

Discovery for Tenants in Foreclosed Properties

Representing Yourself in an Eviction Case

If you are a tenant in a foreclosed property and facing an eviction **discovery** is a way to get information from the new landlord to help you prove your case. When you request Discovery, the landlord must answer questions in writing and provide you documents about your eviction case. **The landlord must answer your questions in writing under oath.**

Discovery also **postpones your eviction hearing for two weeks** if you ensure that both the court and the landlord's attorney receive your Discovery requests **on or before your Monday Answer Date.**

If you do not request Discovery, you must go to court on the Original Trial Date listed on your Summons and Complaint.

DISCOVERY FORM

(Please print or type)

COMMONWEALTH OF MASSACHUSETTS TRIAL COURT

1. _____, ss:
County

2. _____
Name of Court

3. _____
Docket No. Summary Process

4. _____
Plaintiff (Bank or Other Owner)

vs.

5. _____
Defendant (Tenant(s))

[POST FORECLOSURE]
**DEFENDANT'S REQUEST FOR
DISCOVERY (INTERROGATORIES,
DOCUMENT REQUESTS, and
REQUESTS FOR ADMISSIONS)**

6. _____
Rescheduled Trial Date

Notice to Plaintiff

- A. Because this Discovery has been filed and served, the trial date is automatically postponed for two weeks until the date stated above. If a jury trial has been requested, then a pre-trial conference may be held on the Rescheduled Trial Date (after or at which time a jury trial date will usually be assigned).
- B. You are required by law to answer the interrogatories (questions) checked off below truthfully and fully, and to sign them under the pains and penalties of perjury. Before each of your answers, you must re-state the interrogatory to which you are responding. Include all information that is available to you and to those who work with and for you. You must also provide any and all requested documents in your possession (or control) or that of your agents or employees.
- C. The court and the Defendant must receive your responses to these questions and request for documents no later than ten (10) days after you or your attorney receives this Request for Discovery. Answers should be mailed or delivered to the Defendant's Unit (or to his/her attorney, if s/he is represented).
- D. You are also required to supplement and/or amend your responses to this Discovery if after you have responded you learn:
 1. The identity of other persons with information about the questions asked (including expert witnesses you intend to have testify at trial); and/or
 2. That any of the information you gave in the responses was incorrect when made or is no longer correct.

E. If any documents that are responsive to the requests for production of documents checked off below are redacted or are not produced based on a claim of privilege or on any other grounds, please identify as to each such document or part of such document:

1. The nature of the privilege claimed; and
2. The factual and legal basis of the claim of privilege or ground for not producing the document.

F. As required by Mass. R. Civ. Proc. 26(b)(5), as amended:

When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as material prepared in anticipation of litigation or for trial, the party shall make the claim expressly and, without revealing information that is privileged or protected, shall prepare a privilege log containing the following information: the respective author(s) and sender(s) if different; the recipient(s); the date and type of document, written communication or thing not produced; and in general terms, the subject matter of the withheld information.

G. Unless otherwise specified, the applicable time period for these requests is the period of the Defendant's occupancy of the Unit (including one month afterward if the Defendant has vacated) or, at minimum, the period from Your involvement with the Mortgage or Property going forward.

H. Whenever a person is identified in response to these interrogatories, in addition to her/his name, please furnish such person's business and residential addresses and telephone number.

DEFINITIONS

A. The terms "You," "Your" and "Plaintiff," include the Plaintiff named above and any and all other persons or entities with any asserted ownership in the Property, as well as Plaintiff's predecessors, principals, agents, loan servicers, brokers, employees, relatives, attorneys, and anyone acting on their behalf.

B. The term "Property" refers to the subject premises, as well as common areas, and any other Units at the address where the Defendant's Unit is located, and is meant to encompass terms such as "premises," "land," "building," and the like.

C. The term "Unit" refers to the house or unit that the Defendant occupies, including the exterior and common areas.

D. The term "Defendant" includes the defendant(s) named above and his or her agents, relative(s), attorney(s) and anyone else acting on the Defendant's behalf.

E. The term "Mortgage Loan" refers to a temporary provision of money secured through the granting of a Mortgage and the ownership of Note.

F. The term "Note" means the promissory note signed by the Borrower and secured by the Mortgage.

G. The term "Noteholder" means the entity actually having in its physical custody the original executed Note.

H. The term "Mortgage" means the security instrument for the Property on which You foreclosed.

- I. The term “Borrower” (or “Mortgagor”) means the Borrower(s) listed on the Mortgage.
- J. The term “Mortgagee” refers to the person or entity granting the Mortgage or its Assignee.
- K. The term “Lender” refers to the person or entity funding the loan (which may or may not be the same as the Mortgagee).
- L. The term “Servicer” refers to any entity or company that manages or managed the Mortgage Loan and to which Mortgage Loan payments were to be made.
- M. The term “Foreclosure” or “Foreclosure Sale” means the auction at which You asserted that the Borrower’s rights under the Mortgage were extinguished.
- N. The term “Foreclosing Entity” means any entity that exercised the Power of Sale and/or initiated or conducted foreclosure on the Unit or Property.
- O. The term "Foreclosing Owner" means an entity that holds title in any capacity, directly or indirectly, without limitation, whether in its own name, as trustee or as beneficiary, to a housing accommodation that has been foreclosed upon and either: (1) held or owned a mortgage or other security interest in the housing accommodation at any point prior to the foreclosure of the housing accommodation or is the subsidiary, parent, trustee, or agent thereof; or (2) is an institutional mortgagee that acquires or holds title to the housing accommodation within 3 years of the filing of a foreclosure deed on the housing accommodation; or (3) is the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.
- P. The term “Document” includes: writings, videotapes, electronic mail or other documents electronically stored and/or transmitted, drawings, graphs, charts, photographs, digital images, recordings, contracts, agreements, correspondence, memoranda, reports, notes, requests, bills, orders, notices, writs, declarations, complaints, answers and other court pleadings, schedules, tabulations, checks, diary entries, telegrams, diagrams, films, newspaper clippings, and other writings and recordings of whatever nature. A draft or non-identical copy is a separate document within the meaning of this term.
- Q. The term “Communication” means the transfer, exchange, disclosure, or transmittal of information (in the form of facts, ideas, inquiries, or otherwise), whether orally, or in writing, whether face to face, by telephone, by mail, by personal delivery, by computer, by e-mail, or otherwise.
- R. The term “Fannie Mae” or “FNMA” refers to Federal National Mortgage Association, and the term “Freddie Mac” or “FHLMC” refers to Federal Home Loan Mortgage Corporation.
- S. The term “HUD” refers to the U.S. Department of Housing and Urban Development.
- T. The term “FHA” refers to the Federal Housing Administration.

INTERROGATORIES

NOTE TO DEFENDANTS:

CHECK NO MORE THAN THIRTY (30) BOXES FOR INTERROGATORIES

- I - 1. Please identify any persons with knowledge in this matter, including but not limited to the facts alleged in Your Complaint, the Defendant's Answer and Counterclaims, or your responses to these discovery requests providing for each:
- a. his or her name, occupation/title, telephone number, and address;
 - b. such person's relationship to You (employee, agent, contractor, or the like);
 - c. any actual involvement with the Property on the part of such person;
 - d. the factual substance of the information known to such person; and
 - e. the expert qualifications, if any, of said person.

COMPLIANCE WITH G.L. C 186A TENANT PROTECTIONS IN FORECLOSED PROPERTIES

- I - 2. Please describe in detail all oral communications You have had with the Defendant respect to Defendant's occupancy of the Property and/or his or her vacating the Property, including but not limited to the following:
- a. the date and time of the conversation;
 - b. who initiated the conversation;
 - c. where the communication took place;
 - d. the length and substance of the conversation;
 - e. the name of the person acting on Your behalf who had the conversation with the Defendant; and
 - f. the terms of any offer and of any acceptance of such offer (or counter offer) to vacate (e.g. "cash for keys").
- I - 3. Please describe in detail all written communications You have had with respect to Defendant's occupancy of the Property and/or his or her vacating the Property, including but not limited to the following:
- a. whether a written notice of identity and address of Foreclosing Owner was provided to the Defendant; if so, was it (i) posted in a prominent location at the Property; (ii) mailed by first class mail to the Defendant's unit; (iii) slid under the door of the Defendant's. For each of these methods, please indicate when it occurred and by whom;
 - b. If such notice was provided to Defendant, whether it stated the names, addresses, telephone number and telephone contact information for the Foreclosing Owner, the building manager or other representative of Foreclosing Owner responsible for management;
 - c. If such notice was provided to Defendant, whether it stated the address to which rent could be sent.

- I - 4. If You claim that the Defendant is not a *bona fide* tenant within the meaning of G.L. c. 186A, describe all facts that support such contention.
- I - 5. If You have an agreement to sell the Property, please describe such agreement in detail, including but not limited to:
- a. the date and terms of any purchase and sale agreement;
 - b. the scheduled closing date, if any;
 - c. the identity and contact address and telephone number of the purchaser and any attorney retained by the purchaser in connection with the sale; and
 - d. whether or not to your knowledge the purchaser intends to occupy the Unit.
- I - 6. If You informed the Defendant of Your alleged purchase of the Property, please describe every such notification in detail, including:
- a. all information You provided with each notification, whether it was oral or in writing; and
 - b. when, how and by whom it was delivered.
- I - 7. If You claim to have just cause to evict the Tenant within the meaning of G.L. 186A, please describe all facts that support that contention, including but not limited to:
- a. what happened;
 - b. the dates of each such alleged violation;
 - c. when and how You learned of the alleged violation;
 - d. the names and addresses of anyone with knowledge of or information about such alleged violation;
 - e. the substance of the information known to each person; and
 - f. what if anything You did after becoming aware of each alleged violation, including the substance and date(s) of any written or oral communication to the Tenant regarding such alleged violation and the Tenant's response(s) to such communication(s).
- I - 8. Please describe how much You charged in rent or use and occupancy.
- I - 9. If You charged an amount higher than previously paid to the mortgagor before the foreclosure, please indicate whether You brought a claim in district, superior or housing court to set new rent or use and occupancy rate in accordance with G. L. c. 186A, §5.
- I - 10. Please describe any opportunity the Defendant had to cure the conduct that allegedly constitutes just cause for the eviction, including when and how You informed the Defendant of the allegations and the right to cure, and what facts, if any, support the claim that such cure was not effective. If You did not offer the Defendant an opportunity to cure, please describe in detail why not.

DISABILITY AND REASONABLE ACCOMMODATION

- I - 11. Please describe any knowledge, information, or beliefs You have of the Defendant or a household member having any mental and/or physical disability, including but not limited to how You were made aware of such disability and what disability You believe or were informed the Defendant or the household member has.
- I - 12. Please describe in detail any requests made by or on behalf of the Defendant or household member for an accommodation (e.g., a change in rules or policy, a physical change to the Unit, not proceeding with an eviction, or other special treatment) due to her/his disability, including but not limited to:
- a. when and how the Defendant or other person asked You for an accommodation;
 - b. what s/he requested that You do or not do on account of her/his disability;
 - c. your response; and
 - d. if You denied the request, the reasons for such denial, including the complete factual basis for any denial based on financial or administrative burden, and/or the alleged unreasonableness of the request.
- I - 13. If you contend that You are not covered by any obligation to provide reasonable accommodations to Defendant or members of Defendant's household, please state all facts supporting such contention.

CONDOMINIUM

- I - 14. If the unit You foreclosed upon is a condominium, please describe in detail any interactions You have had with the condominium association, including, but not limited to:
- a. all efforts You have made to appoint any trustee(s) or otherwise participate in the condominium association;
 - b. the substance and date of, and persons involved in, any communications You have had or attempted to have with the association or any trustee;
 - c. whether there has been any allegation that You owe any money to the condominium association and if so, how much;
 - d. what if any payments You have made to the condominium association for the Unit or any other purpose;
 - e. what if any efforts You have made to ensure that the association pays common area utilities and makes repairs in common areas; and
 - f. what, if any, other units You own at the Property.

SECURITY DEPOSIT AND/OR LAST MONTH'S RENT

- I - 15. Please describe in detail how You have handled the Defendant's security deposit and/or last month's rent, including:
- a. whether You requested and/or received the deposit and/or last month's rent from the former landlord and if so in what amount;
 - b. the amount, account number(s), and the name(s) and address(es) of any bank(s) in which You have placed or held the security deposit and/or last month's rent, and the date(s) of the initial deposit in a bank and of any transfer;
 - c. whether the security deposit has at all times since the foreclosure been kept in a separate escrow account protected from creditors, and if not, the reasons why not;
 - d. a full and complete description of any notice(s) You provided to the Defendant about any deposit(s) and/or payment(s) made to a former landlord, including the date(s) of such notice(s);
 - e. if the Defendant claims a violation of the law regarding last month's rent, whether you have paid the Defendant interest on his/her last month's rent;
 - f. if the Defendant claims a violation of the law regarding a security deposit, whether You have paid the Defendant interest on his/her deposit and/or returned the deposit, and if so, the date and amount of any funds so paid; and
 - g. what if any policies, procedures or practices You have regarding tenant's security deposits or prepaid rent concerning properties on which You have foreclosed.

CONDITIONS

- I - 16. If You claim that any conditions of disrepair have been caused by the Defendant or anyone acting under his/her control, please describe the factual basis for this allegation with respect to each such condition, including but not limited to:
- a. the dates on which You claim said condition was so caused and on which You became aware of said condition being so caused;
 - b. how You claim that the Defendant caused the condition; and
 - c. the information on which You rely to form such conclusion, including but not limited to, the name, address and telephone number of anyone who provided information to You in this regard.
- I - 17. If You claim in this action that the Defendant owes you money for use and occupancy or rent of the Unit or for any other reason, please describe:
- a. such amount(s) in detail, including a breakdown of any time period(s) and applicable amount(s) and the basis used for calculating such amount(s);
 - b. any inspections of the Unit performed, inquiries made, photographs taken or the like concerning the Unit's condition;
 - c. an identification of any utilities included in such amount; and
 - d. any communications with the Defendant regarding such amount(s) (including, without limitation, any efforts You made to request payment or inform the

Defendant where payment should be sent and in what amount, and any offers to tender or payments made by the Defendant.

- I - 18. Please describe in detail (providing date, substance, persons involved, and any cost incurred) repairs or maintenance performed to the Unit since Your asserted acquisition, including but not limited to information from:
- a. any visits You made to the Property;
 - b. any communications, whether oral or written, between You and Mortgagor/Borrowers concerning the Property;
 - c. any inspection or assessment of the Property;
 - d. any other individual, agency, bank, realty, government division, or other entity; and
 - e. any photographs or video images of the Property.
- I - 19. For each actual or alleged condition of disrepair (including but not limited to those alleged in the Defendant's Answer and Counterclaims), please state:
- a. whether You agree that said condition of disrepair exists or has existed on the Property during the period of Your asserted ownership;
 - b. the date and manner in which You first became aware of said condition of disrepair (even if prior to Your asserted ownership of the Property); and
 - c. the specific steps, if any, You have taken to address each such condition (including the date and substance thereof, cost, and persons involved).
- I - 20. Please identify and describe in detail all times You were at the Property, including any indoor or outdoor common areas, since acquiring an interest in the Property. For each visit, please include:
- a. the date and length of the attempt;
 - b. the name and title of anyone who visited the Unit or the Property and the name, address and telephone number of anyone else present at the time who has information;
 - c. the purpose of the visit;
 - d. the specific areas of the Unit or Property that were visited;
 - e. whether any photographs and/or video images were taken;
 - f. how and when You let the Defendant know of your plan to inspect and/or to repair;
 - g. what, if anything, the Defendant did or said that prevented or hindered the inspection or repair; and
 - h. what, if any, financial or other loss You suffered as a result of any alleged action or inaction by the Defendant.

Where there are children under the age of six residing in the Unit

- I - 21. Please describe in detail facts concerning the existence of any lead paint in the Unit (including common areas), including but not limited to:
- a. Your efforts, if any, to identify the ages of children under six living in the Unit; investigations to determine the existence or location of any such lead paint (including the dates and substance thereof); and
 - b. any notices or other documents You have received concerning such lead paint; and what if any remedial action You have taken in response (including but not limited to investigation and/or action in response to your receipt of the Defendant's Answer indicating the potential existence of lead paint which would endanger a child under the age of six living at the Property).

UTILITIES

- I - 22. Please describe in full detail the provision of utilities (hot water, water and sewer, heat, gas and electrical service) at the Unit and in the common areas (see State Sanitary Code, 105 C.M.R. 410.020, 410.190, 410.201, and 410.354), including for each such utility without limitation:
- a. the name of the party in whose name the utility is billed or who is otherwise responsible;
 - b. any information received from any source about the utility payment arrangement between the Defendant and the former landlord;
 - c. all efforts You made to determine whether you were responsible for providing each type of utility service;
 - d. the effective dates on which You took responsibility for any utility;
 - e. the substance and date of any communications between You and any other person or entity regarding responsibility for each such utility (including, but not limited to, communications reflecting investigation of utilities at the Property with any utility company or other person/entity), requests for You to take action, and notice of threatened shut-off or interruption; and
 - f. for any utility you claim is the responsibility of the Defendant, all facts upon which You base such claim (including e.g. any written agreement making the Defendant responsible for payment of utilities, steps You have taken to comply with the provisions of G.L. c. 186, §22 with respect to water submetering at the Property and related requirements, and the like).
- I - 23. If You have received any information with respect to any of the utilities (water, gas, or electricity) at the Property having been shut off, discontinued or threatened to be shut off/discontinued (by You, a utility company, or anyone else), please describe such information in detail, including which utility and when, the reason for the shutoff or notice/threat of shutoff, what if any steps You took in response, and when the utility was turned back on.

PUBLIC AND SUBSIDIZED HOUSING

- I - 24. If You have investigated, and/or have knowledge of, the Defendant's receipt of a subsidy or subsidy attached to the Unit or Building, please describe all information with respect to subsidy, including but not limited to:
- a. how and when You first investigated or became aware that the Defendant received a housing subsidy; and
 - b. the full contract rent under the subsidy program and the Defendant's portion of such rent (and whether You have received, been offered, and/or affirmatively rejected rent from a housing agency); c. any and all communications, whether oral or written, You have had with the tenant and/or a housing agency with respect to such subsidy, including but not limited to the substance and date of, and persons involved in, each such communication.
- I - 25. If the Property or the Tenant's Unit has been converted to the condominium or cooperative form of ownership, or if there is intent to do so, please state:
- a. when the conversion took place or will take place; and
 - b. the substance and date(s) of information or notices, if any, provided the Tenant by the Plaintiff or any other person or entity regarding any rights the Tenant may have under any applicable condominium conversion eviction laws.

VALID TITLE TO THE PROPERTY

- I - 26. Please describe in detail the Plaintiff's relationship to the Foreclosing Entity, if any, including, but not limited to, pursuant to any servicing agreements, powers of attorney, or other delegations of authority:
- a. at the time the Pre-foreclosure Notices were sent;
 - b. at the time of the Foreclosure Sale; and
 - c. at the initiation of this Summary Process action (duly noting any change since).
- I - 27. If Plaintiff had any relationship, including, but not limited to, pursuant to any servicing agreements, powers of attorney, or other delegations of authority, with the Foreclosing Entity at any time since the inception of the Mortgage Loan to the present, please describe the physical custody and ownership/holding of the Note in detail including but not limited to:
- a. the physical location(s) of the original Note at all times from the date of the Mortgage through the present;
 - b. any and all transfers in ownership of the Note (or a beneficial interest therein) from the date of the Mortgage through the present (specifying dates, any sums paid, and parties to/from whom such interest was transferred); and
 - c. the specific nature of the relationship between the holder of the Note and any entity undertaking foreclosure activity (if such entities are distinct), including but not limited to a description of any authority to act granted by such holder at the following times:
 - i issuance of any acceleration notice(s) pursuant to the Mortgage;

- ii issuance of any notices pursuant to Massachusetts statutes, including but not limited to G.L. c. 244, §35A, G.L. c. 244, §35B, G.L. c. 244, §35C;
 - iii issuance of any notice(s) of foreclosure sale; and
 - iv sale of the Property by foreclosure deed or otherwise.
- I - 28. Please describe in detail the factual knowledge of the signor of any Affidavit required by G.L. c. 244, §15, including but not limited to: a. what, if any, information the signor reviewed before swearing to its contents, e.g. computer records, written documents, newspaper publications and the like; b. any person with whom the affiant spoke regarding the mortgage loan, compliance with G.L. c. 244, §14, and/or the foreclosure auction; and c. the actual involvement, if any, of the signor in servicing the Mortgage and/or the foreclosure process.
- I - 29. Please identify in detail anyone retained or authorized to act on Your behalf relating to: the foreclosure, the sale, management and/or maintenance of the Property, and/or the eviction of the Defendant (e.g. agents, employees, brokers, and the like), stating for each their identity and title; the effective date, nature and scope of such person's duties, and the substance of such person's knowledge and actual involvement with the Property.
- I - 30. Please describe in full detail any scheduled foreclosure sale and surrounding events, including but not limited to:
- a. how, when, in what manner, and in what publication the foreclosure sale was advertised;
 - b. what, if any, open houses or views were scheduled or advertised (and if so, when) to allow prospective buyers to see the Property;
 - c. how, when, and by whom entry was made onto the Property prior to foreclosure sale;
 - d. an identification of the auctioneer and all others who attended either an open house and/or the foreclosure sale;
 - e. if there was one or more postponement(s) of foreclosure sale, how, when (date and time), where and by whom each such postponement was announced;
 - f. the amount of any bids that were made at such sale; and
 - g. a full accounting of amounts received upon or after foreclosure sale identifying amounts paid toward the mortgage(s); toward costs of sale or auction; other associated charges or fees; and any surplus or overage payable to the Defendant.
- I - 31. Please describe in what if any manner the Foreclosing Entity became the Mortgagee and/or Lender (specifying which, and how and when).

FANNIE MAE/FREDDIE MAC

(ONLY WHERE EITHER FNMA OR FHLMC IS PLAINTIFF)

- I - 32. Please describe the involvement of Fannie Mae/Freddie Mac with the Defendant's Mortgage in complete factual detail, including but not limited to the substance of any guarantee/insurance and all related terms and conditions (including e.g. any applicable servicing guidelines), any exchange of compensation concerning the Mortgage (dollar

amount, date, and entities involved), and any FNMA/FHLMC involvement in, or conditions or requirements concerning modification of Defendant's mortgage.

- I - 33. Please specify any time period(s) when the Note was held by Fannie Mae/Freddie Mac.
- I - 34. If Fannie Mae/Freddie Mac acquired the Property through the foreclosure action or an assignment of bid, please explain what if any rental, buy-back, or relocation programs You offered the Defendant after the foreclosure.

FHA

- I - 35. If this Mortgage Loan was insured by the Federal Housing Administration (FHA/HUD), please describe how the Lender or entity initiating or carrying out foreclosure complied with HUD requirements for such loans, including but not limited to the provision of all required notices (e.g. notices about the Right to Request an Occupied Conveyance), all efforts to arrange a "face to face interview," the acceptance of any partial mortgage payments, and the like.
- I - 36. Please provide the name and locations of all branches of any kind of the Lender/Mortgagee (or its servicer) or Foreclosing Entity within a 200-mile radius of the Property, specifying the scope of services available at each.
- I - 37. If you contend that any of the exceptions to the pre-foreclosure requirement of a face-to-face meeting with the Borrower pursuant to 24 CFR §203.604 and set forth below apply to the instant case, please describe in detail all facts supporting each such contention, including an identification of the source of such facts:
 - a. the Mortgagor does not reside in the Property;
 - b. the mortgaged Property is not within 200 miles of the Mortgagee, its Servicer, or a branch office of either;
 - c. the Mortgagor has clearly indicated that s/he will not cooperate in the interview;
 - d. a repayment plan consistent with the Mortgagor's circumstances if entered into to bring the Mortgagor's account current thus making a meeting unnecessary, and payments there under are current; or
 - e. a reasonable effort to arrange a meeting is unsuccessful.

OTHER

- I - 38. _____

REQUESTS FOR PRODUCTION OF DOCUMENTS

G.L. c. 186A

- D - 1. All documents relating to any claim You may have that the Defendant is not a bona fide tenant within the meaning of G.L. c. 186A.
- D - 2. If You have an agreement to sell the Property, all documents pertaining to such sale, including but not limited to:
- a. any written offers to purchase the Property;
 - b. any purchase and sale agreement;
 - c. any written communications with any potential purchasers regarding their interest or potential interest in acquiring the Property and any closing date; and
 - d. any notice to the Defendant of such sale.
- D - 3. If You claim that You are not a “Foreclosing Owner” within the meaning of G.L. c. 186A, § 1, please provide any documents representing or referencing any mortgage or other security interest that You have held, owned, or serviced, on Your own behalf or as agent or nominee for another, at any time since the commencement of the Foreclosure.

Written Notice to Tenants

- D - 4. Any written notices or communications You sent to or had served on the Defendant, including but not limited to: any and all notices to quit; any and all summons and complaints
- D - 5. Any written notices or communications You posted at the Property.
- D - 6. Any documents relating to the method of service of any notices on the Defendant, including but not limited to internal correspondence, receipts or invoices, or photographs.
- D - 7. All documents concerning written or oral communications between You or Your agents and the Defendant or members of the Defendant’s household regarding the Defendant’s occupancy of the Unit, including but not limited to any notices required by G.L. c. 186A, §3.
- D - 8. All documents concerning written or oral communications between or among the Plaintiff and its agents, or between You or Your agents and third parties, concerning the Defendant’s occupancy of the Unit.

“Just Cause” Allegations for Eviction of Tenants

- D - 9. All documents relating to any claim that You have just cause to evict the Defendant within the meaning of G.L. c. 186A.
- D - 10. All documents relating to any information You provided to the Defendant about any alleged just cause and/or the Defendant’s right to cure.
- D - 11. All documents relating to any claim that the Defendant did not, or was not entitled to, cure any alleged just cause.
- D - 12. All documents relating to oral or written communications with the Defendant or members of the Defendant’s household regarding the payment of rent or use and occupancy for the Unit.

- D - 13. All documents relating to any times You or anyone acting on Your behalf has entered or attempted to enter the Unit, including but not limited to requests for access, the Defendant's response to such requests, and any findings and communications related to such access.

PUBLIC AND SUBSIDIZED HOUSING/GOVERNMENTAL ASSISTANCE

- D - 14. All leases or rental agreements between the Defendant and any current or former owner of the Unit and any related subsidy contracts between the owner and any governmental agency providing subsidy on Defendant's behalf and/or providing subsidy to the Unit or the Property in which the Unit is located or providing low-income tax benefits to the Unit or Property.
- D - 15. All documents concerning communications between the Plaintiff or its agents and any housing authority or subsidy agency regarding the Defendant, the Unit, or the Property.
- D - 16. All documents pertaining to any request by any Defendant or occupant at any Property You owned that You enter into a housing subsidy contract or otherwise accept payments through Section 8 or similar rental subsidy program and Your response thereto.
- D - 17. All agreements, contracts, vouchers, checks, records, notices, correspondence or other documents concerning rental assistance You received from any governmental agency in connection with the tenancy of the Defendant or any other occupant or potential occupant of any other property You own or manage.
- D - 18. All documents concerning income eligibility or other use restrictions for the Unit and/or Property.
- D - 19. All letters and other written communications between You and any housing authority or agency, e.g., DHCD (formerly EOCD), MHFA, HUD, and/or any other relevant agency concerning the Defendant or the Unit.

CONDITIONS

- D - 20. All documents concerning the rent or use and occupancy payments for the Unit, including but not limited to demand, tender, payment, acceptance/rejection and/or Defendant's eligibility for rental of or any period of extended occupancy in the Property.
- D - 21. All notices, calculations, correspondence, online research, broker opinions, verifications, studies, reports, or other documents concerning the fair market value of or rent or use and payments (and calculation thereof) for the Property.
- D - 22. Any and all documents reflecting policies or procedures You have concerning the rental of and/or collection of use and occupancy payments for properties acquired through foreclosure (whether by/from tenants or Borrowers/Mortgagors).
- D - 23. All documents concerning Your efforts to notify the Defendant of the person(s) responsible for repairs or maintenance at the Property.
- D - 24. All documents concerning responsibility for management and/or maintenance of the Unit or Property from the date You acquired ownership of the Unit until the present, including but not limited to policies and procedures, agreements with brokers or local agents, and any emails or other communications related to such management and maintenance.

- D - 25. All documents concerning any inspections, assessments or evaluation of the Property or the Unit itself that You obtained prior to, at the time of, or following the purchase of the Unit or Property.
- D - 26. All documents and internal communications concerning notice, complaint, violation, report or request for repair or the like concerning purportedly or admittedly defective sanitary, building, or health conditions in the Unit or Property, since the beginning of the Defendant's occupancy of the Unit (or Your involvement in any capacity with the Property) and continuing to the present.
- D - 27. All documents concerning all bids, inspections, repairs or other work that You have attempted, performed or caused to be performed at the Property at any time, including but not limited to internal documents and external communications such as emails, work orders, invoices, or receipts.
- D - 28. All documents concerning any claim that the Defendant or any member of the Defendant's household or guest has caused any damage or conditions of disrepair at the Unit or Property.
- D - 29. All photographs, videos, and/or digital images of the Defendant's Unit or the Property at any time.
- D - 30. All documents related to or reflecting Your, if any, with any local ordinance(s) concerning foreclosed properties, e.g., the City of Boston Ordinance entitled "An Ordinance Regulating the Maintenance of Vacant, Foreclosing Residential Properties."
- D - 31. All documents concerning lead or lead paint at the Property or Unit, including but not limited to notices, certifications, reports or requests for repair or the like, and all records and communications that the Plaintiff has made itself, or received from any person or agency, regarding investigation for, or the presence or absence of, lead or lead paint.

UTILITIES

- D - 32. All notices, correspondence, bills, payments or other documents concerning the provision of utility services to the Unit, including any utility payments You made and any utility accounts in Your name or the name of any of Your agents.
- D - 33. All documents concerning the threatened or actual termination and/or re-connection of utilities (including water and sewer, electricity, and/or gas) in the Unit and/or Property since the date of the foreclosure sale.
- D - 34. All documents, including but not limited to agreements, memoranda, and communications relating to any of Your policies or procedures with regard to the provision of or payment arrangements for utility services in occupied properties or units acquired through foreclosure in Massachusetts.
- D - 35. All documents concerning any written agreement between You and the Defendant or the Defendant and any prior owner of the Unit concerning responsibility for payment of any utility service, including water, heat, hot water, and electricity to the Unit.
- D - 36. All documents concerning Your compliance with G.L. c. 186, § 22 if You have not paid for water at the Unit at any time from the date of the foreclosure sale through the date of Your responses to these Discovery requests.

LAST MONTH'S RENT AND/OR SECURITY DEPOSIT

- D - 37. All documents concerning the Defendant's security deposit and/or last month's rent, including but not limited to documents concerning any notice or claim related thereto on the part of the Defendant, any such documents received from any prior owner of the Unit such as receipts, copies of any bank records or statements, notices given to the Defendant about the deposit/payment, conditions statement, and documents concerning payment and/or crediting of interest to the Defendant.
- D - 38. If You claim that You or, if You are the trustee of a trust, that the trust is a bank chartered in the Commonwealth of Massachusetts or the United States, all documents concerning such status.

VALID TITLE TO THE PROPERTY

- D - 39. All documents which support or refute your claim of title to the Property or superior right of possession.
- D - 40. All assignments of Mortgage(s) with regard to this Property starting from the Mortgagor/Defendant to You, the Plaintiff.
- D - 41. The Mortgage Note(s) bearing all intervening endorsements or *Allonges* showing a complete chain of endorsement from the originator to the last endorsee.
- D - 42. Any documents, that demonstrate the Foreclosing Entity was acting on behalf of the Noteholder, including but not limited to any affidavits issued pursuant to G.L. c. 244 §35C.
- D - 43. Any documents that demonstrate the Foreclosing Entity complied with G.L. c. 244 §35B, including but not limited to any affidavits recorded at the Registry of Deeds.
- D - 44. All documents related to the Foreclosing Entity's strict compliance with the statutory and/or contractual power of sale, including but not limited to the Notice of Right to Cure, Notice of Acceleration, Notice of Foreclosure Sale, Notices of the Sale published in the Newspaper, Affidavit of Compliance as required by G.L. c. 244 §35A(f), and Affidavit pursuant to G.L. c. 244, §15.
- D - 45. If the Foreclosing Entity and the Noteholder at the time of the Foreclosure are distinct entities, please provide any and all documents related to the nature of the relationship between the Foreclosing Entity and the Noteholder, including but not limited to Servicing Agreements, Delegations of Authority, Powers of Attorney, and the like.
- D - 46. If You are a Foreclosing Owner, but you are distinct from the Foreclosing Entity, please provide any and all documents related to the nature of the relationship between You and the Foreclosing Entity, including but not limited to servicing, purchasing and/or other agreements.
- D - 47. All documents concerning Your relationship with other persons or businesses who are authorized to act on Your behalf with regard to the Unit or Property and/or that concern the scope of such persons' or businesses' authority and responsibility with regard to the Unit or Property, including but not limited to any powers of attorney, real estate brokerage agreements, property management agreements, and any applicable documents concerning servicing, Real Estate Offerings ("REO"), or other agreements.

- D - 48. If the Mortgage is an FHA-insured loan, any and all documents concerning notice or other requirements (or exceptions thereto) pursuant to HUD regulations (24 CFR Part 203) governing FHA-insured loans, including but not limited to: communications or other documents concerning: a. Occupied Conveyance; and b. a “face-to-face interview” with the Mortgagee.

OTHER

- D - 49. All documents concerning the Defendant’s or household member’s disability and/or need for accommodation (i.e., a change in rules or policy/practice, a physical change in the Unit, etc.), including but not limited to: any request that the Defendant or anyone on his/her behalf has made to You, Your response to such request, any offers of reasonable accommodation that You otherwise have made to the Defendant or household member, notes, internal communications, and any reasonable accommodation forms, policy or the like that You have in use.

- D - 50. If You assert that any request(s) for accommodation made on behalf of the Defendant would be unreasonable and/or would constitute an undue financial or administrative burden, please describe the reasons for such assertions in full factual detail.

- D - 51. All documents concerning actual or proposed condominium or cooperative status or conversion of the Unit or Property, including but not limited to:
- a. documents related to the establishment of a condominium, by-laws, master deed, and named trustees (including appointment thereof or changes thereto);
 - b. correspondence between You and any condominium association or representative; record of payments made by You to any condominium association or representative for the Property for Unit fees or other charges; and
 - c. documents concerning the granting of any mortgage with regard to any past or anticipated condominium conversion.

- D - 52. All documents concerning insurance for the Property (general liability, fire or other insurance) during Your ownership, including but not limited to policies, binders, correspondence, notices of initiation, cancellation and/or renewal, and the like. (See Mass. R. Civ. Proc. 26(b)(2))

OTHER

- D - 53. _____

REQUESTS FOR ADMISSIONS

The Defendant requests that the Plaintiff admit or deny, under penalty of perjury and **within ten days**, the statements which follow numerically below for the purpose of this action only and subject to all pertinent objections to admissibility which may be raised at hearing.

In responding to said requests for admissions, the Plaintiff is advised that Rule 36 of the Massachusetts Rules of Civil Procedure requires that "a denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party **may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry** and that the information known or **readily obtainable** to him is insufficient to enable him to admit or deny" (emphasis added).

PROTECTIONS UNDER G.L c. 186A

- A - 1. The Defendant was not to Your knowledge the borrower (mortgagor) or the child, spouse, or parent of the borrower at the time of the Foreclosure.
- A - 2. You are not aware of any specific facts refuting that the Defendant's tenancy was the result of an arms-length transaction.
- A - 3. You have no factual basis for contesting that the Defendant's tenancy began before the Foreclosure deed was executed.
- A - 4. You do not have a signed agreement to sell the Property to a third party.

WRITTEN NOTICE AND JUST CAUSE UNDER G.L. c. 186A

- A - 5. You did not, within 30 days of the Foreclosure, post in a prominent location in the Property, mail by first class mail to the Defendant's unit, and slide under the door of the Defendant's unit a written notice stating (*please admit or deny a and b*):
 - a. the names, addresses, telephone numbers, and telephone contact information of the Foreclosing Owner, the building manager or other representative responsible for the management of the Property; and
 - b. the address to which rent or use and occupancy payment should be sent.
- A - 6. If You served the written notice specified in Admission No. A-16, You did not at the same time provide a written disclosure of the Defendant's right to a court hearing prior to eviction.
- A - 7. You did not, before the Defendant was allegedly in arrears in rent, notify the Defendant in writing of the amount of rent or use and occupancy to be paid and to whom it was to be paid.
- A - 8. The Defendant has not failed to pay the rent claimed to be in effect prior to the Foreclosure at any time since You notified the Defendant of the address to which rent should be sent.
- A - 9. You do not have any specific facts or reports that the Defendant is currently committing a nuisance in the unit or permitting one to exist.

- A - 10. You do not have any specific facts or reports that the Defendant is causing substantial damage to the Unit.
- A - 11. You do not have any specific facts or reports that the Defendant is creating a substantial interference with the quiet enjoyment of other occupants.
- A - 12. You do not have any specific facts or reports that the Defendant is using the Unit or permitting it to be used for any illegal purpose.
- A - 13. The Defendant has not denied You reasonable access to the Unit for the purpose of inspection, repair, or showing the Property to prospective purchasers or mortgagees.
- A - 14. The conduct or circumstances that form the basis for Your allegation(s) of just cause did not stop within thirty (30) days of Your notifying the Defendant of the allegations.
- A - 15. The conduct or circumstances that form the basis for your allegations of just cause is to your knowledge still occurring.

REQUESTS FOR REASONABLE ACCOMMODATION DUE TO DISABILITY

- A - 16. You have not received federal monetary assistance.
- A - 17. You have not responded to the request for accommodation made in the Defendant's Answer (and/or by other means) as of the date of your responses to these Requests.
- A - 18. You have not permitted mortgagors/former owners of foreclosed properties on occasion to rent or remain in a property for an extended period of time.
- A - 19. You have a policy of not selling foreclosed properties back to the mortgagors of those properties, or an entity or family member intending to sell such property back to the mortgagor.
- A - 20. You have not permitted mortgagors/former owners of foreclosed properties, their family members, and/or Boston Community Capital on occasion to purchase foreclosed properties under circumstances that would permit the mortgagor of such foreclosed property to continue occupying and/or to purchase such property.

SECURITY DEPOSIT AND/OR LAST MONTH'S RENT

- A - 21. You are not a bank chartered in the Commonwealth of Massachusetts or the United States.
- A - 22. You have not returned to the Defendant the security deposit asserted in the Defendant's Answer or other written demand.
- A - 23. You have not paid the Defendant any interest on a security deposit or last month's rent.

UTILITIES

- A - 24. You did not assume responsibility for payment of the following utilities to the Property within seven (7) days of assuming ownership of the Property (please admit or deny each of the following): a. water service; b. common area electricity; c. heat to the Unit; d. hot water to the Unit; and e. electricity to the Unit.
- A - 25. There are no submeters for water service at the Property in accordance with the requirements of G.L. c. 186, §22.

- A - 26. There is no written agreement between You and the Defendant making the Defendant responsible for any utility service at the Unit.
- A - 27. You were notified in the Defendant's Answer that You were not paying for utilities for the Unit in violation of the State Sanitary Code.
- A - 28. As of thirty (30) days following Your receipt of the Defendant's Answer in this action, You had not assumed responsibility for payment of any utilities to the Unit other than cold water.

VALIDITY OF LEGAL TITLE

- A - 29. You (or an entity of which you were a subsidiary, parent, trustee, or agent) did not hold or own a mortgage on or other security interest in the Property at some point in the last 10 years.
- A - 30. You do not hold, own, or service (directly or as mortgagee, nominee, or agent) mortgages or other security interests in three or more properties.
- A - 31. You did not purchase the Property at the Foreclosure sale.
- A - 32. You did not hold title to the Property within three years of the recording of the Foreclosure deed.
- A - 33. Prior to the Foreclosure sale, You did not enter into a Servicing Agreement with the Foreclosing Entity to service mortgage loans including the subject Mortgage Loan.
- A - 34. Prior to the Foreclosure sale, You were not a beneficiary of the Mortgage Loan.
- A - 35. Prior to the Foreclosure sale, You did not send a Notice of Right to Cure to the Borrower in compliance with the Mortgage.
- A - 36. At the time the Notice of Acceleration pursuant to the Power of Sale in the Mortgage was sent to the Borrower, the Foreclosing Entity had not yet been assigned the Mortgage.
- A - 37. Neither You nor the Mortgagee held the Note at the time of the Foreclosure sale.
- A - 38. The Foreclosing Entity did not hold the Note on your behalf at the time of the Foreclosure sale.
- A - 39. A written decision regarding the Mortgagor's modification or loss mitigation request was not provided to the Borrower before the Foreclosure [sale] occurred.

FHA/HUD-INSURED LOANS

- A - 40. The Mortgage is not a Federal Housing Administration ("FHA") loan.
- A - 41. Prior to the Foreclosure Sale, You did not conduct a "face to face" interview with the Mortgagor.
- A - 42. Prior to the Foreclosure Sale, You refused to accept partial Mortgage payments from the Defendant.
- A - 43. At least 60 but not more than 90 days before you reasonably expected to acquire title to the Property, You did not send a Notice of Pending Acquisition to the Mortgagor, summarizing the conditions under which continued occupancy would be permissible.

A - 44. There is not a branch of the Lender or Servicer of the Mortgage within a 200-mile radius of the Property.

OTHER

A - 45. _____

I hereby certify that I caused to be delivered or mailed (circle which one) a copy of this Discovery to the Plaintiff's lawyer on _____ (date).

Signature(s) of Defendant(s)

Printed Names of Defendant(s)

Address

City State Zip

Telephone Number

Email (if any)

Date

