



ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

March 16, 2012

Mortgagee Letter 2012-6

To	All FHA-Approved Mortgagees, Single Family Servicing Managers
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Subject	Changes to FHA's Occupied Conveyance Procedures
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Purpose	The purpose of this Mortgagee Letter is to provide guidance regarding compliance with FHA's occupied conveyance procedures in light of the Protecting Tenants at Foreclosure Act of 2009 (PTFA) and state and local laws relating to tenant protections. As advised in a companion Federal Register Notice published on March 15, 2012, this Mortgagee Letter contains modified policies regarding PTFA.
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Effective Date	Mortgagees must begin using the revised Notice to Occupant of Pending Acquisition and its attachments, with additional changes as required by PTFA and state and local law, no later than July 1, 2012. The provisions of this Mortgagee Letter pertaining to the PTFA are temporary and will expire upon the sunset of the PTFA on December 31, 2014.
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Affected Policy	The policies set forth in this Mortgagee Letter modify or supersede, where there is conflict, the Federal Register Notice published October 28, 2010, <i>Protecting Tenants at Foreclosure Act: Guidance on Notification Responsibilities Under the Act With Respect to Occupied Conveyance</i> (FR 75-66385).
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Background: Protecting Tenants at Foreclosure Act of 2009	<p>On May 20, 2009, the President signed the PTFA into law. Prior to passage of the PTFA, leases that did not pre-date the mortgage could usually be terminated by the new property owner following completion of foreclosure. Additionally, although there were variations due to state or local law, most eviction actions required that advance notice to vacate be provided to occupants only 60 days or less before the date occupants would be required to vacate the property. The passage of the PTFA changes both of those situations.</p> <p>The PTFA generally provides, after the date of its enactment, that in the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property, any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to:</p>
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- (1) 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 under a bona fide lease 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.

Mortgagees are to comply with the terms of the PTFA. As provided in Section 702(a) of the PTFA, nothing in the PTFA shall affect any state or local law that provides longer time periods or additional protections for tenants.

Former Notice to Occupants of Pending Acquisition

HUD has historically required mortgagees to provide all property occupants (including former mortgagors) a Notice to Occupant of Pending Acquisition (NOPA) within 60 to 90 days prior to the date the mortgagee expected to acquire title to the property. The former NOPA advised occupants of the following information:

- Ownership of a property was changing and occupants would likely need to relocate in the near future;
- There was a possibility for occupants to remain in the property when ownership of that property was conveyed to HUD, if occupants met certain criteria; and
- Any continued occupancy of the property after conveyance to HUD would be temporary.

The NOPA has been revised to also advise occupants of the terms of the PTFA.

Occupied Conveyance and PTFA Process

In addition to following HUD's occupied conveyance procedures, mortgagees must comply with applicable PTFA requirements and state and local law.

Before completion of foreclosure, the mortgagee must:

- Confirm the identity of all occupants;
- Determine each occupant's possible rights for continued occupancy under HUD's occupied conveyance procedures; and
- Follow HUD's occupied conveyance procedures by sending occupants the NOPA 60 to 90 days before the mortgagee expects to acquire title.
 - If HUD grants occupied conveyance: The mortgagee shall convey the property occupied under HUD's normal occupied conveyance procedures.
 - If HUD denies occupied conveyance: The mortgagee should determine if PTFA is applicable (i.e., whether there is a bona fide lease or tenancy, etc.) or if there is some other occupancy protection under state or local law that would require the mortgagee to delay possessory action.

If the mortgagee determines that the PTFA is applicable, mortgagee must:

- Follow PTFA requirements before evicting the occupant, and
 - Attempt to obtain documentation of existing leases and tenancies for the claim file, as evidence of the applicability of the PTFA and the additional time needed to comply with the PTFA.
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**Revised Notice
to Occupants of
Pending
Acquisition**

At least 60 days but not more than 90 days before the mortgagee reasonably expects to acquire title, the mortgagee shall notify the mortgagor and each head of household occupying a unit of the property of the potential that the mortgagee will convey the property to HUD following foreclosure. The notice(s) shall:

- Provide a summary of the conditions under which continued occupancy is permissible;
- Provide other information as specified in 24 CFR § 203.675(b); and
- Be sent via certified mail or with a signature confirmation service to ensure receipt of the notice by occupants.

Attached to this Mortgagee Letter are a sample revised NOPA and documents related to the notice. Mortgagees should make any additional changes to the NOPA that are required to be in compliance with the PTFA and state or local laws.

The mortgagee shall provide an electronic copy of each NOPA to HUD's Mortgagee Compliance Manager (MCM), Michaelson, Connor, and Boul, together with all documentation and information obtained regarding existing leases and tenancies. All NOPA notices, documentation and information shall be uploaded to HUD's on-line, web-based internet portal for mortgagees, P260. Mortgagees may contact Michaelson, Connor, and Boul at:

Michaelson, Connor, and Boul
4400 Will Rogers Parkway, Suite 300
Oklahoma City, OK 73108
Phone: (877) 517-4488
Local: (405) 595-2000
FAX: (405) 595-5005
Email: mcm-info@mcbreo.com

If the occupant responds to the NOPA and HUD approves occupied conveyance, the mortgagee shall convey the property occupied under HUD's existing occupied conveyance procedures, as described in 24 CFR § 203.670-681.

Additional Time for Compliance with PTFA Under 24 CFR § 203.356(b), mortgagees must exercise “reasonable diligence” in prosecuting foreclosure proceedings and in acquiring title to and possession of the foreclosed property. The additional time needed under the PTFA or applicable state or local laws to obtain possession of a property is taken into consideration when evaluating compliance with HUD’s reasonable diligence time frame. Upon expiration of the tenancy protection under the PTFA or state or local law, mortgagees are expected to proceed promptly with possessory actions.

Rent Collection HUD expects mortgagees to attempt to collect rents payable under bona fide leases and tenancies and, in the event of default, to take possessory action pursuant to the rental contract terms and applicable law.

Any rents received by a mortgagee during the term of the bona fide lease or tenancy must be reflected as a credit on line 115 of Form HUD-27011, Single-Family Application for Insurance Benefits.

Preservation and Protection Costs due to Compliance with the PTFA Additional routine preservation and protection costs, including lawn maintenance and inspections, that are incurred as a result of an extended lease or tenancy under the PTFA will be reimbursed pursuant to the schedule in Mortgagee Letter 2010-18, *Update of Property and Preservation (P&P) Requirements and Cost Reimbursement Procedures*.

Questions Any questions regarding this Mortgagee Letter may be directed to HUD’s National Servicing Center (NSC) at (877) 622-8525. Persons with hearing or speech impairments may reach this number by calling the Federal Information Relay Service at (800) 877-8339.

Signature Carol J. Galante, Acting Assistant Secretary for Housing- Federal Housing Commissioner

Paperwork Reduction Act

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB control number, 2502-0584. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB Control Number.

Sample Notice to Occupant of Pending Acquisition

(To be prepared and sent via certified mail or with a signature confirmation service by the mortgagee to all property occupants)

NOTICE TO OCCUPANT OF PENDING ACQUISITION

(Name) (Date)
(Street Address)
(Town or City)

(HUD/FHA Case No.)

AVISO IMPORTANTE PARA PERSONAS DE HABLA HISPANA.
ESTO ES UN AVISO MUY IMPORTANTE. SI NO ENTIENDE EL CONTENIDO, OBTENGA UNA TRADUCCIÓN INMEDIATAMENTE. SI USTED NO RESPONDE DENTRO DE VEINTE (20) DÍAS, PUEDE QUE TENGA QUE MUDARSE DE LA CASA O APARTAMENTO EN QUE VIVE.

Dear _____:

The mortgage for the property in which you are living is in foreclosure as a result of the property owner’s default. Within the next 60 to 90 days, title to the property is expected to be transferred to [NAME OF MORTGAGEE]. Some time thereafter, ownership of the property will probably be transferred to the Secretary of Housing and Urban Development (HUD).

HUD generally requires that there be no one living in properties conveyed to the Secretary as a result of a foreclosure. As the Federal Housing Administration’s (FHA) single family program is a mortgage insurance program, it must sell all acquired properties and use the proceeds of sale to help replenish the FHA Mortgage Insurance Fund. It is not a rental program. There are other programs within HUD that assist in making rental housing available.

However, before [NAME OF MORTGAGEE] conveys the property to HUD, you may be entitled to remain in the property for some period of time, pursuant to the Protecting Tenants at Foreclosure Act of 2009 (PTFA) or state or local law. If you are a bona fide tenant (someone other than the mortgagor, or the child spouse or parent of the mortgagor occupying the property pursuant to a bona fide lease or tenancy), a separate notice regarding your occupancy rights under PTFA will be provided to you when complete title to the property is transferred to (name of mortgagee) as a result of an order of a court or pursuant to provisions in the mortgage, deed of trust or security deed.

Instructions: Mortgagees may insert here any language they deem necessary to inform occupants of the conditions under which they might be eligible to remain in the property pursuant to the PTFA or state or local law, and/or for the mortgagee to request information from the occupant that would be needed for the mortgagee to determine whether the occupant qualifies.

If you are not entitled to remain in the property pursuant to the PTFA or state or local law, you may nevertheless be eligible to remain in the property upon conveyance to HUD, if certain conditions are met, as described in Attachment 3, Conditions for Continued Occupancy. To be considered for continued

occupancy upon conveyance to HUD, you must submit a written request to HUD **within 20 days of the date at the top of this letter. Oral requests are not permitted.**

Please use the enclosed Attachment 1, Form HUD-9539, Request for Occupied Conveyance, in making your request, as it gives HUD information it needs to make its decision. You must send your request and the enclosed Attachment 2, Request for Verification of Employment, to HUD's Mortgagee Compliance Manager (MCM) at the following address: [MORTGAGEE'S ADDRESS].

If an individual residing in the property suffers from a permanent, temporary, or long-term illness or injury that would be aggravated by the process of moving from the property, please also provide supporting documentation of the illness or injury. This documentation must include a projection of the date that the individual could be moved without aggravating the illness or injury and a statement by a state-certified physician establishing the validity of your claim.

Additional information that you wish to include with your request may be written on additional pages that you attach to the Request for Occupied Conveyance form.

If HUD approves your request to remain in the property, you will be required to sign a month-to-month lease and pay rent at the prevailing fair market rate. If HUD does not in fact become owner of this property, any decision it may make with respect to your continued occupancy will no longer apply.

Your right to continued occupancy of the property under HUD's Occupied Conveyance policies will only be temporary, depending on the circumstances, as described in Attachment 4, Temporary Nature of Continued Occupancy.

For assistance in finding affordable housing, you may wish to contact one or more of HUD's approved housing counseling agencies. These agencies usually provide services at little or no cost. A counselor may be able to recommend other organizations that can also be of assistance. If you have access to the Internet, you may locate a local housing counseling agency by visiting the following webpage: <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm>. Alternatively, you may call the HUD Housing Counseling and Referral Line, weekdays between 9:00 am and 5:00 pm EST. The Referral Line telephone number is (800) 569-4287.

If you have any questions concerning this notice, please contact [NAME AND CONTACT INFORMATION OF MORTGAGEE].

Sincerely,

Signature
Title

Attachments

Attachment 1 (*Request for Occupied Conveyance - Form HUD - 9539*)

Attachment 2 (*Request for Verification of Employment*)

NOTE: Mortgagees may use their own standard employment verification forms.

Attachment 3 (*Conditions for Continued Occupancy*)

Attachment 4 (*Temporary Nature of Continued Occupancy*)

Attachment 3 (Conditions for Continued Occupancy)
(to Mortgagee's Notice to Occupant of Pending Acquisition)

HUD's Occupied Conveyance Procedures
CONDITIONS FOR CONTINUED OCCUPANCY

The following conditions must be met before HUD can approve the occupied conveyance of an acquired property.

1. One or more of the following must be met, as determined by HUD in HUD's sole and absolute discretion pursuant to authority provided in FHA occupied conveyance regulations 24 CFR §203.670-681 and additional guidance provided by the Department:
 - a. Your occupancy is necessary to protect the property from vandalism;
 - b. The average time in inventory for HUD's unsold inventory in the residential area in which the property is located exceeds six months;
 - c. With respect to two-to-four-unit properties, the marketability of the property would be improved by your continuing occupancy.
 - d. The high cost of eviction or relocation expenses makes eviction impractical; or
 - e. An individual residing in the property suffers from a permanent, temporary, or long-term illness or injury that would be aggravated by the process of moving from the property.
2. The house must be habitable (except for approval under condition 1(e)).
3. You must have been living in the house at least 90 days prior to the date the lender acquires title to the house (except for approval under condition 1(e)).
4. You must agree to sign a month-to-month lease at fair market rent on a form prescribed by HUD at the time HUD acquires the property.
5. You must have the financial ability to make the monthly rental payments under the terms of the lease.
6. You must agree to pay one month's advance rent when you sign the lease (except for approval under condition 1(e)).
7. You must allow access to the property during normal business hours:
 - (a) By HUD representatives for a physical inspection of the property, with two days advance notice.
 - (b) By HUD contractors doing repairs, with two days advance notice.
 - (c) By real estate brokers and their clients with two days advance notice.
8. You must disclose the complete and accurate social security number (SSN) assigned to you and to each member of your household.

Attachment 4 (*Temporary Nature of Continued Occupancy*)
(*to Mortgagee's Notice to Occupant of Pending Acquisition*)

HUD's Occupied Conveyance Procedures
TEMPORARY NATURE OF CONTINUED OCCUPANCY

This is to advise you that occupancy of HUD-owned property is temporary in all cases and is subject to termination to facilitate preparing the property for sale and completing the sale. Temporary means that your lease arrangement with HUD is subject to termination at the convenience of the government upon 30 days notice, or otherwise in accordance with applicable law. You should not view your occupancy of the property as a permanent or long-term arrangement. It is HUD's policy to ask you to vacate the property and, if necessary, take appropriate eviction action for the following causes:

1. Your failure to execute the lease.
2. Your failure to pay the required rent, including the initial payment at the time of execution of the lease.
3. Your failure to comply with the terms of the lease.
4. Your failure to allow access to the property upon request to accomplish necessary repairs, inspect the property, or allow real estate brokers to show the property to prospective purchasers.
5. Necessity to facilitate preparation of the property for sale and for completion of the sale.
6. Assignment of the property by HUD to a different use or program.