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Comptroller of the Currency  
Administrator of National Banks

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## Protecting Tenants at Foreclosure Act of 2009

Comptroller's Handbook

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\*References in this guidance to national banks or banks generally should be read to include federal savings associations (FSA). If statutes, regulations, or other OCC guidance is referenced herein, please consult those sources to determine applicability to FSAs. If you have questions about how to apply this guidance, please contact your OCC supervisory office.

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# Protecting Tenants at Foreclosure Act of 2009

## Background and Summary

The Protecting Tenants at Foreclosure Act<sup>1</sup> 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”<sup>2</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 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.<sup>3</sup>

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.

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<sup>1</sup> Title VII of the Helping Families Save Their Homes Act of 2009.

<sup>2</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 one-to-four family residential real property, including individual units of condominiums and cooperatives.

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

However, even when these exceptions apply, tenants must still receive 90 days notice before they may be evicted.

The protections of this law apply to tenants under a “bona fide” lease or tenancy. A lease or tenancy is “bona fide” only if:

- (1) The mortgagor or a child, spouse, or parent of the mortgagor under the contract is not the tenant;
- (2) The lease or tenancy was the product of an arm’s-length transaction; and
- (3) The lease or tenancy requires the receipt of rent that is not substantially less than fair market rent or the rent is reduced or subsidized due to a federal, state, or local subsidy.

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## References

### Laws

Public Law 111-22, Helping Families Save Their Homes Act of 2009  
Title VII, Sections 701-704, Protecting Tenants at Foreclosure Act  
Dodd-Frank Wall Street Reform and Consumer Protection Act

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# Expanded Procedures—Protecting Tenants at Foreclosure Act

**Objective:** Determine the bank’s level of compliance with Title VII of the Helping Families Save Their Homes Act of 2009 – Protecting Tenants at Foreclosure Act.

Assess the bank’s level of compliance by using the Protecting Tenants at Foreclosure Act Examination Worksheet.

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## Protecting Tenants at Foreclosure Act

This worksheet can be used for reviewing audit work papers, evaluating bank policies, performing expanded procedures, and training as appropriate. Complete only those sections that specifically relate to the issue being reviewed, evaluated, or tested, and retain the completed sections in the work papers.

When reviewing audit or evaluating bank policies, a “no” answer indicates a possible exception/deficiency and should be explained in the work papers. When performing expanded procedures, a “no” answer indicates a violation and should be explained in the work papers. If a line item is not applicable within the area you are reviewing, indicate “NA.”

### Protecting Tenants at Foreclosure Act Examination Worksheet

Underline the applicable use:

**Audit    Bank Policies    Expanded Procedures**

	Yes	No	NA
<p>1. In the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property that has a bona fide tenant, whether or not the tenant is subject to a bona fide lease, has the bank, as immediate successor in interest in such property:</p> <p style="padding-left: 40px;">a) Provided a notice to vacate to the tenant at least 90 days before the effective date of such notice? [Sec. 702(a)(1)]</p>			
<p>2. In the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property that has a bona fide tenant under a bona fide lease entered into before the notice of foreclosure, has the bank, as immediate successor in interest in such property:</p> <p style="padding-left: 40px;">a) Assumed such interest subject to the tenant’s rights to occupy the premises until the end of the remaining term of the lease, unless the lease is terminable at will under state law or the property is sold to a purchaser who will occupy the unit as a primary residence? [Sec. 702(a)(2)(A)]</p>			

<p>3. In the case of any foreclosure on a federally-related mortgage loan or on any residential real property in which a recipient of assistance under Section 8 of the United States Housing Act of 1937 resides, has the bank, as immediate successor in interest in such property:</p> <p>a) Assumed such interest subject to the lease between the prior owner and the tenant and subject to the housing assistance payments contract between the prior owner and the public housing agency for the occupied unit? [Sec. 703(2)]</p>			
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