NATIONAL LAW CENTER
ON HOMELESSNESS & POVERTY

Protecting Tenants at Foreclosure Act

Background

The **Protecting Tenants at Foreclosure Act**, part of the Helping Families Save their Homes Act of 2009, was signed into law by President Obama on May 20, 2009.[1] The law provides important new federal legal protections for tenants renting housing in properties that are the subject of foreclosure actions. Before the Protecting Tenants at Foreclosure Act (PTFA) was enacted, the rights of tenants in properties that are the subject of foreclosure actions were governed by state law. In most states, tenants had few if any rights to remain in their housing for more than a very short period of time after a foreclosure.[2] In July 2010, Congress passed and President Obama signed into law federal financial reform legislation. Among other things, this legislation further clarifies and extends the rights provided for tenants under PTFA.

PTFA Provides Legal Rights to Tenants in Foreclosed Properties

The PTFA applies in all cases involving "any foreclosure on a federally related mortgage loan or on any dwelling or residential real property" after May 20, 2009. Under the law:

1. The new owner of the foreclosed property (the "immediate successor in interest") must give a bona fide tenant 90 days to vacate after providing the bona fide tenant with a notice to vacate.[3] In other words, the new owner cannot require a bona fide tenant to leave the rental property until 90 days have elapsed from the date on which the new owner provided the bona fide tenant with a notice to vacate.

2. The new owner must allow any bona fide tenant who entered into a lease prior to the notice of foreclosure to remain in the property for the term of his/her lease;[4]

3. The new owner must honor the rights of any bona fide tenant living in the property without a lease or with a lease terminable at will under state law.

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[1] Pub. L. No. 111-22, tit. VII, 123 Stat. 1632, 1660-62 (2009), as amended by Pub. L. No. 111-203, tit. XIV (2010).
[2] In February, 2009, the National Law Center on Homelessness & Poverty (NLCHP) and the National Low Income Housing Coalition (NLIHC) released a report, *Without Just Cause*, which discusses the pre-PTFA rights (or lack thereof) of tenants in properties facing foreclosure in all 50 states; it is available at http://www.nlchp.org/content/pubs/Without_Just_Cause1.pdf. Subsequently, in June 2010, NLCHP updated this report to include the new tenant protections provided by PTFA. This updated report, *Staying Home*, is available at http://www.nlchp.org/content/pubs/StayingHomeReport_June2010.pdf.
[3] A lease or tenancy is considered to be "bona fide" as long as (1) the tenant is not the mortgagor or the child, spouse or parent of the mortgagor; (2) the lease or tenancy is the result of an arms-length transaction; and (3) the lease or tenancy requires receipt of rent that is not substantially less than the fair market rent for the property.
[4] The law includes one exception to this requirement. In cases in which the new owner or person who purchases the unit from the new owner will occupy the unit as a primary residence, the lease may be terminated as of the date of sale and new owner does not have to honor any existing lease for longer than the 90 days. However, the tenant must still be provided with at least 90 days' advance notice after the foreclosure before he or she can be required to vacate the property.

The law also extends these protections to tenants who are participants in the Section 8 program. New owners of such properties assume ownership subject to the lease between the prior owner and tenant, and also subject to the housing assistance payments contract between the prior owner and public housing agency (or other entity that administers the local Section 8 program). Section 8 participants must also be provided with at least 90 days' advance notice after the foreclosure before they can be required to leave their rental housing.

The Protecting Tenants at Foreclosure Act does not affect the requirements of any state or local law that provides longer time periods or other additional protections for tenants.

Changes to PTFA as a Result of the Dodd-Frank Act

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act. In addition to providing new regulatory oversight over financial institutions and products, the Act also affects PTFA[5] in two important ways:

1. The Dodd-Frank Act extends the protections of PTFA until December 31, 2014 (whereas under the original law, PTFA expired on December 31, 2012).

2. The first version of the PTFA pinned its protections to the date of a "notice of foreclosure," without precisely defining that term. Banks and other successors quickly asserted that any communication to a landlord that hinted at the possibility of foreclosure, including default notices, met this requirement. According to this interpretation, tenants who signed their leases after the landlord received any such notices were not protected by the PTFA - even when the lease was entirely valid.

   In response to such practices, the Dodd-Frank Act now specifies that "notice of foreclosure" means "the date on which complete title … is transferred."[6] This is a bright line rule that simplifies the requirements for all parties involved and extends benefits to all bona fide tenants.

IF YOU ARE A RENTER AND BELIEVE YOU HAVE BEEN UNLAWFULLY EVICTED IN VIOLATION OF PTFA:

- **Contact a local lawyer or legal aid office immediately for legal assistance.** If you cannot afford an attorney, you may be eligible for free legal services. Call 211 or contact the Law Center for your closest legal aid office.

- **Share your story with the Law Center:** NLCHP is working to ensure compliance with PTFA, to strengthen the law's protections, and to educate the public about its rights. We want to hear from you! Contact NLCHP Housing Attorney Geraldine Doetzer by email at gdoetzer@nlchp.org or by telephone at (202) 638-2535.

[5] Pub. L. No. 111-203, tit. XIV, § 1484 (2010).
[6] *See* footnote 5.