

PUBLICATION

New Obligations Imposed by Florida's 2015 Tenant Protection Act

July 14, 2015

On June 2, 2015, a new Florida law took immediate effect providing residential tenants additional protections and imposing new landlord obligations on foreclosing lenders, real estate investors and lienholders. The bill, HB 779, adds language to the Florida Residential Landlord and Tenant Act entitling tenants who are renting apartments and homes that have been foreclosed to notice and time to vacate the property. Previously, the now expired Federal Protecting Tenants at Foreclosure Act of 2009 had required winning bidders at foreclosure sales to honor the terms of existing leases or alternatively to allow the tenant at least 90 days after the sale to vacate the property. Upon the federal act's expiration on December 31, 2014, Florida consumer advocate groups backed new state legislation which would have closely mirrored the federal act. Eventually the Florida legislature unanimously passed a more lenient version with a shorter timeline. Still, the law prescribes certain duties and procedural obligations on the purchaser prior to taking possession of the property, which should be carefully considered.

Specifically, the new law enacts Florida Statute 83.561, which designates the purchaser taking title to a foreclosed property as a landlord, subject to the rights of any tenant residing on the property. The purchaser is not obligated to honor the terms of an existing lease, but if the purchaser intends to terminate the lease it must notify the tenant in writing and wait 30 days before requesting the clerk of court to issue a writ of possession. Prior to the statute's enactment, purchasers at foreclosure sales were entitled to immediate possession of the property with as short as 24 hours' notice of eviction. The substance and form of the new mandatory notice is delineated in the statute. If the tenant chooses to stay during the 30 days, the tenant must pay rent to the purchaser. The new law applies to residential properties, including condos, and does not apply to commercial properties. The new law also does not apply to a holdover tenant who was the mortgagor of the property in the subject foreclosure, nor does the law apply when the lease was not the result of an arms-length transaction. The purchaser does not assume other various statutory obligations of a landlord for building maintenance and post-tenancy security deposit notices. However, the purchaser is strictly prohibited from terminating utility services furnished to the tenant, preventing reasonable access to the property, and changing locks or removing personal property, and the purchaser may be liable for damages and attorney's fees in the event a violation occurs.

Given that residential leases are typically not recorded in Florida, these new procedural requirements limit a foreclosing party's ability to rely on what can be found in the public records. Consequently, additional due diligence will be needed on the part of foreclosing parties and purchasers to determine if the new law applies. Furthermore, the new law leaves some questions unanswered. It is uncertain whether the new law will also apply to non-mortgage loan foreclosure sales, such as foreclosure of homeowners association liens or county and municipal liens. Also unclear is whether the new law's obligations are imputed from an assignor of a foreclosure sale bid to an assignee. Finally, there may be unintended market consequences of forcing the purchaser into the role of landlord by increasing the time and risk of purchasing a foreclosed property.

A majority of foreclosed properties in Florida are purchased by the foreclosing lender at foreclosure sale. Therefore, lenders, their REO department, and their vendors should be aware of these new obligations, confirm whether foreclosed Florida properties are subject to residential leases and provide tenants with notice and 30 days to vacate as appropriate.

If you have questions or concerns about how this new law may affect your business operations, please contact a Baker Donelson attorney in the Consumer Finance Litigation and Compliance practice group, and we can assist you with your compliance.