



Berkeley Housing Authority

1901 Fairview St., Berkeley, CA 94703
Telephone: (510) 981 5470 Fax: (510) 981 5480

SECTION 8 HOUSING CHOICE VOUCHER PROGRAM TENANT PROTECTIONS AFTER FORECLOSURE

What is a Foreclosure?

Technically speaking a *foreclosure* is the legal process by which an owner's right to a property is terminated by its lender. It is a complicated process that can take several months to complete. In practical terms, *foreclosure* means your landlord is in default on the mortgage for the unit where you live and the bank is acting to reclaim the property.

What should you do if you receive notice that the property where you live is in foreclosure?

As soon as possible, mail or deliver a copy of the notice to your Housing Specialist at the Berkeley Housing Authority. Also, gather copies of your lease and other agreements you may have with the owner regarding services, past due amounts, etc. and provide those to your Housing Specialist.

Do you have to continue paying rent?

Yes. You can lawfully be evicted if you fail to pay your required rent. If the new owner refuses to accept your rent, place the amount in an escrow or savings account so that you can make payment to the appropriate person, at the proper time. Note-the Housing Authority will continue making our rental payment until title for the property has been legally terminated (as long as the unit meets minimum Housing Quality Standards).

How can you determine who to make the rental payment to?

You should continue making payments to the landlord identified in your lease (and you can also confirm with your Housing Specialist where BHA's payments are being sent) until you receive official, written notice that ownership has been transferred through a foreclosure sale.

Do you have to move if the building you are living in goes into foreclosure?

No. The new owner (including the bank) can only evict you (ask you to move) for "good cause." Good cause includes non-payment of rent, or other serious or repeat lease violations. Simply because the bank or new owner wants the property to be vacant **is not** "good cause." There is **one exception**: if the new owner wants to occupy the unit as his or her primary residence and has given the tenant a 90-day notice to vacate. In Berkeley, new owners must satisfy several additional requirements before moving in and, in most situations, must pay the tenant \$4,500 in moving expenses. For more information about owner/relative occupancy evictions in Berkeley, call the Rent Stabilization Board (510) 981-7368. Carefully consider, and seek legal advice, before you accept any offer of "cash for keys" or other incentives to voluntarily move from the property.

What should you do if the owner asks you to move with less than 90-day notice?

Respond in writing (and provide a copy of your letter to your Housing Specialist). Your letter should state your objection to the requirement to move AND offer to continue making rental payments to the new owner. A sample letter is posted on our website. You are encouraged to pay the small fee to have the Post Office confirm that the owner receives your letter ("return receipt requested"). Be sure to keep

the signed copy of the green return receipt card that the owner will be required to sign when he or she accepts the envelope.

What should you do if I receive an eviction notice or if an unlawful detainer is filed?

If you receive an eviction notice (or a notice to quit) at your rental property, you should contact Bay Area Legal Aid or East Bay Community Law Center at the numbers listed below for free legal assistance. Similarly, you should contact legal services if an unlawful detainer (eviction) action is filed, even if the unlawful detainer complaint names only your landlord and not you directly. If the owner files an unlawful detainer (eviction) be sure to file an answer. Go to the court whose address is shown at the top of the Unlawful Detainer Notice. File an answer that says the new owner failed to give the notice required by the *Protecting Tenants at Foreclosure Act, Public Law Number 111-22, Section 703 (2009)*. Be sure to be in Court for any scheduled appearances. Keep copies of all your records, and present them to the Court.

What protections do I have if I want to move?

Your Section 8 voucher is “tenant based” meaning that, within limits, you get to determine where you want to live. If you want to move voluntarily (e.g. to take advantage of some incentive offered by the bank or new owner) you may request a transfer voucher and move with your rental assistance. The “incentive” is a one-time payment, and thus *is not* considered income for purposes of determining your rent. Contact your Housing Specialist for instructions. Note – you will not be allowed to move if you have an unsatisfied debt to the Berkeley Housing Authority for excess subsidy or a Security Deposit loan.



If you have additional questions about your rights under the new law, call Bay Area Legal Aid at (510) 250-5270, or East Bay Community Law Center at (510) 548-4040, Berkeley Rent Stabilization Board at (510) 981-7368, or ECHO Housing at 581-9380.

Sample Letter to New Landlord/Owner

Mail certified mail, return receipt requested

Date

New Owner
1234 Main St
Any City, CA 94123

Re: Foreclosure Notice – 2345 Main St, Berkeley, CA

Dear Landlord/Owner:

On _____ (date) you advised me orally or in writing that I need to move out of my unit at _____, Berkeley, CA, by _____ (date).
(address)

Your action violates federal law protecting Section 8 families against unfair evictions. This letter is my official protest.

The Protecting Tenants at Foreclosure Act, Pub. L. No. 111-22, §§ 701-704 (2009), which became federal law on May 20, 2009, applies to state eviction proceedings. This law requires a new owner of residential rental property who acquires it through foreclosure to be legally bound by the existing Section 8 voucher lease and Housing Assistance Payment (HAP) Contract. A new owner may only terminate the lease and HAP contract for good cause (such as owner making the property his/her primary residence) and by giving the tenant at least 90 days notice of termination.

In addition, in Berkeley, new owners must satisfy several additional requirements before moving in and, in most situations, must pay the tenant \$4,500 in moving expenses. Simply because a new owner of a foreclosed property wants it vacant (to re-sell or re-rent or for any other reason) is not considered good cause. Your notice to me does not provide the 90 day notice required.

I am requesting that you withdraw the notice, and allow me to continue my tenancy. I am current with the rental payments to the owner of record required under my lease. If you have any questions about “good cause” or lawful grounds for eviction in Berkeley, you may call the Rent Stabilization Board at (510) 981-7368.

Signature/Date

cc: Berkeley Housing Authority Housing Specialist
1901 Fairview
Berkeley, CA 94703