

Protecting Tenants at Foreclosure

Background

The Protecting Tenants at Foreclosure Act of 2009¹ became effective on May 20, 2009. This new law protects tenants from immediate eviction by persons or entities that become owners of residential property through the foreclosure process and extends additional protections for tenants with U.S. Department of Housing and Urban Development Section 8 vouchers.² The law is self-executing; no federal agency has authority to issue regulations implementing the law or to interpret the law. The law expires on December 31, 2012.

The fundamental purpose of the Protecting Tenants at Foreclosure Act is to ensure that tenants facing eviction from a foreclosed property have adequate time to find alternative housing. To that end, the law establishes a minimum time period that a tenant can remain in a foreclosed property before eviction. The law does not affect any state or

1. Title VII of the Helping Families Save Their Homes Act of 2009. Public Law 111-22, effective May 20, 2009 (www.gpo.gov/fdsys/pkg/PLAW-111publ22/pdf/PLAW-111publ22.pdf).

2. www.gpo.gov/fdsys/pkg/FR-2009-06-24/pdf/E9-14909.pdf and www.hud.gov/offices/pih/programs/hcv/about/fact_sheet.cfm#6

local law that provides longer time periods or other additional protections for tenants.

Definitions

Bona Fide Lease or Tenancy

A lease or tenancy is bona fide if the tenant is not the mortgagor or the parent, spouse, or child of the mortgagor; the lease or tenancy is the result of an arms-length transaction; and the lease or tenancy requires rent that is not substantially lower than fair market rent or is reduced or subsidized due to a federal, state, or local subsidy.

Requirements

Under the law, the immediate successor in interest at foreclosure must (a) provide bona fide tenants with 90 days notice prior to eviction and (b) allow bona fide tenants with leases to occupy property until the end of the lease term, except the lease can be terminated on 90 days notice if the unit is sold to a purchaser who will occupy the property.

Protecting Tenants at Foreclosure Examination Objectives and Procedures

EXAMINATION OBJECTIVES

1. To assess the institution's awareness of its responsibilities under the Protecting Tenants at Foreclosure Act of 2009.
2. To assess the institution's compliance management policies and procedures with respect to its responsibilities under the law.

EXAMINATION PROCEDURES

1. Determine that the institution is aware of its responsibilities under the law through interviews with institution management.
2. Determine that the institution has incorporated its compliance responsibilities under the law into its operations, particularly with respect to its foreclosure notice procedures.
3. Determine that the institution has conducted training for appropriate personnel regarding the law.
4. Determine that the institution has incorporated routine reviews for compliance with the law into its compliance monitoring program.
5. Determine that the institution's internal audit program has been updated to include audit plans for evaluating compliance with the law.
6. Review applicable compliance review and audit materials, including workpapers, checklists, and reports pertaining to the law. Evaluate whether the reviews and audits performed were reasonable and accurate and that effective corrective action occurred in response to any identified deficiencies.
7. Summarize findings and supervisory concerns. Identify actions needed to address any weaknesses and deficiencies in the institution's compliance management systems. Discuss findings with institution management and obtain any necessary commitment for corrective action.