housing restriction from -------- to -------- dated -------- recorded with -------- Deeds, book --------, page --------, assign said statutory housing restriction to --------. Witness -------- hand and seal this -------- day of --------. (Here add acknowledgment.)

(21) Statutory Deed under Statutory Housing Power to Sell. --------- holder of a statutory housing restriction from -------- to -------- dated -------- recorded with -------- Deeds, book --------, page --------, by the power conferred by said housing restriction and every other power, for -------- dollars paid, grant to -------- the premises conveyed by said housing restriction, subject to said housing restriction and also to (description and encumbrances, if any) upon the statutory housing condition, for any breach of which the holder shall have the statutory housing power to sell. . Witness -------- hand and seal this -------- day of --------. (Here add acknowledgment.)

(22) Termination of Statutory Housing Restriction ----------, holder of a statutory housing restriction from -------- to -------- dated -------- recorded with -------- Deeds, book --------, page --------, releases the same. Witness -------- hand and seal this -------- day of --------. (Here add acknowledgment.)

(23) Affidavit of Sale under Statutory Housing Power to Sell -------- named in the foregoing deed, make oath and say that the statutory housing restriction was breached, and that I published on the -------- day of -------- 20--------, in the --------, a newspaper published or by its title page purporting to be published in -------- aforesaid and having a circulation therein, a notice

227 of which the following is a true copy: -------- (Insert advertisement.) --------. Pursuant to said
228 notice at the time and place therein appointed, I sold the premises in accordance with the
229 statutory housing power to sell, for -------- dollars, being not in excess of the Affordable Value
230 therefor. Witness -------- hand and seal this -------- day of --------. (Here add jurat.)

231 (24) Certificate of Compliance under Statutory Housing Power to Sell ----------,
232 holder of a statutory housing restriction from -------- to -------- dated -------- recorded with --------
233 Deeds, book --------, page --------, states that a) ---------- is a member of an eligible household
234 with respect the residential real property described in the restriction who are obligated to occupy
235 those statutory housing premises as their principal residence, b) the present affordable value of
236 said property is [insert affordable value] and c) to the best of the undersigned's knowledge and
237 belief the owner is otherwise in compliance with said restriction. Witness -------- hand and seal
238 this -------- day of --------. (Here add jurat.)

239 SECTION 2. The General Laws are hereby amended by inserting after chapter 244 the
240 following new chapter 244A:

241 General Laws Chapter 244A. Foreclosure and Redemption of Statutory Housing
242 Restrictions

243 Section 1. Exercise of Statutory Housing Power to Sell

244 The statutory housing power to sell shall be governed by the provisions of this Chapter
245 244A.

246 Foreclosure by Entry or Action

247 Section 2. Foreclosure by Entry or Action.

248 The holder of a restriction with the statutory housing power to sell may recover
249 possession of the statutory housing premises and foreclose the right of redemption while the
250 breach of condition continues by entry or action in the manner prescribed in and subject to
251 Sections 1, 2, 3, 4, 6, 8, 11, 12 and 13 of chapter 244, substituting holder for mortgagee, owner
252 for mortgagor, statutory housing restriction for mortgage and statutory housing power to sell for
253 power of sale; provided a) that if an entry for breach of condition is made without a judgment,
254 then in addition to the requirements of section 2 the holder shall give written notice thereof to the
255 owner and each mortgagee and other lien holder of record within thirty days after entry and the
256 same shall be recorded in the manner required for the memorandum of entry, b) that only an
257 owner entitled to occupy the statutory housing premises shall have the right to oppose entry
258 under section 1 and to redeem without the consent of the plaintiff under section 4, c) the
259 commencement of foreclosure or other legal proceedings by the holder of a conforming
260 mortgage or other lien or claim within the affordable value shall stay the holder's foreclosure by
261 entry and completion of the conforming mortgagee's foreclosure or judgment in favor of such

262 other lienor or claimant shall extinguish the holder's entry, d) that the court shall determine the
263 performance due to the plaintiff and each mortgagee and other lien holder of record under
264 section 5, e) that an owner who regains possession by performance as ordered by the court shall
265 do so subject to the statutory housing restriction, f) that any person residing in or claiming an
266 interest in the real property subject to the restriction may be joined as a defendant irrespective of
267 his estate in the statutory housing premises, but if he has no estate in the statutory housing
268 premises and makes no defense to the action, he shall not be liable for costs, g) that any
269 mortgagee or other lien holder of record may be joined as a defendant but if he makes no defense
270 to the action, he shall not be liable for costs and g) any sale by order of the court shall be subject
271 to the terms of the statutory housing restriction.

272 Foreclosure by Sale

273 Section 3 Foreclosure under statutory housing power to sell; procedure; notice; form.

274 The holder of a statutory housing restriction with respect to statutory housing premises,
275 or a person authorized by the power to sell, or the attorney duly authorized by a writing under
276 seal by the holder or person acting in the name of such holder or person, may, upon breach of
277 condition and without action, do all the acts authorized or required by the power to convey said
278 premises as statutory housing; but no sale under such power shall be effectual to foreclose the
279 statutory housing restriction and convey the statutory housing premises, unless, previous to such
280 sale, notice thereof has been sent by registered mail to the owner or owners of record of the
281 equity of redemption in the statutory housing premises as of ninety days prior to the sale, at the
282 premises and also to any other address of such owner or owners appearing on the records of the
283 holder, not less than three times at intervals of not less than seven days, beginning not later than
284 sixty days prior to the date of sale and ending not later than thirty days prior to the date of sale,
285 and notice thereof has been published once in each of three successive weeks, the first
286 publication to be not less than twenty-one days before the day of sale, in a newspaper, if any,
287 published in the town where the statutory housing premises lies or in a newspaper with general
288 circulation in the town where the statutory housing premises lies, and said notice has been sent
289 by registered mail to the owner or owners of record of the statutory housing premises as of thirty
290 days prior to the date of sale, said notice to be mailed at least fourteen days prior to the date of
291 sale to said owner or owners to the address set forth in section sixty-one of chapter one hundred
292 and eighty-five, if the statutory housing premises is then registered or, in the case of unregistered
293 premises, to the last address of the owner or owners of the equity of redemption appearing on the
294 records of the holder of the statutory housing restriction, if any, or if none, to the address of the
295 owner or owners as given on his deed or on the petition for probate by which he acquired title, if
296 any, or if in either case no address appears, then to the address to which the tax collector last sent
297 the tax bill for the statutory housing premises to be sold, or if no tax bill has been sent for the
298 last preceding three years, then to the statutory housing premises and unless a copy of said notice
299 of sale has been sent by registered mail to all mortgagees and other persons of record as of thirty
300 days prior to the date of sale holding an interest in the property being foreclosed, said notice to

301 be mailed at least fourteen days prior to the date of sale to each such person at the address of
302 such person set forth in any document evidencing the interest or to the last address of such
303 person known to the holder. Any person of record as of thirty days prior to the date of sale
304 holding an interest in the property being foreclosed may waive at any time, whether prior or
305 subsequent to the date of sale, the right to receive notice by mail to such person under this
306 section and such waiver shall be deemed to constitute compliance with such notice requirement
307 for all purposes. If no newspaper is published in such town, or if there is no newspaper with
308 general circulation in the town where the statutory housing premises lies, notice may be
309 published in a newspaper published in the county where the statutory housing premises lies, and
310 this provision shall be implied in every restriction containing the statutory housing power to sell
311 in which it is not expressly set forth. A newspaper which by its title page purports to be printed
312 or published in such town, city or county, and having a circulation therein, shall be sufficient for
313 the purpose.

314 The following form of notice may be used and may be altered as circumstances require;
315 but nothing herein shall be construed to prevent the use of other forms.

316 (Form.)

317 STATUTORY HOUSING RESTRICTION HOLDER'S SALE OF REAL ESTATE

318 By virtue and in execution of the statutory housing power to sell contained in a certain
319 statutory housing restriction given by _____ to _____ dated _____ and recorded with
320 _____Deeds, Book _____, page _____, of which housing restriction the
321 undersigned is the present holder,

322 (If by assignment, or in any fiduciary capacity, give reference.) for breach of the
323 conditions of said housing restriction and for the purpose of the foreclosing and conveying same,
324 whether directly or through an intermediary qualified to hold statutory housing restrictions, to an
325 eligible household as their principal residence, will be sold by (specify either Public Auction or
326 Sale to the Holder or its Designee) at _____ o'clock, __.M. on the _____ day of
327 _____ A.D. (insert year), at _____ (insert place) all and singular the premises
328 described in said housing restriction, subject to the statutory housing covenants, statutory
329 housing condition and statutory housing power to sell contained therein,

330 To wit: "(Description as in said housing restriction, including all references to title,
331 restrictions, encumbrances, etc., as made in said housing restriction)"

332 having an affordable value of $_____ : (State the amount of the affordable value)

333 Terms of sale: (State here the amount, if any, to be paid in cash by the purchaser at the
334 time and place of the sale, and the time or times for payment of the balance or the whole as the
335 case may be.)

Other terms to be announced at the sale.

(Signed)

Present holder of said housing restriction

A notice of sale in the above form, published in accordance with the statutory housing power to sell in the statutory housing restriction and with this chapter, together with such other or further notice, if any, as is required by the statutory housing restriction, shall be a sufficient notice of the sale; and the statutory housing premises shall be deemed to have been sold, and the deed thereunder shall convey said premises, subject to and with the benefit of the statutory housing covenants, on the statutory housing condition and with the statutory housing power to sell (but no other provisions of any housing restriction applicable to said premises) and also subject to and with the benefit of all other restrictions, easements, improvements, outstanding tax titles, municipal or other public taxes, assessments, liens or claims in the nature of liens, and existing encumbrances of record to the extent they secure debt, whether created prior or subsequent to the statutory housing restriction, that, together with the portion of the affordable value paid at sale, in the aggregate do not exceed the affordable value at the time of sale and are not paid at sale, whether or not reference to such restrictions, easements, improvements, liens or encumbrances is made in the deed; but no purchaser at a sale by public auction shall be bound to complete the purchase if there are encumbrances which will remain following such payment at sale, other than those included in the notice of sale, which are not stated at the sale and included in the auctioneer's contract with the purchaser.

Exercise of the statutory housing power to sell may be by public auction or purchase by the holder as follows:

a) In the case of sale at public auction, bidding shall be capped at the affordable value or such higher amount required to pay each holder of a conforming mortgage as stated in this section, in either case net of outstanding tax titles, municipal or other public taxes, assessments, liens or claims in the nature of liens, and existing encumbrances of record to the extent they secure debt, not being paid at sale, and if more than one qualified bidder has bid such affordable value (or such higher amount), the premises shall be sold to such of those bidders as is selected by chance.

b) Any purchase of the premises by the holder or its designee pursuant to exercise of the statutory housing power to sell, in lieu of sale by public auction, shall be for the affordable value or such higher amount required to pay each holder of a conforming mortgage as stated in this section, in either case net of outstanding tax titles, municipal or other public taxes, assessments, liens or claims in the nature of liens, and existing encumbrances of record to the extent they secure debt, not being paid at sale. The holder may assign its right to acquire the premises at the affordable value (or such higher amount) to an eligible household appearing on a list of eligible households established for the purpose or maintained by or utilized by the holder generally. The

373 eligible household shall be selected by chance, seniority or otherwise in accordance with
374 applicable law, as the holder determines.

375 All proceeds from exercise of the statutory housing power to sell shall be paid to
376 mortgagees and other lien holders subordinate to the statutory housing restriction appearing of
377 record immediately prior to exercise of the power according to their rights of priority, and any
378 amount within the affordable value remaining shall first be paid to the holder as reimbursement
379 of the holder's reasonable expenses of exercising the power and thereafter be paid to the owner;
380 provided, however, that when foreclosing by public auction or by purchase, any holder of a
381 conforming mortgage shall be paid principal, accrued interest, all future advances and all
382 reasonable costs and expenses secured by its mortgage, notwithstanding such payment may
383 exceed the affordable value. Any lien on the premises which, in the aggregate with senior liens,
384 exceeds the proceeds from exercise of the statutory housing power to sell shall be extinguished
385 by exercise of the statutory housing power to sell to the extent it exceeds the proceeds from the
386 exercise of the power.

387 The provisions of section 15 of chapter 244, substituting statutory housing restriction for
388 mortgage deed and statutory power to sell for power of sale, shall apply in case of foreclosure by
389 sale under this section.

390 A holder conveying title to statutory housing premises pursuant to the provisions of this
391 chapter shall, within thirty days of conveying title, notify all residential tenants of said premises,
392 and the office of the assessor or collector of taxes of the municipality in which the premises are
393 located and any persons, companies, districts, commissions or other entities of any kind which
394 provide water or sewer service to the premises, of said conveying title.

395 Redemption

396 Section 4. Redemption. An owner of statutory housing premises under the terms of a
397 statutory housing restriction may, after breach of the statutory housing condition, have
398 redemption in the manner prescribed in and subject to sections 18, 19, 22, 23, 24, 25, 26, 27 and
399 32 of chapter 244, substituting owner for mortgagor, holder for mortgagee, statutory housing
400 power to sell for power of sale, restriction or restricted for mortgage or mortgaged and
401 performance under the restriction for amount due on the mortgage, provided a) the person
402 entitled to redeem shall perform or tender performance of every condition contained in the
403 restriction; and if there has been an action to recover the property, shall pay or tender the costs of
404 such action if unpaid; b) the tender shall be made before a sale pursuant to the statutory power to
405 sell contained in the restriction and if in compliance with the terms of the restriction shall be
406 accepted by the holder and c) following redemption the property shall continue to be subject to
407 the statutory housing restriction.

408 Conforming Amendments

409 SECTION 3. The first sentence of the third paragraph of section 32 of chapter 184 of the
410 General Laws is amended by inserting after each occurrence of the word "state" the words "or
411 municipal".

412 SECTION 4. Chapter 244 of the General Laws is hereby amended by adding the
413 following new section 14A:

414 Section 14A. Foreclosure under Power of Sale on Property Subject to Statutory Housing
415 Restriction or other Affordable Housing Restriction

416 In the case of sale by foreclosure under the power of sale in a mortgage of a property
417 subject to a statutory housing restriction, statutory housing condition or statutory housing power
418 to sell or other affordable housing restriction as defined in section 31 of chapter 184 which will
419 remain in effect following foreclosure, the property may, if the mortgagee so determines, be
420 auctioned only to eligible households as defined in section 17E of chapter 183 (together with the
421 mortgagee or its designee and the holder of the housing restriction or its designee or any entity
422 eligible to be a holder of a statutory housing restriction) for an amount not exceeding the
423 affordable value applicable to the property, or such higher amount required to pay each holder of
424 a conforming mortgage as stated in section 3 of chapter 244A, in which event if more than one
425 eligible household or entity qualified as a bidder has bid at or in excess of the affordable value,
426 then bidding shall be capped at the affordable value and the bidder to whom the property is sold
427 shall be selected by chance from among those bidding who are willing to pay the affordable
428 value.

429 In lieu of conducting bidding, the mortgagee may elect to sell the property at the
430 affordable value, or such higher amount required to pay each holder of a conforming mortgage as
431 stated in section 3 of chapter 244A, by lottery that includes all eligible households who have
432 been qualified to bid for the property at the public auction. At the request of the mortgagee, the
433 holder shall confirm the status as members of an eligible household or as an entity eligible to be
434 a holder of a statutory housing restriction of any persons or entities identified to it by the
435 mortgagee.

436 If the holder of the restriction tenders the affordable value, then the premises shall be sold
437 to the holder.

438 SECTION 5. Chapter 236 of the General Laws is hereby amended by adding the
439 following new second paragraph section 27:

440 When selling a property subject to a statutory housing restriction under section 17A of
441 chapter 183 or other affordable housing restriction as defined in section 31 of chapter 184 which
442 will remain in effect following foreclosure, the officer may instead make the sale and convey by
443 deed either:

444 a) by public auction only among eligible households as defined in section 17E of chapter
445 183 (together with the holder of the housing restriction or its designee or any entity eligible to be
446 a holder of a statutory housing restriction) for an amount not exceeding the affordable value
447 applicable to the statutory housing premises, or such higher amount required to pay each holder
448 of a conforming mortgage as stated in section 3 of chapter 244A, in which event if more than one
449 eligible household or entity qualified as a bidder has bid at or in excess of the affordable value,
450 then bidding shall be capped at the affordable value and the bidder to whom the property is sold
451 shall be selected by chance from among those bidding willing to pay the affordable value; or

452 (b) if the holder of the restriction tenders the affordable value, or such higher amount
453 required to pay each holder of a conforming mortgage as stated in section 3 of chapter 244A,
454 then by deed to the holder.

455 SECTION 6. Section 1(b) of chapter 30B of the General Laws is hereby amended by
456 adding the following new subsection (35):

457 (35) Contracts or other actions to acquire or dispose of statutory housing premises as
458 defined in section 17E of chapter 183, including exercise of the statutory housing power to sell,
459 following which the statutory housing restriction continues in force and effect as to the premises
460 as before shall be exempt from the provisions governing disposition of real estate under Chapter
461 30B.

462 SECTION 7. Chapter. 183 of the General Laws is hereby amended by adding the
463 following new section 22A:

464 Section 22A. Protecting Public Investment.

465 No restriction that has been purchased with state or municipal funds or which has been
466 granted in consideration of a loan or grant made with state or municipal funds shall be released
467 unless it is repurchased by the landowner at its then current fair market value.