

Your Rights Under the Protecting Tenants at Foreclosure Act

Are you a renting a house that is in foreclosure or has been foreclosed?

Under the Protecting Tenants at Foreclosure Act (PTFA) a new owner needs to end your tenancy by giving you a 90-day notice to leave. If you have an unexpired lease, you may be able to stay until the end of the lease unless the **new owner will live in the property**. In that case, you can be required to leave after the new owner gives the 90-day notice.

It does not matter if your lease is **written, oral or is month to month**, so long as the lease is one that is recognized by of your state.

The PTFA **protects any legitimate rental arrangement created before title to your home changed as a result of the foreclosure**.

The 90 day period **begins** when the person or entity that acquires the title to your home provides you with the required notice. The **form of the notice** is defined by local law.

There are some limits on the tenants that can be protected under the PTFA.

- The **former owner of the property, and that former owner's spouse, children and parents** are not protected by the PTFA.
- The rent paid by the tenant cannot be **substantially less** than that paid for similar properties in the area, unless the rent is reduced because of a federal or state rent subsidy.
- The lease or rental arrangement must be an **arm's length transaction** which means that rental terms that are outside the ordinary, such as long contracts, pre-paid rents, etc., may be subject to additional scrutiny.

What if I am a Section 8 housing choice voucher holder?

If you are renting your home using a Section 8 voucher, you also have the right to remain in your home and the new owner must accept the Section 8 payment. If you have a Section 8 voucher you should contact the agency that issued your voucher for more information.

What can I do if the new owner says I have to leave in less than 90 days?

You can send a letter telling the new owner about the law. Make sure that you keep a copy of the letter you send and it may help to go to the post office and pay for a return receipt to make the new owner sign to prove they got your letter. If you get a return receipt, be sure to keep the green receipt signed by the new owner. You should also offer to pay the new owner your rent.

What if the new owner files an eviction?

You should file an answer with the court that says the new owner failed to give the notice required by the Protecting Tenants at Foreclosure Act, Pub. L. No. 111-22, §702 (2009) and go to court on the date the court sets for a trial. You should take to court the copy of your letter to the new owner, the green return receipt, if you received one, a copy of your lease, if you have one, and a copy of the law that is on the back of this brochure.

Because the protections of the PTFA will differ with the laws of the applicable state and locality and individual facts, it is very important that you seek legal advice.

For more information go to www.nlihc.org or contact:

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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 (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.

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