

Foreclosed Properties: What REALTORS® Need to Know About Tenant Rights

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The “Protecting Tenants at Foreclosure Act” (PTFA) was signed into law by President Obama on May 20, 2009. Part of the “Helping Families Save Their Homes Act of 2009,” PTFA includes federal protections for renters living in foreclosed properties around the country.

As the foreclosure crisis escalated, more and more families living in rental housing were evicted without any prior notice when the home where they lived was foreclosed upon. Much of the time, the rental family had no idea the home was in delinquency or subject to foreclosure until they received eviction papers.

Under the PTFA, bona fide tenants have the right to remain in their rental homes for at least 90 days, and often much longer. “Successors in interest,” including new individual or bank owners, must provide tenants with written notice if they want the tenant to vacate the property:

- If the tenant has a lease agreement, whether written or not, the new owner must notify them that they can remain in the property for the rest of the lease period.
- If the tenant has a lease agreement that will expire in less than 90 days, then the new owner must give the tenant at least 90-days notice to vacate.
- If the tenant has a month-to-month lease, has no lease, or if the new owner plans to occupy the property as her own primary dwelling, then the new owner must provide them with a written notice at least 90 days in advance.

In some cases, this notification will come from the bank (when they assume the home), and in other cases it may be the new owner.

The PTFA protects only “bona fide” tenants. Most renters meet the requirements of this definition. However, the former owner and his or her spouse, parents, or children are not protected by PTFA. Tenants who are paying substantially less than market rate rent or who did not enter into the lease as the result of an arms-length transaction also are not considered bona fide tenants.

A number of states have existing laws protecting tenants. The PTFA preempts existing state law, except where the state law offers greater protection for tenants.

The PTFA was clarified under the 2010 Dodd-Frank Wall Street Financial Reform Act, and will expire on December 31, 2014. Legislation has been introduced to make the law permanent. In the House, Rep. Keith Ellison (D-MN) has introduced H.R. 3543. In the Senate, S. 1761 is sponsored by Senator Richard Blumenthal (D-CT).

**This issue brief was prepared in cooperation with the National Law Center on Homelessness & Poverty. To learn more, please visit <http://www.nlchp.org/>.*