

Protecting Tenants at Foreclosure Act

President Obama signed the Protecting Tenants at Foreclosure Act on May 20, 2009. The act includes a nationwide 90 day pre-eviction notice requirement for tenants in foreclosed properties. The provisions of the bill were effective on enactment.

Specifically, the PTFA requires that the immediate successor in interest at foreclosure

- provide bona fide tenants with 90 days notice prior to eviction and
- allow bona fide tenants with leases to occupy the property until the end of the lease term except the lease can be terminated on 90 days notice if the unit is sold to a purchaser who will occupy the property.

A bona fide lease or tenancy is one where the tenant is not the mortgagor or a member of the mortgagor's family, the lease or tenancy is the result of an arms 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. The protections of the act apply to all tenancies and leases entered into before transfer of title at foreclosure..

For section 8 tenants, the new law provides that in the case of an owner who is an immediate successor in interest pursuant to foreclosure vacating the property prior to sale shall not constitute other good cause for terminating a lease or tenancy, except that the owner may terminate the tenancy effective on the date of transfer of the unit to the owner if the owner (i) will occupy the unit as a primary residence and (ii) has provided the tenant a notice to vacate at least 90 days before the effective date of such notice. In addition, in the case of any foreclosure on any property in which a recipient of section 8 assistance resides, the immediate successor in interest in such property pursuant to the foreclosure assumes such interest subject to the lease between the prior owner and the tenant and to the housing assistance payments contract between the prior owner and the public housing agency for the occupied unit.

None of these provisions preempt more protective state and local laws and all of these provisions expire at the end of 2014.

Public Law 111-22, (May 20, 2009)

TITLE VII--PROTECTING TENANTS AT FORECLOSURE ACT (PTFA)¹

SEC. 701. SHORT TITLE.

This title may be cited as the 'Protecting Tenants at Foreclosure Act of 2009'.

SEC. 702. EFFECT OF FORECLOSURE ON PREEXISTING TENANCY.

(a) In General- In the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property after the date of enactment of this title, any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to--

(1) the provision, by such successor in interest of a notice to vacate to any bona fide tenant at least 90 days before the effective date of such notice; and

(2) the rights of any bona fide tenant--

(A) under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90 day notice under paragraph (1); or

(B) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90 day notice under subsection (1),

except that nothing under this section shall affect the requirements for termination of any Federal- or State-subsidized tenancy or of any State or local law that provides longer time periods or other additional protections for tenants.

(b) Bona Fide Lease or Tenancy- For purposes of this section, a lease or tenancy shall be considered bona fide only if--

(1) the mortgagor or the child, spouse, or parent of the mortgagor under the contract is not the tenant;

(2) the lease or tenancy was the result of an arms-length transaction; and

(3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a Federal, State, or local subsidy.

(c) Definition- For purposes of this section, the term 'federally-related mortgage loan' has the same meaning as in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602). For purposes of this section, the date of a notice of foreclosure shall be deemed to be the date on which complete title to a property is transferred to a successor entity or person as a result of an order of a court or pursuant to provisions in a mortgage, deed of trust, or security deed.

SEC. 703. EFFECT OF FORECLOSURE ON SECTION 8 TENANCIES.

Section 8(o)(7) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(7)) is amended--

(1) by inserting before the semicolon in subparagraph (C) the following: 'and in the case of an owner who is an immediate successor in interest pursuant to foreclosure during the term of the lease vacating the property prior to sale shall not constitute other good cause, except that the owner may terminate the tenancy effective on the date of transfer of the unit to the owner if the owner--

(i) will occupy the unit as a primary residence; and

(ii) has provided the tenant a notice to vacate at least 90 days before the effective date of such notice.'; and

(2) by inserting at the end of subparagraph (F) the following: 'In the case of any foreclosure on any federally-related mortgage loan (as that term is defined in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602)) or on any residential real property in which a recipient of assistance under this subsection resides, the immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to the lease between the prior owner and the tenant and to the housing assistance payments contract between the prior owner and the public housing agency for the occupied unit, except that this provision and the provisions related to foreclosure in subparagraph

¹ The PTFA was clarified and extended in section 1484 of P.L. 111-203 (July 21, 2010).

(C) shall not shall not affect any State or local law that provides longer time periods or other additional protections for tenants.

SEC. 704. SUNSET.

This title, and any amendments made by this title are repealed, and the requirements under this title shall terminate, on December 31, 2014.