

# Protecting Tenants at Foreclosure Act of 2009

## Background and Summary

The Protecting Tenants at Foreclosure Act<sup>1</sup> protects tenants from eviction because of foreclosure on the properties they are renting. These provisions took effect on May 20, 2009, and will expire on December 31, 2012.

The tenant protection provisions apply in the case of any foreclosure on a “federally related mortgage loan”<sup>2</sup> or on any dwelling or residential real property. They provide that “any immediate successor in interest” in such a foreclosed property, including a bank that takes title to a house upon foreclosure, will assume the interest subject to the rights of any bona fide tenant and will need to comply with certain notice requirements.

Under this law, the immediate successor in interest of a dwelling or residential real property must provide tenants with a notice to vacate at least 90 days before the effective date of such notice. Additionally, tenants must be permitted to stay in the residence until the end of their lease, with two exceptions:

- (1) When the property is sold after foreclosure to a purchaser who will occupy the property as a primary residence or,
- (2) When there is no lease or the lease is terminable at will under state law.

However, even when these exceptions apply, tenants must still receive 90 days notice before they may be evicted.

The protections of this law apply to tenants under a “bona fide” lease or tenancy. A lease or tenancy is “bona fide” only if:

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

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<sup>1</sup> Title VII of the Helping Families Save Their Homes Act of 2009.

<sup>2</sup> The law states that “federally related mortgage loan” has the same meaning as in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 USC 2602). The definition includes any loan secured by a lien on one-to-four family residential real property, including individual units of condominiums and cooperatives.

- (2) The lease or tenancy was the product of an arm's-length transaction;  
and
- (3) The lease or tenancy requires the receipt of rent that is not substantially less than fair market rent or the rent is reduced or subsidized due to a federal, state, or local subsidy.

***Sample Letter to send to Public Housing and Section 8 HCV Administrators***

*(Address)*

*(Date)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*(Name of contact person*

*Address of Public Housing Authority or other Section 8 Administrator)*

Re: Protecting Tenants at Foreclosure Act of 2009

Dear \_\_\_\_\_:

I write to bring to your attention a significant recent change in federal law that pertains to Section 8 tenancies. The Protecting Tenants at Foreclosure Act (Pub. L. No. 111-22, §§ 702 - 703 (2009)), a federal law enacted on May 20, 2009, imposes new requirements on people and entities (including banks) that become the new owners of residential property as a result of foreclosure on the property.

Under this law, new owners who take title to residential property as a result of foreclosure assume their ownership of the property subject to any existing Section 8 voucher leases and to any existing Housing Assistance Payment (HAP) contracts. The new owners must honor the existing arrangements, including the duration of the original lease, and no matter what the length of the remaining term, must provide the tenants with at least 90 days' advance notice before requiring the tenants to vacate the property.

The law contains an exemption for new owners who plan to live in the unit at issue as their primary residence – these new owners are not required to honor the existing lease terms for more than 90 days. New owners in this situation must give the tenant at least 90 days' advance notice to vacate — beginning after the new owner acquires the property--, and may terminate the tenancy after the 90 day period. Even if the new owner wishes to terminate the tenancy only at the end of the Section 8 lease, or if a successor to a Section 8 landlord wishes to terminate the lease or the Housing Assistance Payment (HAP) contract, he or she must provide 90 days' advance notice to the tenant.

We hope that you, as the administrator of the Section 8 voucher program, will inform tenants, current landlords and new owners of units that house Section 8 voucher tenants about this new law in writing. Please make these documents available in languages other than English for tenants and landlords with limited English proficiency. For future HAP contracts and voucher leases, we suggest that the PHA prepare an addendum to include the 90-days notice requirement and the modification to the term "other good cause" to exclude vacating the property prior to sale from that category.

Please find enclosed a copy of the Protecting Tenants at Foreclosure Act, and a sample notice for tenants informing them of the new law. If we can be of assistance, please feel free to contact \_\_\_\_\_ . Thank you for your attention to this matter.

Sincerely,

\_\_\_\_\_  
*(Name)*

**Sample Letter for Section 8 Tenant to Send to New Owner**

(Address of Tenant)  
(Date)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Name and address of new owner)

Dear \_\_\_\_\_ (new owner):

I am a tenant at \_\_\_\_\_ (address, including apartment number if applicable). I have a lease that is assisted with a Section 8 voucher. The Housing Assistance Payments (HAP) contract for my unit is managed by \_\_\_\_\_ (name of housing authority or other entity that administers your voucher).

I am writing this letter in response to the notice of termination dated \_\_\_\_\_ (date of notice you received) that I received from you.

The Protecting Tenants at Foreclosure Act, Pub. L. No. 111-22, § 701 - 704 (2009), which became a federal law on May 20, 2009, applies to state eviction proceedings. This law requires a person or entity (including a bank) who becomes the new owner of residential rental property as a result of a foreclosure to **continue to honor and be bound by both the Section 8 voucher lease and the Housing Assistance Payments (HAP) contract** that existed with the original landlord. A new owner must give the tenant at least 90 days notice to vacate prior to the end of the lease

If the Section 8 lease and HAP contract have less than 90 days remaining in their term, or if the new owner plans to live in the property as his or her primary home, the new owner can require a tenant to leave the property **after giving at least 90 days' advance notice**. The 90 days must start on or after the date when the new owner officially becomes the owner of the property.

Because the notice sent on \_\_\_\_\_ (date of notice you received) gives me less than the 90-day notice required by law, I consider the notice to be void and ineffective.

Sincerely,

\_\_\_\_\_  
(Tenant's name)

**Sample Letter for Non Section 8 Tenant to Send to New Owner**

(Address of Tenant)

(Date)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Name and address of new owner)

Dear \_\_\_\_\_ (new owner):

I am a tenant at \_\_\_\_\_ (address, including apartment number if applicable). I am writing this letter in response to the notice of termination I received from you dated \_\_\_\_\_ (date of notice received).

The Protecting Tenants at Foreclosure Act, Pub. L. No. 111-22, §§ 701-704 (2009), which became a federal law on May 20, 2009, applies to state eviction proceedings. This law requires that a person or entity (including a bank) that becomes the new owner of a residential rental property as the result of a foreclosure **continue to honor existing leases with a fixed term until the end of the lease term.** The law also mandates that, no matter what the least term, the new owner must provide the tenant(s) in the property with at least 90 days' notice before requiring the tenant(s) to vacate the property. There is an exception in the law for new owners who will live in the unit as their primary residence. Such owners are not required to honor the existing lease until the end of its term but still must still provide at least 90 days' advance notice before requiring a tenant to leave. The 90 day period begins once the new owner assumes ownership of the property following foreclosure.

Since the notice sent on \_\_\_\_\_ (date of notice received) does not comply with this law, I consider the notice to be void and ineffective.

Sincerely,

\_\_\_\_\_  
(name of tenant)

Address  
Date

Name of Judge  
Address

Dear Honorable Judge \_\_\_\_\_:

I write to bring to your attention recent changes in federal law that apply to state eviction proceedings.

During the foreclosure crisis, renters in good standing have been evicted from their homes, often with little or no notice, because the properties have been foreclosed upon. To address this problem and to stabilize neighborhoods, Congress enacted the Protecting Tenants at Foreclosure Act (PTAFA), Pub. L. No. 111-22 §§ 701-704, which became effective on May 20, 2009. This law requires that new owners (including lenders) who have acquired residential property through foreclosure honor the existing leases of any bona fide tenants for the entire lease term. PTAFA also requires that new owners provide existing tenants with at least ninety (90) days' advance notice before requiring the tenants to leave the property, regardless of the length of time remaining on their lease. There is only one category of new owners who are exempt from the lease continuation requirement – those who will live in the unit at issue as their primary residence. Even these new owners, however, must provide at least 90 days' notice--after they acquire the property--before requiring tenants to vacate the property.

The new law similarly provides protections for tenants whose rent is subsidized through a Section 8 voucher. In cases involving such tenants, pursuant to PTAFA the new owner at foreclosure assumes ownership of the property subject to the existing lease between the Section 8 participant and the previous owner of the property, and also subject to the Section 8 Housing Assistance Payments (HAP) contract between the previous owner and the housing authority or other administrator of the Section 8 program. As in the case of tenancies not subsidized by a Section 8 voucher, the new owner must provide all tenants with 90 days' advance notice before requiring the tenant(s) to vacate the property. If the new owner will occupy the unit as her/his primary residence, s/he may terminate a tenancy prior to the end of the lease term after giving at least 90 days' notice to vacate to the tenant.

Please note that PTAFA explicitly states that it does not preempt state and local laws that provide *additional* protections to tenants.

A copy of the text of the law is enclosed for your reference. If you have any questions, please feel free to contact \_\_\_\_\_ . Thank you for your attention to this matter.

Sincerely,

\_\_\_\_\_  
(name)

*Sample Notice to be Given to Tenants by Successors in Interest including Realtors, Banks, LL's Lawyers and other agent.*

Date:

**ATTENTION: The property you live in has gone through foreclosure and has a new owner.**

**The new owner is:** (name, address, telephone number, and email address )

**We represent the new owner:** (name, address, telephone number, name and email address of contact)

Please contact us immediately to let us know if you are a tenant and give us proof, such as a COPY of your lease or COPIES of rent receipts.

If we do not hear from you within twenty (20) days of the above date, you will not lose any legal rights, but we will take legal action to remove you from the property.

This Notice describes some of your legal rights.

IN MOST CASES, UNDER THE “**PROTECTING TENANTS AT FORECLOSURE ACT OF 2009**”<sup>1</sup> YOU HAVE THE RIGHT TO CONTINUE AS A TENANT FOR THE REMAINDER OF YOUR LEASE OR AT LEAST 90-DAYS FROM THE DATE YOU ARE GIVEN NOTICE TO VACATE WHICHEVER IS LONGER. IN EITHER CASE, THE NEW OWNER CAN ONLY TERMINATION YOUR TENANCY AND EVICT YOU IF THE OWNER HAS GIVEN YOU AT LEAST 90 DAYS NOTICE TO VACATE. If, at any time, you violate your lease, the new owner may evict you for that lease violation and you will not be protected by the above law.

You are protected by the above law if:

The new owner became the owner on or after May 20, 2009; and

You were a tenant in the foreclosed property at the time the new owner took title; and

You are NOT the child, parent or spouse of the former owner; and

Your rent is equal to or is not substantially below fair market rent, or you pay less because you have rental assistance such as Section 8.

If the new owner sells the property to a person who wants to move into the property as his or her home, the above law allows that buyer to lawfully end your lease and tell you to vacate the property as long as that owner gives you at least 90 days advance notice before the date you are being asked to leave.

If you have a SECTION 8 voucher you have additional rights.

It doesn't matter when the foreclosure happened so long as you were a tenant on May 20, 2009.

The new owner must abide by your lease and by the Housing Assistance Payments contract that the old owner had with the housing authority.

The new owner has to accept your share of the rent from you and the housing authority's share from the housing authority.

None of your rights as a tenant under state or local laws that give you greater protection are changed by the Protecting Tenants At Foreclosure Act.

**YOU HAVE OTHER CHOICES:**

If you want to move, the new owner may offer to pay your moving expenses and any other costs or amounts you and the new owner agree on in exchange for your agreement to leave the premises in less than 90 days or before your lease expires.

We suggest that you speak with a lawyer to fully understand your rights before making any decisions regarding your tenancy.

If you have any questions, please contact \_\_\_\_\_ at \_\_\_\_\_

<sup>1</sup> Protecting Tenants at Foreclosure Act, Pub. L. No. 111-22, § 702-703 (2009).

**ATTENTION TENANTS LIVING IN UNITS THAT HAVE BEEN FORECLOSED UPON**

**90-DAYS TERMINATION (EVICTION) NOTICE REQUIREMENT AND RIGHT TO CONTINUED OCCPANCY UNTIL THE END OF THE LEASE TERM**

If you rent your home or apartment a new law, in effect as of May 20, 2009, may protect you.<sup>1</sup>

If a new owner who took over your unit in a foreclosure after May 20, 2009, wants to terminate your tenancy, he or she may not do so if you have a lease which has not expired and at the very minimum must give you a 90-days notice of termination of tenancy.

If the new owner gives you a notice of anything less than 90 days to terminate your tenancy, without stating a reason or for the reason that your home has been foreclosed upon, you should send the landlord a letter telling the landlord that s/he must give you a 90-days notice of termination of tenancy.<sup>2</sup>

If you have a lease for a term, such as for a year, and the term is not up, the new owner cannot evict you during the term of the lease for the reason that there has been a foreclosure on your home. The only exception to this rule is in the event that the new owner wants to live in your unit as his or her primary residence. In that event the new owner may give you a 90 day notice to vacate.

If you receive an improper notice, you should give a letter to your landlord before the date for termination in the notice you received, and you should pay your rent. If you do not pay your rent, your landlord can serve you with a notice to pay rent or quit under your state law.

If your landlord files an eviction complaint against you (some states call this an unlawful detainer action) based upon the termination notice, you should put in your answer, or tell the court if your state does not allow you to file an answer, that the termination notice is improper because the landlord should have served you with a 90-days notice or could not evict until the lease expired under the Protecting Tenants at Foreclosure Act, Pub. L. No. 111-22, § 702 (2009).

You should make a copy of your letter for your records, send your letter to the new owner by certified mail, return receipt requested, at the address the new owner put on his/her notice to you. When you go to court in the eviction case, you should take with you copies of the letter you sent to your landlord, the original and copies of your proof of mailing and green return receipt from the post office, the copy of the new law that is attached to this notice and a copy of your written lease if you have a written lease.

The judge may not know about the law because it is so new, but if you tell the judge about the law it his or her legal responsibility to enforce it, and make sure that you are not forced to move with less than 90 days notice or before the end of your lease term.

If you have any questions, please contact the local Legal Services Office at \_\_\_\_\_

**Attachments**

**Ltr from non-Sec 8 tenants to LL**

Protecting Tenants at Foreclosure Act, Pub. L. No. 111-22, § 702-703 (2009).

NOTE: If you have a Section 8 Housing Choice Voucher you have additional protections that you should learn about.

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<sup>1</sup> Protecting Tenants at Foreclosure Act, Pub. L. No. 111-22, § 702-703 (2009).

<sup>2</sup> Attached is a copy of such a notice which you may use.