



**XVIII Airborne Corps and Fort Bragg  
Office of the Staff Judge Advocate  
Legal Assistance Office**



## **INFORMATION PAPER – TENANT’S RIGHTS IN FORECLOSURE**

### **IN A FORECLOSURE SALE OF RESIDENTIAL RENTAL PROPERTY: WHAT IS THE EFFECT OF THE SALE ON THE TENANT’S LEASE OR MONTH-TO-MONTH TENANCY?**

#### **BACKGROUND**

The Protecting Tenants at Foreclosure Act of 2009 became effective on May 20, 2009. This new law protects tenants from immediate eviction by persons or entities that become owners of residential property through the foreclosure process and extends additional protections for tenants with U.S. Department of Housing and Urban Development Section 8 vouchers. The law is self-executing; no federal agency has authority to issue regulations implementing the law or to interpret the law. The law expires on December 31, 2012.

All Army Activities Message (ALARACT) provides guidance on foreclosure moves. It applies to soldiers of all components serving on active duty, to include soldiers serving on Title 10, and Title 32 Active Guard.

#### **PURPOSE**

The fundamental purpose of the Protecting Tenants at Foreclosure Act is to ensure that tenants facing eviction from a foreclosed property have adequate time to find alternative housing.

The purpose of the applicable ALARACT is to inform servicemember/tenants of available entitlements in cases of dislocation due to a foreclosure action on rented property.

#### **DEFINITIONS**

A lease or tenancy is “bona fide” if the tenant is not the mortgagor or the parent, spouse, or child of the mortgagor; the lease or tenancy is the result of an arms-length transaction; and the lease or tenancy requires rent that is not substantially lower than fair market rent or is reduced or subsidized due to a federal, state, or local subsidy.

#### **OVERVIEW**

Under the law, the immediate successor in interest at foreclosure must (a) provide bona fide tenants with 90 days notice prior to eviction and (b) allow bona fide tenants with leases to occupy property until the end of the lease term, except the lease can be terminated on 90 days notice if the unit is sold to a purchaser who will occupy the property.

ALARACT 122/2009 provides guidance for military members (tenants) facing a foreclosure on their rental property. A local move is authorized for members of the armed forces and their dependants who are forced to vacate a rental property by reason of a foreclosure action against the owner/landlord. This provision does not apply if the member is the homeowner. The local move is authorized to another dwelling within commuting distance of the member’s permanent duty station.

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## TWO COMMON SITUATIONS

### 1. *TENANTS WITH A BONA FIDE LEASE*

- a. Upon a foreclosure sale, the lease continues with the new owner as landlord and, absent cause for termination, it continues until either (i) the end of the lease term or (ii) the new owner elects to use the new property as a primary residence and provides the tenant with a 90-day notice of termination.

### 2. *TENANTS WITH A BONA FIDE MONTH-TO-MONTH TENANCY*

- a. Upon a foreclosure sale, the lease continues with the new owner as landlord and, absent cause for termination, it continues until either (i) the new owner provides the tenant with 90-day notice of termination or (ii) the tenant provides the new owner with a state law 30-day notice of termination.

## LESS COMMON SITUATION

### 1. *TENANTS WITH A HOUSING CHOICE VOUCHER (aka Section 8) LEASE*

- a. Upon a foreclosure sale, the voucher lease (which may be a written month-to-month tenancy after the first year) is treated the same as the other leases (see item 1 above) and other month-to-month tenancies (see item 2 above). In addition, upon a foreclosure sale, the Housing Assistance Payments (HAP) contract continues, with the new owner subject to the terms of the HAP contract. The new owner may not terminate the voucher lease on the “other good cause” business ground that it will assist in the sale of the property.

## THREE IMPORTANT POINTS **[IF YOU READ NOTHING ELSE, READ THESE]**

1. If the foreclosed property is purchased by an investor (new landlord), or by a bank, they must allow the tenant to complete his/her lease term.
2. If the foreclosed property is purchased by an owner who will occupy the premises, the new owner may terminate the lease (evict the tenant) by giving the tenant 90 days notice.
3. After a foreclosure sale, a military servicemember/tenant is authorized to file a claim for reimbursement of a local move due to rental property foreclosure.