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 program started: 2009

Year program sunset: 2014

Population targeted: Renters

With the expiration of federal protections on December 31, 2014, state and local law now comprise the only protections for renters facing foreclosure.

As the foreclosure crisis took hold, experience and research have revealed that rental properties and renters are at significant risk, with renters comprising 40% of the families affected by foreclosure. These families often have no idea that their landlord has fallen behind on mortgage payments, and have usually continued to pay their rent even as their landlord has failed to pay the mortgage.

Before the enactment of PTFA in May 2009, in most states it was legal for tenants to be required to move on only a few days' notice. Under the PTFA, most tenants had the right to remain in their home for the remainder of their lease, or at least 90 days.

Efforts from Representative Keith Ellison (D-MN) (H.R. 1354) and Senator Richard Blumenthal (D-CT) (S. 730) to remove the 2014 sunset date and make the law permanent met with Republican opposition and the law was not extended. The bills would also have added a private right of action to the law as an enforcement mechanism.

In addition to these stand-alone bills to restore and make permanent the PTFA, Senate Committee on Banking, Housing, and Urban Affairs Ranking Member Sherrod Brown (D-OH) and House Committee on Financial Services Ranking Member Maxine Waters (D-CA) have also introduced S. 1491 and H.R. 2642, the "Community Lender Regulatory Relief and Consumer Protection Act of 2015," in their respective chambers. Among the bills' provisions is one that would restore PTFA and make it permanent.

HISTORY AND PURPOSE

In recent years, inappropriate lending, falling home prices, and high unemployment have led to a very high number of foreclosures across the U.S. However, the impact of these foreclosures is not limited to homeowners; renters lose their homes every day when the owner of the home they are renting goes into foreclosure. In fact, one in five properties in the foreclosure process is likely to be a rental. Further, research from NLIHC concludes that, since these properties often contain more than one unit, and many owner-occupied properties also house renters, roughly 40% of the families facing eviction as a result of the foreclosure crisis are renters. Unlike homeowners, who have some indication that a foreclosure is coming, renters are often caught entirely off guard.

As might be expected, very low income families and low income and minority communities are bearing the brunt of rental foreclosures. Analysis from NLIHC shows that for four states in New England, the census tracts with the lowest percentage of white individuals and the highest percentage of households that are under the poverty line have the highest foreclosure rates. Multifamily foreclosures, which more often than not impact at least some renters, also occur in these high-poverty, high-minority census tracts.

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 (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.

ISSUE SUMMARY

The PTFA required the immediate successor in interest at foreclosure to provide bona fide tenants with a 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 was 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 was 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 had additional protections, which allowed them to retain their Section 8 lease, and required the successor in interest to assume the housing assistance payment contract associated with that lease.

The PTFA applied to all foreclosures on all residential properties; traditional one-unit single family homes were covered, as were multi-unit properties. The law applied in cases of both judicial and non-judicial foreclosures. Tenants with lease rights of any kind, including month-to-month leases or leases terminable at will, were 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 could 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 could be the financial institution that held the mortgage or it could be an individual who purchased the property at foreclosure. Notices of the pending foreclosure, although desirable, did not serve as the 90-day notice required by the PTFA.

The PTFA applied in all states, but did not override more protective state laws. The PTFA specifically provided 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.

State and local law now comprise the only protections for renters facing foreclosure.

FORECAST

Advocates, led by the National Housing Law Project (NHLP), NLCHP, and NLIHC, will continue to work with PTFA champions in Congress, Senator Blumenthal and Representative Ellison, to resume and extend PTFA protections in 2016.

TIPS FOR LOCAL SUCCESS

State and local laws are critical to protecting renters facing foreclosures with the expiration of the PTFA. NHLP has compiled state and local PTFA-like protections. Passing such protections in more states and localities will require working with a variety of housing stakeholders, including banks and real estate professionals. See NHLP's chart, at http://nhlp.org/node/1341

WHAT TO SAY TO LEGISLATORS

Urge lawmakers to support, resume, and extend PTFA protections for renters facing foreclosure.

FOR MORE INFORMATION

NLIHC, 202-662-1530, www.nlihc.org

Renters in Foreclosure: A Fresh Look at an Ongoing Problem, from NLIHC, http://nlihc.org/library/other/periodic/rif2012

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

NLCHP, http://www.nlchp.org/ ■