

April 22, 2009

Honorable Spencer Bachus
U.S. House of Representatives
2246 RHOB
Washington, DC 20515
FAX: 202-225-2082

Dear Ranking Member Bachus:

The undersigned organizations are writing to express our concern with H.R. 1247, the "Protecting Tenants at Foreclosure Act of 2009." The bill preempts state and local law with the intention of protecting renters living in foreclosed homes by imposing a set of notice requirements for renters with special treatment of Section 8 voucher residents.

We believe that H.R. 1247 as introduced may create more problems than the legislation attempts to solve. Please note that our concerns also apply to the nearly identical language included in H.R. 1728, the "Mortgage Reform and Anti-Predatory Lending Act of 2009."

The bill's provisions apply to the smallest single-family house as well as the largest multifamily community, yet there is little data to suggest that nationwide foreclosures are occurring at any significant rate in multifamily rental buildings with more than five units.

In fact the foreclosure problem is clearly in single-family owned units, not in the professionally managed apartment sector. Our research based on government data sources shows that more than three quarters of all defaults are owner-occupied units. For rental buildings with five or more units, the default rate is in the low single digits. The bill's reach far exceeds the scope of the problem, which is concentrated in buildings with less than four units.

We are not opposed to reasonable notice to renters, but the bill raises a number of other practical and legal questions (attached) that we believe need to be addressed to meet our concerns. We look forward to working with you to resolve these issues.

Sincerely,

Institute for Responsible Housing Preservation
Council for Affordable and Rural Housing
National Affordable Housing Management Association
National Association of Homebuilders
National Apartment Association
National Leased Housing Association
National Multi Housing Council

Talking Points on H.R 1247 “Protecting Tenants at Foreclosure Act of 2009”

- H.R. 1247 is intended to provide protection to renters from the impact of foreclosures of any real property and does not distinguish between size and types of property. Foreclosures are mainly affecting single-family houses and small multi-unit buildings (duplexes, fourplexes, etc.). In fact, the foreclosure problem is clearly in single-family owned units, not in the professionally managed apartment sector. Our research based on government data sources shows that more than three-quarters of all defaults are owner-occupied units. For rental buildings with five or more units, the default rate is in the low single digits. If Congress wants to address this issue, it should focus on the problem, buildings with less than five units.
- Section 2 of the bill provides that any “immediate successor in interest” must provide a bona fide renter 90 days notice before requiring the renter to vacate the property. Many states and localities have existing laws to protect renters (this bill would preempt them unless the state or localities have stricter terms). In addition to the 90-day notice, the bill requires that the renter may stay beyond the 90-day notice period to the end of the lease term *unless* the purchaser wishes to reside in the unit. Requiring the new purchaser to honor the lease term beyond the 90 days will certainly delay or thwart the sale of the property when the purchaser wishes to renovate the home or apartments for resale or other uses.
- The bill intends to treat renters with Section 8 subsidies differently than conventional renters. Section 3 of H.R. 1247, through changes in the language of the Housing Assistance Payments (HAP) contract, attempts to subject an owner, who is the immediate successor in interest, to the existing HAP contract that was agreed to by the previous owner. It is not clear how this provision would be applied considering that the new purchaser is not party to the existing HAP contract. Further, the HAP contract is NOT a recorded covenant or lien that passes with the transfer of title to the property.
- In addition to attempting to force the purchaser to become party to an existing government contract, Section 3 of the bill would require the purchaser to honor the term of the initial lease of the Section 8 renter *without regard* to whether the purchaser wishes to live in the home. It is unlikely that a purchaser of a foreclosed single-family home would be able to determine in advance of the purchase of the existence of a renter, let alone that the renter is receiving Section 8 subsidies. A homebuyer would be in for a rude surprise if after buying the home for their principal residence that they could not live there for up to a year. The bill does NOT provide that the purchaser be given any notice of the contract.

Section 8 voucher renters do NOT lose their subsidy as a result of a foreclosure. Such renters are often in a better position than conventional low-income renters as they can take their voucher subsidy to another rental unit and security deposit requirements are very low. For this reason, it is unclear why Congress would want to provide additional protections to voucher renters while infringing on the rights of the purchaser. The goal should be to encourage sales of foreclosed properties, not impose additional burdens.

*H.R. 1728, the “Mortgage Reform and Anti-Predatory Lending Act of 2009” includes nearly identical legislative language therefore these comments apply to those provisions as well.