



# RESCINDED

OCC 2009-28  
OCC BULLETIN

Comptroller of the Currency  
Administrator of National Banks

OCC 2009-28 has been replaced by OCC  
2011-15

**Helping Families Save Their**  
Subject: **Homes Act of 2009 — Title VII Tenant Protections**      Description: **Guidance**

Date: August 13, 2009

**TO:** Chief Executive Officers of National Banks, All Department and Division Heads,  
and All Examining Personnel

On May 20, 2009, the Helping Families Save Their Homes Act of 2009, P.L. 111-22, was signed into law. Title VII of this law, the Protecting Tenants at Foreclosure Act, provides protections to tenants from eviction as a result of foreclosure on the properties they are renting. These provisions took effect on May 20, 2009, and will expire on December 30, 2012.

The tenant protection provisions apply in the case of any foreclosure on a “federally-related mortgage loan”<sup>1</sup> 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 after foreclosure, will assume the interest subject to the rights of any bona fide tenant and certain notice requirements.

Under this law, the immediate successor in interest must provide tenants with notice at least 90 days before evicting them. Additionally, tenants must be able to stay in the residence until the end of their lease, with two exceptions: (1) where the property is sold after foreclosure to a purchaser who will occupy the property as a primary residence and, (2) where there is no lease (or where the lease is terminable at will under state law). However, even when these exceptions apply, tenants must still receive 90 days’ notice before they may be evicted.

The protections of this law apply only to “bona fide” tenants — meaning that the lessee is not the mortgagor or a child, spouse, or parent of the mortgagor; the lease is the product of an arm’s-length transaction; and the rent is not substantially less than fair market rent (unless it is due to a government subsidy). Additionally, the law provides that it does not affect the requirements for termination of any federal- or state-subsidized tenancy or of any state law that provides longer notice requirements or other additional protections for tenants.

National banks are advised to adopt policies and procedures to ensure compliance with these new tenant protection provisions. The OCC will evaluate bank compliance in the course of our supervisory process.

Questions about this matter may be directed to your supervisory office, to the Compliance Policy Division at (202) 874-4428, or to the Community and Consumer Law Division at (202) 874-5750.

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/signed/

Ann F. Jaedicke  
Deputy Comptroller for Compliance Policy

<sup>1</sup> 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 1-4 family residential real property, including individual units of condominiums and cooperatives.

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