

BIERMAN, GEESING, WARD & WOOD, LLC
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EVICTIONS IN MARYLAND FORECLOSURE CASES

The evictions department at Bierman, Geesing, Ward & Wood LLC's ("BGWW") manages the legal process by which occupants or abandoned possessions are removed from foreclosed properties in Maryland and Virginia. BGWW does not conduct evictions in Washington D.C. We represent mortgage lenders and servicers, and handle evictions for bank-owned properties ("REO") only.

Before Eviction

Not every foreclosed property requires an eviction. Some properties are abandoned by the occupants during or shortly after the foreclosure process. In other circumstances realtors working with the banks are able to negotiate "Moveout" or "Cash-For-Keys" ("C4K") agreements where the occupants voluntarily vacate the property in exchange for a monetary payment.

Protecting Tenants at Foreclosure Act

Since the passage of the Federal Protecting Tenants at Foreclosure Act of 2009 ("PTFA"), bona fide tenants occupying foreclosed properties may be eligible to remain in the property for an extended period and must receive 90 days notice prior to eviction ("Notice to Vacate"). Attorneys review files on a case-by-case basis to determine whether the Act applies to any occupants. In the case of Fannie Mae properties, Fannie Mae predetermines whether an occupant is bona fide before referring the property to BGWW for eviction proceedings. For other REO properties, we request leases, paystubs and an Occupant Information Form (provided with our Notice to Vacate) which we use to determine bona fide status, along with the reports from the real estate agents who visit the property.

The Eviction Process

Occupants receive several notifications of our firm's intent to evict prior to the day of eviction through mailed notices. A Motion for Judgment Awarding Possession is filed in the Circuit Court within the foreclosure case and served on the occupants by a process server, who may post the Motion on the property without personally serving the occupant directly. A representative of the bank, either a real estate agent or property preservation company, may visit the property during this period. Note that they may discuss the PTFA Act or C4K agreement with the occupants. Once the Court enters a Judgment Awarding Possession, we file a Writ with the Court and an eviction date is set (also known as the lock-out date) to be conducted by the Sheriffs. In some counties, the Sheriff's Office posts an eviction notice with the date and time of the lock-out on the property. Others do not.

Sale → Referral → Notice to Vacate → Motion for Judgment → Service by posting and regular mail → Judgment → Writ → Important Eviction Notice → Lockout

The Lock-Out Process

The eviction is overseen by an officer of the Sheriff's department to ensure that the eviction is conducted in an orderly fashion. Also in attendance during the eviction are a locksmith, a property preservation team (movers) and a bank representative. All items in the property are disposed of or moved to the curb before disposal and the locks are changed.

FOR FURTHER INFORMATION CONTACT:

Rachael Abramson
Bierman, Geesing, Ward & Wood, LLC
4520 East-West Highway, Suite 200
Bethesda, Maryland 20814
(240) 482-0717 (voice)
(240) 482-0845 (facsimile)
Rachael.abramson@bgww-llc.com

NOTICE TO VACATE

April 28, 2010

All Occupants
[Borrower's Name]
[Address]

Dear Sir/Madam:

Please be advised that the property known as [Address] ("Property") has been sold at auction to a foreclosure sale purchaser. The Property is now owned by the party that purchased the Property at the foreclosure sale. The purchaser will not occupy the Property as a primary residence. You no longer have the right of possession. Please vacate and remove all personal property immediately to avoid eviction proceedings.

TO BONA FIDE TENANT

PLEASE BE ADVISED THAT IF YOU ARE A BONA FIDE TENANT THE ABOVE DEMAND OF POSSESSION DOES NOT APPLY TO YOU. NOTICE IS HEREBY GIVEN THAT YOU MAY HAVE THE RIGHT TO REMAIN IN THE PROPERTY FOR AN ADDITIONAL PERIOD OF TIME PURSUANT TO THE PROTECTING TENANTS AT FORECLOSURE ACT OF 2009, A COPY OF WHICH IS HEREIN ATTACHED. If you believe you may be a bona fide tenant, please immediately produce and forward by mail and fax your bona fide lease and the enclosed Occupant Information Form to the foreclosure sale purchaser at:

Bierman, Geesing, Ward & Wood, LLC
Attn: Evictions
4520 East West Highway, Suite 200
Bethesda, MD 20814
(240) 482-0845 (fax)

Failure to produce and forward a bona fide lease and the enclosed Occupant Information Form may prevent the foreclosure sale purchaser from honoring the terms of your bona fide lease, when possible and required by law. You are strongly encouraged to call Claudia Menjivar at (240) 482-0704 to ensure your bona fide lease has been received. Should we not receive the documentation requested herein within ten (10) days of the date of this letter, we will assume no bona fide tenants are present and begin eviction proceedings. If we have reason to believe only personal property or the former mortgagor(s) is presently occupying the property, please be advised we will proceed with the eviction immediately.

OCCUPANT INFORMATION FORM

Please fill out this form to the best of your knowledge. If available, please attach a copy of your lease and evidence of your six (6) most recent rent payments (for example, cancelled checks). Use additional pages if necessary. Occupants under the same lease may submit one tenant information form, provided that all occupants sign below.

PROPERTY ADDRESS (include Unit#/City/State/Zip Code): _____

1. Provide the name, age and contact information for all occupants over the age of 18 presently residing in the property. Attach additional pages if necessary to list all occupants.

	Name	Date of Birth	Phone Number	Email Address
1				
2				
3				
4				

2. Did you have a mortgage on the property? Yes No
3. Are you the spouse, child or parent of a party who mortgaged the property? Yes No
4. Are you or any other occupants on active duty in the United States military? Yes No
5. Did you have an oral or written lease agreement with the prior owner? Yes No
6. Did you have a written lease agreement with the prior owner? Yes No
- a. If you answered yes to this question, please attach a copy of your lease.
7. Do you receive a rent subsidy that you apply to housing or are you a Section 8 tenant? Yes No
- a. If you answered "yes" to this question, please provide the name and address of the agency or housing authority handling your case/subsidy program on an additional page and provide any applicable details.
8. When did your current lease begin? _____
9. When does your current lease end? _____
10. How much was your rent payment? _____
11. When were your rent payments due? _____
12. When did you make your last rent payment? _____
13. Attach documentation (e.g. cancelled checks or receipts) for the six (6) most recent rent payments that you made to your former landlord under your lease.
14. If your lease has ended, were you converted to a month-to-month tenancy? Yes No

By signing below, I confirm and agree that:

- I have received the document titled Notice to Vacate that was addressed to Occupants pursuant to the Protecting Tenants at Foreclosure Act of 2009; and
- I certify under the penalties of perjury that the statements made in this Occupant Information Form are true to the best of my knowledge, information and belief.

Name

Date

Name

Date

RETURN THIS FORM TO:

ATTN: EVICTIONS

BIERMAN, GEESING & WARD, LLC, 4520 EAST-WEST HIGHWAY, SUITE 200, BETHESDA, MARYLAND 20814

FAX: 301-961-6473 • EMAIL: EVICTIONS@BGW-LLC.COM

PARA ASISTENCIA EN ESPAÑOL LLAME AL 240-482-0704

TITLE VII—PROTECTING TENANTS AT FORECLOSURE ACT

SEC. 701. SHORT TITLE.

This title may be cited as the “Protecting Tenants at Foreclosure Act of 2009”.

SEC. 702. EFFECT OF FORECLOSURE ON PREEXISTING TENANCY.

(a) IN GENERAL.—In the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property after the date of enactment of this title, any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to—

(1) the provision, by such successor in interest of 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, as of the date of such notice of foreclosure—

(A) under any bona fide lease entered into before the notice of foreclosure 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, subject to the receipt by the tenant of the 90 day notice under paragraph (1); or

(B) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90 day notice under subsection (1),

except that nothing under this section shall affect the requirements for termination of any Federal- or State-subsidized tenancy or of any State or local law that provides longer time periods or other additional protections for tenants.

(b) BONA FIDE LEASE OR TENANCY.—For purposes of this section, a lease or tenancy shall be considered bona fide only if—

(1) the mortgagor or the child, spouse, or parent of the mortgagor under the contract is not the tenant;

(2) the lease or tenancy was the result of an arms-length transaction; and

(3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit’s rent is reduced or subsidized due to a Federal, State, or local subsidy.

(c) DEFINITION.—For purposes of this section, the term “federally-related mortgage loan” has the same meaning as in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602).

SEC. 703. EFFECT OF FORECLOSURE ON SECTION 8 TENANCIES.

Section 8(o)(7) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(7)) is amended—

(1) by inserting before the semicolon in subparagraph (C) the following: “and in the case of an owner who is an immediate successor in interest pursuant to foreclosure during the term of the lease vacating the property prior to sale shall not constitute other good cause, except that the owner may terminate the tenancy effective on the date of transfer of the unit to the owner if the owner—

“(i) will occupy the unit as a primary residence; and

“(ii) has provided the tenant a notice to vacate at least 90 days before the effective date of such notice.”; and

(2) by inserting at the end of subparagraph (F) the following: “In the case of any foreclosure on any federally-related mortgage loan (as that term is defined in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602)) or on any residential real property in which a recipient of assistance under this subsection resides, the immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to the lease between the prior owner and the tenant and to the housing assistance payments contract between the prior owner and the public housing agency for the occupied unit, except that this provision and the provisions related to foreclosure in subparagraph (C) shall not affect any State or local law that provides longer time periods or other additional protections for tenants.”.

SEC. 704. SUNSET.

This title, and any amendments made by this title are repealed, and the requirements under this title shall terminate, on December 31, 2012.