

## Client Alert

Business Information for Clients and Friends of Shumaker, Loop & Kendrick, LLP

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New Florida Law Protecting Tenants in Foreclosure

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On June 2, 2015, Florida Governor Rick Scott signed into a law a new statute titled "Termination of rental agreement upon foreclosure," which became effective upon signing. The Florida law is similar to the federal Protecting Tenants at Foreclosure Act ("PTFA"), which expired in 2014. The Florida law provides that if a tenant is occupying residential property which sold at a foreclosure sale, then upon the issuance of the certificate of title following the sale, the purchaser at the foreclosure sale takes title to the property subject to the rights of a bona fide tenant, as defined by the statute. The tenant may remain in the property for 30 days after the purchaser delivers a written notice to the tenant stating that the rental agreement is terminated upon delivery of the notice, and the tenant's occupancy is terminated 30 days after delivery of the notice. However, these provisions do not apply where the "tenant" is not bona fide; that is, where the tenant is the mortgagor in the foreclosure action, or is the child, spouse or parent of the mortgagor. Similarly, the provisions do not apply if the tenant's rental agreement is not the result of an arms-length transaction, or if the rent is substantially less than fair market value (unless the rent is subsidized due to a federal, state or local subsidy). The notice can advise the tenant that he must pay rent during the 30 day period and deliver the rent payment to the purchaser. The notice must be delivered to the tenant as provided in the lease, or if no delivery method is specified, by mail, or, if the tenant is not on the property, by leaving a copy at the residence. The statute specifically provides that the purchaser does not assume any obligations of the landlord other than the payment of rent during this 30-day period, unless the purchaser assumes the prior lease or enters into a new lease agreement with the tenant.

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If the tenant does not vacate the property within 30 days after delivery of the notice, the purchaser may apply to the court for a writ of possession based on a sworn affidavit stating that the 30-day notice of termination was delivered to the tenant and the tenant has not vacated the premises. Once entered, the sheriff will post a notice on the property and will put the new owner in possession of the property 24 hours after the notice is posted. The new owner can then remove any of the tenant's personal property and change the locks. Based on our experience with the PTFA, we expect that judges may be reluctant to grant the purchaser a writ of possession unless the purchaser demonstrates that the notice is clear and provides all required information, and was actually delivered to the tenant.

Shumaker, Loop & Kendrick, LLP has a group of dedicated attorneys who assist financial institutions and other entities or individuals who purchase property at foreclosure sales with all foreclosure and post-foreclosure issues which may arise, including condominium and homeowners' association disputes, title defects, and compliance with the former PTFA and the new Florida statute described here. This group is the recent recipient of Corporate America magazine's Legal Elite Award for Best Post-Foreclosure Practice for Florida. Should you need assistance with any of these issues, please contact Adria Jensen (941-364-2739) or Meghan Serrano (941-364-2783) to discuss your needs.

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