

Texas Neighborhood Stabilization Program

Questionnaire on Compliance with Protecting Tenants at Foreclosure Requirements

To be completed and retained in file - if the Seller is unwilling to provide certification of compliance

1. On _____, _____ became the Initial Successor in Interest (ISII) pursuant to a foreclosure on residential property located at: _____
(If date is before 02/17/09, Tenant Protections do not apply.)

2. Date of Notice of Foreclosure (Notice of Sale): _____
(If the ISII is not able to provide the Notice, assume 21 days prior to the first Tuesday of the month before the Foreclosure Sale)

On or after the date of Notice of Foreclosure (Notice of Sale), was the property occupied?
Yes No
Basis for determination: _____
(If property was NOT occupied, Tenant Protections do not apply. If the property was occupied, continue.)

3. If the property was occupied, is the lease or tenancy "bona fide"?

A. The occupant was the former mortgagor? Yes No

Basis for determination: _____

(If occupant WAS the former mortgagor, stop here. Tenant Protections do NOT apply.)

B. The occupant was a tenant (that was NOT the former mortgagor)

Yes No

Basis for determination: _____

C. Was lease or tenancy the result of an arms-length transaction?

Yes No

Basis for determination: _____

D. Was the rent required in an amount that is not substantially less than fair market rent for the property? Yes No

Basis for determination: _____

(If ANY answer to B-D is NO, Tenant Protections do NOT apply.)
(If ALL answers to B-D are YES, you have a bona fide tenant. Continue.)

4. Was the tenant occupying the property under a lease in effect **as of the date of Notice of Sale**? Yes No
(If YES, proceed to #6. If NO, proceed, below.)

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5. Was the lease or tenancy effective (did it begin) after the date of Notice of Sale?

Yes No

(If YES, proceed to #7. If NO, Tenant Protections do not apply.)

6. If the property was occupied under a “bona fide” lease or tenancy effective as of the date of the Notice of Sale, what was the remaining term? (end date)

A. Has tenant vacated the property? Yes No

Date tenant moved:

B. Did the ISII allow the tenant to stay until the end of the lease term?

Yes No Unknown

Basis for determination:

C. Did the ISII provide at least 90 days notice to move?

Yes No Unknown

When did/will that 90-day notice expire?

Basis for determination:

E. Based on these facts, did ISII comply with NSP tenant protection requirements?

Yes No Unknown

F. If the ISII did not comply and the tenant is still in occupancy will the grantee assume this responsibility? Yes No

(If the any answer to questions B-E is “no” or “unknown” – the Buyer assumes responsibility at purchase)

7. If the property was occupied under a “bona fide” lease or tenancy effective after the date of notice of foreclosure, without a lease, or under lease terminable at will:

A. Has tenant vacated the property? Yes No

Date tenant moved:

B. Did the ISII provide at least 90 days notice to move?

Yes No Unknown

When did/will that 90-day notice expire?

Basis for determination:

D. Based on these facts, did ISII comply with NSP tenant protection requirements?

Yes No

D. If the ISII did not comply and the tenant is still in occupancy will the grantee assume this responsibility? Yes No

(If the any answer to questions B-E is “no” or “unknown” – the Buyer assumes responsibility at purchase)

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Property Address:

Buyer:

Signature

Date

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Instructions for Completion
Questionnaire on Compliance with NSP Tenant Protection Requirements

1. Complete with date of Trustee's Deed for property and Seller name. If the Seller is not the Initial Successor in Interest (ISII), contact the NSP Program Specialist immediately to confirm eligibility of the property for NSP funding.
2. Complete with the date of the Notice of Sale for mortgage foreclosures, or the Judgment Date for tax foreclosures. If the ISII is not able to provide the date for the Notice of Sale and it is not accessible in public record, assume that it was sent 21 days prior to the first Tuesday for the month previous to the Trustee's Deed.

For example:

Trustee's Deed recorded date	August 7, 2009
Foreclosure Sale (1 st Tuesday)	August 5, 2009
1 st Tuesday of previous month	July 7, 2009
21 days prior	June 16, 2009

Indicate if the property was occupied on the date of the Notice of Sale, and enter the basis for determination.

Acceptable evidence of occupancy status includes:

Utility or land-line telephone records
 Law Enforcement/Code Enforcement/Postal or School records
 Statement/Affidavit from the former mortgagor or tenant

If the property was not occupied on the date of the Notice of Sale, Tenant Protections do not apply – you may proceed with the purchase.

If the property was occupied or the status is unknown, a determination must be made regarding the identity and interest of the tenant.

3. Determination of nature of tenancy
 - A. If the occupant of the property on the date of the Notice of Sale was the mortgagor or a member of their immediate family – check “yes” and enter the basis for the determination.

Acceptable evidence of occupancy status includes:

Utility or land-line telephone records
 Law Enforcement/Code Enforcement/Postal or School records
 Statement/Affidavit from the former mortgagor
 Homestead Exemption on property on date of Notice of Sale

(if the property did NOT have a Homestead Exemption – assume it was occupied by a tenant)

If the occupant was a tenant, complete the questionnaire

- B. If the occupant was not the former mortgagor, assume they were a tenant unless there is clear evidence to the contrary.
 - C. If the lease was NOT the result of an arms-length transaction (between unrelated parties on the open market), check “no” and indicate the basis for the determination

Acceptable evidence of occupancy status includes:

Law Enforcement/Code Enforcement/Postal or School records
 Statement/Affidavit from the former mortgagor or tenant

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Public Record indicating familial relationship to mortgagor
If you are not able to document that the lease was not the result of an arms-length transaction, assume that it was and check “yes”.

D. Determine if the tenant rent for the property was at fair market

Acceptable evidence that rent was at fair market rate

Copy of Tenant Lease

Tenant or Mortgagor Affidavit

Statement from Section 8 Voucher or other rental subsidy provider

If you are not able to document that the rent was at market-rate, assume that it was and check “yes”.

4 & 5. Determination of the tenancy date

If evidence of the initial tenancy (date lease began) is not available, assume that it was effective prior to the date of the Notice of Sale.

Acceptable evidence of tenancy date

Copy of Tenant Lease

Tenant or Mortgagor Affidavit

Statement from Section 8 Voucher or other rental subsidy provider

6 & 7. Determination of ISII compliance with tenant protection requirements

If clear evidence of compliance is not available, assume that the ISII did **not** comply with the requirements of the Act. In purchasing the property without evidence of compliance, the Buyer assumes this responsibility.

Acceptable evidence of tenancy date

Copy of Tenant Lease and all Notices

Tenant or Mortgagor Affidavit

Statement from Section 8 Voucher or other rental subsidy provider