

NATIONAL LAW CENTER
ON HOMELESSNESS & POVERTY

*Protecting Tenants in the
Foreclosure Crisis:
Working With Constituents*

Webinar
December 14, 2011
2:00 EST

Welcome & Introductions

**Carrie Johnson & Rebecca Lucero,
Office of Congressman Keith Ellison
(Minnesota's 5th District)**



**Genevieve Gaboriault, Staff Attorney
Legal Aid Society of Minneapolis**

**Sham Manglik, Policy Analyst
National Low Income Housing Coalition**



**NATIONAL LOW INCOME
HOUSING COALITION**

**Geraldine Doetzer, Housing Attorney
National Law Center on
Homelessness & Poverty**

**NATIONAL LAW CENTER
ON HOMELESSNESS & POVERTY**

Role of District Office Staff

- **Providing first line of response for constituent tenants**
- **Initial analysis of constituent issues**
- **Referrals to targeted community resources**
 - **Housing counselors**
 - **Legal services**
 - **National advocacy groups (Law Center, NLIHC)**

H.R. 3619: Permanently Protecting Tenants at Foreclosure Act of 2011

- Introduced by Reps. Ellison and Stark on December 8, 2011
- Makes the federal Protecting Tenants at Foreclosure Act permanent
- Provides a private right of action for tenants whose PTFA rights are violated

Renters in the Foreclosure Crisis: Before PTFA



- Before 2009, renters living in foreclosed properties were protected only by the laws of their states
- Tenants could be legally evicted with as little as 3 days' notice

The Protecting Tenants at Foreclosure Act

- In 2009, President Obama signed the **Protecting Tenants at Foreclosure Act (PTFA)**
 - *Public Law 111-22, Sections 701-704*
 - *Amended by the Dodd-Frank Act in July 2010*
 - *Sunsets on December 31, 2014*
- The law protects bona fide tenants living in foreclosed properties

Who's Who in PTFA?

- Bona fide tenant
 - Tenant residing in foreclosed property
 - Not the spouse, child, or parent of mortgagor
 - Lease was “arms-length” transaction
 - Rent is not substantially less than FMV
- No written lease requirement!



Who's Who in PTFA?

- Successor in interest
 - New owner of a property after foreclosure
 - Often a bank
- *Agents of the successor in interest often include:*
 - *Bank employees*
 - *Attorneys*
 - *Real estate agents*



What does PTFA require?

PTFA guarantees bona fide tenants the right to at least 90 days' notice



What does PTFA require?



- If the bona fide tenant has a lease with more than 90 days left:
 - Right to remain in her home until the end of the lease period if lease was signed before foreclosure
 - **UNLESS:** the successor in interest plans to occupy the home as her primarily residence
 - **If** the lease is terminable at will under state law, Tenant must still receive 90 days' notice

Section 8 Tenants

- Section 8 tenants are bona fide tenants
- Eviction notices must go to the housing authority and the tenant
- Both the Section 8 lease and the Housing Assistance Payment (HAP) contract survive the foreclosure
 - **UNLESS:** the successor in interest plans to occupy the home as her primary residence



Dodd-Frank Act Changes



- PTFA was extended and clarified as part of the Dodd–Frank Wall Street Reform and Consumer Protection Act
 - New sunset: December 31, 2014
 - “date of a notice of foreclosure” is defined as the date of complete title transfer

Renters in the Foreclosure Crisis: Who Are They?



The Low Income Housing Coalition and the National Law Center on Homelessness & Poverty have both surveyed tenants and advocates to learn more about the experiences of tenants living in foreclosed properties.

Renters in Foreclosure: Who Are They?

- According to NLIHC's research, renters make up roughly 40% of families living in properties being foreclosed on.
- Very low income families and low income and minority communities are bearing the brunt of rental foreclosures.

NLIHC 2011 Survey Results

- Surveyed counselors and lawyers
- 58.6% of counselors have seen an increase in the number of renters seeking assistance in last year.
- Only 6.9% of counselors said that tenants had accurate knowledge of the PTFA.
- 88.7% of lawyers who used PTFA said it has helped to halt an eviction.

NLIHC Survey Results Continued

- Other frequently cited benefits of the PTFA:
 - Provided more time for clients
 - Helped provide leverage for clients to negotiate for things like cash for keys agreements
 - Helped clients extract relocation assistance

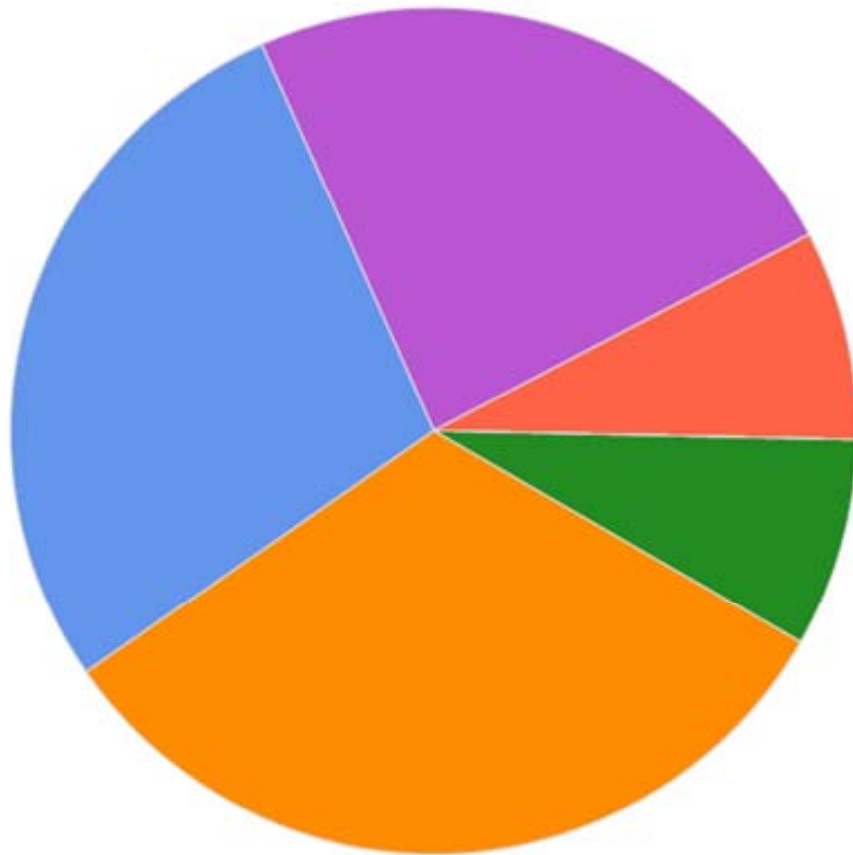
NLCHP Survey Results

Based on the data the Law Center has collected so far, the typical renter in a foreclosed property:

- 1.) Lives in a single-family home**
- 2.) Has a written lease**
- 3.) Does not receive housing assistance**
- 4.) Is likely to be a person of color**

Renters in Foreclosure: Who Are They?

How many of the people that live with you are children aged 18 or younger?



Multiplier Effect:

**8 out of 10 are
households of at least
3 people**



**7 out of 10
households have at
least one child**

Major Issues for Renters

#1: Miscommunication!

90% of advocates surveyed list lack of communication from former landlords as a major problem for tenants

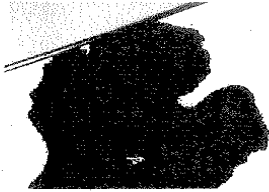


Major Issues for Renters

#2: Confusing, Inaccurate, or Illegal Notices!

75% of advocates surveyed had worked with clients who received bad notices—typically from the realtors or lawyers hired by large financial institutions to handle the property

Bad Notice: Michigan



All-Pro
PROPERTY
MANAGEMENT
www.allprorentsjackson.com

All-Pro Realty & Property Management
4030 Lansing Avenue Jackson, MI 49202
Office: 517-782-home (4663) Fax: 517-782-0177

IMPORTANT NOTICE – PLEASE READ

Wednesday, May 18, 2011

[Redacted]
Jackson, MI 49202

Dear [Redacted]:

Due to the pending foreclosure, we regret to inform you that the bank has told the landlord that they want **all tenants moved out at [Redacted] by June 30, 2011**. The bank is taking possession on June 30, 2011. Your lease will be terminated prematurely with no penalties.

We prefer to keep you as a tenant. If you want to move with All-Pro Realty, please contact our leasing department at 517-782-4809. However, if we do not have a suitable property, we will not penalize you for breaking your lease early.

The bank will be shutting off all of the utilities on that day so we strongly recommend that you start moving now. You will not have any water, sewer, gas, electric or trash service after 6/30/11. You will need to move out before then.

Additionally, your Security Deposit held with All-Pro Realty will be refunded in full as long as there is no unpaid rent due. All-Pro Realty has up to thirty (30) days from the date the keys are turned in to issue the Security Deposit back to the tenant per the lease agreement. We apologize for the late notice and hope you will stay with us.

Sincerely,

All-Pro Realty & Property Management

Bad Notice: Arizona



Phone: (480) 558-8800
Fax: (480) 558-8700
4135 S Power Rd, Ste. 115
Mesa, AZ 85212

Date: 5/5/11

Re: [REDACTED] AZ

Dear Occupant(s):

The above referenced property foreclosed; Fannie Mae is now the owner and they have hired us to market and sell the property. Fannie Mae has also asked us to determine the occupancy status.

Although we have knocked at the door on several occasions, at various times of day, we have not had communication with any occupant.

Therefore, if we do not hear from you within 24 hours, we will alert Fannie Mae that this property has been abandoned. At that time, we will have the property rekeyed, and any belongings left behind will be removed.

If there is someone living at this property, please call us immediately. If you qualify, you may receive relocation assistance.

Regards,

Rock Point Realty

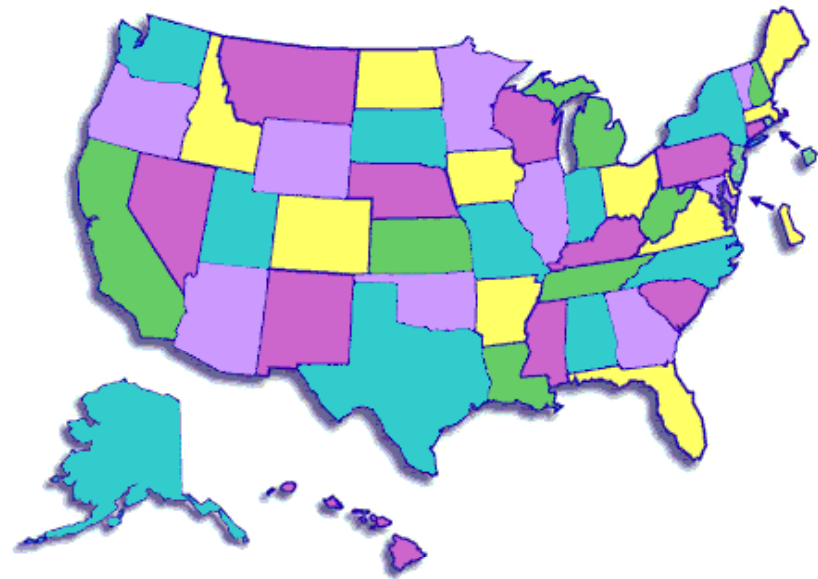
Major Issues for Renters: State/Federal Legal Interaction

- #3: Poor Maintenance
 - Before and after foreclosure
 - Snapshot: 50% of Baltimore foreclosures are non-owner occupied
- #4: Loss of Security Deposit
 - Traps renters in place



State Legislation

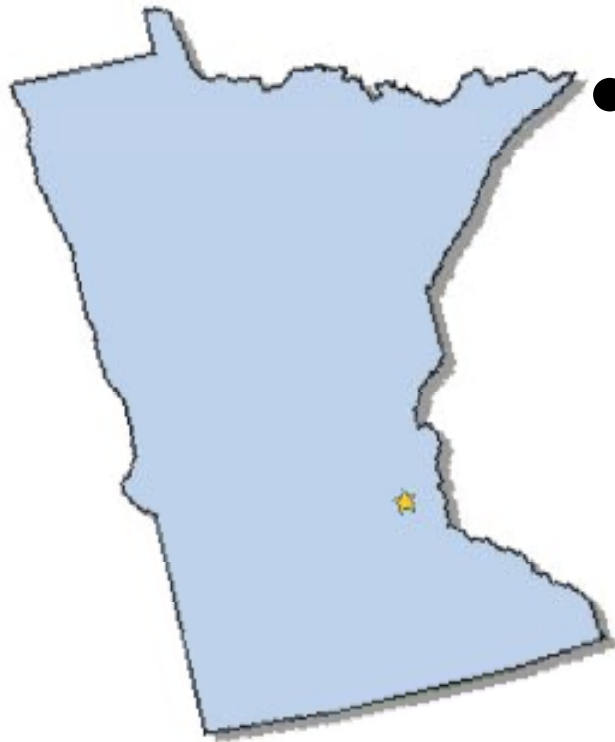
- **PTFA is the floor – states and localities have extended rights for renters well beyond those in the federal law**
 - Just-cause eviction
 - Expanded notice requirements
 - Maintenance requirements
 - Adopting PTFA as state law



State-Specific Information

- “Staying Home: The Rights of Renters Living in Foreclosed Properties”
 - Report including 50-state survey on laws impacting tenants
 - Available at www.nlchp.org
- The National Housing Law Project maintains a database of state and local laws available at <http://nhlp.org/node/1341>

Case Study: Minnesota



- Illegal Notices
- Banks & Lenders fail to follow local landlord/tenant laws
 - Rental license issues
 - Getting repairs made

Case Study: Minnesota

FINAL NOTICE

THIS PROPERTY HAS FORECLOSED. THE OCCUPANTS(S) ARE TRANSFERRING. THE OCCUPANT(S) MUST CONTACT THE BELOW AUTHORIZED REAL ESTATE BROKER IMMEDIATELY.

You have 48 hours to contact our office to make arrangements for a move out. If you do not contact us immediately, the bank will be forced to continue the eviction process. A sheriff's deputy will come to the property with a locksmith, change the locks, and escort you off of the property regardless of your personal belongings. To avoid this, call NOW.

In exchange for your cooperation, the bank is willing to offer you a cash incentive and a reasonable time period to allow you to move out. In order to receive this cash incentive, you must:

- Contact our office below within 48 hours.
- Move out by a given deadline.
- Leave the property clean.
- Leave property completely free of belongings & trash.

**IT IS CRITICAL THAT YOU CONTACT US IMMEDIATELY.
THE EVICTION PROCESS HAS BEGUN AND WILL
CONTINUE UNLESS ARRANGEMENTS ARE MADE.**

If A Constituent Calls...

1. Obtain Contact Info, Including a Phone Number

1. Determine if your constituent is stably housed or at risk of becoming homeless

1. Does the constituent know about PTFA?
 - Inform them that the Protecting Tenants At Foreclosure Act allows most renters to remain in their homes for at least 90 days, many can stay through the end of their leases, and the law protects renters in every state.
 - **Your state may provide even more protections!**

2. Legal Aid Referral: www.LSC.gov or www.findlegalhelp.org

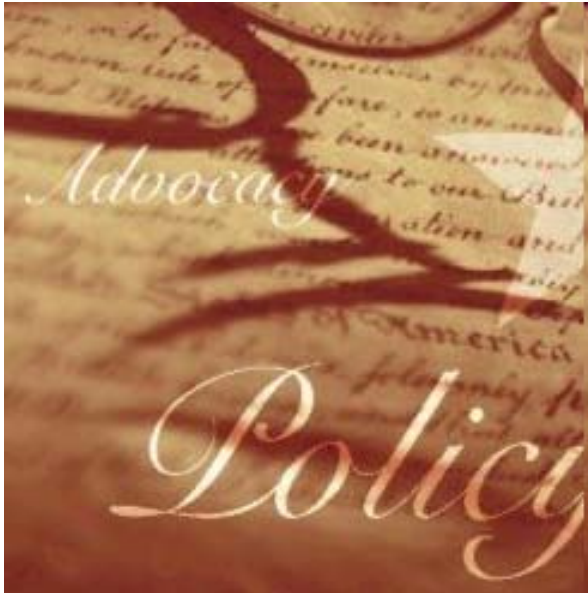
What Else Can I Do?

Education, Outreach, & Enforcement



- Tenants, Landlords, Advocates
 - Fact sheets and Know Your Rights materials are available on NLCHP.org and NLIHC.org
- Successors in interest
 - Bank of America, Fannie & Freddie
 - Realtors, property managers, and local counsel
- Report violations to your AG and the Law Center

PTFA Violations Database



- **Surveys for advocates and tenants (English, Spanish, & Haitian Creole)**
- **Available online, by email or phone, in hard copy**
- **10 minutes or less to complete**

Goal: To collect stories from individual tenants and their advocates to improve compliance and bolster policy efforts

PTFA Violations Database

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ON HOMELESSNESS & POVERTY
Lawyers Working to End Homelessness

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Renters Rights in Foreclosure Survey DONATE TODAY JOIN US

Have Your Rights Been Violated?

The Law Center needs your help!

The foreclosure crisis continues to affect millions of Americans, including families that rent their homes. In fact, 40% of households at risk of eviction due to foreclosure are renters. The Protecting Tenants at Foreclosure Act of 2009 (PTFA) provides important protections for renters after a foreclosure, but reports from around the country suggest that landlords, banks, and real estate agents are violating PTFA and state laws designed to allow renters to stay in their homes.

In order to determine where and how these violations are occurring, the Law Center has partnered with dozens of local organizations around the country to gather information about the experiences of renters in the foreclosure crisis. We will use the data we collect to work with advocates, federal agencies, and Congress to enforce and improve the law.

- [If you are a renter living in a foreclosed property, click here to tell us about your experiences.](#)
- [Haga clic aquí para ver una versión en español.](#)
- [If you are an advocate who works with tenants, click here to tell us about the problems facing your clients.](#)
- [Klike la a wè yon vèsyon kreyòl ayisyen.](#)

These surveys are also available in hard copy, by telephone, or by email. Please contact Housing Attorney Geraldine Doetzer at gdoetzer@nlchp.org for more details.

The PTFA guarantees renters at least 90 days advanced notice following a foreclosure before a new owner (including a bank) can ask them to leave. Many renters have the right to remain until the end of their current leases, which can be much longer. Some states provide even more protections to their residents. If you think your rights as a tenant have been violated, contact the Law Center or your local legal aid office.

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www.nlchp.org/tenantsurvey.cfm

Conclusion

- Support H.R. 3619
 - Making PTFA permanent
 - Providing a private right of action for tenants
- For more information, contact Carrie Johnson (DC) or Rebecca Lucero (MN)
 - Carrie.Johnson@mail.house.gov
 - Rebecca.Lucero@mail.house.gov

For more information...

**NATIONAL LAW CENTER
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www.nlchp.org/rentersurvey.cfm

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