

Protecting Tenants at Foreclosure Act of 2009



**§§ 702-704 of Public Law 111-22
Effective May 20, 2009**

**REBA Affordable Housing Committee &
CHAPA Foreclosed Property Initiative
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Presenter

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Current Massachusetts law protecting tenants after foreclosure

- Chapter 206 Acts of 2007 (amending G.L. c. 186 § 13 and adding § 13A)
- Tenancies at will not terminated by foreclosure.
- Post-foreclosure owner must file summary process action to evict tenants at will.



Current Mass. law (cont.)

- Private (not subsidized) leases *are* terminated by foreclosure . . . BUT . . .
- Private lease tenants become tenants at will after foreclosure.
- Section 8 and MRVP leases not terminated by foreclosure.



PTFA - Summary

- **Effective May 20, 2009**
- **Expires December 31, 2012**
- **Immediate post-foreclosure owners must assume existing “bona fide” tenancies and leases and all Section 8 leases and HAP contracts.**



PTFA – Summary (cont.)

- **Post-foreclosure owners must give at least 90 days notice to vacate to bona fide tenants.**
- **Special protections for Section 8 tenants.**
- **Protections are minimum, do not preempt more protective state, local laws and subsidy programs.**



Section 702 (non-Section 8 tenants)

- **Applies to foreclosures on any dwelling or residential real property or on federally-related mortgage loans.**
- **Applies to post-May 20 foreclosures.**
- **May apply to pre-May 20 foreclosures on “federally related mortgage loans.”**



Section 702 (cont.)

- **“Immediate successor in interest pursuant to foreclosure” has new obligations.**
- **Who is “immediate successor in interest?”**
- **In Mass., entity or individual who buys at foreclosure sale and is grantee on foreclosure deed.**
- **Most often the mortgagee.**



Section 702 (cont.)

- **Immediate successor in interest takes property subject to “bona fide” existing lease or tenancy; i.e., becomes the landlord.**
- **If desires to evict must give at least 90-day notice.**



Section 702 (cont.)

- Most tenancies are “bona fide.”
- *Not* bona fide if tenant is mortgagor or child, spouse or parent of mortgagor.
- *Not* bona fide unless tenancy or lease was arms length transaction.
- *Not* bona fide if rent is substantially less than fair market rent (unless reduced because of subsidy)
- “Bona fide” lease must be entered into before notice of foreclosure.



Section 702 (cont.)

- **Bona fide leases continue after foreclosure.**
- **EXCEPT - successor may terminate lease on date of sale to purchaser who will live in unit as primary residence.**
- **But still must give 90 days notice**
 - **Example: Tenant signs one-year lease Jan. 1. On Feb. 1, house is foreclosed & foreclosure deed signed. Lease continues in effect until Dec. 31. BUT if new owner wants to move in, can give 90-day notice to quit right away.**



Section 703 – Section 8 Tenancies

- **All provisions of § 702 apply to Section 8 tenants under § 703.**
- **§ 703 covers both pre- and post-May 20 foreclosures.**
- **§ 703 protections are minimum – doesn't pre-empt more generous state or local law.**



Section 703 (cont.)

- **Amends Section 8 statute governing grounds for termination of tenancy.**
- **Before PTFA, after initial lease term (usually the first year), owner could attempt to terminate Section 8 lease for “other good cause,” including a business reason.**
- **Owners often alleged that wanting property vacant after foreclosure was other good cause to terminate Sec. 8 tenancy.**



Section 703 (cont.)

- Under PTFA, merely wanting property vacant after foreclosure is NOT other good cause to terminate Sec. 8 lease.

EXCEPT lease may be terminated (with 90-day notice) if new owner after foreclosure will occupy unit as primary residence.

- Post-foreclosure owner assumes Sec. 8 lease AND HAP contract between prior owner and housing agency.



Section 703(cont.)

- Boston HUD office issued a notice on the Act on June 15, 2009. Summarized § 703 as follows:
- “. . . immediate successor in interest (generally the bank or other lending institution) shall assume both existing Section 8 lease and the existing [HAP] Contract. Foreclosure does not constitute ‘other good cause’ for termination of an existing Section 8 lease with one exception; if the unit will be owner-occupied as a primary residence, the owner must provide the tenant with a minimum 90 day notice to vacate.”



Section 703 (cont.)

- HUD published national notice on June 24 explaining how the new law works.
- “Immediate successor owners of foreclosed properties in which Section 8 voucher recipients reside become participants in HUD’s Section 8(o) tenant-based voucher programs and must comply with Sections 702 and 703.”



Materials

1. Protecting Tenants at Foreclosure Act of 2009 (Sections 702-704 of Helping Families Save Their Homes Act of 2009, P.L. 111-22) http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ022.111.pdf
2. HUD Notice: Federal Register / Vol. 74, No. 120 / Wednesday, June 24, 2009 / Notices <http://www.gpo.gov/fdsys/pkg/FR-2009-06-24/pdf/E9-14909.pdf>
3. O.C.C. notice, August 13, 2009: <http://www.occ.gov/ftp/bulletin/2009-28.html>
4. Federal Reserve Board notice, July 30, 2009: <http://www.federalreserve.gov/boarddocs/CALETTERS/2009/0905/caltr0905.htm>