

Congress Enacts Unprecedented Federal Tenant Protections

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On May 20, 2009, President Obama signed Senate Bill 896 (Helping Families Save Their Homes Act of 2009) into law. Title VII of this Act is called “Protecting Tenants at Foreclosure Act of 2009” (“PTFA”) and is designed to protect “bona-fide” tenants from being displaced when their landlord’s property is foreclosed. While the new law protects tenants, it raises significant issues for landlords, property managers, lending institutions and buyers.

The PFTA applies where foreclosure has occurred on a “federally-related” home loan. A winning bidder at the foreclosure sale, often the bank, is termed by the PFTA as the “immediate successor in interest.” Pursuant to the PFTA, immediate successors in interest acquire the property subject to any “bona-fide” leases in place at the time of foreclosure. To qualify as “bona-fide,” (1) the lease must have been executed prior to the issuance of the notice of the foreclosure; (2) the defaulting borrower may not be the tenant under the lease; (3) the lease must be the result of an arms-length transaction; and (4) the lease must require “fair market rent” for the property.

If a “bona-fide” lease exists, the successor in interest is required to honor the balance of the lease term unless the successor in interest sells the property to a buyer “who will occupy the unit as a primary residence.” Additionally, the successor in interest is required to provide the tenant with 90-days notice to vacate. Even in the case of “bona-fide” month-to-month tenancies, a successor in interest must still provide 90-days notice requiring the tenant to vacate.

Significant concerns are raised by the PFTA and, in many instances, clear answers are yet to be determined. Property managers, landlords, agents and prospective buyers should familiarize themselves with the new law, and consult competent legal counsel if necessary. The new law can be found at www.combslawgroup.com.