



# FLORIDA LEGAL SERVICES, INC.

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LARRY COLLETON  
PRESIDENT

KENT R. SPUHLER  
DIRECTOR

July 22, 2009

**Re: Protecting Tenants at Foreclosure Act of 2009  
Pub. L. No. 111-22, §§ 701-704 (2009)**

Dear:

The Housing Umbrella Group of Florida Legal Services, Inc. wishes to call your attention to recent changes in federal law that apply to tenants in state foreclosure proceedings. The Housing Umbrella Group is comprised of approximately 150 legal aid and legal services attorneys from across Florida who specialize in landlord-tenant issues and represent low-income tenants.

During the foreclosure crisis, numerous renters in good standing have been forced to relocate after a foreclosure sale with little or no notice. To address this critical problem and to stabilize neighborhoods, Congress passed the Protecting Tenants at Foreclosure Act (Title VII of S. 896, Pub. L. No. 111-22, §§701 - 704 (2009)). This law immediately went into effect when President Obama signed it on May 20, 2009, and it applies to all pending and future residential foreclosures.

**Tenants with an unexpired lease term:** The law requires a new owner acquiring property at a foreclosure sale, including plaintiffs acquiring the property, to honor all terms and conditions of existing leases. This means the tenant can remain in the property for the time remaining in the lease term. However, if the new owner wants to live in the property, then the new owner may terminate the tenancy by giving the tenant at least 90 days written notice to vacate.

**Tenants without a lease:** In the case of tenants without a current lease, usually month-to-month tenants, the new owner must provide the tenant with a minimum 90 day written notice before terminating tenancy. This also applies when there is an unexpired written lease which has less than 90 days remaining.

**Section 8 voucher participants:** When the tenant is a participant in the Section 8 voucher program, the new owner takes the property subject to the Section 8 lease and the Section 8 Housing Assistance Payments (HAP) contract. Once again, the only exception to this provision is when the new owner wants to live in the property and has provided the tenant with a minimum 90 day written notice terminating tenancy.

The 90 day notice must be sent by the new owner. A “new owner” does not exist until after the clerk issues the certificate of title. Any notice sent prior to the certificate of title does not comply with the new statute and has no legal effect.

**Most significantly, residential tenancies now survive the foreclosure process.** The implication of this change is that a tenant’s right to continued possession of the property is now outside the scope of the foreclosure action, and therefore the foreclosure court should no longer issue writ of possession when a bona fide tenant is in possession of the property. If the new owner after foreclosure desires to terminate the surviving tenancy, he/she must give the tenant 90 days written notice to vacate. If the tenant fails to comply with the notice, the new owner would then be required to file an eviction action in County Court pursuant to Chapter 83, Florida Statutes, since Circuit Courts do not have jurisdiction over landlord-tenant disputes unless the amount in controversy exceeds \$15,000. Please note that these changes apply when there is a “bona fide tenant” in the property, as defined in the new statute. The new law does not prohibit a foreclosure court from issuing a writ of possession against a former owner that is still in possession.

These new protections make it imperative for every official involved with the foreclosure process to modify their procedures to ensure compliance with this new federal law. The courts and sheriffs must have a system which determines whether a tenant resides in the foreclosed property or whether the property is owner-occupied. The best way to accomplish this is to require a hearing, with notice addressed to “occupant” and sent to the property address, before the court issues a writ of possession. This crucial procedural safeguard is now required by the 11<sup>th</sup> Judicial Circuit (See Administrative Order 09-09) and should be a statewide procedure.

Please note that this law specifically does **not** preempt other federal, state, and local tenant protections and expires on December 31, 2012.

A copy of the Act is enclosed. Thank you for your attention to this matter. If you have any questions, please feel free to contact one of the undersigned attorneys.

Sincerely,

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Enclosure as stated

**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.