

Re: The "Protecting Tenants at Foreclosure Act of 2009"

A. SUMMARY:

What is called the "Protecting Tenants at Foreclosure Act of 2009" is actually Title VII of the "Helping Families Save Their Homes Act of 2009", which was signed into law by President Obama on 5/20/2009.

The **Protecting Tenants at Foreclosure Act of 2009** will sunset on December 31, 2012, meaning it will only apply from its effective date through that sunset date, unless extended by another act.

1. It applies:
 - (a) to the foreclosure of a "**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](#)));
 - (b) after the foreclosure of such a federally-related mortgage loan on any dwelling or residential real property (what I will call a "**unit**");
 - (c) to the immediate "successor-in-interest" in such property (who I will call the "**new owner**"), undoubtedly meaning the party who takes title to the unit from the trustee's deed, or someone else who takes title from that person, before the effective protections of this act for the tenant in question expire.
2. It says such a new owner takes ownership of the unit subject to the rights of a "**bona fide tenant**":
 - (a) if the tenant has no lease, or has a lease that is terminable at will under State law, the right to receive a notice to vacate the property that is 90 days or longer; and
 - (b) if the tenant has a "**bona fide lease**" that was entered into before the notice of foreclosure (in Arizona that would be a written lease entered into before the *Notice of Trustee's Sale*), the right of the tenant to remain in the property until the end of that lease; except that for a new owner who will occupy the unit as a primary residence, that bona fide tenant can be required to move out after the same 90 day notice described at 1(a) above for a tenant without a lease.
3. A lease or tenancy is only considered as "bona fide" if:
 - (a) The mortgagor (person who owned the unit when the foreclosed mortgage was recorded against it), or his child, spouse or parent is not the tenant;
 - (b) The lease or tenancy: (i) was the result of an arms-length transaction; and (ii) 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.
4. Nothing in the act overrides any termination requirements under any Federal or State-subsidized tenancy, or and State or local law that requires a longer termination notice or other additional protections for the tenant.

B. FULL DISCUSSION:

1. Link for entire *Helping Families Save Their Homes Act of 2009*:

http://thomas.loc.gov/home/gpoxmlc111/s896_enr.xml

2. Introduction to the entire *Helping Families Save Their Homes Act of 2009*:

AT THE FIRST SESSION

Begun and held at the City of Washington on Tuesday, the sixth day of January, two thousand and nine an act

To prevent mortgage foreclosures and enhance mortgage credit availability.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DIVISION A—Preventing Mortgage Foreclosures

SECTION 1. Short title; table of contents.

(a) Short title.—This division may be cited as the “Helping Families Save Their Homes Act of 2009”.

(b) Table of contents.—The table of contents of this division is the following:

3. Table of Contents for the *Protecting Tenants at Foreclosure Act of 2009*:

TITLE VII—PROTECTING TENANTS AT FORECLOSURE ACT

Sec. 701. Short title.

Sec. 702. Effect of foreclosure on preexisting tenancy.

Sec. 703. Effect of foreclosure on section 8 tenancies.

Sec. 704. Sunset.

4. Full Text of the *Protecting Tenants at Foreclosure Act of 2009*:

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).

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, 2012.