

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:

Your Rights Under the Protecting Tenants at Foreclosure Act

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).

Sample Notice for Tenants to be handed out by the Landlord Tenant Court, Local Legal Service Office, Public Housing Authorities or other housing advocates

ATTENTION TENANTS LIVING IN UNITS THAT HAVE BEEN FORECLOSED UPON

90-DAYS TERMINATION (EVICTION) NOTICE REQUIREMENT AND RIGHT TO CONTINUED OCCUPANCY UNTIL THE END OF THE LEASE TERM

If you rent your home or apartment and your landlord loses the property through a foreclosure, a law, called the Protecting Tenants at Foreclosure Act (PTFA), may protect you.¹ Under this law, the new owner becomes your landlord. All bona fide leases or tenancies entered into before the date on which complete title is transferred to the new owner must be honored.

If a new owner who takes over your unit wants to evict you, he or she must give you at least 90-days notice to vacate. If your lease has more than 90 days left in the term, then you can stay until the end of your lease and until you receive a notice at least 90 days which can be before the end of your lease. The only exception to this rule is that a new owner who wants to live in your unit as his or her primary residence doesn't have to wait for your lease to end and only has to give you a 90 day notice.

If the new owner gives you a notice of less than 90 days or a notice that would terminate your lease before its end, you should

- Send the new owner a letter (a draft letter is attached), by certified mail, return receipt requested, at the address the new owner put on his/her notice to you, telling the new owner/landlord that s/he must give you at least a 90-days notice to vacate. This letter should be sent before the date you were told to vacate.²
- **Pay your rent.** If you do not pay your rent, your landlord can ask the court to evict you for non-payment under state law.
- Make and retain a copy of your letter and the green return receipt for your records.

If your landlord files an eviction complaint against you (some states call this an unlawful detainer action) and did not give the required 90-day notice, you should put in your answer, or tell the judge at court (if your state does not make you file an answer), that the notice is improper under the Protecting Tenants at Foreclosure Act.

If you have to go to court in the eviction case, you should take with you

- copies of the letter you sent to your landlord,
- the original and copies of your proof of mailing and green return receipt from the post office,
- a copy of the PTFA that is attached to this notice and
- a copy of your written lease if you have a written lease. If you do not have a written lease, take rent receipts or utility bills or something else that proves that you live there.

The judge may not know about the law, but if you tell the judge about the law it is his or her legal responsibility to enforce it and make sure that you are not forced to move with less than 90 days notice or before the end of your lease term.

If you have a Section 8 Housing Choice Voucher you have additional protections that you should learn about.

¹ Protecting Tenants at Foreclosure Act, P.L. 111-22, § 701-704 (2009), as clarified and amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203, § 1484 (July 21, 2010).

If you have any questions, please contact the local Legal Services Office at _____

Attachments

1. Letter from non-Sec 8 tenants to new owner/landlord
2. The Protecting Tenants at Foreclosure Act (PTFA), P.L. 111-22, §§ 701-704 (May 20, 2009) as amended and clarified by the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203, § 1484, (July 21, 2010).

Sample Letter to send to Public Housing and Section 8 HCV Administrators

(Address)

(Date)

(Name of contact person

Address of Public Housing Authority or other Section 8 Administrator)

Re: Protecting Tenants at Foreclosure Act of 2009

Dear _____:

I write to bring to your attention a federal law that pertains to Section 8 tenancies. The Protecting Tenants at Foreclosure Act (P.L. 111-22, §§ 701 - 704 (May 20, 2009)) imposes new requirements on people and entities (including banks) that become the new owners of residential property as a result of foreclosure on the property. The Protecting Tenants at Foreclosure Act was recently clarified and extended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203, § 1484 (July 21, 2010).

Under this law, new owners who take title to residential property as a result of foreclosure assume their ownership of the property subject to any existing Section 8 voucher leases and to any existing Housing Assistance Payment (HAP) contracts that were entered into prior to transfer of complete title to the new owner. The new owners must honor the existing arrangements, including the duration of the original lease, and no matter what the length of the remaining term, must provide the tenants with at least 90 days' advance notice before requiring the tenants to vacate the property.

The law contains an exemption for new owners who plan to live in the unit at issue as their primary residence – these new owners are not required to honor the existing lease terms for more than 90 days. New owners in this situation must give the tenant at least 90 days' advance notice to vacate —beginning after complete title is transferred to the new owner — and may terminate the tenancy after the 90 day period. Even if the new owner wishes to terminate the tenancy only at the end of the Section 8 lease, or if a successor to a Section 8 landlord wishes to terminate the lease or the Housing Assistance Payment (HAP) contract, he or she must provide 90 days' advance notice to the tenant.

We hope that you, as the administrator of the Section 8 voucher program, will inform tenants, current landlords and new owners of units that house Section 8 voucher tenants about this law in writing. Please make these documents available in languages other than English for tenants and landlords with limited English proficiency. For future HAP contracts and voucher leases, we suggest that the PHA prepare an addendum to include the 90-days notice requirement and the modification to the term “other good cause” to exclude vacating the property prior to sale from that category.

Please find enclosed a copy of the Protecting Tenants at Foreclosure Act and a sample notice for tenants informing them of the new law. Also, please see HUD Notice PIH 2009 - 52 (HA), Protecting Tenants at Foreclosure Act – Guidance on New Tenant Protections, (December 15, 2009).

If we can be of assistance, please feel free to contact _____. Thank you for your attention to this matter.

Sincerely,

(Name)

Sample Letter for Section 8 Tenant to Send to New Owner

(Address of Tenant)

(Date)

(Name and address of new owner)

Dear _____ (new owner):

I am a tenant at _____ (address, including apartment number if applicable). I have a lease that is assisted with a Section 8 voucher. The Housing Assistance Payments (HAP) contract for my unit is managed by _____ (name of housing authority or other entity that administers your voucher).

I am writing this letter in response to the notice of termination dated _____ (date of notice you received) that I received from you.

The Protecting Tenants at Foreclosure Act (PTFA), P.L. 111-22, §§ 701-704 (May 20, 2009) as amended, applies to state eviction proceedings.¹ This law requires a person or entity (including a bank) who becomes the new owner of residential rental property as a result of a foreclosure to **continue to honor and be bound by both the Section 8 voucher lease and the Housing Assistance Payments (HAP) contract** that existed with the original landlord.

If the Section 8 lease and HAP contract have more than 90 days left, a new owner must give the tenant at least 90 days notice to vacate prior to the end of the lease.

If the Section 8 lease and HAP contract have less than 90 days remaining in their term, or if the new owner plans to live in the property as his or her primary home, the new owner can require a tenant to leave the property **after giving at least 90 days' advance notice**.

All bona fide leases entered into before the date on which complete title is transferred to the new owner are covered by the law. The 90 day period cannot start until the date on which complete title is transferred to the new owner and the new owner properly serves the tenant with a 90 day notice to vacate

Because the notice sent on _____ (date of notice you received) gives me less than the 90-day notice required by law, I consider the notice to be void and ineffective.

Sincerely,

(Tenant's name)

¹ The Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203 (July 21, 2010), in § 1484, clarified and amended the PTFA.

Sample Letter for Non Section 8 Tenant to Send to New Owner

(Address of Tenant)
(Date)

(Name and address of new owner)

Dear _____ (new owner):

I am a tenant at _____ (address, including apartment number if applicable). I am writing this letter in response to the notice of termination I received from you dated _____ (date of notice received).

The Protecting Tenants at Foreclosure Act (PTFA), P.L. 111-22, §§ 701-704 (May 20, 2009) as amended, applies to state eviction proceedings.¹ This law requires that a person or entity (including a bank) that becomes the new owner of a residential rental property as the result of a foreclosure **honor existing leases with a fixed term until the end of the lease term**. The law also mandates that, **no matter what the lease term, the new owner must provide the tenant(s) in the property with at least 90 days' notice before requiring the tenant(s) to vacate the property**. There is an exception in the law for new owners who will live in the unit as their primary residence. Such owners are not required to honor the existing lease until the end of its term but still must still provide at least 90 days' advance notice before requiring a tenant to leave.

All bona fide leases entered into before the date on which complete title is transferred to the new owner are covered by the law. The 90 day period cannot start until the date on which complete title is transferred to the new owner and the new owner properly serves the tenant with a 90 day notice to vacate

Since the notice sent on _____ (date of notice received) does not comply with this law, I consider the notice to be void and ineffective.

Sincerely,

(name of tenant)

¹ The Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203 (July 21, 2010), in § 1484, clarified and amended the PTFA.

Address

Date

Name of Judge

Address

Dear Honorable Judge _____:

I write to bring to your attention a federal law that applies to state eviction proceedings.

At the start of the foreclosure crisis, renters in good standing were being evicted from their homes, often with little or no notice, merely because the properties they occupied were foreclosed upon. To address this problem and to stabilize neighborhoods, Congress enacted the Protecting Tenants at Foreclosure Act (PTFA), P.L. 111-22, §§ 701-704 (effective on May 20, 2009), as clarified and extended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203, § 1484 (July 21, 2010).

The PTFA requires that new owners (including lenders) who have acquired residential property through foreclosure honor the existing leases or tenancies of any bona fide tenants for the entire remaining lease term. The law also requires that, regardless of the length of time remaining on their lease, new owners provide existing tenants with at least ninety (90) days' notice to vacate before requiring the tenants to leave the property. If the remaining lease term is more than 90 days, and a new owner intends to live in the unit as their primary residence, an exception to the general rule allows such owners to provide at least 90 days' notice to vacate and terminate the lease before its normal expiration date. Regardless of the remaining term on the lease, only after complete title to the property is transferred may the new owner give the notice to vacate to the tenants.

Under the PTFA, all bona fide tenants must receive a 90-day notice before they may be required to vacate. Tenants with more than 90 days remaining on a lease may remain until the end of the lease, if the tenant entered into the lease prior to the transfer of complete title to the new owner. In addition, the lease must be bona fide (the tenant cannot be the mortgagor or the child, spouse, or parent of the mortgagor, the lease or tenancy must be the result of an arms-length transaction, and the lease or tenancy must require the receipt of rent that is not substantially less than fair market unless the lease is reduced or subsidized due to a Federal, State, or local subsidy.)

The new law similarly provides protections for tenants whose rent is subsidized through a Section 8 voucher. In such cases the new owner at foreclosure assumes ownership of the property subject to the existing lease between the Section 8 participant and the previous owner of the property, and also subject to the Section 8 Housing Assistance Payments (HAP) contract between the previous owner and the administrator of the Section 8 program. The requirement to serve at least a 90 day notice to vacate to the tenants is the same as with non-Section 8 tenancies.

Please note that PTFA explicitly states that it does not preempt state and local laws that provide *additional* protections to tenants.

Copies of the text of these laws are enclosed for your reference. If you have any questions, please contact _____. Thank you for your attention to this matter.

Sincerely,

(name)