

I've taken the liberty of breaking down the act into logical "clauses" so you can understand what is being said. I've also added my own commentary, highlighted in yellow.—Denise Evans

[SEC. 701. Short title.](#)

This title may be cited as the "Protecting Tenants at Foreclosure Act of 2009".

[SEC. 702. Effect of foreclosure on preexisting tenancy.](#)

(a) In general.—In the case

of any foreclosure on a federally-related mortgage loan

(virtually any mortgage on a residential property, except most seller financing. I have reprinted at the end of this statute the RESPA definition of a "federally-related mortgage loan.)

or

(a New York appellate case says this "or" is a typo and should be left out, otherwise the statute would be unconstitutional. If you take out the "or" then the law applies to federally related mortgage loans on any dwelling or residential real property. If you leave in the "or" then the law applies to commercial loans and to seller financing loans. On the other hand, by definition a federally-related mortgage applies only to residential properties. So, why the redundancy? Rules of statutory construction say that if one interpretation of a statute is merely redundant, and another interpretation adds something more, you must assume the lawmakers intended to include the additional concept rather than merely repeating themselves. I say, you can't assume **anything** when lawmakers hurry up and pass legislation without thinking about it or even proof-reading it. You see why this little word, "or," makes such an incredibly big difference.)

on any dwelling or residential real property

(such as seller financing, etc., but only for residential properties)

after the date of enactment of this title,

(foreclosure happens after May 9, 2009)

any immediate successor in interest

(no one knows what this means—the first purchaser at the foreclosure action, or the investor who buys it out of bank REO. What significance is the use of the word “immediate?” If the bank buys at the foreclosure, they are certainly bound by the statute. If they sell to someone else afterwards, that person is not an “immediate successor”, so does that mean the statute does not apply to them?)

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,

(any tenant with a lease can occupy until the end of the lease term. No limit on the lease term, either. BUT, if the tenant has the right to occupy, does it have the obligation to pay rent? The Act is silent. Does the landlord owe the normal landlord duties to the tenant, including the duty to repay security deposit to residential tenants, or does the tenant simply have the right to occupy but the landlord has no other obligations. Under uniform Residential Landlord Tenant Acts, does the new “landlord” have the obligation to refund the security deposit? Does it have habitability liabilities? If the old landlord was supposed to maintain the lawn, does the new landlord have to do that? No one knows what this means.)

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—

(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.

(I found a Georgia decision that said, in dicta, that rent 30% less than market was “substantially less than fair market rent.” “Dicta” means the language was just an off-hand comment by the court, and was not necessary for the ruling they made. Dicta is not considered binding on later courts.)

(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). (I've reprinted this at the end of this document for you to read.)

[SEC. 703. Effect of foreclosure on section 8 tenancies.](#)

Section 8(o)(7) of the United States Housing Act of 1937 ([42 U.S.C. 1437f\(o\)\(7\)](#)) is amended—

(1) by inserting before the semicolon in subparagraph (C) the following: “and in the case of an owner who is an immediate successor in interest pursuant to foreclosure during the term of the lease vacating the property prior to sale shall not constitute other good cause, except that the owner may terminate the tenancy effective on the date of transfer of the unit to the owner—

“(i) will occupy the unit as a primary residence; and

“(ii) has provided the tenant a notice to vacate at least 90 days before the effective date of such notice.”; and

(2) by inserting at the end of subparagraph (F) the following: “In the case of any foreclosure on any federally-related mortgage loan (as that term is defined in section 3 of the Real Estate Settlement Procedures Act of 1974 ([12 U.S.C. 2602](#))) or on any residential real property in which a recipient of assistance under this subsection resides, the immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to the lease between the prior owner and the tenant and to the housing assistance payments contract between the prior owner and the public housing agency for the occupied unit, except that this provision and the provisions related to foreclosure in subparagraph (C) shall not shall not affect any State or local law that provides longer time periods or other additional protections for tenants.”.

[SEC. 704. Sunset.](#)

This title, and any amendments made by this title are repealed, and the requirements under this title shall terminate, on December 31, 2012.

Definition of “federally related mortgage loan” from RESPA:

Federally related mortgage loan or mortgage loan means as follows:

(1) Any loan (other than temporary financing, such as a construction loan):

(i) That is secured by a first or subordinate lien on residential real property, including a refinancing of any secured loan on residential real property upon which there is either:

(A) Located or, following settlement, will be constructed using proceeds of the loan, a structure or structures designed principally for occupancy of from one to four families (including individual units of condominiums and cooperatives and including any related interests, such as a share in the cooperative or right to occupancy of the unit); or

(B) Located or, following settlement, will be placed using proceeds of the loan, a manufactured home; and

(ii) For which one of the following paragraphs applies. The loan:

(A) Is made in whole or in part by any lender that is either regulated by or whose deposits or accounts are insured by any agency of the Federal Government;

(B) Is made in whole or in part, or is insured, guaranteed, supplemented, or assisted in any way:

(1) By the Secretary or any other officer or agency of the Federal Government; or

(2) Under or in connection with a housing or urban development program administered by the Secretary or a housing or related program administered by any other officer or agency of the Federal Government;

(C) Is intended to be sold by the originating lender to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation (or its successors), or a financial institution from which the loan is to be purchased by the Federal Home Loan Mortgage Corporation (or its successors);

(D) Is made in whole or in part by a “creditor”, as defined in section 103(f) of the Consumer Credit Protection Act (15 U.S.C. 1602(f)), that makes or invests in residential real estate loans aggregating more than \$1,000,000 per year. For purposes of this definition, the term “creditor” does not include any agency or instrumentality of any State, and the term “residential real estate loan” means any loan secured by residential real property, including single-family and multifamily residential property;

(E) Is originated either by a dealer or, if the obligation is to be assigned to any maker of mortgage loans specified in paragraphs (1)(ii) (A) through (D) of this definition, by a mortgage broker; or

(F) Is the subject of a home equity conversion mortgage, also frequently called a “reverse mortgage,” issued by any maker of mortgage loans specified in paragraphs (1)(ii) (A) through (D) of this definition.

(2) Any installment sales contract, land contract, or contract for deed on otherwise qualifying residential property is a federally related mortgage loan if the contract is funded in whole or in part by proceeds of a loan made by any maker of mortgage loans specified in paragraphs (1)(ii) (A) through (D) of this definition.