

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

9 “Affiliate”, an entity owned or controlled by an owner.

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

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

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

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

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

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

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

28 “Government program”, a program which provides government 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,
31 adjusted for household size, as periodically determined by the United States Department of Housing and
32 Urban Development.

33 “Owner”, a person, firm, partnership, corporation, trust, organization, limited liability company or
34 other 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
36 government-held mortgage indebtedness prior to its original maturity date; (ii) the voluntary cancellation
37 of mortgage insurance on a publicly-assisted housing development; or (iii) 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”, to undertake reasonable and diligent actions to retain, renew or secure
42 subsidies affecting a publicly-assisted housing development in order to maintain at least the same number
43 of units affordable to low, very low and extremely low-income households, respectively, as are currently
44 occupied by such households, and to maintain as affordable to such households generally all units that are
45 currently vacant, to the extent of available subsidies and taking into account the need to ensure that the
46 development provides quality housing to its tenants.

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

50 “Publicly-assisted housing”, a housing unit or development that receives government assistance
51 under any of the following programs: (i) section 8 of the United States Housing Act of 1937 and 42
52 U.S.C. section 1437f as it applies to new construction, substantial rehabilitation, moderate rehabilitation,
53 property disposition and loan management set-aside programs or any other program providing project-
54 based rental assistance; (ii) section 42 of the Internal Revenue Code and 26 U.S.C. section 42, the federal
55 Low-Income Housing Tax Credit Program; (iii) section 101 of the Housing and Urban Development Act
56 of 1965 and 12 U.S.C. section 1701s as it applies to programs for rent supplement assistance thereunder;
57 (iv) section 202 of the Housing Act of 1959 and 12 U.S.C. section 1701q; (v) section 221(d)(3) of the
58 National Housing Act 12 U.S.C. section 1715 (d)(3) or (5), the below market interest rate program; (vi)
59 section 221(d)(4) of the National Housing Act 12 U.S.C. section 1715I (d)(4) to the extent the project’s
60 rents are restricted pursuant to a government agreement; (vii) section 236 of the National Housing Act
61 and 12 U.S.C. section 1715z-l; (viii) section 515 of the Housing Act of 1949 and 42 U.S.C. section 1485;
62 (ix) section 521 of the Housing Act of 1949 and 42 U.S.C. section 1490a; (x) the Urban Development
63 Action Grant and 42 U.S.C. section 5318 to the extent that the affordability of dwelling units subject to
64 such program are restricted pursuant to a government agreement; (xi) the Housing Development Action
65 Grant and 42 U.S.C. section 1437o to the extent the project’s rents are restricted pursuant to a government
66 agreement; (xii) section 13A of chapter 708 of the acts of 1966; (xiii) the voucher program provided for
67 annually in item 7004-9024 of section 2 of the general appropriation act as that program applies to
68 project-based rental assistance; (xiv) the Massachusetts low income housing tax credit program
69 established in section 6I of chapter 62; (xv) the State Housing Assistance for Rental Production,
70 established in chapter 574 of the acts of 1983; and (xvi) chapter 121A to the extent that the affordability
71 of dwelling units are restricted pursuant to a written agreement with the affected municipality.

72 “Purchase contract”, a document that purports to sell a publicly-assisted housing development
73 including, without limitation, a purchase and sale agreement, contract of sale, purchase option or other
74 similar instrument.

75 “Regulatory agreement”, an affordable housing restriction that establishes an owner's obligations
76 created pursuant to the efforts of the department or its designee to preserve affordability and which is
77 consistent with section 31 of chapter 184; provided, however, that in any project that is eligible for
78 participation in the United States Department of Housing and Urban Development’s Mark Up to Market
79 Program, the restriction, insofar as it relates to the limiting of the level of rents, shall not apply to units
80 covered by a section 8 housing assistance payment contract so long as such contract is effective.

81 “Sale”, the execution of a written agreement pursuant to which the owner or the holders of an
82 ownership interest in the owner of the publicly-assisted housing agrees to the disposition of the property
83 by deed or otherwise, whether through a single transaction or a series of transactions, except for a
84 disposition of such housing to an affiliate of the owner.

85 “Section 8”, section 8 of the United States Housing Act of 1937, 42 U.S.C. section 1437f.

86 “Subsidy”, public financial assistance including, but not limited to, grants, loans, rental
87 assistance, tax credits, tax abatements, mortgage financing, mortgage insurance, assistance pursuant to
88 any government program or any other form of assistance, intended to make housing affordable to low-
89 income households, especially very low and extremely low-income households.

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

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

98 “Termination”, the cessation, discharge or removal of an affordability restriction affecting a
99 publicly-assisted housing development in the absence of a simultaneous replacement of that restriction
100 with an equivalent affordability restriction including, but not limited to: (i) nonrenewal or termination, in
101 whole or in part, of a government program contract or mortgage; (ii) expiration, in whole or in part, of an
102 affordability restriction under a government program or the requirement to renew the restriction; (iii)
103 payment in full of a government program mortgage; or (iv) prepayment of a government program
104 mortgage or contract.

105 “Time for performance”, the date for delivery of the deed or other document evidencing a sale
106 pursuant to a purchase contract or any extension thereof.

107 “Very low income”, having a household income of not more than 60 per cent of the area median
108 income, adjusted for household size, as periodically determined by the United States Department of
109 Housing and Urban Development.

110 Section 2. (a) Except with respect to property subject to an affordability restriction which has
111 less than 2 years remaining and for which subsection (e) shall apply, the owner shall provide written
112 notice to: (i) all tenants and the tenant organization; (ii) the chief executive officer of the affected
113 municipality; (iii) CEDAC; and (iv) the department, not less than 2 years before the termination of the
114 affordability restriction affecting publicly-assisted housing. Nothing herein shall prohibit an owner from
115 taking actions to terminate an affordability restriction during any notice period provided herein; provided,
116 however, that the owner shall comply with all of the notice terms and restrictions pursuant to subsections
117 (b) and (c). The informational notice shall provide: (1) the address of the publicly-assisted housing; (2)
118 the name and address of the owner; (3) notification that an affordability restriction may terminate; (4) the
119 date on which each affordability restriction may terminate; and (5) such other information as required by
120 the department. If more than 1 termination may occur, the owner may send 1 written notice so long as the

121 terminations are scheduled to occur within 1 year of each other, the notice is given at least 24 months
122 before the earliest termination and the notice otherwise complies with this subsection.

123 (b) An owner shall not complete a termination or allow a termination to occur unless, not less
124 than 1 year before the completion of the last termination event affecting the housing, the owner provides
125 the entities identified in subsection (a) with written notice of intent to complete termination. The notice
126 shall state: (1) the address of the publicly-assisted housing; (2) the name and address of the owner; (3) the
127 date on which the owner intends to complete termination; (4) unless section 6 applies, a statement that the
128 department has the right of offer pursuant to section 3; and (5) such other information as required by the
129 department.

130 (c) An owner shall not sell publicly-assisted housing before offering the department the
131 opportunity to purchase the property pursuant to sections 3 and 4. The owner shall notify, in writing, the
132 parties identified in subsection (a) of the owner's intention to potentially sell the property.

133 (d) The notice required by this chapter shall be deemed to have been provided when delivered in
134 person or mailed by certified or registered mail, return receipt requested, to the party to whom notice is
135 required. A notice to the affected municipality shall be awarded to the chief executive officer.

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

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

142 (b) The department may select a designee to act on its behalf as purchaser of the publicly-
143 assisted housing and shall give the owner and CEDAC written notice of its selection. The department

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

156 (c) The department shall, within 90 days after it receives notice pursuant to section 2 of the
157 owner's intention to sell, submit an offer to the owner to purchase the publicly-assisted housing. Failure
158 by the department to submit a timely offer shall constitute an irrevocable waiver of the department's
159 rights under this section and the owner may sell the publicly-assisted housing subject to section 4. If the
160 owner accepts the department's initial or any revised offer, the owner and the department shall enter into
161 such other agreements as are necessary and appropriate to complete the sale. If the owner and the
162 department have not entered into an agreement to sell the property to the department within 90 days after
163 receipt of the notice pursuant to subsection (c) of section 2, the owner may enter into an agreement to sell
164 the property to a purchaser of the owner's choice, subject to the department's right of first refusal
165 pursuant to section 4.

166 (d) At any time after the notice in section 2 has been provided and within 10 days of receiving a
167 request, the owner shall make documents available to the department for review and photocopying during
168 normal business hours at the owner's principal place of business or at a commercial photocopying facility.

169 Such documents shall include, but not be limited to: (1) any existing architectural plans and specifications
170 of the development; (2) itemized lists of monthly operating expenses and capital expenditures in each of
171 the 2 preceding calendar years; (3) any capital needs studies or market studies that have been submitted to
172 a federal, state or local agency in the preceding 3 years; (4) utility consumption rates for the preceding 12
173 months; (5) copies of the last 2 annual financial and physical inspection reports filed with federal, state or
174 local agencies; (6) the most recent rent roll showing then current vacancies and rent arrearages; (7) a list
175 of vacant units; and (8) a statement of the approximate annualized vacancy rate at the development for
176 each of the 2 preceding calendar years. Documents obtained pursuant to a request under this subsection
177 shall not be considered public records, as defined in clause Twenty-sixth of section 7 of chapter 4, and the
178 department shall not make such documents available to the public without the written consent of the
179 owner or pursuant to a court order; provided, however, that disclosure may be made to potential funding
180 sources, regulatory agencies or agents or consultants of the department in connection with the transaction,
181 subject to appropriate confidentiality agreements. Upon request and with appropriate notice, the owner
182 shall also permit reasonable inspections of the dwelling units, building systems, common areas and
183 common grounds by agents, consultants and representatives of the department including, but not limited
184 to, inspections related to environmental, engineering, structural or zoning matters.

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

188 Section 4. (a) The department shall have a right of first refusal to purchase any publicly-assisted
189 housing development under this section. After the expiration of the 90 day period following receipt of
190 notice pursuant to subsection (c) of section 2, but not later than the 360 days after the date of receipt of
191 such notice, the owner may execute a purchase contract with a third party to sell the publicly-assisted
192 housing development if the owner complies with this section. After 360 days from the date of receipt of
193 such notice, the owner shall again be subject to the notice provision of subsection (c) of section 2.

194 (b) Upon execution of a third party purchase contract, the owner shall, within 7 days, submit a
195 copy of the contract to the department and CEDAC, along with a proposed purchase contract for
196 execution by the department. The department shall, within 30 days after receipt of the third party
197 purchase contract and the proposed purchase contract, execute the proposed purchase contract or such
198 other agreement as is acceptable to the owner and the department. The time periods set forth in this
199 subsection may be extended by agreement between the owner and the department. The proposed
200 purchase contract shall contain the same terms and conditions as the executed third party purchase
201 contract, except that the proposed purchase contract shall provide at least the following terms: (i) the
202 earnest money deposit shall not exceed the lesser of: (1) the deposit in the third party purchase contract;
203 (2) 2 per cent of the sales price; or (3) \$250,000; provided, however, that the earnest money deposit shall
204 be held under commercially-reasonable terms by an escrow agent selected jointly by the owner and the
205 department; (ii) the earnest money deposit shall be nonrefundable unless the owner fails to perform its
206 obligations with due diligence for a period of not less than 90 days from the date of execution of the
207 purchase contract or such greater period as provided for in the third party purchase contract; and (iii) the
208 time for performance shall be not less than 240 days from the date of the execution of the purchase
209 contract or such greater period as provided for in the third party purchase contract.

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

216 (d) If the department executes the proposed purchase contract as provided in subsection (b) but
217 fails to perform as provided in the executed purchase contract, the owner shall have 24 months from the
218 date on which the proposed purchase contract terminated in which to complete the sale of the owner's

219 publicly-assisted housing development to a third party on economic terms and conditions that are not
220 materially more favorable to the proposed purchaser than the economic terms and conditions in the
221 proposed purchase contract offered to the department. Upon the expiration of the 24-month period, the
222 owner shall again be subject to subsection (c) of section 2, section 3 and this section.

223 (e) The department may make a counteroffer by executing and submitting to the owner an
224 amended proposed purchase contract. The owner shall have 30 days from the date it receives the
225 amended proposed purchase contract to execute the amended proposed purchase contract or reject, in
226 writing, the counteroffer. If the owner rejects the counteroffer, it shall have 24 months from the date on
227 which the owner rejects the department's counteroffer to complete the sale of the owner's publicly-
228 assisted housing development to a third party; provided, however, that if such sale is: (i) upon economic
229 terms and conditions that are materially more favorable to the proposed purchaser than the economic
230 terms and conditions in the proposed purchase contract offered to the department; or (ii) upon terms that
231 are substantially the same as were offered by the department in the counteroffer, the owner shall provide a
232 copy of the new third party purchase contract, along with a proposed purchase contract for execution by
233 the department which shall contain the same terms and conditions as the executed third party purchase
234 contract, and the department shall have 30 days from the date it receives the third party purchase contract
235 and the proposed purchase contract to execute the proposed purchase contract or such other agreement as
236 is acceptable to the owner and the department.

237 (f) The owner shall, not later than 7 days after the execution of the proposed purchase contract or
238 such other agreement acceptable to the owner and the department, provide the department with a copy of
239 any new or amended purchase contract executed with respect to the property during the 24-month period
240 set forth in subsections (c) to (e), inclusive, and shall, not later than 7 days after the recording or filing
241 thereof, provide the department with a copy of any deed or other document transferring the owner's
242 interest in the publicly-assisted housing development.

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

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

250 Section 6. (a) Sections 3 and 4 shall not apply to any of the following: (i) a government taking by
251 eminent domain or a negotiated purchase in lieu of eminent domain; (ii) a forced sale pursuant to a
252 foreclosure; (iii) a deed-in-lieu-of foreclosure; (iv) a proposed sale that, as determined by the department,
253 is to a purchaser pursuant to terms and conditions that preserve affordability; (v) a proposed sale of a
254 publicly-assisted development which the department has determined has section 8 contracts for all of the
255 units in the development and the buyer has agreed, in a regulatory agreement, to renew that project-based
256 section 8 assistance, or assistance under any successor program for all units in the development if at the
257 time of such renewal, such assistance is available to the owner on economic terms and conditions that are
258 comparable to the existing assistance contract; (vi) a proposed sale of a publicly-assisted development to
259 an affiliate of the owner that is not a termination as determined by the department; and (vii) a proposed
260 sale pursuant to an agreement in effect on the effective date of this chapter.

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

266 or (vi) of said subsection (a) to the owner, CEDAC, the local legal services organization and the tenant
267 organization.

268 Section 7. For 3 years after termination, the rent for a protected low-income tenant who does not
269 receive an enhanced section 8 voucher shall not be increased more than once annually by the increase in
270 the consumer price index applicable to the area in which the publicly-assisted housing development is
271 located during the preceding 12 months, plus 3 per cent. This section shall not apply to a low-income
272 tenant who: (i) is income eligible for an enhanced section 8 voucher but does not obtain such a voucher
273 solely due to some action or inaction of the tenant on or after the date that the tenant is eligible to apply
274 for the enhanced section 8 voucher; or (ii) would be eligible for an enhanced section 8 voucher if this
275 section were not in effect. For a period of 3 years after termination, a protected low-income tenant shall
276 not be evicted or involuntarily displaced from the tenant's apartment except for good cause related to
277 tenant fault.

278 Section 8. A purchase by the department or by its designee pursuant to this chapter shall be
279 subject to a regulatory agreement. A regulatory agreement shall not contain any terms that would preclude
280 an owner or buyer from participating in, or diminishing the benefits that an owner would otherwise
281 receive by participating in, the United States Department of Housing and Urban Development's Mark Up
282 to Market Program.

283 Section 9. If an owner complied with sections 2 and 3 but a purchase by the department did not
284 occur after such compliance or such owner completed a sale pursuant to section 4, such owner may apply
285 to the department for a certificate of compliance by submitting a written request for the certificate in a
286 form and with such documentation as required by the department to establish the owner's compliance to
287 the satisfaction of the department. When an owner submits such an application to the department, the
288 owner shall provide a copy of the request to CEDAC and the chief executive officer of the affected
289 municipality. The owner shall also provide a copy of the owner's request to a tenant of the publicly-

290 assisted housing upon request. The department shall issue the certificate of compliance within 30 days
291 after receipt of the application if it determines that the owner has complied with said sections 2 and 3.
292 The certificate of compliance shall be filed with the registry of deeds within 1 year after the date of
293 issuance.

294 **SECTION 2.** Within 45 days after the effective date of this act, the department of housing and
295 community development shall establish a 13-member advisory committee to provide advice and
296 recommendations to the department regarding regulations to implement this act. That committee shall
297 consist of: the undersecretary of the department or his designee; the executive director of the Community
298 Economic Development Assistance Corporation; 1 member selected by the Massachusetts Mayors
299 Association; 1 member selected by the Massachusetts Municipal Association; 1 member selected by
300 Citizens Housing and Planning Association; 1 member selected by the Greater Boston Real Estate Board;
301 1 member selected by the Real Estate Bar Association for Massachusetts; 1 member selected by the
302 Massachusetts Association of Community Development Corp.; 1 member selected by the Massachusetts
303 Legal Assistance Corporation; 1 member affiliated with the Affordable Housing Preservation Initiative of
304 the Local Initiatives Support Corporation; 1 member selected by the Massachusetts Chapter of the
305 National Association of Housing and Redevelopment Officials; and 2 members chosen by the department.
306 The department shall promulgate regulations to effectuate the purposes and implement chapter 40T of the
307 General Laws not later than 150 days after the effective date of this act.

308 **SECTION 3.** For the purposes of sections 3 and 4 of chapter 40T of the General Laws, housing
309 that qualified as publicly-assisted housing under any of the programs described in the definition of
310 “publicly-assisted housing” in section 1 of said chapter 40T that was not then subject to a purchase
311 contract in existence on the effective date of this act shall be subject to said chapter 40T for 4 years after
312 the date of the last event or occurrence that constituted a termination.

313 **SECTION 4.** Notwithstanding subsection (a) of section 2 of chapter 40T of the General Laws,
314 an owner of publicly-assisted housing who, on the effective date of this act, has less than 2 years
315 remaining prior to the date when the affordability restriction will cease to apply to such property, shall not
316 be required to give the 2-year notice required by said subsection (a), but shall provide such notice within
317 90 days of the effective date of this act. Notwithstanding subsection (b) of said section 2 of said chapter
318 40T, an owner who, on the effective date of this act has less than 1 year remaining prior to a termination
319 shall not be required to give the 12-month notice required by said subsection (b) of said section 2 of said
320 chapter 40T, but shall provide such notice within 90 days after the effective date of this act.