

Memo

To: Interested Parties

From: NLIHC

Date: May 21, 2009

Re: Protections for Tenants in Foreclosed Properties

President Obama signed S. 896 on May 20, 2009. This bill includes a nationwide 90 day pre-eviction notice requirement for tenants in foreclosed properties. The provisions of the bill are effective on enactment, May 20, 2009.

Specifically, the new law will require that the immediate successor in interest at foreclosure

- provide bona fide tenants with 90 days notice prior to eviction and
- allow bona fide tenants with leases to occupy the 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.

A bona fide lease or tenancy is one where the tenant is not the mortgagor or a member of the mortgagor's family, 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.

For section 8 tenants the new law amends section 8(o) to provide that 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. In addition, in the case of any foreclosure on any property in which a recipient of section 8 assistance resides, the immediate successor in interest in such property pursuant to the foreclosure assumes 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.

None of these provisions preempt more protective state and local laws and all of these provisions expire at the end of 2012.

For additional information, please contact Danna Fischer, 202 507-7462 or danna@nlihc.org