



U.S. Department of Housing and Urban Development
Public and Indian Housing

Special Attention of:
Office Directors of Public Housing;
Regional Directors; Public Housing
Agencies.

Notice PIH 2009 - 52 (HA)

Issued: December 15, 2009

Expires: December 31, 2010

Cross References: 42 U.S.C. 1437f (o),
Pub. L. 111-5, Pub. L. 111-22; 24 CFR
982.310, PIH Notice 2009-17.

SUBJECT: Protecting Tenants at Foreclosure Act – Guidance on New Tenant Protections

1. **Purpose.**

This Notice provides guidance to public housing agencies (PHAs) in the case of foreclosures, regarding new protections for tenants with Section 8 assistance that was recently enacted into law by:

- Section 703 of the Protecting Tenants at Foreclosure Act (PTFA), which is part of the Helping Families Save Their Homes Act of 2009 (Public Law 111-22, approved May 20, 2009); and
- The American Recovery and Reinvestment Act of 2009 (Public Law 111-5, approved February 17, 2009) (Recovery Act) under the heading “Community Development Fund” in Title XII of Division A.

2. **Background.**

A. **Section 703 of PTFA.**

Section 703 of the PTFA amends the statute governing the Section 8 program (Section 8(o) of the U.S. Housing Act of 1937, 42 U.S.C. 1437f(o)), by revising section 8(o)(7)(C) (42 U.S.C. 1437f(o)(7)(C)) to require that each HAP contract include the following additional requirements on the owner, as shown in boldface:

(C) Shall provide that during the term of the lease, the owner shall not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause, ... **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.**

Additionally, Section 703 of the PTFA revises section 8(o)(F) (42 U.S.C. 1437f(o)(7)(F)), to add the language shown in boldface:

(F) may include any addenda required by the Secretary to set forth the provisions of this subsection. **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.**

Under these new statutory provisions, the immediate successor in interest, which is the party gaining ownership through a foreclosure sale, becomes subject to the HAP contract, as also revised by statute, and there must be “good cause” other than vacating the property prior to sale in order to terminate the existing tenancy.

Foreclosed properties in which section 8 voucher recipients reside must comply with Sections 702 and 703 of the PTFA. If the immediate successor-in-interest will use the unit as a primary residence, the lease can be terminated effective on the date of the sale. In such cases, the tenant is still entitled to a minimum of 90 days notice to vacate. Section 702 is discussed in more detail in PIH Notice 2009-17. These statutory provisions sunset on December 31, 2012.

B. Tenant Protections under the Neighborhood Stabilization Program (NSP)

The Recovery Act provides further tenant protections in the case of any qualified foreclosed housing assisted under the Neighborhood Stabilization Program (NSP) and in which the resident receives Section 8 assistance. If the housing is assisted with NSP funds after February 17, 2009 and the PHA is unable to make HAP payments to the successor in interest after foreclosure due to (1) rejection of the payments; (2) other action or inaction by the successor, such as failure to maintain the property in accordance with Section 8 requirements; or (3) inability to identify the successor – the PHA may use the funds that would have been used to pay the rental amount for the following purposes:

- To pay the utilities that are the owner's responsibility after taking reasonable steps to notify the owner; except that if the unit has been or will be rendered uninhabitable due to termination or threat of termination of service, prior notice is not required. In the latter case, the PHA shall notify the owner within a reasonable time after making the utility payment; or
- To pay for the family's reasonable moving costs, including security deposit costs.

In addition to the above, the Recovery Act provides that any recipient of a NSP grant or loan after February 17, 2009 may not refuse to lease a dwelling unit assisted with such grant or loan to a participant in the Section 8 program or a HCV holder because of the status of the prospective tenant as a participant or voucher holder.

3. **PHA Responsibilities.**

The HAP contract provides that it shall be interpreted and implemented in accordance with HUD requirements. The contract incorporates by reference the statutory provisions discussed in this notice and the June 24, 2009 Federal Register notice HUD issued on this subject (74 Fed. Reg. 30106) through the definition of HUD requirements. As soon as possible after the issuance of this notice, the Department will revise the applicable forms in the HCV program. In the interim, the PHA must provide notice to the landlord and tenant that the terms of the HAP contract incorporate the changes in law outlined in this Notice and the Notice published in the Federal Register on June 24, 2009. The existing contracts and forms that have been executed will not need to be amended by the PHA. Once the new forms have been issued by HUD, the PHA must use the most recently issued form of the HAP contracts and tenancy addendums for participants that move or new participants.

Notifications:

For every unit in which a tenant receiving Housing Choice Voucher (HCV) assistance resides and is currently provided assistance under a HAP contract, the PHA must:

- A. Provide notice to the Landlord or party executing the contract of the changes in law outlined in this Notice. This Notice can be provided in the most effective manner as determined by the PHA, including but not limited to providing information at landlord meetings, providing notice with the monthly payments, or independent mailings.
- B. Provide notice to the Head of Household that is receiving HCV assistance of their rights as a result of the change in law outlined in this Notice. This Notice can be provided in the most effective manner as determined by the PHA, including but not limited to providing explanations of the tenant rights at annual reexaminations, tenant meetings, case management meetings, or a direct mailing.
- C. Notify HCV applicants that have been issued a voucher as well as prospective owners about the

new law. A PHA may also choose to provide notice to the local entity that oversees foreclosure actions, most commonly the Sheriff's office or local courts.

Sample notice documents have been made available by the National low Income Housing Coalition and National Housing Law Project on their respective websites.

Foreclosure Actions

If a PHA learns that the property is in foreclosure, the PHA must:

- A. Make all reasonable efforts to determine the status of the foreclosure and ownership of the property. This information can most likely be obtained through information that has been sent to the tenant notifying them of the foreclosure, and possibly in a 90 day notice to vacate. Additionally, PHA's may review legal notices in the local newspaper or the local governments web site to keep apprised of foreclosure actions initiated against owners of HCV assisted properties.
- B. Continue to make payments to the original owner until ownership legally transfers in accordance with the HAP contract. With the exception of HUD-insured mortgages or loans, defaulting on a mortgage/loan is not a breach of the HAP contract.
- C. Attempt to obtain a written acknowledgement of the assignment of the HAP contract from the successor in interest. The written agreement should include a request for owner information such as a Tax Identification Number, and payment instructions from the new owner. Even if the new owner does not acknowledge the assignment of the HAP contract in writing, the assignment is nevertheless effective by operation of law.
- D. Inform the tenant that they must continue to pay rent in accordance with the lease, and if the successor in interest refuses to accept payment or cannot be identified, the tenant should pay the rent into escrow, because failure to pay rent may constitute an independent ground for eviction.
- E. If the PHA is unable to make HAP payments to the successor in interest due to: (1) An action or inaction by the successor in interest that prevents such payments, including the rejection of payments or the failure of the successor to maintain the property in accordance with Housing Quality Standards (HQS); or (2) An inability to identify the successor, the PHA should inform the family of this. In order to ensure adequate protection of the tenant's rights under the statutory authority as well as enforcing performance of the successor in interest under the HAP contract, the PHA should refer tenants, as services are needed, to the local Legal Aid Office.

The PHA must make reasonable inquiries to determine whether the unit, in addition to having a tenant receiving HCV assistance, will be (or has been) assisted under the Neighborhood Stabilization Program (NSP). The Department believes that units covered by this notice that receive such assistance will be rare. The PHA may inquire with the applicable units of local government to determine if properties occupied by Section 8 participants are under

consideration for the NSP program.

In cases where the units have received assistance under the NSP, the PHA may use the funds that would have been used to pay the rent for other purposes. These other purposes include:

1. To pay utilities that are the owner's responsibility under the lease or applicable law, after taking reasonable steps to notify the owner that it intends to pay utilities rather than make payments to the owner;
 - The PHA is *not* required to notify the owner before making a utility payment if the unit has been or will be rendered uninhabitable by the termination or threat of termination of service. In that case, the PHA will notify the owner within a reasonable time after making the payment.
2. To pay the families moving costs, including security deposit costs.
3. Any funds that remain after use for these authorized purposes must only be used for housing assistance payments.

Any funds used for these purposes must be recorded and tracked in accordance with Generally Accepted Accounting Principles.

4. **Preemption of certain state and local laws.**

Both PTFA and the Recovery Act contain language that provides that the new protections related to foreclosure shall not preempt any State or local law that provides additional protections for tenants. With respect to units with tenants receiving Section 8 assistance or other tenants, the new federal protections apply when state and local laws provide less protection for tenants whose units are foreclosed. Where State and local laws appear to cover the same ground as the statutes discussed in this notice, the law that gives the longest time frame or most protection to the existing tenant applies.

PHAs and NSP grantees need to be aware that the tenant protection provisions prescribed in Recovery Act and in PTFA are separate and apart from the obligations imposed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA). The URA is applicable to any person displaced as a direct result of acquisition, rehabilitation, and/or demolition of real property for a Federal or federally-assisted project. Eligibility determinations under the URA and the required notices and relocation assistance requirements are different and separate from the Recovery Act and PTFA. Tenant protections under the Recovery Act or PTFA do not establish eligibility for assistance under the URA. Eligibility for URA must be determined in accordance with the URA statute and regulations on a case by case basis.

5. **Time period of the new tenant protections.**

The tenant protections under the PTFA sunset on December 31, 2012.

6. **For Further Information:** Contact Brian Gage, Office of Housing Voucher Management,

Room 4210, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, at (202) 402-4254.

/s/

Sandra B. Henriquez, Assistant Secretary for
Public and Indian Housing