

BANKING & FINANCIAL INSTITUTIONS ALERT

6/25/15

New Florida Law Regarding Post-Foreclosure Tenant Protections

By **Kimberly Davis Bocelli**

Lenders in Florida should take note of new statutory protections for residential tenants, which may delay the lender's ability to take possession following a foreclosure sale and effects a departure from common law. In the wake of the sunset of the federal Protecting Tenants at Foreclosure Act on December 31, 2014, the Florida Legislature passed its own scaled-down version of the Act in order to provide some protections to certain tenants following the foreclosure of their homes. The Florida Statute, codified within the Landlord and Tenant Act at Section 83.561, provides that the foreclosure sale purchaser takes title to the residential premises *subject to* the tenant's leasehold rights. The tenant may remain in possession of the premises until the new owner serves a 30-day notice of termination. During that time, the tenant is obligated to pay rent, and the new owner assumes certain obligations as a landlord. However, the statute does not apply where the tenant is the mortgagor or a close relative of the mortgagor or where the rental agreement is not the result of an arm's length transaction or is for substantially less than fair market rent.

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