



Congress Passes Law to Protect Tenants After Foreclosure

Carrie H. Smith, Esq.

For Associations considering foreclosure, Congress has passed a new law that may affect the ability to exercise remedies available to the Association after lien foreclosure.

As part of the Troubled Asset Relief Program (TARP), after any foreclosure on residential real estate property, the entity that assumes ownership must give any "bona fide" tenants on the property 90 days to vacate that property. If the new owner is not going to use the property as a primary residence, then the tenant has a right to continue to occupy the property through either (1) the end of the lease term or (2) 90 days after the property is sold to an owner who intends to occupy the property as a primary residence. Lastly, even if the tenant is occupying the property without a lease or with a lease that is terminable at will, the tenant is entitled to a 90 day grace period prior to any right to evict.

According to the statute, in order to be a "bona fide" tenant, the resident cannot be the mortgage holder, or immediate family member of the mortgagor (i.e. the owner that was foreclosed). The lease must have been the result of an arms-length transaction and for around market rate for similar property.

After an Association forecloses on its lien in Arizona, it has the right to take the property to a Sheriff's sale at which the Association can bid on the property, and possibly become the owner. This would take place if the Association's bid was highest at the sale, and if the owner did not redeem the property through the Sheriff's office during the statutory time period of 30 days or six months. If there are tenants in the property, the Association may be required to investigate the nature of the landlord tenant relationship and make a determination as to whether it will be required to wait out the term of the lease before the property can be vacated, or at minimum, whether it will be required to wait 90 days before requiring the tenants to vacate the property.

On one hand, this may require the Association to wait longer before it can exercise its right to sell the property after it has become the owner. On the other hand, it can simplify the process that the Association is required to follow to remove residents from the property, as the tenants may choose to take this time to leave voluntarily. Under all circumstances, when residents refuse to leave the property after foreclosure, the Association is required to file a separate action to evict the residents – whether true tenants or former owners. Eviction after a Sheriff sale is relatively rare for Associations, but this tenant issue is an interesting effect of the new federal law.

Carpenter, Hazlewood, Delgado & Wood, PLC.
1400 E Southern Ave. Suite 400 | Tempe, Az 85282