



Homeownership Program Bulletin

October 05, 2010

Program Bulletin #2010-10

To: CalHFA-Approved Servicers

Rental Policy for CalHFA Loans

This Program Bulletin updates the Rental Policy in Section 12 of the Servicer's Guide, replacing Exhibit D-1 Borrower's Rental Affidavit. Attached are the Borrower's Rental Agreement (Exhibit D-1) dated September 22, 2010 and the CalHFA Lease Rider also dated September 22, 2010. These updated documents are effective with CalHFA-approved rental requests made on and after the date of this bulletin.

Servicers must provide the attached documents to borrowers requesting CalHFA approval of a rental arrangement on properties financed by CalHFA loans. Rentals are not permitted unless the borrower and CalHFA complete and execute the CalHFA Borrower's Rental Agreement, and the borrower and tenant complete and execute the CalHFA Lease Rider.

For questions about this bulletin, contact CalHFA Portfolio Management by phone 916.327.5170; by fax 916.449.5719; by email at PortfolioManagement@calhfa.ca.gov or visit CalHFA's web site www.calhfa.ca.gov for additional information.

Attachments: Exhibit D-1 Borrower's Rental Agreement and CalHFA Lease Rider

BORROWER’S RENTAL AGREEMENT

The persons signing this Borrower’s Rental Agreement (“Agreement”) are all of the borrowers (collectively “Borrower”) on a home loan made by _____, and assigned to the California Housing Finance Agency, (“CalHFA”). The home loan is CalHFA number _____ (the “Loan”).

1. Representations, Warranties and Acknowledgements

Borrower hereby makes all of the following representations, warranties, acknowledgements and covenants provided below:

a. The address of the residence financed with the proceeds of the mortgage Loan is located in the State of California, County of _____, at _____ (“Residence”).

b. The Borrower acknowledges that Loan is financed with the proceeds of tax exempt housing bonds, and is subject to federal rules relating to the use of such bond proceeds, including rules relating to first-time homebuyers. The terms of the Loan require the Borrower to occupy the Residence as their principal place of residence, and prohibit the rental of the Residence by Borrower.

c. Borrower has occupied the Residence as Borrower’s principal place of residence since the date of the Loan.

d. Borrower represents that the hardship that is the basis for the rental request is:

_____.

e. When Borrower purchased this Residence, Borrower did so with the intent to use the Residence as Borrowers principal place of residence, and not as an investment residence nor as a means of receiving any income from the Residence.

2. Conditional Consent of CalHFA to Rent

Borrower has requested that CalHFA permit Borrower to rent the Residence to tenants. In considering Borrower’s request, CalHFA has relied on each of the representations, warranties and acknowledgements made in this Affidavit. CalHFA is willing to permit Borrower to rent the Residence, subject to each of the terms of conditions contained in this Agreement. In the event that Borrower breaches the terms of this Agreement, the consent of CalHFA to permit such rental as contained in the Agreement shall cease, and CalHFA may enforce all of the terms and conditions of the Loan as originally made.

3. Terms of Permitted Lease

The rental of the Residence shall not be permitted unless the terms of the lease or rental agreement meet all of the following conditions:

a. Any lease or rental agreement with a tenant entered into by Borrower must contain the CalHFA Lease Rider attached hereto, fully signed by Borrower and all tenants of the Residence. Promptly upon entering into a lease or rental agreement, Borrower shall send CalHFA a fully signed copy of the lease or rental agreement, together with the signed CalHFA Lease Rider, at the following address:

California Housing Finance Agency
Attn: Portfolio Management
P.O. Box 4034 Mail Stop 320
Sacramento, California 95812-4034

- b. The term of any lease or rental agreement with a tenant shall not exceed 12 months.
- c. The terms and conditions of the Agreement shall be fully disclosed to any tenant by providing a copy of this Agreement to any such tenant.

4. Assignment of Rents

As additional security for the performance of Borrower's obligations under the Loan, including the obligation to make loan payments, Borrower grants CalHFA a security interest in all rents derived from the Residence. Borrower hereby absolutely, unconditionally and irrevocably assigns to CalHFA all rents, royalties, issues, accounts and profits of or relating to the Residence and all interests under all leases, subleases, rental agreements and other contracts and occupancy agreements relating to use and possession of the Residence. Notwithstanding the above, CalHFA confers upon the Borrower a license to collect and retain the rents, issues and profits of the Residence as they become due and payable. Upon the occurrence of any breach of this agreement, or Borrower's underlying agreements with CalHFA, this license shall be automatically revoked.

5. Commencement of Consent

The consent to rent will commence on the execution of this Agreement by both parties.

6. Termination of Consent

a. If Borrower rents the Residence in accordance with this Agreement, the consent to rent shall expire on the earlier of the early termination of the lease or rental agreement, or end of the stated term of the lease or rental agreement (which shall not exceed 12 months), whichever is shorter.

b. If Borrower does not rent the Residence as permitted herein, the consent to rent shall expire one year from the date of execution of this Agreement by Borrower.

Executed on the date or dates shown below:

Date: _____
Borrower's Signature

Date: _____
Borrower's Signature

Date: California Housing Finance Agency

By _____

Its _____

September 22, 2010

CALHFA LEASE RIDER

This CalHFA Lease Rider ("Lease Rider") shall be attached to any lease or rental agreement between _____, as owners ("Landlord") of the residence located at _____, California (the "Property"), and _____, ("Tenants"), and shall become part of the lease or rental agreement. The terms and conditions of the Rider shall supersede and override any terms or conditions of the lease or rental agreement that are inconsistent with the terms of this Rider.

1. Requirement of Rider

Landlord has financed the purchase of the Property with a loan ("Loan") held by the California Housing Finance Agency ("CalHFA"). The Loan was financed with the proceeds of tax exempt housing bonds for the benefit of first time homebuyers, and is subject to all federal rules and requirements related to the use of such tax exempt bond proceeds. The terms of the Loan prohibit Landlord from renting the Property to tenants. Landlord has requested that CalHFA grant permission to landlord to rent the Property to Tenants. CalHFA and landlord have entered in to a Borrower Rental Agreement ("Borrower Agreement"), a copy of which has been provided by Landlord to Tenant. The Borrower Agreement contains the terms and conditions upon which Landlord is given permission to rent the Property to Tenant, and further requires that Landlord and tenant sign this Lease Rider. CalHFA does not grant permission to rent the Property unless this Lease Rider is signed. If permission to rent is not granted by CalHFA, the Property may become subject to foreclosure, and tenant's rights to occupy the Property may be affected or terminated, as provided in Section 3, below.

2. Lease Terms

Notwithstanding any inconsistent provision in the lease or rental agreement between Landlord and tenant concerning the Property, Landlord and Tenant agree that all of the following terms, for the benefit of CalHFA, shall be applicable:

- a. The term of the lease or rental agreement may not exceed 12 months.
- b. The term of the lease or rental agreement may be terminated early by CalHFA upon foreclosure to the extent permitted by applicable law, including the Protecting Tenants At Foreclosure Act, as described in Section 3, below.
- c. The consent to rent the Property may be terminated upon a breach of the Borrower Agreement.
- d. The Borrower Agreement contains an assignment of rents as additional security to CalHFA for the Loan. In the event that Landlord defaults on any provision of the Loan, upon written notice to tenant by CalHFA, Tenant will make rental payments directly to CalHFA in accordance with the terms of the notice, and to the extent so made, shall be in satisfaction of Tenant's obligations to pay rent under the lease or rental agreement.

3. Protecting Tenants At Foreclosure Act

Federal law currently provides certain protections for tenants when their landlord loses the rental property upon foreclosure, to the extent that the landlord's loan is covered by that law. Those protections include certain notice provisions, as well as provisions that may require the lender to recognize the tenancy and not evict the tenant. The law is entitled the "Protecting Tenants At Foreclosure Act of 2009" ("Act") however, the Act also contains certain exclusions and exceptions. One of the purposes of this Lease Rider is to insure that the tenant understands that their lease or rental agreement is subject to those exclusions and exceptions provided by federal law. Tenant acknowledges the following:

- a. The Act applies only to the extent that its terms legally apply to the Loan made to Landlord, or to the tenancy created between Landlord and Tenant.
- b. The Act applies only to "bona fide leases or tenancies" entered into prior to the notice of foreclosure, as those are defined in the Act. 'Bona fide leases' do not include leases or rental agreements

(i) which are between family members; or (ii) which are not “arm’s length” transactions; or (iii) which contain rent terms which are substantially below fair market value; or (iv) which are subsidized due to a state, federal or local subsidy. The Act may not be applicable in the event the lease or rental agreement is determined not to be a bona fide lease or tenancy.

c. The Act applies only if the Loan is determined to be a “federally related mortgage loan”. The Act may not apply in the event that the Loan for the Property is determined not to be such a federally related mortgage loan.

d. In the event that the Act does apply to the Loan or the tenancy, there are circumstances in which the tenancy may be terminated early after a foreclosure by a lender. The Act provides that the Tenant’s lease or rental agreement may be terminated early in the event that a foreclosing lender sells their interest in the property to a purchaser who will occupy the property as their primary residence. A month to month rental agreement may also be terminated under the Act by giving the legally required notice.

4. Other Provisions

a. This Lease Rider is not intended to constitute legal advice, but is simply a disclosure to Tenant that the terms of the lease or rental agreement may be terminated upon foreclosure in certain circumstances, and further reflects the agreement by Tenant that the lease or rental agreement is subject to such permitted termination. In the event that tenant wants advice or additional information, they should consult their legal adviser.

b. CalHFA shall be a third party beneficiary of this Lease Rider between landlord and tenant. A copy of the fully signed lease or rental agreement, as well this fully signed Lease Rider, must be provided to CalHFA at the following address:

California Housing Finance Agency
Attn: Portfolio Management
P.O. Box 4034 Mail Stop 320
Sacramento, California 95812-4034

Dated: _____
_____ Landlord

Dated: _____
_____ Tenant

Dated: _____
_____ Tenant