

Danna Fischer

National Low Income Housing
Coalition

www.nlihc.org

Legislative History

Background and Context

- As foreclosures increased focus turned to renters
 - NLIHC estimates that as many as 40% of those affected by foreclosure are renters
- Renters had few, if any, rights in most states and could be summarily evicted
 - *Without Just Cause* (2/09)

Legislative History

Congressional Response

- Provisions protecting renters
 - Emergency Economic Stabilization Act of 2008 (10/3/08)
 - ARRA/NSP (2/17/09)
- 110th and 111th Congress Senator Kerry and Congressman Ellison sponsored bills offering broad protections for all tenants

Legislative History

S. 896, P.L. 111-22

- S. 896 passed Senate (5/6/09)
- Public Law signed (5/20/09)
- Senator Kerry, Congressional Record
Page: S5110 (5/5/09)

“Under this amendment, tenants in any federally related mortgage loan or any dwelling or residential real property with a lease have a right to remain in the unit until the end of the existing lease. If a new purchaser intends to use the property as a primary residence, then the lease may be terminated, but the tenant has to receive 90 days’ notice to vacate.”

Legislative History

S. 896, P.L. 111-22

- Senators Dodd and Kerry restated congressional intent on August 6, 2009, Congressional Record, S8978
- While the record is not extensive, it is clear that Congress intended to enact nationwide protections to allow tenants, with limited exceptions, the opportunity to remain in the rented home for the terms of their lease or at a minimum 90 days



David T. Rammmler

National Housing Law Project

www.nhlp.org



Protecting Tenants at Foreclosure Act

- **The federal PTFA provides new protections for tenants living in properties that have been foreclosed upon**
- Applies generally to notices to vacate issued after May 20, 2009
- Applies to all properties as to which there is a bona fide residential tenancy at the date of the foreclosure sale/transfer.



PTFA, cont'd

- **Does not apply**
 - if a tenant is the mortgagor or the mortgagor's child, spouse, or parent
 - if tenant paying substantially below FMR without subsidy
 - not an arms length transaction
- **Does not affect state or local laws that offer additional protections for tenants**
- **Expires December 31, 2012**



PTFA, cont'd

- **Tenants with less than 90 days left on lease:**
 - Entitled to 90 days' notice before the new owner can file an eviction action in court
 - Includes verbal/oral leases
- **Tenants with leases with more than 90 days left:**
 - Have a right to stay in the unit until end of lease
 - **EXCEPTION:** Lease may be terminated on 90 days' notice by a purchaser who will occupy the unit as his or her primary residence



PTFA and Section 8 tenants

- Vacating the property prior to sale does not constitute good cause for terminating a Section 8 tenancy
- New owner is subject to 1) the tenant's Section 8 lease and 2) to the Section 8 Housing Assistance Payment (HAP) contract with the housing authority
- **EXCEPTION:** If the new owner will occupy as primary residence, can terminate with 90 days' notice
 - **HUD issued a notice providing information for section 8 administrators on June 24, 2009 at 74 Fed. Reg. 30106**



CONGRESSIONAL RECORD

- **S8978 CONGRESSIONAL RECORD—SENATE**
August 6, 2009
- **PROTECTING TENANTS AT FORECLOSURE IMPLEMENTATION**
- **http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?dbname=2009_record&page=S8978&position=all**



Frequently Asked Questions

- **When can an effective notice to vacate be given?**
 - **Must be given by the successor in interest;**
 - **effective notice cannot be given before title passes**
 - **Notices of the initiation of the foreclosure action are required in some states and desirable in all cases, but they do not serve as a “notice to vacate”**
 - **When more than 90 days left in the lease term, can be given 90+ days before the end of the lease term**



For more information

- For articles, materials, sample documents, and statutes, see:
 - www.nhlp.org
 - www.nlihc.org
 - www.nlchp.org
- Questions may be submitted to ptfamatters@gmail.com

Catherine Bendor

**National Law Center
on Homelessness & Poverty**

www.nlchp.org

PTFA changes tenants' legal rights in virtually every state:

- Successor in interest must provide at least 90 days notice to vacate to any bona fide tenant
- Unless new owner plans to live in property as primary residence, tenancy/lease survives foreclosure

Protecting Tenants at Foreclosure Act does not negate more favorable state protections

702 (a) "..... except that nothing under this section shall affect the requirements ... of any State or local law that provides longer time periods or other additional protections for tenants."

Lenders/Successors in Interest:

- Need to understand requirements of new law and make sure their actions comply
- Need to ensure that actions of their agents (brokers, eviction attorneys, property managers, etc.) comply
- Examples of problems:
 - Giving renters insufficient time to make contact and demonstrate that they are bone fide tenants
 - Sending notices that don't make clear bona fide tenants have right to stay at least 90 days or right to continue in lease

(Consider perspective of least knowledgeable/sophisticated renter)

Helping Families Save Their Homes Act of 2009: Title VII--Protecting Tenants at Foreclosure

Barry Wides
Deputy Comptroller of Community Affairs

Protecting Tenants in Foreclosed Properties

- **The Protecting Tenants at Foreclosure Act (PTFA), Public Law 111-22**
- **Text of tenant protection provisions begins on page 30 of link below:
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ022.111.pdf**

- **OCC Bulletin 2009-28 (August 13, 2009)**
- <http://www.occ.gov/ftp/bulletin/2009-28.html>
- **OCC Consumer Compliance Manual**
- <http://www.occ.treas.gov/handbook/compliance.htm>

Other Resources:

- **OCC Community Affairs:
Washington DC 20219
(202) 874-4930**

Authority to Hold Real Estate

- **Bank authority to hold real estate, including properties acquired “in satisfaction of a debt previously contracted” is limited by statute.**
- **Banks are generally required to dispose of OREO at the earliest time that prudent judgment dictates, but they are permitted to hold Other Real Estate Owned (OREO) property for up to 5 years and with OCC approval for an additional 5 years.**
- **The holding period starts when ownership transfers to the bank or the statutory redemption period, if any, expires.**
**12 U.S.C. 29 and 12 CFR Part 34,
Subpart E—Other Real Estate Owned.**

Other Regulatory Guidance

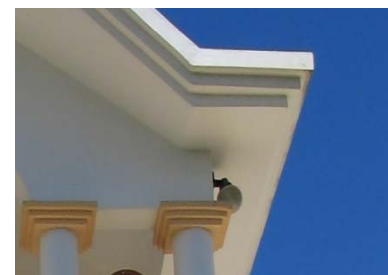
- <http://www.federalreserve.gov/boarddocs/caletters/2009/0904/caltr0905.htm>
- <http://www.federalreserve.gov/boarddocs/caletters/2009/0905/09-05attachment.pdf>
- <http://files.ots.treas.gov/25319.pdf>
- <http://www.ncua.gov/Resources/RegulatoryAlerts/Files/2009/09-RA-08.docx>



Freddie Mac REO Rental Initiative

Tenants In Foreclosed Properties
Information For Lenders & Servicers (Webinar)

September 22, 2009



 **Freddie
Mac**
We make home possibleSM





Background

- In an effort to aid families impacted by foreclosure remain in their home and to help stabilize neighborhoods, Freddie Mac's REO Department implemented a new rental initiative that allows qualified occupants of its REO acquired homes to enter into month-to-month lease agreements.
- By offering the option to lease, families now have another alternative available to them other than accepting relocation assistance (*cash-for-keys*) or possibly facing eviction.
- The initiative was launched in March 2009.



Overview

Who is Eligible?

- Previous Mortgagors
- Tenants

Which Properties?

- Nationwide
- All Property Types
- Free of safety, health, & hazard issues
- Code compliant for renting per state laws

Other Features

- Freddie Mac maintains the exterior of the home during the rental period.
- Lease amounts are based on current market rent data.
- Homes are listed with a broker and marketed for sale.
- A national property management company is used to administer the rental components (i.e. *lease execution, rental collection, maintenance, etc.*).



PROTAFAs Impacts

- As a result of the comprehensive design of Freddie Mac's REO Rental Initiative, only minor modifications were required to comply with the legislation.
- "Bona fide" tenants now have the option to continue to rent under their existing lease and terms. Prior to PROTAFAs, they had to sign a new month-to-month lease and pay market rent.
- While Freddie Mac intends to market homes in the rental initiative for sale, if a "bona fide" tenant's lease prohibits that, we must comply.
- If the home is not in safe or code compliant condition, Freddie Mac must make repairs. Prior to PROTAFAs, Freddie Mac would agree to make some repairs if needed. However, if the repairs were extensive, the home did not qualify for the rental initiative.



Experience To Date

- Few people are selecting the option to lease. Most still opt for relocation assistance and many vacate on their own.
- We have received very positive feedback about our rental initiative and that it does indeed provide a necessary option that some families did not have in the past when being impacted by a foreclosure situation.
- Preplanning, supplier training, and utilization of a national property management company were (*and continue to be*) instrumental in the success of the initiative.

Fannie Mae National REO Rental Policy

Renting to Current Tenants

September 22, 2009

Agenda

- I. Policy background and overview
- II. Who can participate
- III. Options for renters
- IV. Process
- V. Contacts

Policy Background

Families and neighborhoods have been negatively impacted by the increase of foreclosures. In January, Fannie Mae started offering renter occupants the opportunity to stay in their homes at a competitive market rent. Recently Congress passed legislation known as the Protecting Tenants at Foreclosure Act (PTFA) which allows renter occupants who are in a foreclosed home to remain through the term of their lease.

Fannie Mae's policy has four primary objectives:

- Neighborhood stabilization
- Continued housing opportunities for current renters
- Affordable housing prices based on market rates
- Compliance with PTFA

Policy Overview

Fannie Mae offers renters the following options:

- **Financial Relocation Assistance**
 - Renter agrees to vacate the property by a date certain (typically 2 to 4 weeks)
 - Renter leaves the property in broom-swept condition
 - Fannie Mae provides financial assistance to help cover the cost associated with moving
 - Renters and former mortgagors may be eligible

- **New Fannie Mae Lease**
 - Current tenant occupants; not current mortgagor or immediate family member
 - New month-to-month lease required
 - Rate determined with consideration for current market conditions and values
 - No security deposit
 - Property marketed during lease term

- **Existing Leases (pursuant to PTFA and other applicable laws)**

- **Purchase**
 - Sign a purchase and sale agreement

Policy Overview

Characteristics:

- **Property**
 - Nationwide
 - Single Family REO (includes condos, 2-4 family properties)
 - Condition must be habitable
 - Certain loan types may not be eligible (for New Fannie Mae Lease)

- **Renter**
 - Current tenant occupants; not current mortgagor or immediate family member
 - New month-to-month lease or existing lease required
 - Rental rate evaluated against market rent (for existing leases)
 - Rental rate established based on market rents and home value
 - No security deposit
 - Renters are checked against Office of Foreign Assets Control list

- **Property Management**
 - Properties to be managed through broker network
 - Regional / local third party property managers -- to be expanded in 2009
 - Manager will complete necessary repairs during occupancy by renter

Who Can Participate

A new lease agreement can be offered or assumed only if:

- The occupant is **occupying the property** at the time of the foreclosure;
- The occupant is **not the mortgagor** or a member of the mortgagor's immediate family;
- The property is **deemed habitable** and meets the standards of local rental property regulations and laws (subject to completion of reasonable repairs); and
- **Month-to-month renters are allowed** by the neighborhood homeowners' association (if applicable).

Process

- The listing broker assigned to the property provides a renter with a publication called Knowing Your Options, which discusses available options.
- If a rental option is chosen, the listing broker will provide a rental information form and request a copy of the existing lease. The listing broker will inspect and submit a property condition report to Fannie Mae.
- Fannie Mae reviews the information and recommended rent, and determines whether the lease is bona fide or a new lease can be offered. The broker will communicate that information to the renter.
- The renter selects an option. If a new lease was offered and is accepted, the renter executes the lease agreement.
- If relocation financial assistance is selected, the renter agrees to vacate the property by a date certain.
- Fannie Mae will market occupied rental properties for sale when possible.

Questions or additional information

E-mail: REO_Rental@fanniemae.com

Phone: 1-800-7FANNIE (1-800-732-6643)