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March 9, 2011

Sean Rogan
Executive Director
Housing Authority of the County of Los Angeles
2 Coral Circle
Monterey Park, CA 91755

BY MAIL and FAX to (323) 890-8584

Re: Proposed HACoLA Administrative Plan

Dear Mr. Rogan:

The National Housing Law Project submits the following comments in connection with the Housing Authority of the County of Los Angeles (HACoLA) proposed Section 8 Administrative Plan for Fiscal Year 2011-2012. The comments are primarily addressed to recent federal legislation that affects the rights of tenants, including Section 8 tenants, in foreclosed properties. The National Housing Law Project is a national housing law and advocacy center that provides legal assistance, advocacy advice, and housing expertise to legal services and other attorneys, low-income advocacy groups, and others who serve the poor. We appreciate HACoLA's willingness to address the requirements under federal law in its response to the comments we submitted last year¹, yet to date no substantive changes have been made to the FY 2011 Plan to implement the federal law and corresponding HUD guidance. We submit these comments in hope that they will facilitate a continued dialogue with HACoLA and assist the agency in administering its housing programs in a manner consistent with its mission of promoting adequate and affordable housing.

Foreclosures are increasing in all jurisdictions, including Los Angeles County. In response to the foreclosure crisis, Congress enacted the Protecting Tenants at Foreclosure Act (PTFA) in May 2009.² The new law gives tenants the right to stay in their homes for 90 days or until the end of the lease term, whichever is longer.³ For Section 8 tenants, PTFA provides that a successor in interest after foreclosure takes subject to both the Section 8 lease and the Housing Assistance payment (HAP)

¹ For your reference, the response is attached to the end of this letter.

² Protecting Tenants at Foreclosure Act, Pub. L. No. 111-22, tit. VII, §§ 701-704, 123 Stat. 1632, 1660-62 (2009), amended by Pub. L. No. 111-203, tit. XIV, § 1484, 124 Stat. 1376, 2204 (2010).

³ *Id.*

contract.⁴ HUD recently issued an updated guidance to public housing agencies (PHAs) in case of foreclosures.⁵ The guidance includes information on how PHAs can ensure compliance with PTFA.

In accordance with PTFA and the HUD notice, HACoLA should inform Section 8 voucher tenants of their rights in the event of foreclosure. In this regard, HUD asks PHAs to do the following: For every rental unit that receives voucher assistance, PHAs must give information about the tenant protection provisions in PTFA to all participants.⁶ Participants include: (1) existing landlords; (2) heads of households that currently receive voucher assistance; (3) voucher applicants who have been issued vouchers and are searching for new homes; and (4) prospective voucher landlords.⁷ The HUD notice encourages PHAs to use sample notices prepared by the National Low Income Housing Coalition (NLIHC) and the National Housing Law Project (NHLP).⁸ A copy of NHLP's sample notice is attached to this comment. The HUD notice also encourages PHAs to notify local courts and sheriff's offices about these new tenant protection laws.⁹ For your convenience, we are also attaching a copy of a notice that HACoLA could adapt, place on the letterhead and send out to the local courts.

The HUD notice also requires that once a PHA learns that a property receiving voucher assistance is in foreclosure, it must take further steps to ensure that tenants' rights under PTFA are enforced.

These steps include:

- making all reasonable efforts to determine the status and ownership of the property. The notice encourages PHAs to review legal notices in newspapers or local government websites to monitor whether assisted properties are foreclosed upon.
 - Note: In California, any person may record a request for special notice that will entitle the person to receive any notice of default or notice of trustee's sale that is recorded for that property.¹⁰ So in addition to taking the steps outlined in the HUD notice, the Housing Authority should record a request for special notice with the County Recorder's office for the address of each assisted unit and amend the Administrative Plan accordingly.
- continuing to pay the original owner under the existing HAP contract until ownership is legally transferred.
- attempting to obtain from the successor in interest a written acknowledgment of assignment of the HAP contract.
- informing the tenant to pay rent in accordance with the lease and to pay rent into escrow if the successor in interest refuses to accept rent. The PHA must also inform voucher holders that failure to pay rent may constitute an independent ground for eviction.

⁴ *Id.* § 703, 123 Stat. 1661.

⁵ Protecting Tenants at Foreclosure Act – Guidance on New Tenant Protections, Notice PIH-2010-49 (Dec. 28, 2010). This guidance extended Notice PIH-2009-52.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* The notices are posted on NLIHC's website at <http://www.nlihc.org/template/page.cfm?id=227> and on NHLP's website at <http://nhlp.org/node/763>. See also City of Tempe Housing Services Section 8 Housing Assistance Program, Protecting Tenants at Foreclosure Act Notice, <http://www.tempe.gov/housing/Section%208/Foreclosure%20protection%20notice.pdf>.

⁹ PIH 2010-49, at 4.

¹⁰ CAL. CIV. CODE § 2924b (a).

- Note: while nonpayment of rent may be an adequate ground for a successor in interest to evict, this language should not be interpreted to terminate the voucher holder's subsidy in a situation where the successor in interest refuses to take the voucher holder's rent or fails to provide the tenant timely information regarding ownership and where rent payments should be made, and the nonpayment of rent is due to no fault of the tenant. The Housing Authority should clarify in the Administrative Plan that nonpayment of rent in this situation will not be treated as material noncompliance with the lease.
- informing the family if the PHA is unable to make HAP payments to the successor in interest because (1) the successor in interest refuses to accept payments, (2) the property fails Housing Quality Standards inspections, or (3) the PHA cannot identify the successor in interest. The PHA must also give the family a referral to legal services to ensure that the family's rights are protected.¹¹

Proposed Addition to Administrative Plan

The Housing Authority should amend the Administrative Plan to incorporate the language in HUD PIH Notice 2010-49 on the PHA obligations. For example, the Housing Authority can add a new Section to Chapter 9 of the Administrative Plan to incorporate PIH Notice 2010-49.

For example, the section may read:

9.15 – Protecting Tenants at Foreclosure

Upon learning that a voucher-assisted unit is in foreclosure, the Housing Authority will comply with PIH Notice 2010-49, and will:

1. Provide notice to the Owner of the change in law outlined in PIH Notice 2010-49.
2. Provide notice to the Head of Household that is receiving HCV assistance of their rights as outlined in PIH Notice 2010-49.
3. Comply with all PHA responsibilities as outlined in PIH Notice 2010-49 and any additional laws, notices, and guidelines.
4. Record a request for special notice under Civ. Code § 2924b (a) with the County Recorder's Office. This request for special notice ensures that the Housing Authority is informed of any foreclosure notices recorded on the assisted property.

Administrative Plan § 9.13.3 – Proof of Ownership

The Administrative Plan currently state that the "Housing Authority will use property profile information obtained from a private vendor to confirm ownership of the assisted unit." This section should be revised to also require the Housing Authority to check the foreclosure status of the property prior to execution of the HAP contract to ensure that a trustee sale has not occurred.

Administrative Plan § 9.14 – Change of ownership

¹¹ PIH 2010-49, at 4-5.

The Administrative Plan currently states that a “change of ownership does not require execution of a new contract.” But under the Administrative Plan, in order to complete a change in ownership, “the new owner must complete an Assumption of Obligations and Benefits contract.” While the Housing Authority should encourage new owners to execute an assumption of the HAP contract, the Housing Authority should clarify that under PTFA, a successor in interest after foreclosure takes title subject to both the lease and the HAP contract, even if the new owner does not expressly assume the HAP contract. For example, the Housing Authority can add the following language: “However, in the case when ownership is transferred through foreclosure, the Protecting Tenants at Foreclosure Act requires a new owner to be legally bound under the existing Section 8 lease and the Housing Assistance Payment contract until the end of the lease term, even if an Assumption of Obligations and Benefits contract has not been executed.”

Administrative Plan § 10.11 – Consequences of verified owner-related deficiencies

Section 10.11 provides that if an assisted unit fails HQS inspection and the failure is due to an owner-related deficiency, the Housing Authority is obligated to withhold (abate) housing assistance payments. Section 10.11 further provides that “Families that reside in units that have been abated will be issued a voucher and will have the option to move even if the assisted unit passes inspection at the third and final inspection.” This provision should be amended to make it clear that in the event that the family wishes to stay in the unit, the Housing Authority will take all reasonable steps to allow the family to remain, especially in the event that the new owner is intentionally not maintaining the property, not providing utilities that the prior owner provided, etc. for the purpose of renegeing on the responsibilities set forth in the HAP contract. Allowing the new owner to indirectly terminate the tenancy for HQS compliance violations would contravene the intent of PTFA to allow voucher tenants to remain in their homes until the end of the lease term. The Housing Authority can amend the section to include the following language: “In the event that the family wishes to stay in the unit after foreclosure, the Housing Authority will take all reasonable steps to allow the family to remain.”

Administrative Plan § 15.2.2 – Mandatory termination

Under the current administrative plan, the Housing Authority must terminate assistance for participants if no housing assistance payment was made during the past 180 calendar days. For tenants in foreclosed properties, post-foreclosure owners often refuse to execute assumptions of the HAP contract and so in effect refuse to accept housing assistance payments. Requiring mandatory termination in this situation would contravene the intent of PTFA to allow voucher tenants to remain in their homes until the end of the lease term. Accordingly, the Housing Authority should not require mandatory termination of a tenant in this situation where the absence of housing assistance payments is due to noncompliance of a post-foreclosure owner with PTFA. For example, the Housing Authority can add language in § 15.2.2 (3) to indicate: “In the event that the family wishes to stay in the unit after foreclosure, the Housing Authority will not require mandatory termination and will take all reasonable steps to allow the family to remain.”

We thank you for taking the time to review these comments. If you have any questions regarding this letter, please feel free to contact Kent Qian at (415) 546-7000 ext. 3112 or email at kqian@nhlp.org.

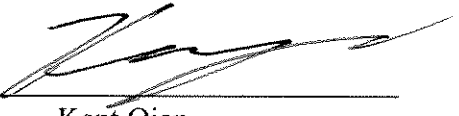
Enclosures:

Sample PTFA notice from PHA to Section 8 Tenant

Sample letter to local court on PTFA

HACoLA Response to NHLP Comments

Respectfully submitted,
National Housing Law Project

By 

Kent Qian
Attorney / Skadden Fellow

Sample Notice for Tenants to be handed out by the Landlord Tenant Court, Local Legal Service Office, Public Housing Authorities or other housing advocates

ATTENTION TENANTS LIVING IN UNITS THAT HAVE BEEN FORECLOSED UPON

90-DAYS TERMINATION (EVICTION) NOTICE REQUIREMENT AND RIGHT TO CONTINUED OCCUPANCY UNTIL THE END OF THE LEASE TERM

If you rent your home or apartment and your landlord loses the property through a foreclosure, a law, called the Protecting Tenants at Foreclosure Act (PTFA), may protect you.¹ Under this law, the new owner becomes your landlord. All bona fide leases or tenancies entered into before the date on which complete title is transferred to the new owner must be honored.

If a new owner who takes over your unit wants to evict you, he or she must give you at least 90-days notice to vacate. If your lease has more than 90 days left in the term, then you can stay until the end of your lease and until you receive a notice at least 90 days which can be before the end of your lease. The only exception to this rule is that a new owner who wants to live in your unit as his or her primary residence doesn't have to wait for your lease to end and only has to give you a 90 day notice.

If the new owner gives you a notice of less than 90 days or a notice that would terminate your lease before its end, you should

- Send the new owner a letter (a draft letter is attached), by certified mail, return receipt requested, at the address the new owner put on his/her notice to you, telling the new owner/landlord that s/he must give you at least a 90-days notice to vacate. This letter should be sent before the date you were told to vacate.²
- **Pay your rent.** If you do not pay your rent, your landlord can ask the court to evict you for non-payment under state law.
- Make and retain a copy of your letter and the green return receipt for your records.

If your landlord files an eviction complaint against you (some states call this an unlawful detainer action) and did not give the required 90-day notice, you should put in your answer, or tell the judge at court (if your state does not make you file an answer), that the notice is improper under the Protecting Tenants at Foreclosure Act.

If you have to go to court in the eviction case, you should take with you

- copies of the letter you sent to your landlord,
- the original and copies of your proof of mailing and green return receipt from the post office,
- a copy of the PTFA that is attached to this notice and
- a copy of your written lease if you have a written lease. If you do not have a written lease, take rent receipts or utility bills or something else that proves that you live there.

The judge may not know about the law, but if you tell the judge about the law it is his or her legal responsibility to enforce it and make sure that you are not forced to move with less than 90 days notice or before the end of your lease term.

If you have a Section 8 Housing Choice Voucher you have additional protections that you should learn about.

¹ Protecting Tenants at Foreclosure Act, P.L. 111-22, § 701-704 (2009), as clarified and amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203, § 1484 (July 21, 2010).

If you have any questions, please contact the local Legal Services Office at _____

Attachments

1. Letter from non-Sec 8 tenants to new owner/landlord
2. The Protecting Tenants at Foreclosure Act (PTFA), P.L. 111-22, §§ 701-704 (May 20, 2009) as amended and clarified by the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203, § 1484, (July 21, 2010).

Sample Letter for Non Section 8 Tenant to Send to New Owner

(Address of Tenant)

(Date)

(Name and address of new owner)

Dear _____ *(new owner)*:

I am a tenant at _____ *(address, including apartment number if applicable)*. I am writing this letter in response to the notice of termination I received from you dated _____ *(date of notice received)*.

The Protecting Tenants at Foreclosure Act (PTFA), P.L. 111-22, §§ 701-704 (May 20, 2009) as amended, applies to state eviction proceedings.³ This law requires that a person or entity (including a bank) that becomes the new owner of a residential rental property as the result of a foreclosure **honor existing leases with a fixed term until the end of the lease term**. The law also mandates that, **no matter what the lease term, the new owner must provide the tenant(s) in the property with at least 90 days' notice before requiring the tenant(s) to vacate the property**. There is an exception in the law for new owners who will live in the unit as their primary residence. Such owners are not required to honor the existing lease until the end of its term but still must still provide at least 90 days' advance notice before requiring a tenant to leave.

All bona fide leases entered into before the date on which complete title is transferred to the new owner are covered by the law. The 90 day period cannot start until the date on which complete title is transferred to the new owner and the new owner properly serves the tenant with a 90 day notice to vacate

Since the notice sent on _____ *(date of notice received)* does not comply with this law, I consider the notice to be void and ineffective.

Sincerely,

(name of tenant)

³ The Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203 (July 21, 2010), in § 1484, clarified and amended the PTFA.

Public Law 111-22, (May 20, 2009)
TITLE VII--PROTECTING TENANTS AT FORECLOSURE ACT (PTFA)⁴

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 or on any dwelling or residential real property after the date of enactment of this title, 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,

(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--

(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). 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.

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 if 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 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, 2014.

⁴ The PTFA was amended in section 1484 of P.L. 111-203 (July 21, 2010).

Address

Date

Name of Judge

Address

Dear Honorable Judge _____:

I write to bring to your attention a federal law that applies to state eviction proceedings.

At the start of the foreclosure crisis, renters in good standing were being evicted from their homes, often with little or no notice, merely because the properties they occupied were foreclosed upon. To address this problem and to stabilize neighborhoods, Congress enacted the Protecting Tenants at Foreclosure Act (PTFA), P.L. 111-22, §§ 701-704 (effective on May 20, 2009), as clarified and amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203, § 1484 (July 21, 2010).

The PTFA requires that new owners (including lenders) who have acquired residential property through foreclosure honor the existing leases or tenancies of any bona fide tenants for the entire remaining lease term. The law also requires that, regardless of the length of time remaining on their lease, new owners provide existing tenants with at least ninety (90) days' notice to vacate before requiring the tenants to leave the property. If the remaining lease term is more than 90 days, and a new owner intends to live in the unit as their primary residence, an exception to the general rule allows such owners to provide at least 90 days' notice to vacate and terminate the lease before its normal expiration date. Regardless of the remaining term on the lease, only after complete title to the property is transferred may the new owner give the notice to vacate to the tenants.

Under the PTFA, all bona fide tenants must receive a 90-day notice before they may be required to vacate. Tenants with more than 90 days remaining on a lease may remain until the end of the lease, if the tenant entered into the lease prior to the transfer of complete title to the new owner. In addition, the lease must be bona fide (the tenant cannot be the mortgagor or the child, spouse, or parent of the mortgagor, the lease or tenancy must be the result of an arms-length transaction, and the lease or tenancy must require the receipt of rent that is not substantially less than fair market unless the lease is reduced or subsidized due to a Federal, State, or local subsidy.)

The new law similarly provides protections for tenants whose rent is subsidized through a Section 8 voucher. In such cases the new owner at foreclosure assumes ownership of the property subject to the existing lease between the Section 8 participant and the previous owner of the property, and also subject to the Section 8 Housing Assistance Payments (HAP) contract between the previous owner and the administrator of the Section 8 program. The requirement to serve at least a 90 day notice to vacate to the tenants is the same as with non-Section 8 tenancies.

Please note that PTFA explicitly states that it does not preempt state and local laws that provide *additional* protections to tenants.

Copies of the text of these laws are enclosed for your reference. If you have any questions, please contact _____. Thank you for your attention to this matter.

Sincerely,

(name)



**HOUSING AUTHORITY
of the County of Los Angeles**

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323.890.7001 • TTY: 323.838.7449 • www.lacdc.org



Gloria Molina
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Michael D. Antonovich
Commissioners

Sean Rogan
Executive Director

February 24, 2010

Kent Qian
National Housing Law Project
614 Grand Ave., Ste. 320
Oakland, CA 94610

RE: RESPONSE TO PROPOSED 2010 ANNUAL PLAN – PUBLIC COMMENT

Dear Mr. Qian,

Thank you for your comments on the Housing Authority County of Los Angeles' (hereafter known as the "Housing Authority") proposed Administrative Plan for Fiscal Year 2010. We appreciate you taking the time to review the Plan and providing comments and recommendations.

The Housing Authority has thoroughly reviewed your recommendations and offers you our response as follows:

Comment: In light of the growing number of properties ending up in foreclosure since the start of 2008, it is critical that the HACoLA Plan outline the steps it will take to address the concerns of Section 8 recipients embroiled in the foreclosure crisis.

HACoLA Response: The Housing Authority agrees that foreclosure has become a crisis in Los Angeles County, as it has in many areas throughout the country. Our staff has been working diligently to quickly issue vouchers to those who need to relocate due to foreclosure for the last two years. When the President signed the Helping Families Save Their Homes Act in May 2009 (2009 Act), the Housing Authority immediately issued written guidance to staff on how to counsel their families subjected to foreclosure.

As a result of guidance issued by HUD in December 2009, the Housing Authority is implementing additional steps to ensure tenants and owners are aware of their rights and responsibilities.

The Housing Authority will also add necessary policies to the Administrative Plan to reflect requirements under the 2009 Act.



Response to Comments FY 2010 Annual Plan
2/24/2010
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Thank you for submitting your comments on the FY 2010 Annual Plan for the Housing Authority County of Los Angeles. If you have any further questions you may contact Kerrin Cardwell, Analyst at (562) 347-4663, ext. 8122.

Sincerely,

A handwritten signature in black ink that reads "Sean Rogan" followed by a horizontal line.

SEAN ROGAN, Executive Director

SR:KC:dd