

VIOLATION OF THE PROTECTING TENANTS AT FORECLOSURE ACT

**A Report on Noncompliance in Connecticut
by Foreclosing Lenders, Real Estate Agents, and Law Firms**

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SUMMARY OF FINDINGS

The federal Protecting Tenants at Foreclosure Act of 2009 (Title VII of the Helping Families Save Their Homes Act of 2009, P.L. 111-22) (“PTFA”),¹ which took effect on May 20, 2009, affords critical protections to persons described as the “forgotten victims” of the foreclosure crisis: the renters who are evicted by foreclosing financial institutions² following the completion of foreclosure actions against their former landlords. In most cases, these tenants had no idea that their landlord was under foreclosure, and they first learned of the foreclosure when a real estate agent or judicial marshal served them with papers demanding that they vacate the premises immediately.

PTFA is intended to stop the surprise announcement of a foreclosure and the immediate removal of tenants from properties. Section 702 of PTFA allows tenants who are living in a foreclosed property to remain for the duration of any unexpired lease. This is a very significant change in tenant rights given that under prior governing state law a foreclosure extinguished leases and a foreclosing bank could immediately commence an eviction action against a tenant.³ PTFA now allows a tenant who, for example, has eleven months left on a lease with a former landlord to continue to be in the premises for the duration of that lease. Section 702 also provides that all tenants, even those without written leases, must be given at least 90 days’ notice

¹ Federal statute attached at Appendix A.

² In our review of cases, post-foreclosure successor owners, as described in PTFA, have uniformly been banks and mortgage companies, acting as either lenders, servicers, or trustees for mortgage-backed security pools. In this report, we refer to these foreclosing parties and successors in interest as “banks.”

³ As a result of the passage of Nov. 24 Special Session P.A. 08-2, Connecticut law now prohibits foreclosing parties from evicting for at least 30 days after foreclosure (for at least 60 days for most tenants with written leases). See Conn. Gen. Stat. § 47a-20e. PTFA supersedes this portion of Connecticut law because it provides greater protection.

before they can be required to vacate and the right to remain in occupancy during that three month period.

In addition, Section 703 of PTFA requires that foreclosing banks take over the Housing Assistance Payments (HAP) contracts for all tenants in the foreclosed property who are participants in the Section 8 Housing Choice Voucher program. This requirement federally mandates that foreclosing banks are responsible for maintenance and repairs of all such foreclosed properties occupied by Section 8 tenants. Foreclosing banks were already legally responsible for maintenance and repairs of all rental properties after foreclosure under long-standing state and local law, because they are “owners” and “landlords” within the meaning of Conn. Gen. Stat. § 47a-1. There has, however, been a near-complete absence of compliance with such state law, thus magnifying the importance of federal PTFA protections for Section 8 tenants.

The five legal services programs in Connecticut (New Haven Legal Assistance Association, Greater Hartford Legal Aid, Connecticut Legal Services, Legal Assistance Resource Center of Connecticut, and Statewide Legal Services) have conducted an extensive review of statewide compliance with PTFA. Based on initial contact with a number of tenants shortly after the passage of PTFA, the legal aid programs were concerned that real estate agents, banks, servicers, and law firms were not following the law’s requirements. In the months since the passage of PTFA, the legal aid programs have: 1) received applications throughout the state from tenants who have applied for legal aid services; 2) surveyed data from housing court filings throughout the state; 3) conducted site visits to most multi-unit properties foreclosed in New Haven since May 20, 2009; 4) written to, or met with, all defendants in post-foreclosure evictions in New Haven Housing Court from May 2009 to the present; and 5) contacted public

housing agencies to determine whether successor owners had contacted them regarding Section 8 HAP contracts to which they are now federally obligated.

As detailed below, the survey reveals widespread non-compliance with the requirements of PTFA that constitute unfair and deceptive trade practices by foreclosing banks, their real estate agents and their attorneys. Specifically, there is clear evidence of the following unfair and deceptive practices:

- Real estate agents, acting on behalf of foreclosing banks, are giving tenants verbal and written notices demanding that they immediately vacate foreclosed properties and sometimes offering them unspecified sums of money (“cash for keys”) but without making any effort to determine the names or tenancy status of occupants or notifying them of their rights to stay under PTFA;
- Foreclosing banks and attorneys for such banks are making little or no effort to ascertain the names or the tenancy status of occupants of foreclosed properties, even in cases in which occupants have communicated with real estate agents, and are inappropriately using “John Doe” notices to communicate with them;
- Attorneys for foreclosing banks are sending notices to vacate to tenants that are unintelligible to a lay reader and that provide misleading and inaccurate information about the tenants’ rights under PTFA, including statements that suggest that PTFA rights apply only to tenants who are current on rent to the former owner or statements that PTFA does not apply to tenants with written leases entered into after the foreclosure action commenced;
- Summary process eviction actions are being brought against tenants who had unexpired written leases;
- Summary process eviction actions are being brought against tenants who did not receive the minimum 90-day notice required by PTFA;
- Summary process eviction actions are being brought that do not attach, recite, or plead compliance with applicable PTFA notice requirements;
- Almost no foreclosing parties are contacting local housing authorities to assume their federally-mandated obligations under the Section 8 HAP contract executed by the former owner; and
- Real estate agents, banks, and servicing companies are failing to notify tenants of whom to contact with maintenance concerns.

Based on this widespread non-compliance with PTFA, we recommend that the Attorney General:

1. Continue to issue cease and desist letters to real estate agents who violate PTFA (including all of those identified in this report⁴): a) requiring that reasonable efforts be made by such agents to ascertain the name and tenancy status of the occupants prior to issuing any notices that inform the occupants that a new owner wants them to vacate, b) prohibiting the agents from communicating misleading or inaccurate information about tenant rights under PTFA, the “cash for keys” law, and the Security Deposit Act,⁵ and c) requiring that any notices concerning the tenant’s vacating foreclosed properties include the provision of legally accurate information about PTFA, the return of security deposits, and “cash for keys.”
2. Issue a cease and desist letter to foreclosing banks which violate PTFA (including all those identified in this report):
 - a. Stating that banks are responsible for PTFA violations by their agents, including real estate agents and attorneys acting on their behalf, with a statement that further action will be taken under CUTPA if such violations continue. The banks should be required to instruct their agents to comply with the federal and state laws that apply to tenants in foreclosed properties and should be required to provide proper guidance as to the form and content of all written notices provided to tenants by real estate agents. The letter could include a sample notice.
 - b. Prohibiting banks and their attorneys from terminating any tenancies or commencing any summary process action:
 - Without first taking affirmative steps to ascertain the names and tenancy status of all occupants of foreclosed properties;

⁴ Attorney General Richard Blumenthal has already sent two such letters. See attached Appendix B-2 and B-3. He has also sought the assistance of the Connecticut Association of Realtors. See attached Appendix B-1.

⁵ This report focuses on violations of the federal Protecting Tenants at Foreclosure Act. Prior to the passage of PTFA, the Connecticut legislature enacted Conn. Gen. Stat. § 47a-20f, which sets minimum cash amounts for relocation offers (“cash-for-keys” agreements). In addition, Conn. Gen. Stat. § 47a-21(e) makes the entity that owns the property when the tenant vacates, including a bank that has foreclosed, liable for returning the tenant’s security deposit, even though the deposit was paid to a prior owner. Although this report does not focus on these state laws, there is much evidence of noncompliance both with the state “cash for keys” requirements and with the Security Deposit Act. We therefore request that the cease and desist letters require compliance with these two state laws, as well as with PTFA.

- Without first advising the occupants of the foreclosed properties of the names and contact information for the person or entity responsible for maintenance of such properties;
 - Without providing all occupants (except those determined to be the former owner or the spouse, parents, or child of the former owner) with at least 90 days' notice to vacate that affirmatively advises each occupant that if s/he produces an unexpired written lease, s/he will be allowed to remain for at least the duration of the lease. All occupants should get this notice unless the bank or its agent has affirmative proof that the occupant is not a bona fide tenant and is able to plead such determination in the court filings.
 - Without ensuring that such notices are addressed to each occupant by name, unless the bank or its agents have been unable to obtain the name(s) after reasonable efforts;
 - Without ensuring that such notices are understandable to the average reader and accurately describe the rights of tenants under PTFA (e.g., such notices should affirmatively state that PTFA requirements apply to all bona fide tenants residing in properties as of the date title passes to the foreclosing bank by judicial sale or passage of the law day, regardless of when such tenancies commenced).
- c. Ordering banks to exercise due diligence to identify Section 8 tenants in the foreclosed properties and to contact the housing authority that administers any such Section 8 tenant vouchers so that the bank can assume landlord responsibilities under the HAP contracts.
3. Inform any firm that violates PTFA (including all of the law firms identified in this report) that they may not take any action on behalf of any bank or any agent of such bank that violates the standards in the above cease and desist letters issued to the banks (e.g., prohibiting the law firms from sending defective PTFA notices or filing defective summary process actions).
 4. Conduct a joint press conference with legal services advocates, sharing evidence of widespread noncompliance with PTFA as documented in the present report, presenting cease and desist letters, and setting forth a commitment to commence legal action if there are further violations.

5. Widen efforts to achieve national compliance with PTFA by sharing this report and initiating joint action with Attorneys General in other states.

6. Join with us in preparing for introduction at the next session of the General Assembly legislation that will incorporate into state law and make permanent the protections of PTFA. A few states, most recently, New Jersey and New York, have enacted such legislation. In addition, the legislation should, at a minimum, contain a provision making clear that any party acquiring residential rental property through foreclosure must comply with the requirements of Conn. Gen. Stat. § 47a-6, regarding identification of the manager of the property. We would welcome the opportunity to discuss with your staff the language of such a bill and the possibility of adding other protections that would ensure that the federal law and existing state protections are observed.

MAIN REPORT

I. VIOLATION OF PTFA BY REAL ESTATE AGENTS IN THEIR INITIAL INTERACTIONS WITH TENANTS IN FORECLOSED PROPERTIES.

Most tenants first learn that a foreclosure has taken place when a real estate agent makes an in-person visit to the premises. These real estate agents are hired by the banks to market and sell the property to a new owner.

Historically, the practice of banks, servicers, and real estate agents has been to summarily empty foreclosed properties of all occupants in order to market the foreclosed properties for sale. This practice has remained virtually unchanged notwithstanding the enactment of PTFA. In the vast majority of cases in which we have represented tenants, banks have refused to allow tenants to remain until the property is sold. We have also found that almost all banks refuse to assess the property and list a sale price until the property is empty.

As such, the initial real estate agent visits appear designed to remove the tenants from the property as quickly as possible. While PTFA provides critical protections to prevent banks from immediately removing tenants from the foreclosed properties, real estate agents, acting on behalf of banks, continue to interact with tenants as if no new law has been passed.

Many tenants report that real estate agents make verbal statements that the property has been foreclosed and that the tenant must move immediately. This is consistent with numerous written notices left by real estate agents which we have collected from around the state and which document outright noncompliance with PTFA. All of these notices contain either explicit or implicit statements that unfairly and deceptively tell tenants that they must vacate immediately without any mention of their PTFA right to remain until the end of their lease or 90

days, whichever is longer. The notices rarely disclose the identify of the new owner of the property nor whom to contact for maintenance concerns.

The worst of the notices state that the tenant must leave immediately or be subject to immediate eviction proceedings with language as follows:

The New Owner has employed me to manage and market this property for them. I have been asked to inform you that it is their policy to immediately initiate eviction on occupied properties. (Spadaccino Realty Team, LLC, Bridgeport, dated 10/2/09) (attached at Appendix C-1).

Ownership of the property, which you are presently occupying, has been transferred as a result of foreclosure proceedings. You are hereby notified to **vacate the premises** and instructed to contact the owner's agent immediately to discuss this matter. (Realty Network, Waterbury, dated 10/24/09) (attached at Appendix C-2).

If you respond rapidly, cooperate, and comply with an agreed stipulation, you may be eligible to receive monetary compensation for vacating the property voluntarily. Please respond within three business days. Otherwise, the sheriff will proceed with the eviction and no monies will be offered to you. (Hunter Realty Group, dated 11/23/09) (attached at Appendix C-3).

PROPERTY YOU ARE LIVING IN IS NOW AN ASSET OF THE BANK. WE WOULD LIKE TO SPEAK WITH YOU ABOUT A POSSIBLE MOVE DATE. THE BANK MAYBE WILLING TO OFFER YOU MONEY FOR RELOCATION ASSISTANCE. IF WE DO NOT HEAR FROM YOU PLEASE BE ADVISED THAT BANK'S ATTORNEY WILL START THE EVICTION PROCESS. (Davis Owen Real Estate, Stratford, dated 9/22/09) (attached at Appendix C-4).

EMC will retain the services of an attorney firm to prepare an unlawful detainer action against you. In the Complaint, EMC will seek to have you legally evicted from the property and will have the option of requesting the court to award monetary damages to compensate EMC for your continued unlawful occupation of the Property as well as court costs. (EMC Mortgage Notice, Irving, Texas, undated) (attached at Appendix C-5).⁶

⁶ This notice is apparently copied from some out-of-state model, since Connecticut does not have "unlawful detainer" actions. In Connecticut, monetary damages are not adjudicated in a summary process action. This notice is therefore misleading not only for its failure to include information about the tenant's right to remain for 90 days but also for this misstatement of Connecticut law.

Many notices also unfairly tell tenants that they must respond within a limited number of hours after receiving the notice and suggest that the tenant will forfeit rights to remain if they do not call immediately, despite the fact that PTFA does not allow such time limitations:

It is imperative that you contact our agent within 48 hours of receiving this notice. . . .
In the event you do not contact our agent, EMC will have no other alternative but to pursue other options through legal remedies to the fullest extent of the law. (EMC Mortgage Notice, Irving, Texas, undated) (attached at Appendix C-5).

One notice even goes so far as to imply that the tenants who do not respond within 24 hours will be locked out – conduct which would be criminal under Connecticut law:

IF WE DO NOT HEAR FROM YOU WITHIN 24 HOURS, WE WILL ASSUME THAT THE PROPERTY IS VACANT. . . . YOUR IMMEDIATE RESPONSE IS NECESSARY TO AVOID A COURT ORDERED EVICTION [sic], WHICH WILL GIVE YOU CONSIDERABLY LESS LENIENCY IN YOUR VACATING PROCESS. IF THE PROPERTY IS VACANT THE LOCKS WILL BE REKEYED, THE PROPERTY WILL BE SECURED AND PHASE I WORK WILL BEGIN. (ReMax, West Hartford, dated 10/23/09) (attached at Appendix C-6).

All of the notices that refer to “cash for keys” offers fail to mention that bona fide tenants may live out their leases and have at least 90 days before a tenant may be required to vacate.

See, for example:

A foreclosure sale on the above-referenced property has taken place and the new owner may be entitled to possession. In order to help you avoid the stressful and often difficult eviction process, GMACM, as servicer of record, is offering you moving expense assistance if you voluntarily agree to vacate the premises. (Homecomings Financial, Hamden, 7/15/09) (attached at Appendix C-7).

Real estate agents certainly have a right to make “cash for keys” offers, but only in the context of a full and fair communication that tenants need not accept such an offer and may choose to remain either for 90 days or the duration of the lease, whichever is later.

We are concerned that the use of the above-described defective notices is widespread. It is likely that deceptive notices virtually identical to those we have obtained are being used in

every building handled by the named real estate agent and that similar notices are being used by other real estate agents. Through conversations with colleagues in other states we have learned that the unlawful notices served in Connecticut are part of a national pattern of abuse.⁷

The disconcerting effect of the above-described actions by real estate agents is to prematurely empty tenants from foreclosed properties. Advocates at New Haven Legal Assistance conducted site visits to at least 80 multi-unit properties in New Haven in which title was recorded on the land records as having passed on or after May 20, 2009. More than half of the properties were empty of all occupants by the time the advocates arrived for the site visits. Unfortunately, we are unable to assist these tenants when we monitor court filings and attend court hearings because they have already departed the premises, thereby forfeiting PTFA rights. Moreover, given that the tenants vacate prior to any court appearance, no court is able to scrutinize the real estate agent notices, destroying the effectiveness of PTFA.

All foreclosing banks should be required to instruct their real estate agents to comply with PTFA. Each bank should be required to instruct its real estate agents to ascertain the names and legal status of all occupants of foreclosed properties and should be required to provide these agents with a consistent Know Your Options Document to be hand-delivered and mailed to the occupants in all properties foreclosed upon by that bank. The Federal National Mortgage Association (“Fannie Mae”) has produced such a document (attached at Appendix C-8) which it distributes through a large network of real estate agents across the country. The notice is both posted on the property door and mailed to each unit in the building. In addition, it appears that at least two large banks, Chase and Premiere Asset Services have produced Know

⁷ We have collected a number of notices from colleagues from other parts of the country which contain similar violations of PTFA, including the following: “This property has been acquired through foreclosure. . . . This property will be rekeyed and personal property removed on 9/15/09.” (Priority Realty, LLC, Pittsburgh, Pennsylvania, dated 9/10/09) (attached at Appendix C-11).

Your Options documents (attached at Appendix C-9 and C-10). However, we have yet to see the Chase and Premiere Asset Services notices served in Connecticut.

Responsibility for the above violations of PTFA rests both with real estate agents and the banks. In speaking with real estate agents, we have discovered that they uniformly claim to be unaware of PTFA. This lack of knowledge of the law, if truthful, is certainly not a legitimate excuse for violating the law. Moreover, the lack of knowledge is particularly troubling given that these agents are acting on behalf of banks, many of which operate nationwide. Each of these banks has corporate counsel offices and is represented in state by local counsel. As such, the banks can and should be held responsible for properly instructing and monitoring their agents regarding PTFA.

II. VIOLATION OF PTFA BY BANKS AND LAW FIRMS IN DEFECTIVE SUMMARY PROCESS COURT FILINGS AND IMPROPER 90-DAY PTFA NOTICES.

As described above, an initial violation of PTFA occurs when real estate agents visit properties to attempt to convince tenants to leave, without informing tenants of their rights to remain. Subsequent violation of PTFA occurs when the foreclosing banks commence the eviction process to obtain a judicial order to remove the tenants who remain in the properties.

PTFA established two very important tenant protections that prevent banks from commencing immediate evictions of all tenants, as had been the practice prior to PTFA. Under PTFA, tenants must be provided with a notice that informs that tenant that s/he has 90 days to

remain in the premises. Tenants must also be afforded the right to remain beyond 90 days if the tenant has an unexpired lease with the former owner that runs more than 90 days into the future.⁸

Legal aid attorneys have collected summary process case filings by banks from five courthouses statewide in order to review the extent of compliance with PTFA. The most extensive collection of cases comes from New Haven, where all cases filed by banks from the date of passage of PTFA (May 20, 2009) through the present have been reviewed. In addition, case filings by banks were collected from Bridgeport, Derby, Hartford, New Britain, and Waterbury for the time period of July through October (the end dates in October vary for each).

The review of these case filings has shown a number of serious violations of PTFA by banks and law firms as described below:

A. Tenancies Terminated with a Notice to Quit with a Quit Date Less Than 90 Days After the Date of Foreclosure

At least 24 summary process cases reveal clear PTFA violations on the face of the court filings. See Case List 1 (attached at Appendix D-1). Each of the 24 properties was almost certainly occupied by bona fide tenants and thus covered by the PTFA requirement to give a 90-day notice.⁹ Yet, despite the applicability of PTFA to these tenancies, all of the 24 tenancies

⁸ Section 702 states, “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 such premises until the end of the remaining term of the lease....”

⁹ The only likely explanation for why PTFA would not apply to the eviction is if the occupant was not a bona fide tenant. Under PTFA’s narrow exceptions to the definition of “bona fide tenant,” former owners, spouses, and children do not receive protections. In each of the cases referenced here, we have concluded that the occupants were bona fide tenants for one the following reasons: 1) the defendants were all “John or Jane Doe,” 2) the named defendant was not listed as the property’s former owner in town property records or the eviction case, 3) NHLAA staff spoke directly to defendants, who self-identified as tenants, 4) a former owner was named as a defendant but the property was a multi-family building and the owner did not appear, or 5) a former owner was named as a defendant, but tenants appeared in the case.

were terminated by service of a notice to quit with a quit date either less than 90 days after the date of the foreclosure (either the foreclosure date expressly stated in the complaint or the foreclosure law date as obtained from the relevant Superior Court foreclosure records) or less than 90 days after the date alleged for service of a PTFA notice.

In these cases, it is evident from the face of the record that the cases do not comply with PTFA. In 20 of these cases, we do not know whether any PTFA notice was served at all. However, even if a PTFA notice was served on the date of the foreclosure, the earliest date that a PTFA notice could legally be served, there are fewer than 90 days between this earliest date of service of a PTFA notice and the quit date. In four of these cases, the law firm attempted to serve a PTFA notice, but the notice provided fewer than 90 days between the service of the notice and the quit date.¹⁰

B. Tenancies Terminated with Inadequate Pleadings, Such That It Is Impossible To Determine PTFA Compliance from the Face of the Pleadings

In at least 15 cases, banks and their agents may have complied with the substance of PTFA requirements, but such compliance is impossible to determine due to insufficiencies in the pleadings. See Case List 2 (attached at Appendix D-2). In 10 of these cases, it is highly unlikely that a PTFA notice was served, given the timing of the action. In almost all of the 10 cases, a maximum of 91 days exist between the foreclosure and the quit date. It is therefore technically possible that a timely PTFA notice was served immediately after the foreclosure, however we know from common practice that such notices are not usually sent so quickly.¹¹ In six cases, the

¹⁰ These four cases are unique in that the law firm attempted to combine a PTFA notice with a Notice to Quit. There are numerous defects in the particular pleadings, and the law firm is no longer using these combined notices. The salient point here is that they do not provide 90 days' notice on their face.

¹¹ In most cases, it takes several weeks after the completion of the foreclosure for any eviction papers to be served.

timing suggests that there was ample opportunity for a 90-day PTFA notice (in these cases, there was between 100 and 137 days between transfer of title and the quit date), but there is no way to know whether any such notice was served because the pleadings contain neither mention nor attachment of any PTFA notice.

In the above-described cases, 90 days elapsed between the date of foreclosure and the quit date; however, because the law firm did not plead and attach or recite any PTFA notice, it is unclear both whether a PTFA notice was ever served upon these tenants and whether, if served, such a notice was legally adequate. The failure to plead and attach or recite the PTFA notice is a violation of Connecticut Practice Book § 10-68 and Jefferson Garden Associates v. Greene, 202 Conn. 128 (1987).

Recently, several law firms have begun to plead and attach the PTFA notices served upon tenants. See Case List 3 (attached at Appendix D-3). This recent change in practice is a welcome development. In addition to being required by Connecticut law, such pleading and attachment is critically important to ensure compliance with PTFA.¹² First, without attaching the PTFA notice to the summary process summons and complaint, there is no way to tell whether PTFA notices were served and whether the content of the notices complied with federal law. Second, the attachment of notices is critically important to educate tenants that PTFA rights exist and to notify tenants that the bank claims to have sent such a notice so that the tenant can present a defense that s/he never received such notice if, as may be the case, the notice never reached the tenant. The law firms which have begun to attach and plead notices should be required to

¹² Prior to pleading and attaching the PTFA notice, Bendett & McHugh filed a number of cases in which it pled compliance with PTFA but did not attach the notice. This practice was an improvement over not pleading the notice at all but still failed to comply with requirements that the notice be attached. See Case List 3 (attached at Appendix D-3).

continue to do so, and all law firms which have yet to do so should be required to begin pleading and attaching PTFA notices immediately.

C. Tenancies Terminated with Defective PTFA Notices

In addition to the defects described above in which a PTFA notice is served which gives less than 90 days before the quit date, there are numerous other substantive problems with the content of PTFA notices served.¹³

From the beginning, most PTFA notices were seriously defective. Both Goldman, Gruder & Woods and Glass & Braus utilized notices to quit, with a 90-day quit period, as their PTFA notices. Such notices failed to inform tenants of their rights to live out their leases and provided no mechanism through which a tenant could exercise the right to live out a lease that exceeded the 90-day notice. See Goldman, Gruder & Woods Notice to Quit dated 6/29/09 and Glass & Braus Notice to Quit dated 6/15/09 (attached at Appendix E-1 & E-2). The Marinosci Law Group sent notices to quit that required tenants to vacate within a few days unless the tenant comprehended and responded to technical information about PTFA which was so buried in the notice to quit as to be meaningless to the recipient.¹⁴ See Marinosci Law Group PTFA Notice dated 9/8/09 (attached at Appendix E-3). Hunt Leibert and Bendett & McHugh served notices that likely intimidated tenants into leaving prior to taking advantage of the protections of PTFA. These notices failed to plainly advise tenants of their rights under PTFA, presumed that the occupants were not bona fide tenants, subjected occupants to immediate eviction unless the

¹³ The majority of the notices to be discussed were collected from tenants directly, given that most notices were not attached to court pleadings.

¹⁴ This notice to quit, which both tells the tenant to vacate in seven days and tells the tenant there may be an option to vacate within 90 days, also violates the state law requirement that the notice to quit be unequivocal.

occupants affirmatively provided evidence to demonstrate that they were bona fide tenants,¹⁵ and demanded this information in short time frames.¹⁶ See Hunt Leibert PTFA Notice undated, Bendett & McHugh PTFA Notice 6/24/09 (attached at Appendix E-4 & E-5).

After a series of conversations with legal aid attorneys, many law firms amended their notices and began serving notices which are less egregiously violative of PTFA. Nonetheless, serious defects remain in many of the notices still being used.

First, many PTFA notices are not addressed to tenants by name. In many cases, real estate agents have been to the foreclosed properties and have spoken with the tenants. Yet, even in cases where the real estate agent knows the tenant's name, many law firms are still sending PTFA notices and then subsequent summary process eviction papers to unnamed "Jane Doe" and "John Doe" tenants. Such notices to unnamed tenants are problematic because they are less likely to reach the tenant or, if received, they may likely be disregarded by the tenant. Moreover, a notice to quit may not legally be addressed to a "John Doe" alias unless the bank or its agent "does not know the name of such occupant." See Conn. Gen. Stat. § 47a-23(b). Accordingly, it is critical that law firms utilize reasonable diligence to ascertain the names of the tenants and to then direct all legal papers to the tenants by name.

Second, there are a number of problems with the written notices themselves, including:

- Many notices are written in technical language that is unintelligible to the average recipient. Martha Croog, LLC is currently sending out at least two different versions of PTFA notices. The first notice was relatively readable. The second later notice is

¹⁵ Under PTFA, the bank may bypass tenant protections only if it has affirmatively determined that the occupant is not a protected tenant (i.e., the occupant is a former owner or the tenancy was not an arms-length transaction). The law does not allow the bank to assume that all occupants are non-bona fide tenants because the tenant does not respond to a notice. To the contrary, PTFA notice must give 90 days unless the bank has credible evidence that the occupant is not a bona fide tenant.

¹⁶ After improperly placing the burden of proof on the tenant, many notices placed short time limits on the tenants to respond to the notice and told tenants that failure to respond in the time period waives their rights under PTFA. PTFA contains no such time limits or waivers, and the imposition of such deprives tenants of their rights.

so technical as to deprive tenants of knowledge of their rights under the PTFA.¹⁷ See Martha Croog PTFA Notice 10/16/09 and Martha Croog PTFA Notice undated (Rev. 11/5/09) (attached at Appendix E-6 & E-7). All law firms should immediately be required to cease sending out notices that are not written and formatted in plain language.

- Many of the notices unlawfully require that tenants provide proof that all monthly rental payments due under the lease have been paid. See Martha Croog PTFA Notice undated (Rev. 11/5/09), Glass & Braus PTFA Notice dated 10/27/09, Bendett & McHugh PTFA Notice dated 6/24/09 (attached at Appendix E-7, E-8, & E-5). This requirement of proof of rent payment deceptively suggests that tenants do not receive PTFA protections if they are not current on their rent with the former owner. This is a misstatement of the law. Not only is proof of rent payments to the former owner not required by PTFA, but tenants are often in a situation in which they may have been willing, but unable, to pay rent due to an absentee landlord. All law firms should immediately be required to cease requesting proof of past rent payments made to the former owner.
- At least one law firm continues to state that a tenant may live out his or her lease only if the lease had been entered into prior to the commencement of the foreclosure action. See Hunt Leibert PTFA Notice dated 12/1/09 (attached at Appendix E-9). The protections of the PTFA apply to all bona fide tenants, regardless of when their leases were entered into with the prior owner. The phrase “commencement of foreclosure” does not appear in the statute and should not be used in the 90-day notice. Statements in the Department of Housing and Urban Development Guidance, the Congressional Record, and a letter from the Board of Governors of the Federal Reserve all concur that the phrase “notice of foreclosure” in PTFA refers to notice that foreclosure itself has occurred and title has passed, not that the litigation has begun (attached at Appendix F-1, F-2 & F-3). Therefore, all firms should be required to cease stating that the lease must be entered into before the commencement of the foreclosure action.
- Other law firms state that the lease must be entered into before the “‘notice of foreclosure’ (as specified in the Act).” See Marinosci PTFA Notice dated 12/3/09 and Bendett & McHugh PTFA notice dated 7/30/09 (attached at Appendix E-10 and E-11). This language does indeed track the language in the federal statute and avoids the objective error of those notices that state that the lease must be entered into before commencement of foreclosure. But this language is still ambiguous and confusing to the average notice recipient who is unlikely to have any idea what is meant by “notice of foreclosure.” All firms should be required to state in plain

¹⁷ Compare “**PLEASE TAKE NOTICE THAT** you are required to vacate . . . at the end of ninety days from the date of this Notice, unless you have a written lease which ends more than 90 days after the date of this Notice” (Appendix E-6) with “**PLEASE TAKE NOTICE THAT** within ninety (90) days after receipt of this Notice you are required to vacate . . . unless you provide acceptable evidence that you are a *bona fide tenant* pursuant to Section 702(a)(2)(A) of the Act or are protected by Section 703 of the Act” (Appendix E-7).

language that the bank will honor leases that were entered into before completion of the foreclosure (i.e., transfer of title).

D. Other Cases Collected -- No Proof of Noncompliance with PTFA But Some Noncompliance May Still Exist

Finally, there are 32 cases in which there is some evidence in the record that the only occupants of the property were the former owner and/or the owner's spouse, parents or children – making PTFA rights likely inapplicable.¹⁸ However, since banks sometimes name former owners of foreclosed properties as defendants in eviction actions even if there is no evidence that the former property owner ever lived in the property, but rather had leased all units to bona fide tenants, there may well be PTFA violations in these cases as well.

E. Section 8 Tenancies Terminated in Violation of PTFA

PTFA affords additional protections to Section 8 Housing Choice Voucher tenants in that Section 703, which governs Section 8 tenants in foreclosed properties, applies retroactive of the enactment of the statute to all tenants living in foreclosed properties on May 20, 2009, even if the foreclosure had been completed before May 20, 2009.¹⁹ See United States Department of Housing and Urban Development, New England PIH Advisory Letter #09-02, dated June 15, 2009 (attached as Appendix F-4). Unfortunately, we are unable to document the extent of non-compliance with Section 703.

¹⁸ In these cases, some or all of the following factors indicate that the former owner was likely the occupant: 1) the property was a single-family home, 2) the former owner appeared in the eviction action, 3) the former owner provided the listed address as his or her residence in the foreclosure case, 4) no tenant was named or ever appeared, or 5) the case was withdrawn as to all originally listed Does, leaving the named former owner as the only defendant.

¹⁹ In contrast, non-Section 8 tenants are protected by Section 702 only, which applies just to buildings foreclosed on after May 20, 2009.

Our review of housing court eviction files found at least 98 cases filed after May 20, 2009, in which it appeared that the foreclosure took place *prior to* May 20, 2009; however, we cannot determine from a review of these files which, if any, of the defendants were Section 8 tenants and therefore entitled to 90-days notice and the right to live out the remaining term of their leases.²⁰ Based on our experience, it is certain that a substantial number of these actions were brought against Section 8 tenants in violation of their PTFA rights. Since May 20, 2009, New Haven Legal Assistance has attended housing session as often as possible and attempted to meet as many tenants in post-foreclosure evictions as possible. In the course of these court visits, New Haven Legal Assistance identified eight Section 8 tenant defendants, with active court cases, who were living in buildings for which title transferred prior to May 20, 2009, and were therefore entitled to PTFA protections. None of these Section 8 tenants had been asked by any bank agent, including the law firm representing the bank at court, whether they were Section 8 tenants and therefore would have been deprived completely of their PTFA rights had they not been assisted by a legal aid advocate.

Conclusions Based on Review of Court Filings

The review of court filings and the collection of PTFA notices from tenants for matters that have not yet been filed in court show widespread noncompliance with PTFA. Although there has been some notable improvement in the content of the PTFA notices being sent by most law firms, it is apparent that foreclosing banks and their agents, including real estate agents and lawyers, need to be more forcefully advised not only to follow the law but also to follow protocols that enable review of compliance with the law.

²⁰ Of these 98 cases, it is more than likely that at least 80 were occupied by tenants, while only 18 were likely occupied by former owners, based on the same criteria discussed in fns. 9 & 18.

To achieve this goal of PTFA compliance, we recommend that all foreclosing parties be required to demonstrate compliance with PTFA in subsequent summary process actions by: 1) ascertaining, documenting, and pleading the status of all occupants, 2) delivering a 90-day notice to all occupants that clearly informs any tenants that they have the right to remain for 90 days and for the duration of any lease, if longer, unless there is affirmative proof that the occupant is not protected by PTFA, 3) ceasing to require that tenants prove that rent payments with the prior owner are current, 4) pleading and attaching any PTFA notice served, and 5) ceasing to file any actions until 90 days have elapsed between delivery of the PTFA notice and the quit date, unless they affirmatively plead in the complaint allegations that will demonstrate why the defendant's occupancy is exempt from the PTFA notice requirement and 90-day waiting period.

III. ALMOST NO BANKS ARE COMPLYING WITH PTFA PROTECTIONS AFFORDED TO SECTION 8 RECIPIENTS.

Section 703 of PTFA specifically protects Section 8 Housing Choice Voucher Program tenants in foreclosed properties. As described above, Section 703 extends protections retroactively to all cases filed after May 20, 2009, in which title transferred even before May 20, 2009. Section 703 also requires that "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." Thus, under PTFA, upon taking ownership of a property through foreclosure, the bank immediately becomes subject to the terms of the existing Section 8 lease and the HAP contract, as a matter of law. See United States Department of Housing and Urban Development, New England PIH Advisory Letter #09-02, dated June 15, 2009 (attached at Appendix F-4). This requirement is an affirmative obligation

on the foreclosing banks, requiring them to ascertain whether occupants are Section 8 tenants and to contact the public housing authority that administers the Section 8 program for the particular tenant to take over the lease and HAP contract. See id.

Foreclosing banks appear to have virtually disregarded this section of PTFA. In New Haven, not a single bank has yet acknowledged a HAP contract with the Section 8 program administered by the New Haven Housing Authority. See Letter from Housing Authority of New Haven's Service Center Director Evelise Ribeiro (attached at Appendix G-1). Similar non-compliance is seen in the experience of the state's largest Section 8 program, run statewide by the Department of Social Services (DSS). The attached email from DSS's Manager of Housing Services, Mary Cattanach, reports that, in the entire statewide DSS-administered portion of the Section 8 program, foreclosing banks have assumed responsibility for a former owner's HAP contract in only three cases (attached at Appendix G-2).

We have no way to conclusively assess the extent of bank noncompliance with Section 703. As an initial matter, as explained above in the review of court pleadings, there is no way to know how many Section 8 tenants who live in properties in which foreclosures took place before May 20, 2009, have been deprived of their PTFA rights and were subjected to evictions without lease rights or 90-day notice. Moreover, we cannot know how many Section 8 tenants are in foreclosed buildings for which the foreclosing party has not taken over the existing lease and the HAP contract. New Haven Legal Assistance alone has worked with 19 Section 8 tenants in foreclosed properties.²¹ In not one of these cases has the bank signed a HAP contract with the Section 8 office.

²¹ This number includes the eight Section 8 tenant defendants mentioned previously. See infra p. 18. In addition, it includes tenants who do not yet have active court cases.

The requirement that a foreclosing party take over a HAP contract is critically important to tenants for two reasons: first, it identifies, for both the tenant and the Section 8 administering agency, the entity that is responsible for the upkeep and maintenance of the premises for the duration of the tenant's occupancy. Second, Section 8 program rules require that a tenant's account be "active," with the housing authority paying rent to a landlord. If no rent is paid on a tenant's behalf for more than 180 days, the HAP contract automatically terminates, in accordance with the program's regulation, 24 C.F.R. § 982.455. The bank's disregard of its legal obligation therefore has the effect of not only frustrating PTFA's mandate but also jeopardizing the tenant's Section 8 status. Although we have not yet seen a tenant face termination of a Section 8 subsidy from lack of a signed, active HAP contract, this is a real risk for Section 8 tenants.

Banks should therefore be required to comply with Section 703. Specifically, the banks should be told to take affirmative steps to identify Section 8 tenants in their foreclosed properties and contact the applicable housing authority to assume the responsibilities under the applicable Section 8 HAP contracts.

IV. NEITHER REAL ESTATE AGENTS NOR PTFA NOTICES INFORM TENANTS WHOM TO CONTACT FOR MAINTENANCE CONCERNS.

PTFA fundamentally alters the rights of tenants living in foreclosed properties by preempting the Connecticut common law principle that foreclosure extinguishes all leases between the former owner and the tenants of the properties. As a result of PTFA, tenancies now survive foreclosure, and foreclosing banks become landlords of all bona fide tenants for a minimum 90-day period, and even longer if the tenant has a written lease of a longer duration. This right for tenants to remain in the premises is only meaningful, however, if banks and real estates agents take responsibility for maintenance and upkeep of the property for the duration of

the tenant's PTFA rights, as the law requires. If not, tenants will move out due to maintenance issues, even if they have a federal right to remain.

Although state law has always made banks responsible for property maintenance after taking title for as long as tenants are still in occupancy,²² PTFA's federal prohibition against forcing tenants to vacate for 90 days or before the expiration of their leases effectively requires the banks to maintain the property during this federally mandated tenants protection period. Unfortunately, banks and their real estate agents are undermining PTFA rights to remain by continuing to follow their unlawful historical practice of failing to comply with state law requirements for property maintenance.

Our review of real estate agent notices, law firm notices, and contact with tenants has documented that most banks are failing to give tenants any information about whom to contact for maintenance, as required by Conn. Gen. Stat. § 47a-6 and the intent of PTFA. To the best of our knowledge, no real estate agent has provided maintenance contact information, and only two law firms (Bendett & McHugh and Marinosci Law Group) have agreed to do so for now after much negotiation with legal aid advocates. See Marinosci PTFA Notice dated 12/3/09 (attached as Appendix E-10). The banks seem to understand that, without assurance that maintenance needs will be addressed by the foreclosing banks, in accordance with their statutory obligations as landlords, tenants will move sooner rather than later.

It is critical that these banks and law firms be required to provide maintenance contact information to tenants in foreclosed properties. The failure to provide such critical information

²² Prior to the enactment of PTFA, foreclosing banks were responsible for all the obligations of a successor landlord under Conn. Gen. Stat. § 47a-7 and for the obligation to affirmatively notify tenants, at the time of taking title, of the person or entity to call for any maintenance needs as required by Conn. Gen. Stat. § 47a-6. Conn. Gen. Stat. § 47a-6(a)(1) requires written notice, "in the case of a successor at the time of such succession," of the name and address of "the person authorized to manage the premises." The manager of the premises is the person to contact for maintenance and repair.

not only violates state landlord-tenant law but critically undermines the ability of tenants to remain in the premises, as intended by PTFA.

V. CONCLUSION

This report documents widespread noncompliance with the requirements of the Protecting Tenants at Foreclosure Act. As discussed, real estate agents, acting for banks, present notices to “occupants” of foreclosed properties that improperly pressure these “occupants” to vacate without any explanation of their PTFA rights. Law firms send notices to vacate to these unidentified “John or Jane Doe” occupants that are barely comprehensible and contain misleading and inaccurate information regarding the recipients’ PTFA rights. Banks and their attorneys have filed dozens of summary process actions that explicitly violated PTFA’s requirements. These problems were found statewide and likely reflect a national pattern of noncompliance with PTFA.

As discussed, there have been some improvements in PTFA compliance. Most notably, a number of law firms have modified their PTFA notices to correct some egregious violations and are starting to plead and attach PTFA notices to summary process complaints, enabling the notices to be reviewed by the Court.

Serious, on-going problems, however, still remain. All banks, mortgage companies, servicers, real estate agents, and law firms doing business in the state of Connecticut should educate themselves about PTFA and comply in full with the law. Failure to do so is a violation of the Connecticut Unfair Trade Practices Act and should be stopped. We look forward to working with you to ensure that the mandates of PTFA, as well as related state laws, are followed and enforced to protect tenants, the innocent victims of the foreclosure crisis.

