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February 11, 2010

Sean Rogan
Executive Director
Housing Authority of the County of Los Angeles
2 Coral Circle
Monterey Park, CA 91755

BY MAIL and FAX to (323) 890-8584

Re: Proposed HAcOLA Administrative Plan

Dear Mr. Rogan:

The National Housing Law Project submits the following comments in connection with the Housing Authority of the County of Los Angeles (HAcOLA) proposed Section 8 Administrative Plan for Fiscal Year 2010-2011. The comments are primarily addressed to recent federal legislation that affect the rights of tenants, including Section 8 tenants, in foreclosed properties. The National Housing Law Project is a national housing law and advocacy center that provides legal assistance, advocacy advice, and housing expertise to legal services and other attorneys, low-income advocacy groups, and others who serve the poor. We submit these comments in hope that they will facilitate a continued dialogue with HAcOLA and assist the agency in administering its housing programs in a manner consistent with its mission of promoting adequate and affordable housing.

Foreclosures are increasing in all jurisdictions, including Los Angeles County. In response to the foreclosure crisis, Congress enacted the Protecting Tenants at Foreclosure Act (PTFA) in May 2009.¹ The new law gives tenants the right to stay in their homes for 90 days or until the end of the lease term, whichever is longer.² For Section 8 tenants, PTFA provides that a successor in interest after foreclosure takes subject to both the Section 8 lease and the Housing Assistance payment (HAP) contract.³ HUD recently issued a notice to provide guidance to public housing agencies (PHAs) in case of foreclosures.⁴ The guidance includes information on how PHAs can ensure compliance with PTFA.

In accordance with PTFA and the HUD notice, HAcOLA should inform Section 8 voucher tenants of their rights in the event of foreclosure. In this regard, HUD asks PHAs to do the following: For every rental unit that receives voucher assistance, PHAs must give information about the tenant protection

¹ Protecting Tenants at Foreclosure Act, Pub. L. No. 111-22, tit. VII, §§ 701-704, 123 Stat. 1632, 1660-62 (2009).

² *Id.*

³ *Id.* § 703, 123 Stat. 1661.

⁴ Protecting Tenants at Foreclosure Act – Guidance on New Tenant Protections, PIH 2009-52 (Dec. 15, 2009).

provisions in PTFA to all participants.⁵ Participants include: (1) existing landlords; (2) heads of households that currently receive voucher assistance; (3) voucher applicants who have been issued vouchers and are searching for new homes; and (4) prospective voucher landlords.⁶ The HUD notice encourages PHAs to use sample notices prepared by the National Low Income Housing Coalition (NLIHC) and the National Housing Law Project (NHLP).⁷ A copy of NHLP's sample notice is attached to this comment. The HUD notice also encourages PHAs to notify local courts and sheriff's offices about these new tenant protection laws.⁸ For your convenience, we are also attaching a copy of a notice that HACoLA could adapt, place on the letterhead and send out to the local courts.

The HUD notice also requires that once a PHA learns that a property receiving voucher assistance is in foreclosure, it must take further steps to ensure that tenants' rights under PTFA are enforced.

These steps include:

- making all reasonable efforts to determine the status and ownership of the property. The notice encourages PHAs to review legal notices in newspapers or local government websites to monitor whether assisted properties are foreclosed upon.
 - Note: In California, any person may record a request for special notice that will entitle the person to receive any notice of default or notice of trustee's sale that is recorded for that property.⁹ So in addition to taking the steps outlined in the HUD notice, the Housing Authority should record a request for special notice with the County Recorder's office for the address of each assisted unit and amend the Administrative Plan accordingly.
- continuing to pay the original owner under the existing HAP contract until ownership is legally transferred.
- attempting to obtain from the successor in interest a written acknowledgment of assignment of the HAP contract.
- informing the tenant to pay rent in accordance with the lease and to pay rent into escrow if the successor in interest refuses to accept rent. The PHA must also inform voucher holders that failure to pay rent may constitute an independent ground for eviction.
 - Note: while nonpayment of rent may be an adequate ground for a successor in interest to evict, this language should not be interpreted to terminate the voucher holder's subsidy in a situation where the successor in interest refuses to take the voucher holder's rent or fails to provide the tenant timely information regarding ownership and where rent payments should be made, and the nonpayment of rent is due to no fault of the tenant. The Housing Authority should clarify in the Administrative Plan that nonpayment of rent in this situation will not be treated as material noncompliance with the lease.
- informing the family if the PHA is unable to make HAP payments to the successor in interest because (1) the successor in interest refuses to accept payments, (2) the property

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* The notices are posted on NLIHC's website at <http://www.nlihc.org/template/page.cfm?id=227> and on NHLP's website at <http://nhlp.org/node/763>. See also City of Tempe Housing Services Section 8 Housing Assistance Program, Protecting Tenants at Foreclosure Act Notice, <http://www.tempe.gov/housing/Section%208/Foreclosure%20protection%20notice.pdf>.

⁸ PIH 2009-52, at 4.

⁹ CAL. CIV. CODE § 2924b (a).

fails Housing Quality Standards inspections, or (3) the PHA cannot identify the successor in interest. The PHA must also give the family a referral to legal services to ensure that the family's rights are protected.¹⁰

The Housing Authority should amend the Administrative Plan to incorporate the language in HUD PIH Notice 2009-52 on the PHA obligations. For example, the Housing Authority can add a new Section to Chapter 9 of the Administrative Plan to incorporate PIH Notice 2009-52. In Chapter 9, the Housing Authority can add another Section to implement a policy to record a special notice each time a new unit is leased by a Section 8 voucher holder. Such section may read: "After a new Request for Tenancy Approval is approved and a Housing Assistance Payment (HAP) contract has been executed, the Housing Authority will record a request for special notice under Civ. Code § 2924b (a) with the County Recorder's Office. This request for special notice ensures that the Housing Authority is informed of any foreclosure notices recorded on the assisted property."

Administrative Plan § 9.14 – Change of ownership

The Administrative Plan currently states that a "change of ownership does not require execution of a new contract." But under the Administrative Plan, in order to complete a change in ownership, "the new owner must complete an Assumption of Obligations and Benefits contract." While the Housing Authority should encourage new owners to execute an assumption of the HAP contract, the Housing Authority should clarify that under PTFA, a successor in interest after foreclosure takes title subject to both the lease and the HAP contract, even if the new owner does not expressly assume the HAP contract. For example, the Housing Authority can add the following language: "However, in the case when ownership is transferred through foreclosure, the new owner is obligated under the old HAP contract even if an Assumption of Obligations and Benefits contract has not been executed."

Administrative Plan § 10.11 – Consequences of verified owner-related deficiencies

Section 10.11 provides that if an assisted unit fails HQS inspection and the failure is due to an owner-related deficiency, the Housing Authority is obligated to withhold (abate) housing assistance payments. Section 10.11 further provides that "Families that reside in units that have been abated will be issued a voucher and will have the option to move even if the assisted unit passes inspection at the third and final inspection." This provision should be amended to make it clear that in the event that the family wishes to stay in the unit, the Housing Authority will take all reasonable steps to allow the family to remain, especially in the event that the new owner is intentionally not maintaining the property, not providing utilities that the prior owner provided, etc. for the purpose of renegeing on the responsibilities set forth in the HAP contract. Allowing the new owner to indirectly terminate the tenancy for HQS compliance violations would contravene the intent of PTFA to allow voucher tenants to remain in their homes until the end of the lease term. The Housing Authority can amend the section to include the following language: "In the event that the family wishes to stay in the unit after foreclosure, the Housing Authority will take all reasonable steps to allow the family to remain."

Administrative Plan § 15.2.2 – Mandatory termination

Under the current administrative plan, the Housing Authority must terminate assistance for participants if no housing assistance payment was made during the past 180 calendar days. For tenants in foreclosed properties, post-foreclosure owners often refuse to execute assumptions of the HAP contract and so in effect refuse to accept housing assistance payments. Requiring mandatory termination in this situation would contravene the intent of PTFA to allow voucher tenants to remain in their homes until

¹⁰ PIH 2009-52, at 4.

the end of the lease term. Accordingly, the Housing Authority should not require mandatory termination of a tenant in this situation where the absence of housing assistance payments is due to noncompliance of a post-foreclosure owner with PTFA. For example, the Housing Authority can add language in § 15.2.2 (3) to indicate: “In the event that the family wishes to stay in the unit after foreclosure, the Housing Authority will not require mandatory termination and will take all reasonable steps to allow the family to remain.”

We thank you for taking the time to review these comments. If you have any questions regarding this letter, please feel free to contact Kent Qian at (510) 251-9400 ext. 3112 or email at kqian@nhlp.org.

Enclosures:

Sample PTFA notice from PHA to Section 8 Tenant
Sample letter to local court on PTFA

Respectfully submitted,
National Housing Law Project

By _____
Kent Qian
Attorney / Skadden Fellow

Sample Notice that a PHA could send to Section 8 Voucher Holders

ATTENTION SECTION 8 VOUCHER HOLDERS

90-DAYS OR MORE FOR TERMINATION (EVICTION) NOTICE REQUIREMENT AND FORECLOSURE IS NOT GOOD CAUSE TO TERMINATE THE TENANCY

On May 20, 2009 a new federal law protecting your rights became law.

Section 8 housing choice voucher tenants have new rights regarding eviction from units that have been foreclosed upon.

The person, who now owns your home as a result of the foreclosure, must follow these rules. First, if you have a lease for a fixed term, such as one year, and the lease has not expired, you have a right to remain in the unit and cannot be evicted (except for actions that you, members of your family or your guests take which constitute good cause) until the end of the lease term.

Second, if your lease ends in less than 90 days the new owner may not evict you without giving you a minimum 90 days notice.

Third, the new owner wanting the property vacant before they sell it is not good cause for terminating the tenancy or for eviction.

Fourth, there is one exception to the rule that you may not be evicted during the term of your lease. If the new owner who acquired the property at foreclosure wants to occupy the unit as his or her primary residence, that owner may give you a 90 day notice to vacate your home even if your lease runs for longer than 90 days.

If the new owner tells you that you have to leave, offers you money to leave or gives you a notice of eviction, you should contact _____ (the PHAs' office), tell us what is happening and give us a copy of any notice. You may also contact the local legal services office, located at

_____.
If you have any questions about this notice please contact _____ at the PHA.

General instructions to tenants:

If you receive an improper notice to terminate your lease, you should give a letter objecting to the termination 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 if 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.

Attachments: Ltr from §8 Tenant to LL; §§ 701-704, Public Law 111-22

Date _____

Address

Dear Honorable Judge _____:

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

The National Housing Law Project, the Western Center on Law and Poverty and the Housing and Economic Rights Advocates, organizations that, among other things, provide information to California legal services attorneys and advocates for low income housing, wish to bring to your attention recent changes in federal law that apply to California eviction proceedings. During the foreclosure crisis, renters in good standing have been evicted from properties in foreclosure with little or no notice and in violation of their leases. To address this problem and to stabilize neighborhoods, the Protecting Tenants at Foreclosure Act, signed into law on May 20, 2009, requires that new owners acquiring property through foreclosure honor existing leases. Thus, tenants with term leases may not be evicted until the end of their lease terms and without a 90-day notice. The sole exception is that a new owner who seeks to occupy the unit as a primary residence may terminate the lease with a 90-day notice.

In the case of a tenant without a lease or a lease terminable at will, a minimum of a 90-day notice is also required.

Section 8 voucher tenants have additional protections. The owner who is an immediate successor in interest at foreclosure takes subject to the Section 8 voucher lease and the Section 8 Housing Assistance Payments (HAP) contract. During the term of the lease, vacating the property prior to sale does not constitute good cause for eviction, except that a new owner who seeks to occupy the unit as a primary residence may terminate the Section 8 lease with at least a 90-day notice. The law also provides that during the term of the Section 8 lease, vacating the property prior to sale does not constitute other good cause.

Please note that this law specifically does *not* preempt other state or local law that provides for a longer notice or additional tenant protections.

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 _____.

Sincerely,

Staff Attorney

Enclosure: Public Law No. 111-22, §§ 701 -704