

Restoration of the federal Protecting Tenants at Foreclosure Act (PTFA)

On May 24, 2018, the President signed into law a permanent extension of the “Protecting Tenants at Foreclosure Act” (PTFA) as part of S.2155, a larger—and primarily anti-consumer—banking deregulation bill. The PTFA provides tenants in foreclosed properties with some basic protections against hasty evictions. The PTFA’s coverage is very broad, including tenants in HUD-insured and HUD-subsidized properties as well as tenants with Section 8 Housing Choice Vouchers¹ (HCV), but PTFA protections are subject to some exceptions and limitations.

Background

The original PTFA was enacted in 2009 in response to the plight of tenants around the country who were facing abrupt displacement following foreclosures they often knew nothing about. In most states, these tenants could be evicted with just a few days’ notice. The 2009 PTFA expired at the end of 2014. The permanent version of the law went into effect on June 23, 2018.

Basic Requirements

Under the PTFA, the new owner after a foreclosure must provide bona fide tenants at least 90 days’ notice prior to eviction. The PTFA also gives bona fide tenants with fixed-term leases the right to occupy a foreclosed property until the lease term expires; however, if the purchaser at foreclosure intends to occupy the property, the purchaser may terminate an existing fixed-term lease with 90 days’ notice.

A bona fide tenant is a tenant who: (1) is not the mortgagor (*i.e.*, the borrower on the foreclosed loan) or the child, spouse, or parent of the mortgagor; (2) has a lease or tenancy that was the result of an arms-length transaction; and (3) has a lease or tenancy with a rent that is not substantially less than fair market rent for the property; however, this requirement does not apply if the unit’s rent is reduced or subsidized due to a federal, state or local subsidy.

Coverage

The PTFA applies after a foreclosure on any type of residential properties. One-unit single family homes are covered, as are multi-unit properties. The law applies in cases of both judicial and non-judicial foreclosure. Bona fide tenants with lease or tenancy 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 PTFA applies in all states but does not override more protective state and local laws, including local rent control ordinances.

Additional Section 8 HCV Protections

Section 703 PTFA gives Section 8 HCV tenants additional protections allowing them to continue occupancy under the existing lease and requiring a new owner to assume the housing assistance payment contract associated with the lease. Section 703 also explicitly excludes transfer of ownership via foreclosure as “good cause” for termination of such a lease.

¹See HUD guidance regarding PTFA obligations in FHA Mortgagee Letter 2012-6 (March 16, 2012); 77 Fed. Reg. 15379; Notice PIH-49 (HA); 75 Fed. Reg. 63385; and 74 Fed. Reg. 30106.