



Lynda M. Connolly
Chief Justice

**Trial Court of the Commonwealth
District Court Department**

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MEMORANDUM

TO: District Court Judges and Clerk-Magistrates
FROM: Hon. Lynda M. Connolly, Chief Justice
DATE: August 11, 2010
SUBJECT: **New protections against eviction of residential tenants from foreclosed properties;
New offenses involving fraudulent statements in the mortgage loan process**

On August 7, 2010 at 2:57 P.M. the Governor signed into law St. 2010, c. 258, “An Act to Stabilize Neighborhoods,” which was effective immediately.

The new law has two provisions of particular interest to the District Court: it created a number of new protections against eviction for residential tenants in foreclosed properties, and it added new criminal penalties for fraudulent statements in the mortgage loan process.

1. New protections against eviction of residential tenants from foreclosed properties.

Section 6 of the act added a new Chapter 186A to the General Laws, “Tenant Protections in Foreclosed Properties.” It permits a foreclosing owner to evict a tenant in only two situations: where there is “just cause” or where there is a binding agreement with a third party buyer.

“Notwithstanding any other special or general law to the contrary, a foreclosing owner shall not evict a tenant except for just cause or unless a binding purchase and sale agreement has been executed for a bona fide third party to purchase said housing accommodation from a foreclosing owner.” G.L. c. 186A, § 2.

“Just cause” is limited to six situations:

[Nonpayment of rent] “(a) the tenant has failed to pay the rent in effect prior to the foreclosure or failed to pay use and occupancy charges, as long as the foreclosing owner notified the tenant in writing of the amount of rent or the amount of use and occupancy that was to be paid and to whom it was to be paid; [or]

[Uncorrected tenant violation] “(b) the tenant has violated an obligation or covenant of the tenancy or occupancy, other than the obligation to surrender possession upon proper notice, and has failed to cure such violation within 60 days after having received written notice thereof from the foreclosing owner; [or]

[Nuisance] “(c) the tenant is committing a nuisance in the unit, is permitting a nuisance to exist in the unit, is causing substantial damage to the unit or is creating a substantial interference with the quiet enjoyment of other occupants; [or]

[Illegality] “(d) the tenant is convicted of using or permitting the unit to be used for any illegal purpose; [or]

[Tenant refusal to renew lease] “(e) the tenant who had a written bona fide lease or other rental agreement which terminated, on or after the effective date of this chapter, has refused, after written request or demand by the foreclosing owner, to execute a written extension or renewal thereof for a further term of like duration and

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in such terms that are not inconsistent with this chapter; [or]

[Tenant refusal of reasonable access] “(f) the tenant has refused the foreclosing owner reasonable access to the unit for the purpose of making necessary repairs or improvement required by the laws of the United States, the commonwealth or any subdivision thereof, or for the purpose of inspection as permitted or required by agreement or by law or for the purpose of showing the unit to a prospective purchaser or mortgagee

“provided that none of the preceding events shall be deemed just cause unless the foreclosing owner has delivered to each tenant at the time of the delivery of the written notice specified in the paragraph below, a written disclosure of the tenant’s right to a court hearing prior to eviction.

“The actions sets forth in clauses (a) and (b) shall not be deemed to be just cause unless the foreclosing owner, within 30 days of the foreclosure, posted in a prominent location in the building in which the rental housing unit is located a written notice stating the names, addresses, telephone numbers and telephone contact information of the foreclosing owner, the building manager or other representative of the foreclosing owner responsible for the management of such building and stating the address to which rent and use and occupancy charges shall be sent; provided, however, that the foreclosing owner has delivered such written notice to each tenant of said housing accommodation;

“Nothing in this chapter shall limit the rights of a third party owner to evict a tenant at the expiration of an existing lease.” G.L. c. 186A, § 1.

The court may resolve any dispute between a foreclosing owner and a tenant about the reasonableness of the amount of rent or the use and occupancy rate:

“If a foreclosing owner disagrees with the amount of rent or use and occupancy rates that a tenant at will or lessee pays to the foreclosing owner, the foreclosing owner may bring a claim in district or superior court or the housing court to claim that the rent is unreasonable and set a new use and occupancy rate. A bona fide lease between the foreclosed upon owner and the lessee or proof of rental payment to the foreclosed upon owner shall be presumed reasonable.” G.L. c. 186A, § 3.

Violations by a foreclosing owner are punishable criminally, may be enjoined in equity, and may be offered as a defense in an eviction proceeding:

“A foreclosing owner that evicts a tenant in violation of this chapter or any ordinance or bylaw adopted pursuant to this chapter, shall be punished by a fine of not less than \$5,000. Each such illegal eviction shall constitute a separate offense. The district and superior courts and the housing court shall have jurisdiction over an action arising from a violation of this chapter or of any ordinance or bylaw adopted pursuant to this chapter, and shall have jurisdiction in equity to restrain any such violation. It shall be a defense to an eviction proceeding that the foreclosing owner attempted to evict a tenant in violation of this chapter or any ordinance or bylaw adopted pursuant to this chapter.” G.L. c. 186A, § 4.

2. New offenses involving fraudulent statements in the mortgage loan process. Section 11 of the act made it a 5-year felony for either a lender or borrower knowingly to make a material false statement or omission in the mortgage lending process:

“Whoever intentionally: (1) makes or causes to be made any material statement that is false or any statement that contains a material omission, knowing the same to be false or to contain a material omission, during or in connection with the mortgage lending process, with the intent that such statement be relied upon

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by a mortgage lender, borrower or any other party to the mortgage lending process; (2) uses, or facilitates the use of, any material statement that is false or any statement that contains a material omission, knowing the same to be false or to contain a material omission, during or in connection with the mortgage lending process, with the intent that such statement be relied upon by a mortgage lender, borrower or any other party to the mortgage lending process; (3) receives any proceeds or any other funds in connection with a residential mortgage closing, knowing such proceeds or funds were obtained in violation of clause (1) or (2); or (4) files or causes to be filed with a registrar of deeds any document that contains a material statement that is false or a material omission, knowing such document to contain a material statement that is false or a material omission, shall be punished by imprisonment in the state prison for not more than 5 years or by imprisonment in the house of correction for not more than 2 ½ years or by a fine of not more than \$10,000 in the case of a natural person or not more than \$100,000 in the case of any other person, or by both such fine and imprisonment.” G.L. c. 266, § 35A(b)(¶1).

“(c) If a defendant is convicted of a violation of this section as a result of conduct or an omission by an employee or agent of the defendant the court may consider the following mitigating factors with respect to sentencing:

“(1) that the defendant had instituted and maintained at the time of the violation, and continues to have, a written policy including:

“(i) a prohibition against conduct that violates this section by employees and agents of the defendant;

“(ii) penalties or discipline for violation of the policy;

“(iii) a process for educating employees and agents concerning the policy and consequences of a violation thereof; and

“(iv) with respect to a defendant authorized to conduct criminal history checks for the employee’s or agent’s position, a requirement for a criminal history check before employing an employee or engaging an agent and a requirement that the defendant will not employ or engage an individual who has been convicted of a crime involving fraud;

“(2) a demonstration that the defendant enforces the policy described in clause (1); and

“(3) prior to the violation of this section the defendant provided a copy of the policy described in clause (1), including a description of the consequences for violating the policy, to the employee or agent who committed the violation.” G.L. c. 266, § 35A(c).

Violating the above provision “in connection with 3 or more residential properties” is an aggravated 15-year felony of “engag[ing] in a pattern of residential mortgage fraud” which is punishable:

“by imprisonment in the state prison for not more than 15 years or by a fine of not more than \$50,000, in the case of a natural person, or not more than \$500,000 in the case of any other person, or by both such fine and imprisonment.” G.L. c. 266, § 35A(b)(¶2).

Section 11A of the act includes detailed venue provisions for prosecuting these offenses:

“A violation of section 35A of chapter 266 may be prosecuted and punished in:

“(1) the county in which the residential property for which a mortgage loan is being sought is located;

“(2) the county in which any act was performed in furtherance of the violation;

“(3) the county in which any person alleged to have violated this section had control or possession of any proceeds of, or other funds received as a result of the violation;

“(4) the county in which a closing on the mortgage loan occurred; or

“(5) the county in which a document containing a deliberate misstatement, misrepresentation or omission is filed with a registrar of deeds.” G.L. c. 277, § 62C.

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Finally, § 9 of the act expanded the definition of larceny by false pretenses to include false representations to mortgage lenders by adding the underscored words to G.L. c. 266, § 33(2):

“(2) whoever, with intent to defraud, by a false statement in writing respecting the financial condition, or means or ability to pay, of himself or of any other person, obtains for himself or for any other person credit from any bank or trust company or any banking institution or any mortgage lender, as defined in section 1 of chapter 255E, or any retail seller of goods or services accustomed to give credit in any form whatsoever shall be guilty of larceny.”

The text of the new law is available at <http://www.mass.gov/legis/laws/seslaw10/sl500258.htm> and at <http://www.mass.gov/legis/bills/senate/186/st02pdf/st02407.pdf>.