

Preserving Section 8 tenancies after foreclosure

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Section 8 and Foreclosures

- **Study: 15% of Boston foreclosure filings impacted a Section 8 tenancy**

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- **Study: 15% of Boston foreclosure filings impacted a Section 8 tenancy**
- **Section 8 tenants can have more difficulty relocating**
- **Section 8 tenants often have more rights and greater ability to defend themselves against eviction**

The Massachusetts Strategy

- **Eviction Defense**
- **Legislation**
- **Alliance with Housing Authorities**
 - Program problem-solving
 - Outreach to Section 8 tenants

Preventing Termination of Section 8 Tenancies After Foreclosure

- Eviction Defense Strategy

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 1. **Arguing that Section 8 leases survive foreclosure**
 - a. **Preemption**

Preemption

“It is the Court’s conclusion that the notice and termination provisions of the Section 8 [Program] preempt the state common law rule that tenancies are automatically terminated by operation of law by foreclosure. The state common law rule, if applied to Section 8 tenancies, would impermissibly conflict with the termination and notice requirements of the Section 8 Program because it would stand as an obstacle to the accomplishment and execution of the congressional purpose of providing security of tenancy to Section 8 tenants.”

EMC Mortgage Corp. v. Smith, Boston Housing Court Summary Process Case No. 95-04794 (Winik, J., January 4, 1996)

Preemption: Section 8 Cases

Massachusetts:

EMC Mortgage Corp. v. Smith, Mass. Boston Housing Court Case No. 95-SP-04794 (Winik, J., January 4, 1996) (Section 8 notice and good cause termination rules pre-empt state law prescribing procedures for termination of tenancies upon foreclosure)

G.E. Capital Mortgage Service v. Dillard, Mass. Northeast Housing Court Case No. 96-SP-02565 (Kerman, J., May 23, 1997) (same)

Connecticut:

Webster Bank v. Occhipinti, 1998 WL 846105 (Conn. Super. Nov. 20, 1998) (same)

Bristol Savings Bank v. Savinelli, 1996 WL 166396 (Conn. Super. Mar. 21, 1996) (same)

But see Atl. Mortgage & Inv. Corp. v. Pervis, 1997 WL 866672 (Conn. Super. Dec. 3, 1997) (state law not preempted by Section 8 regulations)

New York:

See also German v. Federal Home Loan Mortgage Corp., 899 F. Supp. 1155 (S.D.N.Y. 1995) (Freddie Mac held to notice provisions of Section 8 lease that was binding on successors and assigns even though lease contained subordination clause and state law extinguished tenancy interests under subordinated leases)

Preemption: Related Case Law

Ayers v. Philadelphia Housing Auth., 908 F.2d 1192 (3rd Cir. 1990) (state statutes establishing procedures for evicting homeowners for failure to make mortgage payments are preempted by federal regulations applicable to homeowner eviction in HUD Turnkey III housing)

Fuzzell v. Rockford Housing Auth., 1993 WL 87720 (N.D. Ill. 1993) (state eviction law conflicts with and is preempted by federal regulations governing termination of Homebuyers Ownership Opportunity Agreement)

California Fed. Sav. & Loan Assn v. Guerra, 479 U.S. 272 (1987) (federal law prevails where there is an actual conflict with state law)

Hines v. Davidowitz, 312 U.S. 52 (1942) (federal law conflicts with state law where compliance with both is impossible and state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress”)

Hillsborough County, Fla. V. Automated Med. Labs., Inc., 471 U.S. 707, 708, 713 (1985) (federal regulations can preempt state law)

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- Eviction Defense Strategy
 1. **Arguing that Section 8 leases survive foreclosure**
 - a. **Preemption**
 - b. **Lease predating the mortgage**

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 1. **Arguing that Section 8 leases survive foreclosure**
 2. **Improper termination of the Section 8 lease**

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 - a. **Notice must specify grounds**

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 2. **Improper termination of the Section 8 lease**
 - a. **Notice must specify grounds**
 - b. **Notice must be served on PHA**

Preventing Termination of Section 8 Tenancies After Foreclosure

- **Eviction Defense Strategy**
 - 1. Arguing that Section 8 leases survive foreclosure**
 - 2. Improper termination of the Section 8 lease**
 - 3. Foreclosure is not “good cause” for terminating a Section 8 tenancy**

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 - 4. Rent claims**

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 - 4. Rent claims**
 - a. Tender with PHA information**

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 - 3. Foreclosure is not “good cause” for terminating a Section 8 tenancy**
 - 4. Rent claims**
 - a. Tender**
 - b. Discrimination defense re PHA portion**

Preventing Termination of Section 8 Tenancies After Foreclosure

- Eviction Defense Strategy
- Legislative Strategy

Legislation

Massachusetts General Laws Chapter 186, Section 13A:

Upon a foreclosure of residential real property pursuant to chapter 244, a tenant, occupying a dwelling unit under an unexpired term for years or a lease for a definite term in effect at the time of the foreclosure by sale, shall be deemed a tenant at will. ***Foreclosure shall not affect the tenancy agreement of a tenant whose rental payment is subsidized under state or federal law.***

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- Housing Authority Outreach

Housing Authority Outreach

- Affirmative measures to help affected tenants

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 - Letters to at-risk voucher holders

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- Affirmative measures to help affected tenants
 - Letters to at-risk voucher holders
 - Trained staff/information hotline
 - Joint outreach to other PHAs

Housing Authority Outreach

- Affirmative measures to help affected tenants
- Preserving participants' subsidies

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 - Vouchers should not be issued automatically upon foreclosure

Housing Authority Outreach

- Preserving participants' subsidies
 - Vouchers should not be issued upon foreclosure
 - Vouchers should not be issued because of banks' blanket policies on tenancies in REO properties

Preserving Subsidies

The Problem

Preventing eviction does not ensure that the bank will sign the Section 8 paperwork or accept the subsidy payments. Federal Law may require issuance of a voucher if no payments have been made for 6 months.

Preserving Subsidies

Possible Solutions

- Address Housing Authority practices on issuance of vouchers

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- Create alternatives to standard assignment forms to assuage banks' fears about Section 8 leases

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- Court-ordered participation (source of income discrimination jurisdictions)

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Possible Solutions

- Address Housing Authority practices on issuance of vouchers
- Create alternatives to standard assignment forms to assuage banks' fears about Section 8 leases
- Pay rent into escrow
- Court-ordered participation (source of income discrimination jurisdictions)
- Limited receiverships