

Protecting Tenants at Foreclosure

By Kimberly Johnson, Policy Analyst,
NLIHC

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 living in a foreclosed building

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 not typically aware that their landlords are behind on mortgage payments and are often caught entirely off guard by a foreclosure. Before the permanent extension, renters in most states could be evicted with just a few days’ notice.

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 when the owner of the home they

were renting went into foreclosure. In fact, one in five properties in the process of foreclosure was a rental. Research from NLIHC concluded that because 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 Black and Latino communities bore the brunt of rental foreclosures.

Before May 2009, protections for renters in foreclosed properties varied from state to state and in most states, tenants had few protections. Recognizing the hardships experienced by tenants in foreclosed properties, in early 2009 Congress acted 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 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 with 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

Visit NLIHC’s website at www.nlihc.org or call 202-662-1530.

Renters in Foreclosure: A Fresh Look at an Ongoing Problem, from NLIHC, <https://bit.ly/2rpeHEm>.

See NHLP’s chart of state and local laws, <https://bit.ly/35CWnWZ>.

Visit NLCHP’s website at www.nlchp.org.

Protecting Tenants at Foreclosure Act: Revised Comptroller’s Handbook Booklet and Rescissions, Version 1.0, March 2020, <https://bit.ly/35XvPmh>.