

# NAR FAQ

## Tenant Protection Provisions Contained in Public Law 111-22



National Association of REALTORS® Government Affairs Division  
500 New Jersey Avenue, NW, Washington, DC, 20001

### Q&A on Tenant Protections

**The law is silent on many issues surrounding the tenant protections. This is our best guidance with respect to questions we have received.**

**Q - Does the tenant still have to pay rent, and can they be evicted for other things?**

A – Nothing in the new federal law affects current landlord tenant law and we expect all of the principles established in that body of law would remain in place - this law only impacts eviction due to foreclosure of the property being rented - if the tenant violates the lease after the new owner takes ownership, the new owner may pursue eviction proceeding for the lease violations.

**Q - Does the property management continue?**

A – Although the effect of the new law would be to treat the existing lease agreement as continuing in effect until its then current expiration date, the contract to manage the property was with the prior owner and with the termination of that prior owner's rights to the property, the agreement to manage the property as the owner's agent must also terminate. As a result the property manager has no right to collect rents. If the property manager knows the property is going through foreclosure, it is strongly recommended that the manager make an effort to determine who the new owner or the new owner's agent will be so that he or she can tell the tenants who remain where to send their rent. If the manager doesn't provide this information, then the rent will most probably be sent to the last address the tenant had for the rent and it will end up with the manager. If that happens it could burden the former property manager with some sort of constructive trust to protect and preserve the money for the new owner.

**Q - Does the tenant have an obligation to stay?**

A - The statute says nothing about the tenant having an option, but we suppose that a tenant could elect to not exercise a right granted to them in the law.

**Q - Does the property manager have any ongoing obligations with regard to the property?**

A - We think no, as the management contract is with the prior owner and is based upon the rights of the prior owner, the contract, along with the prior owner's rights, would terminate with the prior owner's ownership.

**Q- What happens with the security deposit?**

A - This would be another important reason to find out who the new owner or the new owner's agent will be so that the deposits can be transferred to the new party. This should be done in the same way it would normally be done in the state when there is a change in management agents and in compliance with any applicable landlord tenant ordinances or statutes.

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### **Q – Who serves as the landlord during the 90-day period?**

A – The new owner is the landlord and is entitled to the rights and obligations associated with being the landlord. Which entity is the landlord is likely to depend upon state law and also the foreclosure process used in the state. In some cases the landlord may be the bank, who has taken ownership and has yet to dispose of the property. In other cases, the new owner – the purchaser at foreclosure - would be the landlord.

### **Q – What is the duty of the manager in marketing the property?**

A – The former owner’s property manager would have no authority to market the property or enter into any new leases for the property unless that property manager has entered into a new relationship with the new owner.

### **Q – Does a manager have any additional duties as a REALTOR® under the Code of Ethics?**

A – As a REALTOR® the manager is bound to conduct all of his or her real estate activities in a manner consistent with the Code of Ethics. Article 1 of the Code states, that the obligation to promote and protect the interests of the client is primary for the REALTOR®, but it does not relieve him or her from the obligation to treat all parties honestly. A REALTOR® should be guided by this principle in their dealing with everyone in what will undoubtedly be a difficult situation.

### **Q – What advice is there for an agent who lists a bank-owned property following a foreclosure?**

A – The law imposes no specific duties on a listing agent, nonetheless the agent may want to confirm with the bank/client that the necessary procedures are in place to provide the tenant with notice in the event the property is sold to someone who desires to occupy the property as their principal residence.

### **Q – What impact does this law have on purchasers of REOs?**

A - If you are working with a buyer considering the purchase of a property owned by the bank as a result of a foreclosure for use as their principal residence, and that property is currently occupied by bona fide tenant, the new law may delay the buyer’s occupancy of the property pending the completion of the 90-day notice period required under the law. The buyers should consult with their attorney regarding their rights and if this should be addressed in any offer to purchase the property.

For more information, visit our [Issue Summary](#) on realtor.org.

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