

1201

House, No. 1201

Presented by: David L. Flynn

Relative to preserving publicly assisted affordable housing

1/20/2009H Referred to the Joint Committee on Housing

1/20/2009S Senate concurred

Public Hearing date 5/5 at 10:30 AM in Hearing Room A1

6/24/2009H Accompanied a new draft, see H04132

Return to:

Bill inquiry screen,

General Court home page, or

Commonwealth of Massachusetts home page.

HOUSE . . . . . No.

1201151

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:*

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

### CHAPTER 40T

### PUBLICLY ASSISTED AFFORDABLE HOUSING.

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

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

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

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

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

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

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

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

“Designee”, a municipality, local or regional housing authority, nonprofit or for-profit corporation or other entity qualified to do business in the Commonwealth and , which is selected by the department to

operate publicly-assisted housing that is decent, safe and sanitary, affordable housing, under subsection (b) of section 3.

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

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

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

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

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

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

"Preserve affordability", with respect to a publicly-assisted housing development, to undertake reasonable and diligent actions to retain, renew or secure subsidies affecting a publicly-assisted housing development in order to maintain approximately the same number of affordable units, all to the extent of available subsidies and taking into account the need to ensure that the development provides quality housing, including mixed income housing.

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

"Publicly-assisted housing", a housing unit or development that receives government assistance under any of the following programs: (i) section 8 of the United States Housing Act of 1937, 42 U.S.C. section 1437f as it applies to new construction, substantial rehabilitation, moderate rehabilitation, property disposition and loan management set-aside programs or any other program providing project-based rental assistance; (ii) section 42 of the Internal Revenue Code, and 26 U.S.C. section 42, the federal Low-Income Housing Tax Credit Program; (iii) section 101 of the Housing and Urban Development Act of 1965, and, 12 U.S.C. section 1701s as it applies to programs for rent supplement assistance thereunder; (iv) section 202 of the Housing Act of 1959, and 12 U.S.C. section 1701q; (v) section 221(d)(3) of the

National Housing Act, 12 U.S.C. section 1715 (d)(3) or (5), the below market interest rate program; (vi) section 221(d)(4) of the National Housing Act, 12 U.S.C. section 1715l (d)(4) to the extent the project's rents are restricted pursuant to a federal government agreement; (vii) section 236 of the National Housing Act, and 12 U.S.C. section 1715z-1; (viii) section 515 of the Housing Act of 1949, and, 42 U.S.C. section 1485; (ix) section 521 of the Housing Act of 1949, 42 U.S.C. section 1490a; (x) the Urban Development Action Grant, 42 U.S.C. section 5318 to the extent that the affordability of dwelling units subject to such program are restricted pursuant to a government agreement; (xi) the Housing Development Action Grant, 42 U.S.C. section 1437, to the extent the project's rents are restricted pursuant to a government agreement; (xii) section 13A of chapter 708 of the acts of 1966; (xiii) the voucher program provided for annually, in item 7004-9024 of section 2 of the general appropriation act as that program applies to project-based rental assistance; (xiv) the state low income housing tax credit program established in section 6I of chapter 62; (xv) the State Housing Assistance for Rental Production, established in chapter 574 of the acts of 1983;

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

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

"Sale", the act(s) by which an owner conveys, transfers or disposes of property, by deed or otherwise, whether through a single transaction or a series of transactions during any twelve month period. For purposes of this Chapter, a disposition of publicly assisted housing by an owner to an affiliate of owner shall not constitute a sale requiring compliance with this Chapter.

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

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

"Termination", the cessation, discharge or removal of an affordability restriction affecting a publicly-assisted housing development in the absence of a simultaneous replacement of that restriction with an equivalent affordability restriction. By way of example and not in limitation, the following constitute terminations: (i) nonrenewal or termination, in whole or in part, of a government program contract; (ii) expiration, in whole or in part, of an affordability restriction under a government program or the

requirement to renew the restriction; (iii) payment in full of a government program mortgage loan; or (iv) prepayment of a government program mortgage loan.

"Time for performance" the date for delivery of the deed or other document evidencing a sale pursuant to a purchase contract.

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

## Section 2.

(a) Except with respect to property subject to an affordability restriction which has less than 2 years remaining and for which subsection (e) shall apply, the owner shall provide written notice to: (i) all tenants and the tenant organization, if any; (ii) the chief executive officer of the affected municipality; (iii) CEDAC; and (iv) the department, not less than 2 years before the termination of the affordability restriction affecting publicly-assisted housing. Nothing herein shall prohibit the owner from taking actions to terminate an affordability restriction during any notice period provided herein; provided, however, that the owner shall comply with all of the notice terms and restrictions pursuant to subsections (b) and (c). The informational notice shall provide: (1) the address of the publicly-assisted housing; (2) the name and address of the owner; (3) notification that an affordability restriction may terminate; (4) the date on which each affordability restriction may terminate. Where more than 1 termination may occur, the owner may send 1 written notice so long as the terminations are scheduled to occur within 1 year of each other, the notice is given at least 24 months before to the earliest termination and the notice otherwise complies with this subsection. Thereafter, the owner shall again be subject to the notice provision of subsection (c) of section 2.

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

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

(d) Any notice, other than to tenants, shall be deemed given when delivered in person or mailed by certified or registered mail, return receipt requested, to the party to whom notice is required. Notices to

tenants shall be deemed given when delivered in any manner which satisfies requirements established by the United States Department of Urban Development for the giving of notices to tenants regarding rent increases. A notice to the affected municipality shall be sent to the chief executive officer.

(e) Notwithstanding subsection (a) of section 2, an owner of publicly assisted housing who, on the effective date of this act, has less than 2 years remaining prior to the date when the affordability restriction will cease to apply to such property, shall not be required to give the 2 year notice required by said subsection (a), but shall provide such notice within 90 days of the effective date of this act, provided that the affordability restrictions have more than one year remaining at the end of such 90 day period.

Notwithstanding subsection (b) of Section 2, an owner who, on the effective date of this act has less than 1 year remaining prior to a termination shall not be required to give the 12-month notice required by subsection (b), but shall provide such notice within 90 days after the effective date of this act provided that the affordability restriction has not terminated.

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

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

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

(c) The department may, within 60 days after it receives notice pursuant to section 2 (c) of the owner's intention to sell, submit an offer to the owner to purchase the publicly-assisted housing. Failure by the department to submit an offer within such 60 day period shall constitute an irrevocable and permanent waiver of the department's rights under this section and the owner may sell the publicly-assisted housing,

subject only to the provisions of section 4. If the owner accepts the department's initial or any revised offer, the owner and the department shall enter into such other agreements as are necessary and appropriate to complete the sale. If the owner and the department have not entered into an agreement to sell the property to the department within 30 days after acceptance of such offer, or if the department fails to perform under such agreements, the owner may enter into an agreement to sell the property to a purchaser of the owner's choice, subject only to the department's right of first refusal pursuant to section 4.

(d) At any time after the notice in section 2 has been provided, and within 10 days of receiving a request, the owner shall make documents which are in its possession available to the department for review and photocopying during normal business hours at the owner's principal place of business or at a commercial photocopying facility. Such documents shall include: (1) any existing architectural plans and specifications of the development; (2) itemized lists of capital expenditures in each of the 2 preceding calendar years; (3) any capital needs studies or market studies that have been submitted to a federal, state or local agency in the preceding 3 years; (4) utility consumption rates for the preceding 12 months; (5) copies of the last 2 audited annual financial statements, (6) physical inspection reports filed with federal, state or local agencies within the last two years, and; (7) the most recent rent roll showing then current vacancies and rent arrearages. Documents obtained pursuant to a request under this section shall not be considered public records, as defined in clause 26 of section 7 of chapter 4, and the department shall not make such documents available to the public without the written consent of the owner or pursuant to a court order, provided, however, that disclosure may be made to potential funding sources, regulatory agencies or agents or consultants of the department in connection with the transaction, subject to appropriate confidentiality agreements in form and substance reasonably acceptable to the owner. Upon request and with appropriate notice and upon execution of an access and confidentiality agreement in form and substance reasonably acceptable to the owner with respect to matters which may include, without limitation, appropriate times of inspections, limitations on invasive inspections, obligations to provide copies of all reports to the owner, insurance and indemnity requirements and confidentiality provisions, the owner shall also permit reasonable inspections of the dwelling units, building systems, common areas and common grounds by agents, consultants and representatives of the department including, but not limited to inspections related to, environmental, engineering, structural or zoning matters.

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

Section 4 (a) The department shall have a right of first refusal to purchase any publicly-assisted housing development under this section. At any time after the 90 days the department has been given notice pursuant to subsection (c) of section (2), but not later than the 360 days after the date of such notice, the



owner may execute a purchase contract with a third party to sell the publicly-assisted housing development provided that the owner complies with this section.

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

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

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

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

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

Section 6. (a) Section 3 and 4 shall not apply to any of the following: (i) a government taking by eminent domain or a negotiated purchase in lieu of eminent domain; (ii) a forced sale pursuant to a foreclosure; (iii) a deed-in-lieu-of foreclosure; (iv) a proposed sale to a purchaser pursuant to terms and conditions which preserve affordability as determined by the department; (v) a proposed sale of a publicly-assisted development which the department has determined has section 8 contracts for all of the publicly assisted units in the development and the buyer has agreed, in a regulatory agreement, to renew project-based section 8 assistance, or any successor program, for all of the publicly assisted units in the development provided that at the time of such renewal, such assistance is available to the owner on economic terms and conditions that are comparable to the existing assistance contract; (vi) a proposed sale of a publicly-

assisted development to an affiliate of the owner that is not a termination as determined by the department; (vii) a proposed sale pursuant to agreement in effect on the effective date of this chapter; (viii) a proposed sale involving a publicly assisted development in which no affordability restriction is set to expire within two years of the date of the sale; and (ix) any project that is eligible for participation in the United States Department of Housing and Urban Development's Mark up to Market Program so long as the owner applies for a renewal of such contract for all eligible units. For the purposes of section 3 and section 4, housing that, as of the effective date of this chapter, received government assistance under any of these programs and was not subject to a purchase contract, but which no longer receives any such government assistance shall be subject to the provisions of this chapter for 2 years from the date of the last termination.

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

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

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

Section 9. Within 45 days after the effective date of this act, the department of housing and community development shall establish a 12-member advisory committee, to consist of the undersecretary of the department or her designee, the executive director of the Community Economic Development Assistance Corporation, 1 member selected by the Massachusetts Mayors Association, 1 member selected by the Massachusetts Municipal Association, 1 member selected by Citizens Housing and Planning Association,

1 member selected by the Greater Boston Real Estate Board, 1 member selected by the Real Estate Bar Association for Massachusetts, 1 member selected by the Massachusetts Association of Community Development Corp., 1 member selected by the Massachusetts Legal Assistance Corporation, 1 member affiliated with the Affordable Housing Preservation Initiative of the Local Initiatives Support Corporation and 2 members chosen by the department to provide advice and recommendations to the department regarding regulations to implement this act. The department shall promulgate regulations to effectuate the purposes and implement chapter 40T of the General Laws not later than within 150 after the effective date of this act the passage of this chapter.