

Chapter

T H E C O M M O N W E A L T H O F M A S S A C H U S E T T S

*In the Year Two Thousand and Twelve*

AN ACT RELATIVE TO HOUSING RIGHTS FOR VICTIMS OF DOMESTIC VIOLENCE, RAPE, SEXUAL ASSAULT AND STALKING.

*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 186 of the General Laws is hereby amended by adding the following 7 sections:-

Section 23. (a) As used in sections 23 to 29, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

"Co-tenant", a person who shares the legal obligation to pay rent or use and occupancy for the premises with a tenant and who occupies the premises.

"Domestic violence", the occurrence of 1 or more of the following acts between family or member of a household:

- (i) attempting to cause or causing physical harm;
- (ii) placing another in fear of imminent serious physical harm;
- (iii) causing another to engage involuntarily in sexual relations by force, threat or duress.

"Housing subsidy provider", a local housing authority, agency or other entity providing or administering a federal or state rental subsidy within the commonwealth under applicable law.

"Member of the household", a person residing with a tenant or co-tenant as an authorized occupant of the premises. In the case of an application for housing, such term shall include a person identified by the applicant as a proposed household member who would be living with the applicant in the premises.

"Owner", as defined in 105 C.M.R. 410.020.

"Qualified third party", a police officer, as defined by section 1 of chapter 90C, law enforcement professional including, but not limited to, a district attorney, assistant district attorney, a victim-witness advocate, probation or parole officer; an employee of the Victims Services Unit of the department of criminal justice information services; an application assistant in the address confidentiality program of the state secretary under section 2 of chapter 9A; a licensed medical care provider; an employee of the department of children and families or the department of transitional assistance charged with providing direct service to clients, or a manager or designated domestic violence or abuse advocate within either department; an active licensed social worker; a licensed mental health professional; a sexual assault counselor as

defined in section 20J of chapter 233; or a domestic violence victims' counselor as defined in section 20K of said chapter 233.

"Quitting date", the date that a tenant or co-tenant surrenders such person's interest in the premises; provided further, that such date shall be determined as: (i) if the tenant or co-tenant has vacated the premises, the date notice is given to the owner of the intent to abandon the premises and not to return; or (ii) if the tenant or co-tenant has not vacated the premises, either (A) the date the tenant or co-tenant intends to vacate the premises or (B) the actual date that the tenant or co-tenant has vacated after providing such notice.

"Rape", as set forth in sections 22, 22A, 22B, 22C, 23, 23A, 23B, 24 or 24B of chapter 265 or sections 2, 3 or 17 of chapter 272.

"Sexual assault", as set forth in sections 13B, 13B½, 13B¾, 13F, 13H or 13K of chapter 265 or section 35A of chapter 272.

"Stalking", stalking as set forth in section 43 of chapter 265 or criminal harassment as set forth in sections 43 or 43A of chapter 265.

"Tenant", (i) a person who has entered into an oral or written lease or rental agreement with the owner or (ii) a person who remains on the premises after such person's tenancy has terminated or after the expiration of such person's lease.

Section 24. (a) A tenant or co-tenant may terminate a rental agreement or tenancy and quit the premises upon written notification to the owner that a member of the household is a victim of domestic violence, rape, sexual assault or stalking, if such notification is made within 3 months of the most recent act of domestic violence, rape, sexual assault or stalking; or if a member of a tenant's household is reasonably in fear of imminent serious physical harm from domestic violence, rape, sexual assault or stalking. An owner shall have the right to request proof of the status as a victim of domestic violence, rape, sexual assault or stalking, including the name of the perpetrator, if known, as provided in subsection (e).

(b) Within 3 months of written notification to the owner to terminate a rental agreement or tenancy under subsection (a), a tenant, co-tenant or any household member who is not the perpetrator of the domestic violence, rape, sexual assault or stalking shall quit the premises. If the tenant or co-tenant fails to quit the premises within 3 months, the notice to terminate the rental agreement or tenancy shall be void.

(c) A tenant or co-tenant to whom this section applies shall be discharged from liability for rent or use and occupancy for 30 days or 1 full rental period after the quitting date, whichever last occurs, to the extent that a rental agreement and applicable law may otherwise impose such liability beyond the quitting date. Such tenant or co-tenant shall be entitled to a refund of any prepaid rent for any period thereafter. The tenant or co-tenant shall receive a full and specific statement of the basis for retaining any of

the security deposit together with any refund due in compliance with section 15B within 30 days of the conclusion of the tenancy and the delivery of full possession of the leased premises by all occupants to the landlord.

(d) No other tenant or co-tenant who is a party to the rental agreement shall be released from such tenant's or co-tenant's obligations under the rental agreement or other obligations under this chapter. If the tenant or co-tenant to whom this section applies vacates but leaves belongings, such belongings shall be deemed abandoned and may be disposed of under applicable law, unless the tenant or co-tenant indicates in writing the responsibility for such belongings and the action to be taken with respect to such belongings. If the tenant or co-tenant to whom this section applies vacates, but another person remains in the premises other than another tenant or co-tenant, nothing in this section shall affect the owner's rights and obligations with regard to such remaining person. A landlord who in good faith initiates an action against a remaining tenant, co-tenant or household member, or a housing subsidy provider who terminates or denies a rental subsidy to a remaining tenant, co-tenant or household member, or takes any other action under this section, shall not be subject to a claim of retaliation or any other claim under this chapter.

(e) If relief is sought because of recent or ongoing domestic violence, rape, sexual assault or stalking, an owner may request that proof be provided to show that a protective order or third-party verification is in effect or was obtained within the prior 3 months, or a tenant or co-tenant is reasonably in fear of imminent serious physical harm. Proof of status as a victim of domestic violence, rape, sexual assault or stalking shall be satisfied by production of any 1 of the following documents:

(1) a copy of a valid protection order under chapter 209A or 258E obtained by the tenant, co-tenant or member of the household;

(2) a record from a federal, state or local court or law enforcement of an act of domestic violence, rape, sexual assault or stalking and the name of the perpetrator if known; or

(3) a written verification from any other qualified third party to whom the tenant, co-tenant or member of the tenant or co-tenant's household reported the domestic violence, rape, sexual assault or stalking; provided, however, that the verification shall include the name of the organization, agency, clinic or professional service provider and include the date of the domestic violence, rape, sexual assault or stalking, and the name of the perpetrator if known; and provided, further, that any adult victim who has the capacity to do so shall provide a statement, under the penalty of perjury, that the incident described in such verification is true and correct.

(f) An owner or housing subsidy provider who obtains written proof of status as a victim of domestic violence, rape, sexual assault or stalking shall keep such documentation and the information contained in the

documentation confidential, and shall not provide or allow access to such documentation in any way to any other person or agency, unless the victim provides written authorization for the release of such information or unless required by court order, government regulation or governmental audit requirements.

Section 25. An owner shall not refuse to enter into a rental agreement, nor shall a housing subsidy provider deny assistance, based on an applicant having terminated a rental agreement under section 24 or based upon an applicant having requested a change of locks under section 26.

Section 26. (a) For purposes of this section, the term "household member" shall mean a person residing with the tenant or co-tenant as an authorized occupant of the premises, and who is 18 years of age or older or an emancipated minor.

(b) An owner shall, upon the request of a tenant, co-tenant or a household member, change the locks of the individual dwelling unit in which the tenant, co-tenant or household member lives if the tenant, co-tenant or household member reasonably believes that the tenant, co-tenant or household member is under an imminent threat of domestic violence, rape, sexual assault or stalking at the premises. An owner shall have the right to request, in good faith, proof of the status as a victim of domestic violence, rape, sexual assault or stalking, including the name of the perpetrator, if known, as provided in subsection (e) of section 24.

(c) If the threat of domestic violence, rape, sexual assault or stalking is posed by a person who is a tenant, co-tenant or household member, the owner may change the locks and deny a key to the alleged perpetrator upon receipt of a request to change the locks; provided, however, that such request shall be accompanied by: (i) a copy of a valid protective order issued under chapter 209A or chapter 258E issued against a tenant, co-tenant or household member; or (ii) a record from a federal, state or local court or law enforcement, indicating that a tenant, co-tenant or household member thereof poses an imminent threat of domestic violence, rape, sexual assault or stalking.

(d) An owner who has received notice of a request for change of locks under this section shall, within 2 business days, make a good faith effort to change the locks or give the tenant, co-tenant or household member permission to change the locks. If the owner changes the locks, the owner shall make a good faith effort to give a key to the new locks to the tenant, co-tenant or household member requesting the lock change as soon as possible, but within the same 2 business day period. An owner may charge a fee for the expense of changing the locks. The fee shall not exceed the reasonable price customarily charged for changing such locks in that community.

(e) If an owner fails to change the locks after receipt of a request under this section within 2 business days, the tenant, co-tenant or household member may change the locks without the owner's permission. If the rental

agreement requires that the owner retain a key to the leased residential premises and if a tenant, co-tenant or household member changes the locks, the tenant, co-tenant or household member shall make a good faith effort to provide a key to the new locks to the owner within 2 business days of the locks being changed. If a tenant, co-tenant or household member changes the locks without the owner's permission, such person shall change the locks in a workmanlike manner with locks of similar or better quality than the original locks. An owner may replace a lock installed by the tenant, co-tenant or household member, or seek reimbursement for additional costs incurred, if the owner believes that the locks were not of equal or better quality or were not installed properly, and such action shall be deemed not to be in retaliation.

(f) If the locks are changed under this section, a tenant, co-tenant or household member shall not voluntarily give the new key to the perpetrator. An owner who refuses to provide a key to any person based on the reasonable belief that such person is the perpetrator of alleged domestic violence, rape, sexual assault or stalking, shall not be liable for such refusal.

(g) An owner who takes action to prevent the tenant, co-tenant or household member who has complied with subsection (b) from changing the locks, or any owner who changes the locks but fails to make a good faith effort to provide a key to the tenant, co-tenant or household member requesting the lock change as provided in subsection (d), shall be liable for actual and consequential damages or 3 months' rent, whichever is greater, and the costs of the action, including reasonable attorneys' fees, all of which may be applied in setoff or recoupment against any claim for rent owed or owing for use and occupancy. Damages shall not be imposed if the court determines that the owner acted in good faith.

Section 27. The superior court, housing court, district court and Boston municipal court shall have jurisdiction in equity to restrain violations of sections 23 to 26, inclusive. Section 18 of this chapter and section 2A of chapter 239 shall apply to an act taken in reprisal against a person for requesting that locks be changed under section 26.

Notwithstanding sections 23 to 26, inclusive, if a court has issued a protective order under chapter 209A, or any other law, ordering a tenant, co-tenant or member of the household to vacate the dwelling unit, the owner shall not interfere with the order and upon a request to change the locks as described in section 26, shall comply with such request.

Section 28. A waiver of sections 23 to 27, inclusive, in any lease or other rental agreement, except as otherwise provided by law or by federal, state or local regulation shall be void and unenforceable.

Section 29. (a) An owner complying with sections 23 to 28, inclusive, or with the requirements of an order under chapter 209A or any other law, shall be relieved of any liability to the vacated tenant, co-tenant or member of the tenant's household, or to any other third party on account of the owner's good

faith compliance with a court order or changing the locks as provided in section 26 including, but not limited to, withholding a key from the alleged perpetrator, as provided in subsection (c) of section 26. Damages shall not be imposed if the court determines that the matter was of a good faith dispute between the owner and tenants.

(b) Notwithstanding any general or special law to the contrary, any owner who demonstrates that such owner's conduct constituted a good faith effort to comply with sections 23 to 29, inclusive, shall not be liable for multiple damages or for attorney's fees.

SECTION 2. Section 2A of chapter 239 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in line 14, the words "eighty-three A" and inserting in place thereof the following words:- 83A, or a tenant, co-tenant or a member of the household taking action under section 3 of chapter 209A or section 3 of chapter 258E, seeking relief under sections 23 to 29, inclusive, of chapter 186, reporting to any police officer or law enforcement professional an incident of domestic violence, rape, sexual assault or stalking, as defined in said section 23 of said chapter 186, against a tenant, co-tenant or member of the household, or reporting to any police officer or law enforcement professional a violation of an order issued under said section 3 of said chapter 209A or said section 3 of said chapter 258E or any act of abuse as defined in section 1 of said chapter 209A or any act of harassment as defined in chapter 258E directed against the tenant, co-tenant or member of the household.

House of Representatives, December 24, 2012.

Passed to be enacted,

*Paul J. Donato*, Speaker.

In Senate, December 24, 2012.

Passed to be enacted,

*Arthur A. Silva*, President.

, 2012.

Approved,

Governor.