

NEW FEDERAL EVICTION LAWS- WHAT YOU NEED TO KNOW

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OBJECTIVES

- Understand the new federal eviction laws.
- Advise clients on how such laws impact their purchase/management of property.
- Understand whether “cash for keys” is an option for your clients.



OVERVIEW

- Protecting Tenants at Foreclosure Act of 2009.
 - 123 Stat. 1632, Public Law 111-22, May 2009
- Dodd-Frank Wall Street Reform and Consumer Protection Act
 - 124 Stat. 2204, Public Law 111-203, July 2010



Protecting Tenants at Foreclosure Act

TITLE VII—PROTECTING TENANTS AT FORECLOSURE ACT SEC. 701. SHORT TITLE.

This title may be cited as the “Protecting Tenants at Foreclosure Act of 2009”.

SEC. 702. EFFECT OF FORECLOSURE ON PREEXISTING TENANCY.

(a) **IN GENERAL.**—In the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property after the date of enactment of this title, any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to—

(1) the provision, by such successor in interest of a notice to vacate to any bona fide tenant at least 90 days before the effective date of such notice; and

(2) the rights of any bona fide tenant, as of the date of such notice of foreclosure—

(A) under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90 day notice under paragraph (1); or

(B) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90 day notice under subsection (1),

except that nothing under this section shall affect the requirements for termination of any Federal- or State-subsidized tenancy or of any State or local law that provides longer time periods or other additional protections for tenants.

(b) **BONA FIDE LEASE OR TENANCY.**—For purposes of this section, a lease or tenancy shall be considered bona fide only if—

(1) the mortgagor or the child, spouse, or parent of the mortgagor under the contract is not the tenant;

(2) the lease or tenancy was the result of an arms-length transaction; and

(3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit’s rent is reduced or subsidized due to a Federal, State, or local subsidy.

(c) **DEFINITION.**—For purposes of this section, the term “federally-related mortgage loan” has the same meaning as in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602).

PTFA (Continued)

SEC. 703. EFFECT OF FORECLOSURE ON SECTION 8 TENANCIES.

Section 8(o)(7) of the United States Housing Act of 1937 ([42 U.S.C. 1437f\(o\)\(7\)](#)) is amended—

(1) by inserting before the semicolon in subparagraph (C) the following: “and in the case of an owner who is an immediate successor in interest pursuant to foreclosure during the term of the lease vacating the property prior to sale shall not constitute other good cause, except that the owner may terminate the tenancy effective on the date of transfer of the unit to the owner if the owner—

“(i) will occupy the unit as a primary residence; and

“(ii) has provided the tenant a notice to vacate at least 90 days before the effective date of such notice.

(2) by inserting at the end of subparagraph (F) the following: “In the case of any foreclosure on any federally-related mortgage loan (as that term is defined in section 3 of the Real Estate Settlement Procedures Act of 1974 ([12 U.S.C. 2602](#))) or on any residential real property in which a recipient of assistance under this subsection resides, the immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to the lease between the prior owner and the tenant and to the housing assistance payments contract between the prior owner and the public housing agency for the occupied unit, except that this provision and the provisions related to foreclosure in subparagraph (C) shall not shall not affect any State or local law that provides longer time periods or other additional protections for tenants.”.

SEC. 704. SUNSET.

This title, and any amendments made by this title are repealed, and the requirements under this title shall terminate, on December 31, 2012.



OVERVIEW

- Applies to “tenants” in “foreclosed” properties.
- Expires December 2014 (extended by Dodd-Frank)
- Serves as minimal requirements
 - States can impose more strenuous requirements.
- Requires the eviction process be used to remove persons from foreclosed properties.



Applicability

- Applies to all federally-related mortgage loans or any residential property.
- Applies once complete title is transferred.
 - Recording deed, Court order, etc.
- Applies to Section 8 tenants.
- Doesn't apply to short sales.



Requirements

- Divides tenants into: (1) with lease and (2) without lease.
 - Treats tenants differently depending on whether lease is in effect.
- Doesn't apply to former owners living in property
- Generally, “squatters” and “unknowns” fit into “without lease” category.



Tenants Without Leases

- If tenant does not have a current, valid lease, new owner must give tenant 90 days to vacate before moving forward with eviction.
 - 90 Day Notice.
 - Nothing in PTFA addresses conduct of parties during the 90 day period (rent/utilities/etc.)
 - Look to state law



Tenants With Leases

- New owner must honor “bona fide” lease.
- Immaterial when lease was entered into or lease length.
- Must give 90 day notice at end of lease.
- Exceptions:
 - New owner plans to occupy premises.
 - Not a “bona fide” lease.



Exceptions

- New owner plans to occupy
 - Must be person who purchased the foreclosure.
 - Court will likely make inquiries.
 - Must still give tenant a 90 Day Notice and eviction.



Exceptions

- “Bona Fide” Lease
 - Not fraudulent (not in law)
 - Not the mortgager, child, spouse or parent of the mortgagor.
 - What about other relations?
 - Result of an arms-length transaction
 - Rent is not substantially less than fair-market value rent for the property.



“Bona Fide” Lease

- Burden is on new owner to prove lease is not “bona fide”.
- “It Can’t Be Bona Fide” argument
- Proving fraud
- Fair Market Rent
 - Must be “substantially below” FMR
 - Burden on owner to show what comparable rents would be.



Other Issues

- Duty to provide lease (none)
- PTFA doesn't address if tenant wants to break lease.
- PTFA also doesn't address tenant's obligations during this period.
- States may impose special obligations on landlord/tenant relationship.
- Security deposit issues.



“Cash for Keys”

- Legal manner to address these issues.
- Some amount of money for vacating in certain amount of time.
- Put in writing!
- If require other conditions, list them.
- Don't give money until vacate.
- Have tenant sign document once they have left.



THANK YOU

