

**Upon a Foreclosure Sale of Residential Rental Property,
the Lease or Tenancy Continues with the New Owner**

(Peter M. Iskin, Legal Aid Society of Cleveland, July 20, 2009)

1. **Issue.** Upon a foreclosure sale of residential rental property, what is the effect of the sale on the tenant's lease or month-to-month tenancy?
2. **New federal law.** Protecting Tenants at Foreclosure Act of 2009. S. 896, Pub. L. No. 111-22, §§ 701-704.
3. **Effective date.** May 20, 2009.
4. **Application of effective date.** The federal law applies to any existing bona fide lease or tenancy for residing in a property when the property is sold at a foreclosure sale, if the confirmation of the sale occurs on or after the law's effective date.
5. **Bona fide lease or tenancy.** The federal law applies only to bona fide leases and tenancies, which means:
 - The tenant is not the child, spouse, or parent of the mortgagor (former landlord);
 - The lease or tenancy was the result of an arms-length transaction; and
 - The rent is not substantially less than the fair market rent (or the rent is reduced or subsidized due to a Federal, State, or local subsidy).
6. **Tenants with a bona fide lease.** Upon a foreclosure sale, the lease continues with the new owner as the landlord and, absent cause for termination, it continues until the end of the lease term, with two exceptions: (i) for leases with a lease term that will end in less than 90 days, the lease continues until the new owner provides the tenant with a 90-day notice of termination; and (ii) for all leases, the new owner may terminate the lease, in order to use the property as the new owner's primary residence, by providing the tenant with a 90-day notice of termination.
7. **Tenants with a bona fide month-to-month tenancy.** Upon a foreclosure sale, the tenancy continues with the new owner as the landlord and, absent cause for termination, it continues until either (i) the new owner provides the tenant with a 90-day notice of termination or (ii) the tenant provides the owner with a state law 30-day notice of termination.
8. **Tenants with a Housing Choice Voucher (aka Section 8) lease.** Upon a foreclosure sale, the voucher lease (which may be a written month-to-month tenancy after the first year) is treated the same as other leases (see item 6, above) and other month-to-month tenancies (see item 7, above). In addition, upon a foreclosure sale, the housing assistance payments ("HAP") contract continues, with the new owner subject to the terms of the HAP contract. The new owner may not terminate the voucher lease on the "other good cause" business ground that it will assist in the sale of the property.