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REGIONAL HUMAN RIGHTS/FAIR HOUSING COMMISSION

A Government Agency Established To Enforce Civil Rights Laws

PRESS RELEASE

FOR IMMEDIATE RELEASE

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New Federal law immediately affects rights of tenants in foreclosure.

On May 20, 2009, President Obama signed the Protecting Tenants in Foreclosure Act which immediately affects the rights of tenants in foreclosure properties. In situations where California law provides more protection to the tenant, California, and not federal law, applies.

Month-to-month Tenants
The immediate owner after foreclosure must give 90 days notice to terminate a month-to-month tenancy. Current California law only requires the immediate owner to give 60 days notice.

Tenants in a Lease
Under the federal law, if the tenant entered into a lease with the previous owner prior to the notice of foreclosure (Notice of Sale), the immediate owner after foreclosure must allow the tenant to stay until the end of the lease term. However, the immediate owner after foreclosure may terminate the tenant's lease with 90 days notice if the owner subsequently sells the home to a purchaser who will occupy it as a primary residence. The federal law is more protective than current California law which allows the immediate owner after foreclosure to terminate the lease with 60 days notice.

Bona Fide Lease or Tenancy
The new laws apply only to a bona fide lease or tenancy. In order for a lease or tenancy to be considered bona fide:

(1) The tenant cannot be the prior owner or child, spouse or parent of the prior owner.
(2) The lease or tenancy must be a result of an arms-length transaction, i.e. not one conducted with a relative or business partner.
(3) The rent must not be substantially less than fair market value, unless the unit is subsidized (i.e. a Section 8 tenant pays only a portion of the full amount of rent; the remainder is paid by the public housing authority).

Section 8
The immediate owner after foreclosure takes the property subject to the lease between the prior owner and the Section 8 tenant and subject to the housing assistance payment contract between the prior owner and the public housing authority. Under California law, the Section 8 tenant would also be entitled to 90 days notice prior to non-renewal of the lease or termination of a subsequent month-to-month tenancy.

Under the federal law, if the immediate owner after foreclosure will occupy the unit as a primary residence, the owner may terminate the Section 8 lease with 90 days to the tenant. This law is more protective than California law, which only requires the immediate owner after foreclosure to give the Section 8 tenant 60 days notice.