

111TH CONGRESS  
1ST SESSION

# H. R. 1247

To protect the interests of bona fide tenants in the case of any foreclosure on any dwelling or residential real property, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 2, 2009

Mr. ELLISON (for himself, Ms. WATERS, Mr. CAPUANO, and Mrs. MCCARTHY of New York) introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To protect the interests of bona fide tenants in the case of any foreclosure on any dwelling or residential real property, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. EFFECT OF FORECLOSURE ON EXISTING TENANCY.**

7 (a) IN GENERAL.—In the case of any foreclosure on  
8 any dwelling or residential real property, any immediate

1 successor in interest in such property pursuant to the fore-  
2 closure shall assume such interest subject to—

3 (1) the provision, by such successor in interest,  
4 of a notice to vacate to any bona fide tenant at least  
5 90 days before the effective date of such notice; and

6 (2) the rights of any bona fide tenant, as of the  
7 date of such notice of foreclosure—

8 (A) under any bona fide lease entered into  
9 before the notice of foreclosure to occupy the  
10 premises until the end of the remaining term of  
11 the lease, except that a successor in interest  
12 may terminate a lease effective on the date of  
13 sale of the unit to a purchaser who will occupy  
14 the unit as a primary residence, subject to the  
15 receipt by the tenant of the 90 day notice under  
16 paragraph (1); or

17 (B) without a lease or with a lease ter-  
18 minable at will under State law, subject to the  
19 receipt by the tenant of the 90 day notice under  
20 subsection (1),

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

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

4 (1) the mortgagor under the contract is not the  
5 tenant;

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

8 (3) the lease or tenancy requires the receipt of  
9 rent that is not substantially less than fair market  
10 rent for the property.

11 **SEC. 3. EFFECT OF FORECLOSURE ON SECTION 8 TENAN-**  
12 **CIES.**

13 Paragraph (7) of section 8(o) of the United States  
14 Housing Act of 1937 (42 U.S.C. 1437f(o)(7)) is amend-  
15 ed—

16 (1) in subparagraph (C), by inserting before the  
17 semicolon at the end the following: “, and in the  
18 case of an owner who is an immediate successor in  
19 interest pursuant to foreclosure—

20 “(i) during the initial term of the ten-  
21 ant’s lease having the property vacant  
22 prior to sale shall not constitute good  
23 cause; and

24 “(ii) in subsequent lease terms, having  
25 the property vacant prior to sale may con-

1           stitute good cause if the property is un-  
2           marketable while occupied, or if such  
3           owner will occupy the unit as a primary  
4           residence”;

5           (2) in subparagraph (E), by striking “and” at  
6           the end;

7           (3) by redesignating subparagraph (F) as sub-  
8           paragraph (G); and

9           (4) by inserting after subparagraph (E) the fol-  
10          lowing:

11                   “(F) shall provide that in the case of any  
12                   foreclosure on any residential real property in  
13                   which a recipient of assistance under this sub-  
14                   section resides, the immediate successor in in-  
15                   terest in such property pursuant to the fore-  
16                   closure shall assume such interest subject to the  
17                   lease between the prior owner and the tenant  
18                   and to the housing assistance payments con-  
19                   tract between the prior owner and the public  
20                   housing agency for the occupied unit; if a public  
21                   housing agency is unable to make payments  
22                   under the contract to the immediate successor  
23                   in interest after foreclosure, due to action or in-  
24                   action by the successor in interest, including  
25                   the rejection of payments or the failure of the

1 successor to maintain the unit in compliance  
2 with paragraph (8) or an inability to identify  
3 the successor, the agency may use funds that  
4 would have been used to pay the rental amount  
5 on behalf of the family—

6 “(i) to pay for utilities that are the  
7 responsibility of the owner under the lease  
8 or applicable law, after taking reasonable  
9 steps to notify the owner that it intends to  
10 make payments to a utility provider in lieu  
11 of payments to the owner, except prior no-  
12 tification shall not be required in any case  
13 in which the unit will be or has been ren-  
14 dered uninhabitable due to the termination  
15 or threat of termination of service, in  
16 which case the public housing agency shall  
17 notify the owner within a reasonable time  
18 after making such payment; or

19 “(ii) for the family’s reasonable mov-  
20 ing costs, including security deposit costs;  
21 except that this subparagraph and the provi-  
22 sions related to foreclosure in subparagraph (C)  
23 shall not affect any State or local law that pro-

1           vides longer time periods or other additional  
2           protections for tenants.”.

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