

Massachusetts Law Reform Institute

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August 12, 2010

Paul Burke
Director of Court Operations
Housing Court Department
Edward W. Brooke Courthouse
24 New Chardon Street
Boston, MA 02114-4703

**Re: Recent Federal and State Legislation Extending Protections to Tenants
After Foreclosure of Rental Properties**

Dear Mr. Burke:

I am writing to inform you about recent federal and state legislation that will likely affect many post-foreclosure summary process proceedings brought against tenants in the Housing Courts of the Commonwealth.

**1. New State Law Requiring Just Cause Eviction and Provision of Certain Notices
after Foreclosure is Immediately Effective as of August 7, 2010**

Massachusetts law provides that foreclosure does not terminate tenancies at will. All unsubsidized tenants after foreclosure, whether with leases or at-will, are considered tenants-at-will and are generally entitled to a 30-day or rental period notice to quit (whichever is longer). Further, foreclosure does not terminate leases under federal or state rental subsidy programs.¹

On August 7, 2010, Governor Patrick signed into law St. 2010, c. 258, "A Bill to Stabilize Neighborhoods," which addresses several aspects of the worsening foreclosure crisis in Massachusetts. Section 6 of c. 258 adds a new Chapter 186A of the General Laws, which provides additional eviction and notice protections to many, if not most, tenants in foreclosed properties. The law was passed with an emergency preamble, and Section 6 takes effect immediately upon signing.

The new Chapter 186A substantially amends Massachusetts landlord/tenant law in the following ways:

¹ G.L. c. 186, §§ 13, 13A and 12.

- Section 1 of c. 186A defines key terms used in the law;
- Section 2 prohibits a “foreclosing owner” (generally a lending institution) from “evicting” a “bona fide” tenant after foreclosure without “just cause” (one of six reasons set out in Section 1) or unless there is a binding purchase and sale agreement on the property;
- Sections 3 and 4 require a foreclosing owner to provide tenants in foreclosed properties with certain notices concerning rent and maintenance;
- Section 5 allows a foreclosing owner to bring a court challenge regarding the amount of rent or use and occupancy paid by a tenant in the foreclosed property;
- Section 6 imposes sanctions if a foreclosing owner evicts a tenant in violation of this new law; gives jurisdiction to the district, housing and superior courts to enforce the law; and provides that violation of this law shall be a defense in an eviction proceeding.

2. Recent Amendment and Clarification of the Federal “Protecting Tenants at Foreclosure Act of 2009”

On May 20, 2009, the President signed the “Protecting Tenants at Foreclosure Act of 2009” (PTFA), providing certain protections for tenants in foreclosed properties. Under Sections 702-704 of PTFA, an “immediate successor in interest” to a foreclosed property must give “bona fide” tenants at least 90 days’ notice to vacate. Tenants who enter into leases before a “notice of foreclosure” are, with certain exceptions, entitled to remain in possession for the remainder of their leases, and additional protections are accorded to Section 8 tenants. PTFA was originally set to expire on December 31, 2012.²

² As passed in 2009, PTFA (Pub. L. 111–22, div. A, title VII, § 702, May 20, 2009, 123 Stat. 1660) provides:

“(a) In General.—In the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property after the date of enactment of this title [May 20, 2009], any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to—

“(1) the provision, by such successor in interest of 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, as of the date of such notice of foreclosure—

“(A) under any bona fide lease entered into before the notice of foreclosure 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, subject to the receipt by the tenant of the 90 day notice under paragraph (1); or

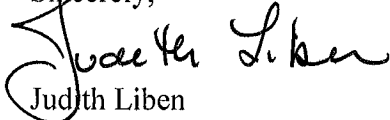
“(B) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90 day notice under subsection (1), except that nothing under this section shall affect the requirements for termination of any Federal- or State-subsidized tenancy or of any State or local law that provides longer time periods or other additional protections for tenants.

“(b) Bona Fide Lease or Tenancy.—For purposes of this section, a lease or tenancy shall be considered bona fide only if—

On July 21, 2010, the President signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (HR 4173). Section 1484 of the Act, "Protecting Tenants at Foreclosure Extension and Clarification," amends and clarifies PTFA in two ways: first, it extends the sunset date from December 31, 2012 to December 31, 2014; second, it clarifies that the date of a "notice of foreclosure" is "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."³

Thank you for your attention to these recent developments, and I hope this information will be useful to the judges and court personnel in the Housing Courts. I have worked extensively on both state and federal laws pertaining to tenants in foreclosed properties and would be happy to answer any questions or attend any trainings you may be planning.

Sincerely,



Judith Liben
Senior Housing Attorney
Massachusetts Law Reform Institute

"(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.
 "(c) Definition.—For purposes of this section, the term 'federally-related mortgage loan' has the same meaning as in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602)."

³ Section § 1484 of the Dodd-Frank bill provides:

The Protecting Tenants at Foreclosure Act is amended—

(1) in section 702 (12 U.S.C. 5220 note)—

(A) in subsection (a)(2), by striking “, as of the date of such notice of foreclosure”; and (B) in subsection (c), by inserting after the period the following: “For purposes of this section, 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.”; and

(2) In section 704 (12 U.S.C. 5201 note), by striking “2012” and inserting “2014.”.

PTFA, as amended and clarified in the Dodd-Frank bill, is cited as 12 U.S.C. § 5220 note; Pub. L. No. 111-22, tit. VII, § 702, 123 Stat. 1632, 1660-62 (2009), as amended by Pub. L. No. 111-203, tit. XIV, § 1484 (2010).