

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

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

If you rent your home or apartment and your landlord loses the property through a foreclosure, a law, called the Protecting Tenants at Foreclosure Act (PTFA), may protect you.<sup>1</sup> Under this law, the new owner becomes your landlord. All bona fide leases or tenancies entered into before the date on which complete title is transferred to the new owner must be honored.

If a new owner who takes over your unit wants to evict you, he or she must give you at least 90-days notice to vacate. If your lease has more than 90 days left in the term, then you can stay until the end of your lease and until you receive a notice at least 90 days which can be before the end of your lease. The only exception to this rule is that a new owner who wants to live in your unit as his or her primary residence doesn't have to wait for your lease to end and only has to give you a 90 day notice.

If the new owner gives you a notice of less than 90 days or a notice that would terminate your lease before its end, you should

- Send the new owner a letter (a draft letter is attached), by certified mail, return receipt requested, at the address the new owner put on his/her notice to you, telling the new owner/landlord that s/he must give you at least a 90-days notice to vacate. This letter should be sent before the date you were told to vacate.<sup>2</sup>
- **Pay your rent.** If you do not pay your rent, your landlord can ask the court to evict you for non-payment under state law.
- Make and retain a copy of your letter and the green return receipt for your records.

If your landlord files an eviction complaint against you (some states call this an unlawful detainer action) and did not give the required 90-day notice, you should put in your answer, or tell the judge at court (if your state does not make you file an answer), that the notice is improper under the Protecting Tenants at Foreclosure Act.

If you have to 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,
- a copy of the PTFA that is attached to this notice and
- a copy of your written lease if you have a written lease. If you do not have a written lease, take rent receipts or utility bills or something else that proves that you live there.

The judge may not know about the law, but if you tell the judge about the law it is 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 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, P.L. 111-22, § 701-704 (2009), as clarified and amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203, § 1484 (July 21, 2010).

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

\_\_\_\_\_

#### Attachments

1. Letter from non-Sec 8 tenants to new owner/landlord
2. The Protecting Tenants at Foreclosure Act (PTFA), P.L. 111-22, §§ 701-704 (May 20, 2009) as amended and clarified by the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203, § 1484, (July 21, 2010).

***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 (PTFA), P.L. 111-22, §§ 701-704 (May 20, 2009) as amended, applies to state eviction proceedings.<sup>3</sup> 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 **honor existing leases with a fixed term until the end of the lease term**. The law also mandates that, **no matter what the lease 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.

All bona fide leases entered into before the date on which complete title is transferred to the new owner are covered by the law. The 90 day period cannot start until the date on which complete title is transferred to the new owner and the new owner properly serves the tenant with a 90 day notice to vacate

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)*

<sup>3</sup> The Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203 (July 21, 2010), in § 1484, clarified and amended the PTFA.

**Public Law 111-22, (May 20, 2009)**  
**TITLE VII--PROTECTING TENANTS AT FORECLOSURE ACT (PTFA)<sup>4</sup>**

**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,

(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). For purposes of this section, the date of a notice of foreclosure shall be deemed to be the date on which complete title to a property is transferred to a successor entity or person as a result of an order of a court or pursuant to provisions in a mortgage, deed of trust, or security deed.

**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.'; and

(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, 2014.

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<sup>4</sup> The PTFA was amended in section 1484 of P.L. 111-203 (July 21, 2010).