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BULLETIN 09-05

To: All Old Republic National Title Agents and Offices

From: Underwriting Department

Re: Protecting Tenants at Foreclosure Act

Date: June 10, 2009

On May 20, 2009, President Obama signed into law the "Helping Families Save Their Homes Act of 2009," which includes the "Protecting Tenants at Foreclosure Act" (the "Act") (a copy of the Act is attached for your reference). The Act provides new protections for "bonafide" tenants of residential property being foreclosed by any party, including mortgagees and homeowners' and condominium associations, as against any "immediate successor in interest" in such property pursuant to the foreclosure. Because of these new protections, our agents will need to pay special attention to this issue and may also need to take additional steps to verify that a residential property is vacant.

Although questions have already arisen about the Act, it provides, in general, that tenants of residential property being foreclosed must be given 90 days' notice before they are required to vacate the property. Further, if a "bonafide" lease exists prior to the foreclosure action, the tenant may continue to occupy the property until the lease is terminated. However, a lease may be terminated when the property is sold in the foreclosure action to a third party who will occupy the property as a primary residence, but the tenant must still be given the 90 days' notice. The Act does not address certain issues, such as whether the protections continue if a tenant is in default under the lease or whether the protections continue when a residential property is immediately re-sold in a legal "flip" (*i.e.* what constitutes an "immediate successor in interest").

It is important to remember that to delete the standard "parties in possession" exception from a title insurance policy, the property owner must sign a sworn affidavit at closing stating that there are no parties in possession (such as tenants), nor any parties claiming possession. As discussed in our First Quarter 2008 newsletter article entitled "Deleting The Standard Exceptions," upon receipt of such affidavit, the agent is required to delete the parties in possession exception, *unless the agent is aware of facts which would make the affidavit false.*

** This Bulletin should become a permanent part of your records to assist in your compliance with the requirements contained herein. **

Please **provide a copy of this Bulletin to your staff** so they can read it and become aware of its contents.

REMEMBER: All ORT Alerts, Bulletins, Notices and our Newsletter can be found on our web site, www.ortfl.com.

Our Alerts and Bulletins are issued via fax and email, but you should check our web site frequently to make sure you have copies of everything issued.

Please call your Underwriting Department if you have any questions.

Bulletin 09-05

June 10, 2009

Page 2

Because of this Act's new protections for tenants, when a foreclosure action exists, agents must be especially cautious in relying on the property owner's affidavit and may, depending on the particular transaction, need to take additional steps to verify that no tenants occupy the residential property. For example, if the agent becomes aware that there may be a tenant on the property or if the property owner refuses to sign the affidavit, the agent may need to also obtain an affidavit from the new buyer reciting that his/her physical inspection of the home and property revealed no evidence or indication of anyone occupying the home.

If you have any questions regarding the new Act or this Bulletin, please contact the Underwriting Department at 1-800-342-5957.

**TITLE V11-PROTECTING TENANTS AT
FORECLOSURE ACT**

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, 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, 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).

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. 1437(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, 2012.