

PUBLICATION

Residential Property Managers and Foreclosing Lenders, Beware!

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Summary: Property managers, foreclosing lenders and even foreclosing lienholders should be mindful of a new law granting additional rights to tenants. The new law limits a foreclosing party's ability to rely on the public records and grants tenants additional pre-eviction notice rights.

A new bill signed by President Obama gives tenants significant protections—and pause to property managers, foreclosing lenders and possibly even foreclosing lienholders. The Helping Families Save Their Homes Act of 2009 includes the Protecting Tenants at Foreclosure Act (the Act), which was signed into law on May 20, 2009. The new law applies to residential properties, including condos. In general, a party taking title to residential property pursuant to a foreclosure takes the title subject to rights of "bona fide" tenants residing on the property. In particular, the bona fide tenant has the right to a 90-day notice to vacate before an eviction. Moreover, if the bona fide tenant entered into a "bona fide" lease before the notice of foreclosure, the tenant has the right to remain on the property for the duration of the lease. An exception to this rule is made for a purchaser who will occupy the property as a primary residence, in which case the lessee is still entitled to a 90-day notice of eviction.

Where the pre-foreclosure investigation process might have formerly involved a brief inspection of the public records for the presence of recorded leases, the Act adds to the due diligence of foreclosing lenders. In addition to giving all tenants a 90-day eviction notice, the Act effectively gives unrecorded leases the effect of recordation with respect to foreclosing lenders. It is unclear whether the Act only applies to loan foreclosures and may apply as broadly to all foreclosures (including lien foreclosures). In any event, foreclosing parties should be aware of their heightened obligations under the Act.

If you have any questions about particular steps that can be taken to anticipate and operate safely within this new era of tenant protection, please do not hesitate to contact any one of the real estate attorneys at Baker Donelson, including those whose names are set out below.

Mr. Arnold and Mr. Janke are attorneys in our New Orleans office.