

Sample Letter for Section 8 Voucher Tenant to Send to the Landlord

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, § 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



June 27, 2009

Housing Authority of the City and County of San Francisco
440 Turk St.
San Francisco, CA 94102

Gentlepersons:

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

The National Housing Law Project, the Western Center on Law and Poverty and the Housing and Economic Rights Advocates, California-based organizations that, among other things, provide information to California legal services attorneys and advocates for low income housing, wish to bring to your attention recent changes in federal law that apply to California eviction proceedings. The newly enacted Protecting Tenants at Foreclosure Act requires that a new owner who takes possession to property through foreclosure, take subject to an existing Section 8 voucher lease and the Housing Assistance Payments (HAP) contract. During the term of the lease, an owner seeking to vacate the property prior to sale due to foreclosure shall not constitute good cause. 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 a 90-day notice.

The new owner may terminate the tenancy at the end of the term of the Section 8 voucher lease, if the new owner provides a 90-day notice. The 90-day notice is applicable when the new owner seeks to terminate the lease or to terminate the HAP.

We hope that you, as the administrator of the Section 8 voucher program, will inform voucher participants current voucher 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 public housing agency prepare an addendum to include the 90-day notice requirement, the modification to the term other good cause to exclude vacating the property prior to sale and reference to the ongoing nature of the lease and HAP contract post foreclosure.

In addition, HUD's New England Regional office has issued a memo providing guidance to its local PHAs in the implementation of the new law's provisions. Significantly, this memo correctly states that

the law applies to any foreclosure regardless of whether it occurred before or after the date of the law's enactment. All Section 8 tenants are protected by this Act and we hope that you will follow the lead of HUD New England Regional office.

Enclosed is a copy of the Protecting Tenants at Foreclosure Act, the HUD New England Regional Advisory Memo to PHAs, a sample notice for tenants informing them of the new law and a sample letter to be used by a Section 8 tenant threatened with eviction to notify the landlord of the new law. Please feel free to contact cbishop@nhlp.org with any questions, or if we can be of any assistance. Please include "P.L. 111-22" in the subject line of the email.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Catherine M. Bishop". The signature is written in a cursive, flowing style.

Catherine M. Bishop
Staff Attorney

Enclosures:

Public Law 111-22, §§ 701-704

Sample Letter from §8 Tenant to Landlord

Sample Bullet Point Notice for Section 8 Voucher Holders

HUD New England Regional Advisory Memo to PHAs

Date _____

Address

Dear Honorable Judge _____:

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

The National Housing Law Project, the Western Center on Law and Poverty and the Housing and Economic Rights Advocates, organizations that, among other things, provide information to California legal services attorneys and advocates for low income housing, wish to bring to your attention recent changes in federal law that apply to California 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, signed into law on May 20, 2009, requires that new owners acquiring property through foreclosure honor existing leases. Thus, tenants with term leases may not be evicted until the end of their lease terms and without a 90-day notice. The sole exception is that a new owner who seeks to occupy the unit as a primary residence may terminate the lease with a 90-day notice.

In the case of a tenant without a lease or a lease terminable at will, a minimum of a 90-day notice is also required.

Section 8 voucher tenants have additional protections. 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 that a new owner who seeks to occupy the unit as a primary residence may terminate the Section 8 lease with at least a 90-day notice. The law also provides that during the term of the Section 8 lease, vacating the property prior to sale does not constitute other good cause.

Please note that this law specifically does *not* preempt other state or local law that provides for a longer notice or additional 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,

Staff Attorney

Enclosure: Public Law No. 111-22, §§ 701 -70

NOTICE TO TENANTS OF BUILDINGS SOLD AT FORECLOSURE AFTER MAY 20, 2009

Can the person who buys the building at foreclosure make me leave right away?

- No.
 - The new owner needs to end your tenancy by giving you a 90-day notice to leave.
 - If you have an unexpired lease, you may be able to stay until the end of the lease.

What can I do if the new owner says I have to leave in less than 90 days?

- You can send a letter telling the new owner about the law. See the attached sample letter.
 - Keep a copy of the letter you send.
 - It may help to go to the post office and pay for a return receipt to make the new owner sign to prove he got your letter.
 - If you get in the mail a green receipt signed by the new owner, save that receipt.
- You must also offer to pay the new owner your rent.

What happens if I don't pay the new owner rent?

- The new owner can send you a letter giving you a 3-day notice to pay rent or move.

What if I have a one-year lease that has more than 90 days left?

- In most cases, the new owner cannot evict you until the end of the lease. There are two exceptions.
 - If the new owner wants to use your home as a primary residence, the new owner only has to give you a 90-day notice to leave after becoming the owner.
 - If you do not pay your rent, the new owner only has to give you a 3-day notice to pay rent or move.

What if the new owner files an eviction?

- File an answer with the court that says the new owner failed to give the notice required by the Protecting Tenants at Foreclosure Act, Pub. L. No. 111-22, §702 (2009).
- Go to court on the date the court sets for a trial.
 - Take with you to court:
 1. a copy of your letter to the new owner.
 2. the green return receipt, if you received one.
 3. a copy of the new law that is attached to this notice.
 4. a copy of your lease, if you have one.

What if I am a Section 8 voucher tenant?

- You have all of the rights listed above regarding your lease and the requirement that the owner give you a 90-day notice to leave.
- You also have additional protections.
 - The Section 8 Housing Assistance Payment contract continues.

- The foreclosure is not a lawful reason to terminate your lease.
- Call your Section 8 worker and tell the worker what is happening.

What if I have additional questions about my rights under the new law?

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

Thanks to Larry Gardella, Legal Services of Alabama and to the National Housing Law Project.

Sample Notice to be Given to Tenants by Successors in Interest including Realtors, Banks, LL's Lawyers and other agent.

Date:

ATTENTION: The property you live in has gone through foreclosure and has a new owner.

The new owner is: (name, address, telephone number, and email address)

We represent the new owner: (name, address, telephone number, name and email address of contact)

Please contact us immediately to let us know if you are a tenant and give us proof, such as a COPY of your lease or COPIES of rent receipts.

If we do not hear from you within twenty (20) days of the above date, you will not lose any legal rights, but we will take legal action to remove you from the property.

This Notice describes some of your legal rights.

IN MOST CASES, UNDER THE “**PROTECTING TENANTS AT FORECLOSURE ACT OF 2009**”¹ YOU HAVE THE RIGHT TO CONTINUE AS A TENANT FOR THE REMAINDER OF YOUR LEASE OR AT LEAST 90-DAYS FROM THE DATE YOU ARE GIVEN NOTICE TO VACATE WHICHEVER IS LONGER. IN EITHER CASE, THE NEW OWNER CAN ONLY TERMINATION YOUR TENANCY AND EVICT YOU IF THE OWNER HAS GIVEN YOU AT LEAST 90 DAYS NOTICE TO VACATE. If, at any time, you violate your lease, the new owner may evict you for that lease violation and you will not be protected by the above law.

You are protected by the above law if:

The new owner became the owner on or after May 20, 2009; and

You were a tenant on or before May 20, 2009; and

You are NOT the child, parent or spouse of the former owner; and

Your rent is equal to or is not substantially below fair market rent, or you pay less because you have rental assistance such as Section 8.

If the new owner sells the property to a person who wants to move into the property as his or her home, the above law allows that buyer to lawfully end your lease and tell you to vacate the property as long as that owner gives you at least 90 days advance notice before the date you are being asked to leave.

If you have a SECTION 8 voucher you have additional rights.

It doesn't matter when the foreclosure happened so long as you were a tenant on May 20, 2009.

The new owner must abide by your lease and by the Housing Assistance Payments contract that the old owner had with the housing authority.

The new owner has to accept your share of the rent from you and the housing authority's share from the housing authority.

None of your rights as a tenant under state or local laws that give you greater protection are changed by the Protecting Tenants At Foreclosure Act.

YOU HAVE OTHER CHOICES:

If you want to move, the new owner may offer to pay your moving expenses and any other costs or amounts you and the new owner agree on in exchange for your agreement to leave the premises in less than 90 days or before your lease expires.

We suggest that you speak with a lawyer to fully understand your rights before making any decisions regarding your tenancy.

If you have any questions, please contact _____ at _____

¹ Protecting Tenants at Foreclosure Act, Pub. L. No. 111-22, § 702-703 (2009).

Sample Notice that a PHA could send to Section 8 Voucher Holders

ATTENTION SECTION 8 VOUCHER HOLDERS

90-DAYS OR MORE FOR TERMINATION (EVICTION) NOTICE REQUIREMENT AND
FORECLOSURE IS NOT GOOD CAUSE TO TERMINATE THE TENANCY

On May 20, 2009 a new federal law protecting your rights became law.

Section 8 housing choice voucher tenants have new rights regarding eviction from units that have been foreclosed upon.

The person, who now owns your home as a result of the foreclosure, must follow these rules. First, if you have a lease for a fixed term, such as one year, and the lease has not expired, you have a right to remain in the unit and cannot be evicted (except for actions that you, members of your family or your guests take which constitute good cause) until the end of the lease term.

Second, if your lease ends in less than 90 days the new owner may not evict you without giving you at a minimum 90 days notice.

Third, the new owner wanting the property vacant before they sell it is not good cause for terminating the tenancy or for eviction.

Fourth, 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 or her primary residence, that owner may give you a 90 day notice to vacate your home even if your lease runs for longer than 90 days.

If the new owner tells you that you have to leave, offers you money to leave or gives you a notice of eviction, you should contact _____ (the PHAs' office), tell us what is happening and give us a copy of any notice. You may also contact the local legal services office, located at

_____.
If you have any questions about this notice please contact _____ at the PHA.

General instructions to tenants:

If you receive an improper notice to terminate your lease, you should give a letter objecting to the termination to your landlord before the date for termination in the notice you received, and you should pay your rent. If you do not pay your rent, your landlord can serve you with a notice to pay rent or quit under your state law.

If your landlord files an eviction complaint against you (some states call this an unlawful detainer action) based upon the termination notice, you should put in your answer, or tell the court if your state does not allow you to file an answer, that the termination notice is improper because the landlord should have served you with a 90-days notice or could not evict until the lease expired under the Protecting Tenants at Foreclosure Act, Pub. L. No. 111-22, § 702 (2009).

You should make a copy of your letter for your records, 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. 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 that is attached to this notice and a copy of your written lease if you have a written lease.

The judge may not know about the law because it is so new, but if you tell the judge about the law if 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.

Attachments: Ltr from §8 Tenant to LL; §§ 701-704, Public Law 111-22