

Protecting Tenants at Foreclosure

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Administering Agency: The Protecting Tenants at Foreclosure Act (PTFA) is self-executing; no agency is responsible for administering the act.

Year Started: 2009

Population Targeted: Renters

A permanent extension of the “Protecting Tenants at Foreclosure Act” (PTFA) was signed into law in May 2018. The PTFA, which was enacted in 2009 but expired at the end of 2014, is the only federal protection for renters living in foreclosed properties.

Unlike homeowners who have some indication that a foreclosure is coming, renters are often caught entirely off guard. Before the permanent extension, renters, who often have no idea that their landlords are behind on mortgage payments, could be evicted with just a few days’ notice in most states.

The PTFA enables renters whose homes were in foreclosure to remain in their homes for at least 90 days or for the term of their lease, whichever is greater. The PTFA now applies in all states but does not override more protective state laws.

In the 115th Congress, Representative Keith Ellison (D-MN) and Senator Richard Blumenthal (D-CT) introduced legislation to remove the 2014 sunset date and make the law permanent. Congress eventually passed the PTFA as part of a larger deregulation bill (S. 2155) that became Public Law No. 115-174.

HISTORY AND PURPOSE

During the financial crisis, inappropriate lending, falling home prices, and high unemployment led to a very high number of foreclosures across the U.S. However, the impact of these foreclosures was not limited to homeowners; renters lost their homes every day when the owner of the home they were renting went into foreclosure.

In fact, one in five properties in the foreclosure process was a rental. Further, research from NLIHC concluded that since these properties often contained more than one unit, and many owner-occupied properties also housed renters, roughly 40% of the families that faced eviction as a result of the foreclosure crisis were renters. As expected, very low-income families and low-income and minority communities bore the brunt of rental foreclosures.

Prior to May 2009, protections for renters in foreclosed properties varied from state to state and in most states, tenants had few protections. The National Law Center on Homelessness & Poverty (NLCHP) and NLIHC issued a joint report on the foreclosure and eviction laws in each state and the District of Columbia.

Recognizing the hardships experienced by tenants in foreclosed properties, Congress acted in early 2009 to provide a basic set of rights for such tenants. On May 20, 2009, President Obama signed PTFA into law (Public Law 111-22, division A, title VII). The PTFA was extended and clarified in the “Dodd-Frank Wall Street Reform and Consumer Protection Act” (Public Law 111-203, section 1484). The law expired on December 31, 2014 but was then made permanent by Congress in May 2018.

ISSUE

The PTFA requires the immediate successor in interest at foreclosure to provide *bona fide* tenants with notice 90 days before requiring them to vacate the property and allows tenants with leases to occupy the property until the end of the lease term. A *bona fide* lease or tenancy is defined as one in which: the tenant is neither the mortgagor, nor the spouse, parent, or child of the mortgagor; the lease or tenancy is the result of an arm’s length transaction; and, the lease or tenancy requires rent that is not substantially lower than fair market rent, or is reduced or subsidized due to a federal, state, or local subsidy. If the property is purchased by

someone who will occupy the property, then that purchaser can terminate the lease on 90 days' notice, even when the tenant has a lease that extends beyond 90 days after foreclosure.

Under PTFA, tenants with Section 8 Housing Choice Voucher assistance have additional protections allowing them to retain their Section 8 lease and requiring the successor in interest to assume the housing assistance payment contract associated with that lease.

The PTFA applies to all foreclosures on all residential properties and traditional one-unit single family homes were covered, as were multi-unit properties. The law applies in cases of both judicial and nonjudicial foreclosures. Tenants with lease rights of any kind, including month-to-month leases or leases terminable at will, are protected as long as the tenancy was in effect as of the date of transfer of title at foreclosure.

The 90-day notice to vacate can only be given by the successor in interest at foreclosure. The successor in interest is whoever acquires title to the property at the end of the foreclosure

process. It can be the financial institution that holds the mortgage, or it can be an individual who purchased the property at foreclosure. Notices of the pending foreclosure, although desirable, do not serve as the 90-day notice required by the PTFA.

The PTFA applies in all states but does not override more protective state laws. The PTFA specifically provides that it does not affect “any [s]tate or local law that provides longer time periods or other additional protections for tenants.” Consequently, state law should be examined whenever there is a tenant in a foreclosed property to maximize the protections available to tenants.

FOR MORE INFORMATION

NLIHC, 202-662-1530, <https://nlihc.org>.

Renters in Foreclosure: A Fresh Look at an Ongoing Problem, from NLIHC, <https://nlihc.org>.

See NHLP's chart of state and local laws, <http://nhlp.org/node/1341>.

NLCHP, <http://www.nlchp.org/>.