

New law continuing lease or tenancy with the new owner of a foreclosed rental property:

PROTECTING TENANTS AT FORECLOSURE ACT OF 2009

S. 896, Pub. L. No. 111-22, §§ 701-704

When is the law in effect?

May 21, 2009 – December 31, 2012

The sale must occur on or within the law's effective dates.

Who does this law effect, and how?

Any immediate successor in interest (new owner) – must continue the lease as the landlord until either: 1) cause for termination arises, 2) the end of the lease term, or 3) the new owner chooses to use the property as a primary residence and provides the tenant with a 90-day notice of termination.

Tenants with a bona fide lease or tenancy - As of the date of such notice of foreclosure, a tenant under any bona fide lease entered into before the notice of foreclosure may remain on the premises until either: 1) cause for termination arises, 2) the end of the remaining term of the lease, or 3) the new owner chooses to use the property as a primary residence and gives the tenant a 90-day notice.

Tenants with a bona fide month-to-month tenancy - Upon a foreclosure sale, the tenancy continues with the new owner as the landlord until either 1) cause for termination arises, 2) the new owner gives the tenant a 90-day notice of termination or 3) the tenant provides the owner with a state law 30-day notice of termination.

Tenants with a Housing Choice Voucher/Section 8 lease - Upon a foreclosure sale, the voucher lease (which may be a written month-to-month tenancy after the first year) is treated the same as other leases and other month-to-month tenancies. In addition, upon a foreclosure sale, the housing assistance payments ("HAP") contract continues, with the new owner subject to the terms of the HAP contract. The new owner may not terminate the voucher lease on the "other good cause" business ground that it will assist in the sale of the property.

Is the lease or tenancy "bona fide"?

The law applies only to "bona fide" leases, which requires:

- 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 rent is not substantially less than fair market rent, or the rent is reduced or subsidized due to a Federal, State, or local subsidy.