

# NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

## Protecting Tenants at Foreclosure Act

### Background

The **Protecting Tenants at Foreclosure Act**, part of the Helping Families Save their Homes Act of 2009, was signed into law by President Obama on May 20, 2009. The law provides important new federal legal protections for tenants renting housing in properties that are the subject of foreclosure actions. Before the enactment of the Protecting Tenants at Foreclosure Act (PTFA), the rights of tenants in properties that are the subject of foreclosure actions were determined by state law. Under state law in most states, tenants had few if any rights to remain in their housing for more than a very short period of time after a foreclosure.<sup>1</sup>

### PTFA Provides New Legal Rights to Tenants in Foreclosed Properties

The new protections that tenants have under the PTFA apply in all cases involving “any foreclosure on a federally related mortgage loan or on any dwelling or residential real property” after May 20, 2009. Under the law:

1. the immediate successor in interest in the foreclosed property (the new owner after the foreclosure takes place) cannot require a bona fide tenant<sup>2</sup> to leave the rental property before 90 days from the date on which the new owner provides the tenant with a notice to vacate the premises;
2. the new owner must allow any bona fide tenant who entered into a lease prior to the notice of foreclosure to remain in the property for the term of his/her lease;<sup>3</sup>
3. the new owner must honor the rights of any bona fide tenant living in the property without a lease or with a lease terminable at will under state law.

The law also extends these protections to tenants who are participants in the Section 8 program. New owners of such properties assume ownership subject to the lease between the prior owner and the tenant, and also subject to the housing assistance payments (HAP) contract between the prior owner and public housing agency (or other entity that administers the local Section 8 program).<sup>3</sup>

<sup>1</sup> In February, 2009, the National Law Center on Homelessness & Poverty and the National Low Income Housing Coalition released a report, *Without Just Cause*, which discusses the rights (or lack thereof) of tenants in properties facing foreclosure in all 50 states.

<sup>2</sup> A lease or tenancy is considered to be “bona fide” as long as (1) the tenant is not the mortgagor or the child, spouse, or parent of the mortgagor; (2) the lease or tenancy is the result of an arms-length transaction; and (3) the lease or tenancy requires receipt of rent that is not substantially less than the fair market rent for the property.

<sup>3</sup> The law includes one exception to this requirement. In cases in which the new owner or person who purchases the unit from the new owner will occupy the unit as a primary residence, the lease may be terminated as of the date of sale and new owner does not have to honor any existing lease for longer than the 90 days. However, tenant must still be provided with at least 90 days’ advance notice after the foreclosure before he or she can be required to vacate the property.

Section 8 participants must also be provided with at least 90 days' advance notice after the foreclosure before they can be required to leave their rental housing.

The Protecting Tenants at Foreclosure Act does not affect the requirements of any state or local law that provides longer time periods or other additional protections for tenants. Unless there is new legislation passed to extend it, its terms will remain in effect until December 31, 2012.

### **NLCHP Needs Your Assistance to Help Ensure Compliance with the PTFA**

The National Law Center on Homelessness & Poverty has been taking steps to urge the federal government to increase its oversight of compliance with the law by lenders and their agents. We seek your assistance in our effort to gather information about violations of the PTFA by lenders or their agents (brokers, real estate agents, eviction attorneys, etc.) who interact with tenants in properties being foreclosed upon.

Please send us the following information regarding any violations you know about that have occurred in the last 4 months:<sup>4</sup>

- A 3 – 6 sentence description of the nature of the violation;
- Date and location (city or town and state) where the violation occurred;
- Name of the lender and, if not the lender itself that directly committed violation, the name and contact info for the lender's agent that committed the violation;
- If known (if successor in interest is a bank), the name of the regulatory entity responsible for oversight of that bank (e.g. OCC, Federal Reserve Board, etc.);
- Information about whether the client or client's advocate filed a complaint about the violation with a banking regulatory agency or any other entity (and with whom and approximate date);
- Current status;
- Copies of any supporting documents (e.g. notice letter telling tenant she must leave premises, complaint letter to lender or lender's agent, response to complaint, etc.).

For further information, please contact the National Law Center on Homelessness & Poverty.

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<sup>4</sup> If the information is already compiled in an existing document, please feel free to send that. If you or your client would prefer not to send information that identifies the specific client or address involved, please redact as necessary.

March 25, 2010