

Protecting Tenants at Foreclosure Act of 2009

Background and Summary

The Protecting Tenants at Foreclosure Act¹ protects tenants from eviction because of foreclosure on the properties they occupy. These provisions took effect on May 20, 2009, and originally were scheduled to expire on December 31, 2012. However, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) changed the expiration date to December 31, 2014.

The tenant protection provisions apply in the case of any foreclosure on a “federally related mortgage loan”² or on any dwelling or residential real property. They provide that “any immediate successor in interest” in such a foreclosed property, including a bank that takes title to a house upon foreclosure, will assume the interest subject to the rights of any bona fide tenant and will need to comply with certain notice requirements.

Under this law, the immediate successor in interest of a dwelling or residential real property must provide tenants with a notice to vacate at least 90 days before the effective date of such notice.

The date of a “notice of foreclosure” is defined as the date on which complete title to a property is transferred to a successor entity or a person as a result of a court order or pursuant to provisions in a mortgage, deed of trust, or security deed.³

Tenants also must be permitted to stay in the residence until the end of their leases, with two exceptions:

- (1) When the property is sold after foreclosure to a purchaser who will occupy the property as a primary residence or,
- (2) When there is no lease or the lease is terminable at will under state law.

¹ Title VII of the Helping Families Save Their Homes Act of 2009.

² The law states that “federally related mortgage loan” has the same meaning as in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 USC 2602). The definition includes any loan secured by a lien on one-to-four family residential real property, including individual units of condominiums and cooperatives.

³ Section 1484 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

