

KNOW YOUR RIGHTS!

Renters in Foreclosure

Affordable Housing Task Force

July 2009

TABLE OF CONTENTS

A letter to renters in foreclosure.....3

A message to renters in foreclosure.....4

A Quick Overview.....5

The Protecting Tenants in Foreclosure Act (S. 896, P.L. 111-22).....8

What if the new owner of the foreclosed property gives me less than 90 days notice to leave my home?.....10

What is foreclosure and what should I do if I am living in an apartment or house that is being foreclosed?.....11

How does the eviction process work?.....14

What is a Writ of Possession.....20

Branch Courts.....23

Sample Letter for Section 8 Tenant to Send to the Landlord.....24

Sample Letter for Non Section 8 Tenant to Send to New Owner.....25

Sample Letter to Send to Public Housing & Section 8 HCV Administrators.....26

Sample Letter to Send to Judges who Handle Landlord Tenant Cases.....27

Sample Answer.....28

Sample Answer & Motion to Determine Amount to be Deposited into the Court Registry.....29

Sample Letter to Send to Landlord who Turns off Your Utilities or Changes the Locks.....30

Sample Emergency Motion to Stay Writ of Possession.....31

Title VII – Protecting Tenants at Foreclosure Act.....32

Dear Renter,

If you're reading this manual, then most likely you are either interested in what happens if the home you rent comes under foreclosure, or you are experiencing that very problem now.

This packet has a lot of information on: how a new owner of the property on which you live can evict you, what happens during foreclosure, what happens during eviction, and what you can and should do during these processes to help delay or even stop eviction from your home.

It was created to help tenants whose homes are in foreclosure know their rights as renters. It should function as a 'toolkit' that contains most of the necessary information and documents that you can use to send letters and file paperwork with the court. At the end of this packet are a number of sample documents that you may need to send letters to various persons or agencies, and/or to file paperwork with the court. We recommend that if at all possible, that you photocopy any sample document you may need before using it, so that you will always have a clean copy to use in the future.

The Affordable Housing Task Force created this guide to help equip renters in foreclosure with the information and documents they may need to help delay or stop eviction from their homes. It was created in response to the rampant and increasing numbers of renters who are facing eviction as a result of foreclosure of their homes. The Affordable Housing Task Force is the result of the collaboration of two non-profit organizations that champion equal justice: Legal Services of Greater Miami and The Community Justice Project of Florida Legal Services. Our goal is to educate renters of their rights and give them the tools they need to protect and enforce them.

Lastly, we aim at making this packet as comprehensive as possible. However, every circumstance is unique, and legal information is not the same thing as legal advice, which tailors information to your specific situation. If there is something that you are unsure of, or you are facing a complicated situation and need further information, please contact a lawyer.

Remember, a judge is the only person who can tell you to move! A landlord can send threatening and scary letters to you. But you HAVE rights!

Sincerely,

The Affordable Housing Task Force

Good News Renters!

On May 20, 2009, President Obama signed into law S. 896, P.L. 111-22, which includes a nation-wide 90-day pre-eviction notice requirement for tenants in foreclosed properties. What does this mean for you? In general, the new owner of the foreclosed property must honor your existing lease or must give you at least 90 days notice prior to eviction.

As with all new laws, The Protecting Tenants in Foreclosure Act (S. 896, P.L. 111-22) is open to interpretation. Until a court decides exactly what this law means, we can only do our best to interpret it. Therefore, the information regarding this new law that follows is what we believe to be true. But our view of this law may change depending on how courts treat it.

A QUICK OVERVIEW

I. THE PROTECTING TENANTS IN FORECLOSURE ACT (S. 896, P.L. 111-22)

1. **If you have a lease** and the home or apartment that you rent has been foreclosed on after May 20, 2009, then the new owner must honor your existing lease. The only exception to that is if the new owner wants to occupy the home as his personal residence, in which case s/he must give you at least 90 days notice before terminating your tenancy. If there are less than 90 days to the expiration of your lease, then the new owner must give you at least 90 days notice before terminating your tenancy.
2. **If you are a month-to-month tenant** and the home or apartment that you rent has been foreclosed on after May 20, 2009, then the new owner must give you at least 90 days notice before s/he can terminate your tenancy.
3. **If you are a Section 8 housing choice voucher tenant** and the home or apartment that you rent has been foreclosed on after May 20, 2009, then the new owner must honor your existing HAP contract/lease until the end of the lease term. The only exception to that is if the new owner wants to occupy the home as his/her personal residence, in which case s/he must give you at least 90 days notice before terminating your HAP contract/lease. If there are less than 90 days to the expiration of your HAP contract/lease, then the new owner must give you at least 90 days notice before terminating your tenancy.

II. WHAT IF THE NEW OWNER OF THE FORECLOSED PROPERTY GIVES ME LESS THAN 90 DAYS NOTICE TO LEAVE MY HOME?

1. If you receive an improper notice to terminate your tenancy, you should:
 - Send a letter to the new owner objecting to the termination, at the address listed in the notice, before the date for termination that is stated in the notice, by certified mail, return receipt requested.
2. If your landlord ignores your letter objecting to the termination and files an eviction complaint against you based upon the termination notice, you should:
 - File an answer with the court stating in it that the termination notice is improper because the landlord should have served you with a 90 days notice or could not evict you until the lease expired, under the Protecting Tenants at Foreclosure Act, Pub. L. No. 111- 22, § 702 (2009).

3. You should always make a copy of any letters you sent, or any paperwork that you filed with the court for your records. And if you 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, the copy of the new law and a copy of your written lease if you have a written lease.

III. WHAT IS FORECLOSURE AND WHAT SHOULD I DO IF I AM LIVING IN AN APARTMENT OR HOUSE THAT IS BEING FORECLOSED?

1. What Is A Foreclosure?

A foreclosure is a lawsuit filed by the mortgage company when the landlord does not pay the mortgage, asking the court to sell the property to pay off the mortgage.

2. What Should I Do If I Am Served With Notice of A Foreclosure Against My Landlord?

Even though you do not own the property, you should file an Answer to the foreclosure. In the Answer explain that:

- * You live in the property and are paying rent.
- * If you have a lease, say this in your Answer and explain when it expires.
- * Attach a copy of the lease to the Answer.

3. What Happens if the Mortgage is Foreclosed?

If your landlord does not stop the foreclosure, the Court will enter judgment against the landlord. The Court will schedule a foreclosure sale. Once the property is sold at the foreclosure sale, there will be a new owner of the property.

IV. HOW DOES THE EVICTION PROCESS WORK?

1. The landlord/new owner will give you a notice terminating your tenancy and requesting that you vacate/leave the property.
2. If you do not comply with the notice, the landlord files an eviction lawsuit against you.
3. You get an opportunity to respond to the eviction by filing an answer with the court.
4. After you file the answer you get a final hearing before a judge, and you get the opportunity to explain what you stated in your answer as to why you should not be evicted.
5. The judge then decides who wins: you, the renter or the landlord/new owner.

6. If the judge decides in the landlord's favor, then the judge issues a writ of possession.
7. A writ of possession is a court order that tells the Sheriff to put you, everything you own, and everyone in your household out of the home where you live.
8. The writ gives you 24 hours to move out. The 24-hour time period starts from the time the Writ of Possession is posted on your door.

I. THE PROTECTING TENANTS IN FORECLOSURE ACT (S. 896, P.L. 111-22)

1. If you have a lease and the home or apartment that you rent has been foreclosed on after May 20, 2009.
 - The new owner of the foreclosed residential property must honor your existing lease until the end of the lease term.
 - There is one exception to the rule that you may not be evicted during the term of your lease. If the new owner who acquired the property at foreclosure wants to occupy the unit as his/her primary residence, then that owner may give you a 90 day notice to vacate your home even if your lease runs for longer than 90 days. But the new owner must give you at least 90 days notice before terminating your tenancy.
 - If there are less than 90 days to the end of your lease term, then the new owner must provide you with at least 90 days notice before s/he can terminate your tenancy.

2. If you are a month-to-month tenant and the home or apartment that you rent has been foreclosed on after May 20, 2009.
 - The new owner of the foreclosed residential property must give you at least 90 days notice before s/he can terminate your tenancy.

3. If you are a Section 8 housing choice voucher tenant and the home or apartment that you rent has been foreclosed on after May 20, 2009.
 - The new owner of the foreclosed residential property must honor your existing HAP contract/lease until the end of the lease term.
 - There is one exception to the rule that you may not be evicted during the term of your HAP contract/lease. If the new owner who acquired the property at foreclosure wants to occupy the unit as his/her primary residence, then that owner may give you a 90 days notice to vacate your home even if your lease runs for longer than 90 days. But the new owner must give you at least 90 days notice before terminating your tenancy.
 - If there are less than 90 days to the end of your HAP contract/lease term, then the new owner must provide you with at least 90 days notice before s/he can terminate your tenancy.
 - The new owner must accept you as a Section 8 tenant.
 - The new owner must comply with all the Section 8 requirements and standards.

- The new owner must accept your existing HAP contract/lease with your old landlord and the Housing Agency.
- The new owner wanting the property vacant before they sell it is not good cause for terminating the tenancy or for eviction.

II. WHAT IF THE NEW OWNER OF THE FORECLOSED PROPERTY GIVES ME LESS THAN 90 DAYS NOTICE TO LEAVE MY HOME?

1. If you receive an improper notice to terminate your tenancy, you should:
Give a letter to the new owner objecting to the termination before the date for termination in the notice you received. Send your letter to the new owner by certified mail, return receipt requested, at the address the new owner put on his/her notice to you. You should continue to pay your rent.
2. If your landlord ignores your letter objecting to the termination and files an eviction complaint against you based upon the termination notice, you should:
File an answer with the court. Put in your answer that the termination notice is improper because the landlord should have served you with a 90 days notice or could not evict you until the lease expired, under the Protecting Tenants at Foreclosure Act, Pub. L. No. 111- 22, § 702 (2009).
3. You should always make a copy of any letters you sent, or any paperwork that you filed with the court for your records.
4. When you 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, the copy of the new law and a copy of your written lease if you have a written lease.
5. The judge may not know about the law because it is so new, but if you tell the judge about the law, it is his/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.

III. WHAT IS FORECLOSURE AND WHAT SHOULD I DO IF I AM LIVING IN AN APARTMENT OR HOUSE THAT IS BEING FORECLOSED?

1. What Is A Foreclosure?

If your landlord does not pay his mortgage, the mortgage company may file a foreclosure. A foreclosure is a lawsuit filed by the mortgage company when the landlord does not pay the mortgage. In the foreclosure, the mortgage company asks the court to sell the property to pay off the mortgage.

2. I Am Only A Tenant - Why Am I Being Served?

If a foreclosure is filed against your landlord, as a tenant living in the property, you will usually be served with the foreclosure lawsuit. Either the Sheriff or a process server will hand you a copy of the lawsuit. As a tenant, you are a party to the foreclosure, but the foreclosure complaint will refer to you as the "unknown tenant" or "John/Jane Doe."

3. What Should I Do If I Am Served With Notice of A Foreclosure Against My Landlord?

Even though you do not own the property, you should file an Answer to the foreclosure. In the Answer explain that:

- * You live in the property and are paying rent.
- * If you have a lease, say this in your Answer and explain when it expires.
- * Attach a copy of the lease to the Answer.

If you file an Answer, it will tell the judge and the mortgage company that a tenant is living in the property. You will also be notified if any hearings are scheduled in the case.

If you do not file an Answer, you may not receive any notices about the foreclosure lawsuit, and you will not know what is happening in the case.

If the landlord did not pay the mortgage and you want to move out, you can send a letter to the landlord explaining that you are terminating your rental agreement in 7 days because s/he did not pay the mortgage. You may also have other claims against the landlord, but you should consult an attorney before you take any legal action.

4. What Should I Do If My Landlord Tells Me S/He Plans to Stop The Foreclosure?

If you receive a foreclosure complaint, you should contact your landlord to find out what s/he intends to do about the foreclosure. Sometimes, after a foreclosure is filed, the owner pays the mortgage company enough money to stop the foreclosure or files bankruptcy. If the landlord does this, the foreclosure should stop or be dismissed. Even if your landlord tells you s/he will stop the foreclosure, you should still file an Answer in the foreclosure lawsuit.

5. What Should I Do If My Landlord Tells Me S/He Cannot Stop the Foreclosure?

If your landlord tells you that s/he is not going to be able to stop the foreclosure, or if you cannot find your landlord, you should file an Answer in the foreclosure and begin looking for a new place to live. Legally, you must continue to pay rent to your landlord during the foreclosure process. You should try to negotiate a new agreement with your landlord once a foreclosure is filed. If your landlord is not accepting your rent, you should save your rent in case an eviction is filed against you.

6. What Happens if the Mortgage is Foreclosed?

If your landlord does not stop the foreclosure, the Court will enter judgment against the landlord. The Court will schedule a foreclosure sale. Once the property is sold at the foreclosure sale, there will be a new owner of the property.

7. What Should I Do If the New Owner Asks Me If I Want To Stay?

Sometimes, the new owner will ask you if you want to keep living in the property. If this happens, you must make sure that the person who contacts you is really the new owner. You should ask for proof that s/he is the new owner before you pay him/her any rent. You should get any agreement in writing. If you cannot reach an agreement, the new owner cannot force you out by changing the locks or turning off the utilities.

8. Should I Keep Paying Rent?

Yes, you should keep paying rent. Legally, you must continue to pay rent to your landlord during the foreclosure process.

9. After the Property is Sold to A New Owner, Must I Pay Rent to the Old Landlord?

No, but you will need to pay rent to the new owner. After the property is sold at the foreclosure sale, you don't need to pay rent to the old landlord. But, after the foreclosure sale the new owner steps into the role of your previous landlord and you will have to pay rent to the new owner. It is very

important that you ask for proof of ownership.

10. What if the Landlord/New Owner Refuses to Accept My Rent Payments?

If the landlord/new owner refuses to accept your rent payments then you should send a letter to him/her confirming that s/he is no longer accepting rent payments. You should hold on to the rental payments and save them up. Eventually when you go to court in an eviction case you may need to deposit the money with the court registry to hold until the judge decides who wins your case.

11. If the new owner tries to evict you from your home, refer to Section I of this manual (The Protecting Tenants in Foreclosure Act (S. 896, P.L. 111-22)).

IV. HOW DOES THE EVICTION PROCESS WORK?

1. What does it mean to be evicted?

Eviction is a legal way a landlord gets back possession of a home/apartment from a tenant.

2. How does a landlord evict me?

To start an eviction, the landlord has to give you some kind of written notice. If you do not do what the notice requests or you do not leave, then the landlord files an eviction lawsuit against you in County Court.

3. Is there anything I can do in response to the eviction lawsuit?

Yes. You get to respond to the eviction by filing with the court a paper called an answer. After you file the answer with the court, you get a final hearing before a judge and you get the opportunity to explain to the judge what you put in your answer.

4. Reasons why you can be evicted.

In Florida there are certain reasons why you can be evicted:

- a) you did not pay your rent,
- b) you violated a lease provision/rule,
- c) you were given a proper notice to leave and you did not,
- d) or your written lease expired and you did not move.

5. Things your landlord CANNOT do.

- a) If you do not pay the rent or you do not move when asked to by the landlord, your landlord cannot change the locks, turn off the utilities, or do anything else which forces you to move out. This is called an illegal eviction or a "prohibited practice" and is a violation of the Landlord/Tenant Act. It can make your landlord liable to you for three times your rent, or actual damages, whichever is higher, and attorney's fees and costs. Each time the landlord commits a prohibited act it is a separate violation. For instance, if your landlord turns off your water one day, and then turns it on, and three days later changes your locks, those acts are two separate violations that you can sue for. Turning off the water makes the landlord liable for three times the rent and changing the locks makes the landlord liable for an additional three times your rent amount.

If your landlord does any of these prohibited acts, you should see an attorney about obtaining an injunction to order the landlord to turn on the utilities or let you back in the apartment.

If you don't want to move back in but want to sue for damages, you can file a lawsuit yourself in Small Claims Court if you are suing for less than \$5,000.00.

Only a judge can order that you leave. The way the landlord asks the judge to do that, as we said, is to file an eviction lawsuit in County Court. You get a copy of the eviction lawsuit and you get to answer it, or in other words, tell the judge why you should not be evicted.

- b) In Florida, the landlord cannot evict you based on discrimination because of race, creed, color, sex, national origin, age, handicap, marital status, HIV status or because you have children.
- c) It is also illegal for a landlord to evict you out of retaliation. Retaliation means the landlord tried to raise the rent, or evict you, or is treating you differently, because you complained to a government agency for some reason. For instance, you called the housing inspectors because the toilet was backed up and the landlord wouldn't fix it. Or it could be that the landlord is evicting you because you have asserted your rights as a tenant. For instance, you organized all the tenants in the building to go to the landlord about getting the broken elevator fixed.
- d) If you are in **public housing** you can only be evicted for certain reasons, such as you did not pay your rent or you violated the lease, or a rule, or a regulation.
- e) If you are in **Section 8 or other government subsidized housing**, you have to read your lease to see in what circumstances a landlord can refuse to renew your lease or try to evict you.

6. How do I write an answer?

Inserted in this packet should be a paper that has the outline for your answer.

- a) You need to first write the case number and the names of the parties on the top of the paper. That is called the "style of the case". The landlord is the Plaintiff. You are the Defendant.

- b) Next you need to read the complaint to evict and respond to each of the paragraphs in the complaint. You respond by writing in your answer that you either admit or deny what is in each paragraph. For instance, paragraph (1) one may say you are the tenant. You should admit that if you are the tenant. Another paragraph says you owe rent or broke the lease and if you're saying that is not true, you would deny that paragraph.
- c) After you admit or deny all of the paragraphs, then you write your defenses. For instance you could write, "the landlord is retaliating because I called the housing inspector" or "I offered the landlord the rent on time but he wouldn't take it".
- d) After you write your answer, you sign it, including your name, address, and phone number.
- e) The rules of the court require you to send a copy of the answer to the landlord or the landlord's attorney when you file it in court. At the bottom of the sample answer, you will see a section for doing that.
- f) You have the right to a jury trial on your eviction. You must write in the answer if you want a jury trial. But that is not a good idea if you are representing yourself, because it can get very complicated.

7. When and where do I file my answer?

- a) Your answer is due in court on the 5th day after the eviction complaint was personally served on you or a member of your the household, or posted on your door. Five days are counted just like in the Three Day Notice to Pay Rent. You don't count Saturdays, Sundays, and Holidays. The day you are served does not count. The next day would be day 1. For instance if you are served on a Wednesday, Thursday is day 1, Friday is day 2, Monday day 3, Tuesday day 4 and Wednesday day 5. Your answer would be due in court by 4:00pm on the 5th day.
- b) If you can't remember when you were served with your eviction papers, take out your eviction papers and look at the top page on the papers. That is called a summons. If you look over to the upper right you will see the word "Summons". Also, usually in that same area, the Sheriff has written or stamped the time and date that they served you with this paper. The

Summons comes with the eviction papers. The Summons is actually like an order from the court telling you to answer the eviction papers in 5 days.

- c) Beside the courthouse downtown on Flagler Street, there are branch courts. You should file your answer in the branch court where the landlord filed the eviction. You can tell the branch court by the two-digit number at the end of the case number. It will say CC 05 or CC 20, etc. The branch court locations are at the end of this handout.
- d) When we talk about filing your answer it simply means to go up to the clerk at the counter at County Court and say “I want to file an answer to an eviction”. The clerk will either take your answer or direct you to another clerk who will.
- e) Always take the original answer and a copy. The clerk will file the original in your court file and will stamp your copy with a date and the Clerk’s stamp. That copy you keep for your records.
- f) **Now this is very important.** You must pay into the registry of the court the rent that is due or ask the Court in writing as part of your answer, to determine how much rent is due. You must also ask the Court in writing to give you a hearing to determine how much rent should be paid into the court registry. If you were doing this, you would title your answer “Answer, Motion to Determine Rent and Request for Hearing.” There is an outline included in this packet. You must continue to pay the rent as it becomes due into the court registry, while the lawsuit continues.

NOTE:

If you fail to pay the rent into the registry of the court or fail to file a written request (motion) to determine the amount of rent due and request for hearing, within (5) days, excluding Saturdays, Sundays and legal holidays after the date you receive the eviction lawsuit, you have waived your defenses other than payment and the landlord automatically wins.

If you do file a motion to determine the amount of rent due, documentation is required to support your argument that the rent that the landlord is seeking is an error. For instance, if you say you paid, then attach a copy of your receipt. If you say you are withholding rent to force repairs, then attach a copy of your rent-withholding letter to your landlord.

If you live in **Section 8 or other government subsidized housing**, you are required to deposit only that portion of the rent you are responsible for under your subsidized program.

If you are being evicted for nonpayment of rent and you asked the Court to determine how much rent you owe or you answered that you paid, the Court may hold a hearing to decide how much rent should be posted or may issue an order based on what the Court reads in your answer.

8. What happens after I've filed my answer?

- a) After you file the answer, the landlord or the landlord's attorney or the court sets the final hearing date.
- b) The final hearing, which is actually your trial, will be heard at the same place where you filed your answer.
- c) Before the final hearing you will probably go to "Mediation". This is a meeting between you and the landlord and the landlord's attorney and a mediator. The mediator is not an attorney and is not a judge. The mediator is a person trained to help you and the landlord work out your problem. Mediation means that you try to compromise. You give up a little of what you want and the landlord gives up some of what he wants to make a settlement. You should always try mediation. If you reach an agreement at mediation, then you sign a paper called a "Stipulation" and then the judge signs it too. It is the final order in your case.
- d) If you and the landlord cannot agree then sometimes you may go right to your trial.
- e) Trials may be held in the judge's chambers, which are like the judge's office. The judge sits at the head of a table at a desk. You and the landlord's attorney and the landlord sit on either side of another table extending out from the judges desk. Other times the trials are held in the courtroom.
- f) The landlord goes first and presents his case. You can question the landlord and his witnesses. This is called cross-examination. Then when the landlord is done, you present your case. You can have witnesses too. The landlord or his attorney can question you and your witnesses. The judge then decides.
- g) If the judge rules for you, there is no eviction. However, sometimes the judge may put conditions in the ruling. Make sure you understand them before you leave. If you lose the Court hearing or if you did not answer the lawsuit in the first place, the Court will enter a

final judgment of eviction. If you do not move out the Court will tell the Sheriff's Office to move you and your family and everything you own out of the place where you are living.

- h) The notice that the Sheriff gives you is called **Writ of Possession**. It gives you 24 hours notice to move out. If you have not moved out by the time the Sheriff comes back, the landlord or the landlord's agent may remove your property and place it at the property line. They can do this whether you are home or not, have children, or are sick.
- i) If you lose the eviction, you have 30 days to appeal. If you lose and the landlord has an attorney, the judge can make you pay the landlord's attorney's fees and the landlord's costs. If the landlord had no attorney, you can still be ordered to pay the landlord's costs.

V. What is a Writ of Possession?

1. What is a Writ of Possession?

A writ of possession is a court order that tells the Sheriff to put you, everything you own, and everyone in your household out of the place where you live.

2. What does a Writ of Possession do?

The Writ gives you 24 hours to move out. The 24 hour time period starts from the time the Writ of Possession is posted on your door.

3. What happens if I don't comply with the Writ of Possession and move out of my home?

If you have not completely moved out by the time the Sheriff comes back, the Sheriff's crew will move you, your family and all your belongings from your home. This is called "Execution of the Writ". The Sheriff's crew will move you out even if someone is sick, pregnant, or you have another good reason why you don't think you must leave your home.

4. Can I Find Out Exactly When the Sheriff Will Return to Put Me Out?

Sometimes the Sheriff's Department gets behind and does not return exactly 24 hours after posting the writ of possession. If you want to get an idea of when the Sheriff will return to move you out, call Sheriff Service's at 305-375-5100. Tell them that a Writ of Possession was served on you or posted on your door. Be prepared to give them your case number. You will then be given an estimate of when the Sheriff will return to put you out of your home.

5. What Can I Do to Stop the Sheriff From Putting Me Out of My Home?

If you have a very strong reason why the Sheriff should not put you out of your home, you should consider filing a paper with the Court called an "Emergency Motion to Stay Writ of Possession". This is a request that the Judge stop the Sheriff from putting you out.

6. What Must Be in the Emergency Motion to Stay the Writ of Possession?

The Emergency Motion must say four things:

- a) The reasons the Sheriff should not put you out;
- b) A request that the Judge stop the Sheriff from putting you out;
- c) A request that the Judge give you a hearing so you can tell the Judge in person why you

- should not be put out, and to present any evidence to support your request; and
- d) That you faxed or hand-delivered a copy of the Motion to the landlord's attorney or to the landlord if he does not have a lawyer.

The Emergency Motion to Stay Writ of Possession must give the reasons why the Sheriff should not put you out. Some reasons may be:

- You never received a copy of the eviction or lawsuit papers except for the Writ of Possession.
- You need extra time to move because someone who lives in the home is very sick or disabled.
- You paid the landlord what you thought you owed him, and therefore you thought you could stay in the home.
- You made an agreement with the landlord or his attorney to pay him what is owed, and to stay in the home.
- You did not pay any rent money into the Court Registry because the rental unit is in very bad condition.

7. How Do I File the Emergency Motion to Stay Writ of Possession and Get a Hearing?

As soon as the Writ of Possession is served on you or posted on your door you must file the Emergency Motion to Stay Writ of Possession. Also, bring a copy of the motion to the Judge's chambers. The only person who can stop the Sheriff Department from putting you out of your place is the Judge who ordered that the Writ of Possession be issued.

File the Motion with the Clerk of the County Court at the Court where the case was filed.

You may be required to pay \$25 or \$50 as a reopening fee to file your motion. You must also hand-deliver a copy of the Motion to the Judge assigned to your case. If you do not know who the Judge is in your case or the Court, call Court Docketing at 305-275-1155. Give them your case number. They will tell you the Judge in your case and the Court where the case was filed.

You must also hand deliver or fax a copy of the Motion to the landlord or the landlord's attorney. You must write in the Motion that you gave a copy of the Motion to the landlord or to the landlord's attorney.

When you take the copy of the Motion to the Judge, ask the Judge's judicial assistant or the Clerk

when you should contact the Judge to find out the Judge's decision about your Motion.

8. What Do I Do if the Judge Agrees with Me and Grants the Motion?

If the Motion is granted, ask the Clerk of the Court or the Judge's judicial assistant to fax a copy of the Judge's order granting your Motion to the Sheriff's department. This will stop the Sheriff from coming back and putting you out of your house.

VI. BRANCH COURTS

The numbers in parentheses are the branch court numbers.

Miami Beach Branch (24) Dade County Courthouse (05)

(East District) (Central District)

1130 Washington Avenue 73 West Flagler Street

Miami Beach, Florida 33139 Miami, Florida 33130

North Dade Justice Center (23) Caleb Center (20)

(North District) (North Central District)

15555 Biscayne Boulevard 5400 NW 22 Avenue

Miami, Florida 33160 Miami, Florida 33142

Coral Gables Branch (25) South Dade Justice Center (26)

(South Central District) (South District)

3100 Ponce De Leon Blvd. 10710 SW 211 Street

Coral Gables, Florida 33134 Miami, Florida 33169

Sample Letter for Section 8 Tenant to send to the Landlord

(Name and address of tenant)

(Name and address of owner)

Date:

Dear Landlord,

I am writing this letter in response to the notice of termination dated _____.

The Protecting Tenants at Foreclosure Act, Pub. L. No. 111-22, § 702 - 703 (2009), that became law on May 20, 2009, applies to state eviction proceedings. This law requires a person or entity who acquires ownership of residential rental property through foreclosure to take subject to (be legally bound by) the Section 8 voucher lease and Housing Assistance Payments (HAP) contract. A new owner can only terminate the lease and HAP contract by giving the tenant at least 90 days notice of termination prior to the end of the lease. If the Section 8 lease and HAP contract have less than 90 days remaining in their term, or if the new owner who takes title at foreclosure wants to occupy the premises as his or her personal residence, the new owner may terminate the lease only after giving the tenant at least 90 days notice of such termination.

Because the notice sent on _____ falls short of the 90-day notice required by law, I ask that you rescind (withdraw) the notice.

Sincerely,

Tenant name

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

Date: _____

To: _____

Dear Landlord,

I am writing this letter in response to the notice of termination dated _____.

The Protecting Tenants at Foreclosure Act, Pub. L. No. 111-22, §§ 701-704 (2009), which became law on May 20, 2009, applies to state eviction proceedings.

This act requires that a new owner who took title to residential rental property through foreclosure must honor existing leases until the end of the lease term. There are three exceptions to this rule: 1) if there is an existing term lease and the new owner wants to occupy the foreclosed property as a personal residence before the end of the lease term, 2) if there is an existing term lease with less than 90 days to the end of the lease term, or 3) if the existing lease on the foreclosed property is a month-to-month tenancy or a tenancy at will. In each of these cases, the owner must provide the tenant at least 90 days notice to terminate the tenancy.

Because the notice sent on _____ does not comply with this law, I ask that you rescind (withdraw) the notice.

Sincerely,

(Tenant name)

Sample letter to send to Public Housing and Section 8 HCV Administrators

Dear _____,

Re: Pub. L. No. 111-22, §§ 702 - 703 (2009),
Protecting Tenants At Foreclosure Act of 2009

I am writing to bring to your attention a recent change in federal law, copy enclosed, which applies to state eviction proceedings. The newly enacted Protecting Tenants at Foreclosure Act requires that new owners who take possession to property through foreclosure, take subject to existing Section 8 voucher leases and the Housing Assistance Payment contracts. During the term of the lease, vacating the property prior to sale shall not constitute good cause, except that a new owner who acquired the property at foreclosure may terminate the tenancy effective on the date of transfer of the unit to the new 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.

At the end of the term of the Section 8 voucher lease, the new owner may also terminate the tenancy, if the new owner provides a 90-day notice. The 90-day notice is applicable when the successor to a Section 8 voucher landlord attempts to terminate the lease as well as when the successor attempts to terminate the Section 8 Housing Assistance Payment (HAP) contract.

We hope that you, as the administrator of the Section 8 voucher program, will inform tenants, current landlords and new owners of units with Section 8 voucher tenants of this new law in writing. Please make these documents available in other languages for limited English proficiency tenants and landlords.

For future HAP contracts and voucher leases, we suggest that the PHA prepare an addendum to include the 90-days notice requirement and the modification to the term other good cause to exclude vacating the property prior to sale.

Enclosed is a copy of the Protecting Tenants at Foreclosure Act, and a sample notice for tenants informing them of the new law. Please feel free to contact _____ with any questions, or if I/we can be of any assistance. Thank you for your attention to this matter.

Sincerely,

(Sender)

Sample letter to send to Judges who handle landlord tenant cases

Dear Honorable Judge _____,

Re: Pub. L. No. 111-22, §§ 701 - 704 (2009),
Protecting Tenants at Foreclosure Act of 2009

I am writing to bring to your attention to recent changes in federal law that apply to state eviction proceedings. During the foreclosure crisis, renters in good standing have been evicted from properties in foreclosure with little or no notice and in violation of their leases. To address this problem and to stabilize neighborhoods, the Protecting Tenants at Foreclosure Act, effective May 20, 2009, requires that new owners acquiring property through foreclosure honor existing leases. Thus, tenants with term leases and more than 90 days remaining on their leases, may not be evicted until the end of their lease terms. The sole exception is that a new owner who seeks to occupy the unit as a primary residence may terminate the lease with at least 90 days notice.

In the case of leases with less than 90-days remaining in the term, month-to-month leases, and leases terminable at will, a minimum of 90 days notice is required.

Section 8 voucher tenants have additional protections. When there is a Section 8 tenancy, the owner who is an immediate successor in interest at foreclosure takes subject to the Section 8 voucher lease and the Section 8 Housing Assistance Payments (HAP) contract. During the term of the lease, vacating the property prior to sale does not constitute good cause for eviction, except 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.

At the end of the term of the Section 8 voucher lease, the new owner may also terminate the tenancy if the owner provides a 90-day notice prior to the end date of the lease.

Please note that this law specifically does *not* preempt other federal, state and local tenant protections. A copy of the Act is enclosed. Thank you for your attention to this matter. If you have any questions, please feel free to contact _____.

Sincerely,

(Sender)

Sample Answer

IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO.

Plaintiff,

vs

Defendant(s)

ANSWER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I faxed a copy of this Answer to _____
_____, on _____, 200 .

Defendant's Name: _____

Address: _____

Phone: _____

IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO.

Plaintiff,

vs

Defendant(s)

**MOTION TO DETERMINE AMOUNT TO BE DEPOSITED INTO
THE COURT REGISTRY AND REQUEST FOR HEARING**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I faxed a copy of this Motion to Determine Amount to be Deposited into the Court Registry and Request for Hearing to _____, on _____, 200 .

Defendant's Name: _____

Address: _____

Phone: _____

Sample letter to send to landlord who turned off the utilities or changed the locks.

Date: _____

Landlord's Name: _____

Landlord's Address: _____

City

State

Zip

Dear _____:

On _____, I believe you did the following illegal acts to force me out of my unit:

Under Florida law as contained in Statute §83.67 of Chapter 83 of the Florida Statutes, if you want me out of the unit, then you must file an eviction action in Dade County Court. **THERE ARE NO SELF HELP EVICTIONS IN THIS STATE.** If the Judge in the eviction case orders me evicted, then the Dade County Sheriff's Department will put me out.

The actions you have taken may violate Florida's landlord/tenant law and may make you liable to me for three times the rent or actual damages, whichever is greater, and my attorney's fees and costs. I am attaching a copy of this law. I suggest you consult with your attorney who can confirm this.

I demand that you cease your illegal activity within three (3) hours of receiving this letter. That should give you sufficient time to confirm that what I have said is true.

Sincerely,

IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO.

Plaintiff,

vs

Defendant(s)

EMERGENCY MOTION TO STAY WRIT OF POSSESSION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I faxed a copy of this Emergency Motion to Stay Execution of Writ of Possession to _____, on _____, 200 .

Defendant's Name: _____

Address: _____

Phone: _____

TITLE VII--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. 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 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.