



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket Number FR-5427-N-02]

Protecting Tenants at Foreclosure Act: Additional Guidance on Notification Responsibilities under the Act with respect to Occupied Conveyance

AGENCY: Office of the Assistant Secretary for Housing--Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice provides additional guidance on the notice, entitled “Protecting Tenants at Foreclosure: Notice of Responsibilities Placed on Immediate Successors in Interest Pursuant to Foreclosure of Residential Property,” published in the Federal Register on June 24, 2009, and supplemented by further information published on October 28, 2010. The October 2010 notice provided guidance on the relationship between the Federal Housing Administration’s (FHA’s) current regulations on occupied conveyance and the protections for existing tenants under the Protecting Tenants at Foreclosure Act of 2009 (PTFA). This notice provides further guidance on the relationship between FHA regulations and the protections for existing tenants under the PTFA.

FOR FURTHER INFORMATION CONTACT: FOR FURTHER INFORMATION

CONTACT: James Hass, Housing Program Specialist, Office of Single Family Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 9172, Washington, DC 20410-8000; telephone number 202-708-1672 (this is not a toll-free number). Persons with hearing or speech challenges may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background of PTFA and HUD's June 2009 Notice

The Protecting Tenants at Foreclosure Act of 2009, Title VII of the Helping Families Save Their Homes Act of 2009 (Pub. L. 111-22, approved May 20, 2009) (codified at 12 U.S.C. 5220 note), requires that any immediate successor in interest take a foreclosed residential property subject to the existing lease and provide tenants residing in the property with notice to vacate at least 90 days in advance of the date by which the successor, generally, the purchaser, seeks to have the tenants vacate the property. Except where the purchaser will occupy the property as the primary residence, the term of any bona fide lease entered into before the notice of foreclosure and extending beyond 90 days also remains in effect. The PTFA was enacted during a period when unprecedented numbers of foreclosures were occurring across the country. Often, tenants residing as leaseholders in residential properties become collateral victims in addition to homeowners when foreclosures occur, and are forced to vacate their leaseholds, often with minimal notice. The PTFA ensures that tenants receive appropriate notice of foreclosure and are not abruptly displaced.

Sections 702 and 703 of PTFA define the scope of PTFA's coverage over residential properties. The Section 702 requirements provide tenants with at least 90 days' advance notice to vacate and to preserve the term of any bona fide lease apply to foreclosures on all Federally related mortgage loans or on any dwelling or residential real property. Section 703 makes conforming changes consistent with the Section 702 requirements to the Section 8 rental voucher assistance provisions of the United States Housing Act of 1937 (1937 Act). The protections provided by PTFA sunset on December 31, 2014.

Section 1484 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111-203, approved July 21, 2010) amended PTFA, and extended the PTFA protections

to December 31, 2014. Section 1484 of the Dodd-Frank Wall Street Reform and Consumer Protection Act also defined when “date of notice of foreclosure” occurs. Section 1484 provides in relevant part as follows: “the date of a notice of foreclosure shall be deemed to be the date on which complete title to a property is transferred to a successor entity or person as a result of an order of a court or pursuant to provisions in a mortgage, deed of trust, or security deed.

To fall under the Act, a bona fide lease must be entered into prior to the date of the notice of foreclosure, which is defined as “the date on which complete title to a property has been transferred to a successor entity or person as a result of an order of a court or pursuant to the provisions in a mortgage, deed of trust, or security deed.” A bona fide lease is one in which: (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 lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit’s rent is reduced or subsidized due to a federal, state, or local subsidy. The requirements of the PTFA apply with respect to properties secured by FHA-insured mortgages as well as those in the Section 8 program.

The notice that HUD published on June 24, 2009 (74 FR 3-1-6), addressed the general applicability of PTFA protections to HUD programs, provided basic guidance, and advised where HUD program participants and other interested parties may find more detailed guidance directed to HUD programs. Following issuance of the June 24, 2009, notice, HUD began receiving questions about the interplay of the PTFA notice requirements with the notice requirements of FHA’s occupied conveyance regulations. HUD therefore issued a second notice on PTFA to specifically address how the PTFA tenant protections work in the context of FHA regulations.

II. FHA's Occupied Conveyance Regulations – October 28, 2010 Notice

The Federal Register notice, published by HUD on October 28, 2010 (75 FR 66385), provided the following guidance on compliance with the FHA's occupied conveyance regulations, and the tenant protections provided by the PTFA.

Upon default of an FHA-insured mortgage, and under FHA's existing regulations, the mortgagee must engage in loss mitigation for the purpose of providing an alternative to foreclosure. Should such loss mitigation efforts be unsuccessful, the mortgagee will generally foreclose and convey the property to FHA in exchange for an FHA mortgage insurance claim. FHA generally requires the mortgagee to convey the property unoccupied, but in certain circumstances, as described in FHA's occupied conveyance regulations at 24 CFR 203.670-203.681, FHA will accept the property occupied. In cases where the regulations would not permit the occupied conveyance of the property, the mortgagee must acquire possession before conveying the property to FHA. Various laws, usually state or local, but now also PTFA, affect possessory action and the length of time it takes to acquire possession of the property.

FHA's claims regulations at 24 CFR 203.356(b) provide that the mortgagee must exercise "reasonable diligence" in prosecuting the foreclosure proceedings to completion and in acquiring title to and possession of the property. (Failure to foreclose and evict acquire possession in accordance with this reasonable diligence time frame could lead to curtailment of debenture interest on the mortgagee's FHA insurance claim as described in section 203.402(k) of the regulations.) FHA publishes state-by-state reasonable diligence time frames by mortgagee letter. At the time of publication of the October 28, 2010, notice, HUD noted that FHA Mortgagee Letter 2005-30 provided that an automatic extension of the reasonable diligence time frame will be allowed for the actual time necessary to complete the possessory action provided

that the mortgagee begins such action promptly. Therefore, FHA regulations and Mortgagee Letters already provide mortgagees the additional time they may need to acquire possession under the PTFA, i.e., in many cases at least an additional 90 days. As mortgagees may have been confused about the interaction between the PTFA and the occupied conveyance regulations, the October 28, 2010, notice served to confirm that: (1) FHA expects mortgagees to comply with the PTFA; and (2) the additional time needed to acquire possession pursuant to the PTFA is automatically included in the reasonable diligence time frame.

III. FHA Occupied Conveyance Regulations and PTFA Protections – Additional Guidance

Since issuance of the October 28, 2010, notice, mortgagees have sought additional guidance on this subject. This notice provides additional guidance regarding compliance with FHA's occupied conveyance procedures and the tenant protections of PTFA in light of recent changes in state and local laws relating to tenant protection. This guidance is also being provided directly to FHA-approved mortgagees through an FHA mortgagee letter.

Tenant Protections Prior to PTFA. FHA historically required mortgagees to provide all property occupants (including former mortgagors) a Notice of Pending Acquisition (NOPA), within 60 to 90 days prior to the date the mortgagee expected to acquire title to the occupied property. For many tenants, this may have been their first notification that ownership of a property was changing and that they would likely need to relocate in the near future. The NOPA also advised the occupants that there was a possibility of remaining in the property when ownership was conveyed to FHA if the occupants met certain criteria. However, the NOPA also cautioned that any continued occupancy after conveyance to FHA would be temporary.

Prior to enactment of the PTFA on May 20, 2009, leases that did not pre-date the mortgage could usually be terminated by the new owner following completion of foreclosure.

Additionally, although there were variations due to state or local law, most eviction actions required that advance notice to vacate be provided to occupants 60 days or less before the effective date of the eviction. The passage of the PTFA changes both of those situations.

PTFA Tenant Protections. The PTFA generally provides, after the date of its enactment, that in the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property, any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to: (1) a notice to vacate to any bona fide tenant at least 90 days before the effective date of such notice; and (2) the rights of any bona fide tenant under a bona fide lease to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence. FHA expects mortgagees to comply with the terms of the PTFA. As provided in section 702(a) of the PTFA, nothing in the PTFA shall affect any state or local law that provides longer time periods or additional protections for tenants.

Mortgagee Compliance under PTFA. Before completion of foreclosure, the mortgagee must confirm the identity of all occupants, determine each occupant's possible rights for continued occupancy under the PTFA and state or local law, and attempt to obtain documentation of existing leases and tenancies.

1. **Revised Notice to occupants of pending acquisition (NOPA).** At least 60 days, but not more than 90 days before the mortgagee reasonably expects to acquire title, the FHA mortgagee shall notify the mortgagor and each head of household who is occupying a unit of the property of its potential conveyance to FHA following foreclosure. The notice(s) shall provide a summary of the conditions under which continued occupancy is permissible and other information

specified in 24 CFR § 203.675(b). A sample Notice to Occupant of Pending Acquisition and related documents to be used for this purpose accompany this notice. Mortgagees should make any additional changes to the NOPA that are required to be in compliance with PTFA, state or local laws. If the occupant responds to the NOPA and FHA approves occupied conveyance, the mortgagee shall convey the property occupied under FHA's existing occupied conveyance procedures.

Mortgagees must begin using the revised NOPA and related documents, with additional changes that are required to be in compliance with PTFA, state or local law, no later than July 1, 2012.

2. Occupancy rights under PTFA and state and local law. If FHA denies occupied conveyance, the mortgagee must confirm if PTFA is applicable (i.e., whether there is a bona fide lease or tenancy, etc.) or if there is some other occupancy protection under state or local law that would require the mortgagee to delay action to obtain possession of the property. Mortgagees shall fully comply with applicable PTFA and state and local law and provide required notices to occupants.

The additional time needed under the PTFA (or specific state or local laws) to obtain possession of the property is taken into consideration when evaluating compliance with FHA's reasonable diligence time frame. The mortgagee must retain documentation in the claim file to support the additional time needed to comply with PTFA (or other state or local occupancy requirements). Upon expiration of the tenancy protection, mortgagees are expected to proceed promptly with possessory actions.

3. Rent Collections. FHA expects mortgagees to attempt to collect rents payable under bona fide leases and tenancies and, in the event of default, to take possessory action pursuant to

the contract terms and applicable law. Any rents received by a mortgagee during the term of the bona fide lease or tenancy must be reflected as a credit on line 115 of Form HUD-27011, Single-Family Application for Insurance Benefits. This form can be accessed at http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_14619.pdf.

4. Preservation and Protection Costs. Additional routine preservation and protection costs, including lawn maintenance and inspections, that are incurred as a result of an extended lease or tenancy will be reimbursed pursuant to the schedule in Mortgagee Letter 2010-18, Update of Property and Preservation (P&P) Requirements and Cost Reimbursement Procedures. This mortgagee letter can be accessed at http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_14634.pdf.

Paperwork Reduction Act. The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number, 2502-0429. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB Control Number.

IV. Additional Questions about PTFA and FHA Occupied Conveyance Regulations

Any questions regarding this subject may be directed to HUD's National Servicing Center (NSC). The NSC's toll free number is 877-622-8525; its email address is Hsg-lossmit@hud.gov. Persons with hearing or speech impairments may reach NSC's number via TDD/TTY by calling 1-877-TDD-2HUD (1-877-833-2483).

Dated: March 9, 2012

Carol J. Galante, Acting Assistant Secretary for
Housing – Federal Housing Commissioner

[FR-5427-N-02]

Sample Notice to Occupant of Pending Acquisition
(To be prepared and submitted by the mortgagee to all occupants)

NOTICE TO OCCUPANT OF PENDING ACQUISITION

(Name) (Date)
(Street Address)
(Town or City)

(HUD/FHA Case No.)

AVISO IMPORTANTE PARA PERSONAS DE HABLA HISPANA.
ESTO ES UN AVISO MUY IMPORTANTE. SI NO ENTIENDE EL CONTENIDO, OBTENGA UNA
TRADUCCIÓN INMEDIATAMENTE. SI USTED NO RESPONDE DENTRO DE VEINTE (20)
DÍAS, PUEDE QUE TENGA QUE MUDARSE DE LA CASA O APARTAMENTO EN QUE VIVE.

Dear _____:

The mortgage for the property in which you are living is in foreclosure as a result of the property owner's default. Within the next 60 to 90 days, title to the property is expected to be transferred to [NAME OF MORTGAGEE]. Some time thereafter, ownership of the property will probably be transferred to the Secretary of Housing and Urban Development (HUD).

HUD generally requires that there be no one living in properties conveyed to the Secretary as a result of a foreclosure. As the Federal Housing Administration's (FHA) single family program is a mortgage insurance program, it must sell all acquired properties and use the proceeds of sale to help replenish the FHA Mortgage Insurance Fund. It is not a rental program. There are other programs within HUD that assist in making rental housing available.

However, before [NAME OF MORTGAGEE] conveys the property to HUD, you may be entitled to remain in the property for some period of time, pursuant to the Protecting Tenants at Foreclosure Act of 2009 (PTFA) or state or local law. If you are a bona fide tenant (someone other than the mortgagor, or the child spouse or parent of the mortgagor occupying the property pursuant to a bona fide lease or tenancy), a separate notice regarding your occupancy rights under PTFA will be provided to you when complete title to the property is transferred to (name of mortgagee) as a result of an order of a court or pursuant to provisions in the mortgage, deed of trust or security deed.

Instructions: Mortgagees may insert here any language they deem necessary to inform occupants of the conditions under which they might be eligible to remain in the property pursuant to the PTFA or state or local law, and/or for the mortgagee to request information from the occupant that would be needed for the mortgagee to determine whether the occupant qualifies.

If you are not entitled to remain in the property pursuant to the PTFA or state or local law, you may nevertheless be eligible to remain in the property upon conveyance to HUD, if certain conditions are met, as described in Attachment 3, Conditions for Continued Occupancy. To be considered for continued occupancy upon conveyance to HUD, you must submit a written request to HUD **within 20 days of the date at the top of this letter. Oral requests are not permitted.**

Please use the enclosed Attachment 1, “Request for Occupied Conveyance” (form HUD-9539), in making your request as it gives HUD information it needs to make its decision. You must send your request and the enclosed Attachment 2 “Request for Verification of Employment” authorization to HUD’s Mortgagee Compliance Manager (MCM) at the following address : [MORTGAGEE’S ADDRESS].

If an individual residing in the property suffers from a permanent, temporary, or long-term illness or injury that would be aggravated by the process of moving from the property, please also provide supporting documentation of the illness or injury. This documentation must include a projection of the date that the individual could be moved without aggravating the illness or injury and a statement by a state-certified physician establishing the validity of your claim.

Additional information that you wish to include with your request may be written on additional pages that you attach to the “Request for Occupied Conveyance” form.

If HUD approves your request to remain in the property, you will be required to sign a month-to-month lease and pay rent at the prevailing fair market rate. If HUD does not in fact become owner of this property, any decision it may make with respect to your continued occupancy will no longer apply.

Your right to continued occupancy of the property under HUD’s Occupied Conveyance policies will only be temporary, depending on the circumstances, as described in Attachment 4, Temporary Nature of Continued Occupancy.

For assistance in finding affordable housing, you may wish to contact one or more of HUD’s approved housing counseling agencies. These agencies usually provide services at little or no cost. A counselor may be able to recommend other organizations that can also be of assistance. If you have access to the Internet, you may locate a local housing counseling agency by visiting the following webpage: www.hud.gov/offices/hsg/sfh/hcc/hccprof14.cfm. Alternatively, you may call the HUD Housing Counseling and Referral Line, weekdays between 9:00 am and 5:00 pm EST. The Referral Line telephone number is (800) 569-4287.

If you have any questions concerning this notice, please contact [NAME AND CONTACT INFORMATION OF MORTGAGEE].

Sincerely,

Signature
Title

Attachments

Attachment 1 (*Request for Occupied Conveyance - Form HUD - 9539*)

Attachment 2 (*Request for Verification of Employment*)

NOTE: Mortgagees may use their own standard employment verification forms.

Attachment 3 (*Conditions for Continued Occupancy*)

Attachment 4 (*Temporary Nature of Continued Occupancy*)

Attachment 3 (Conditions for Continued Occupancy)
(to Mortgagee's Notice of Pending Acquisition)

HUD's Occupied Conveyance Program
CONDITIONS FOR CONTINUED OCCUPANCY

The following conditions must be met before HUD can approve the occupied conveyance of an acquired property.

1. One or more of the following must be met, as determined by HUD in HUD's sole and absolute discretion pursuant to authority provided in FHA occupied conveyance regulations 24 CFR §203.670 through §203.681 and additional guidance provided by the Department:
 - a. Your occupancy is necessary to protect the property from vandalism;
 - b. The average time in inventory for HUD's unsold inventory in the residential area in which the property is located exceeds six months;
 - c. With respect to two-to-four-unit properties, the marketability of the property would be improved by your continuing occupancy.
 - d. The high cost of eviction or relocation expenses makes eviction impractical; or
 - e. An individual residing in the property suffers from a permanent, temporary, or long-term illness or injury that would be aggravated by the process of moving from the property.
2. The house must be habitable (except for approval under condition 1(e)).
3. You must have been living in the house at least 90 days prior to the date the lender acquires title to the house (except for approval under condition 1(e)).
4. You must agree to sign a month-to-month lease at fair market rent on a form prescribed by HUD at the time HUD acquires the property.
5. You must have the financial ability to make the monthly rental payments under the terms of the lease.
6. You must agree to pay one month's advance rent when you sign the lease (except for approval under condition 1(e)).
7. You must allow access to the property during normal business hours:
 - (a) By HUD representatives for a physical inspection of the property, with two days advance notice.
 - (b) By HUD contractors doing repairs, with two days advance notice.
 - (c) By real estate brokers and their clients with two days advance notice.
8. You must disclose the complete and accurate social security number (SSN) assigned to you and to each member of your household.

Attachment 4 (Temporary Nature of Continued Occupancy)
(to Mortgagee's Notice of Pending Acquisition)

TEMPORARY NATURE OF CONTINUED OCCUPANCY

This is to advise you that occupancy of HUD-owned property is temporary in all cases and is subject to termination to facilitate preparing the property for sale and completing the sale. Temporary means that your lease arrangement with HUD is subject to termination at the convenience of the government upon 30 day's notice, or otherwise in accordance with applicable law. You should not view your occupancy of the property as a permanent or long-term arrangement. It is HUD's policy to ask you to vacate the property and, if necessary, take appropriate eviction action for the following causes:

1. Your failure to execute the lease.
2. Your failure to pay the required rent, including the initial payment at the time of execution of the lease.
3. Your failure to comply with the terms of the lease.
4. Your failure to allow access to the property upon request to accomplish necessary repairs, inspect the property, or allow real estate brokers to show the property to a prospective purchaser.
5. Necessity to facilitate preparing the property for sale and completing the sale.
6. Assignment of the property by HUD to a different use or program.

[FR Doc. 2012-6297 Filed 03/14/2012 at 8:45 am; Publication Date: 03/15/2012]