NAR FAQs*

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

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The Protecting Tenants at Foreclosure Act ("PTFA") gives bona fide tenants the right to remain in their homes following a foreclosure until the end of their lease or, for tenants with short-term leases or no lease, until the expiration of a 90-day notice period. In any circumstance, no less than 90 days notice to vacate may be given to a bona fide tenant who is abiding by the terms of their rental agreement. Any notice period less than what is required by PTFA is illegal under federal law.

The law is silent on many issues surrounding the tenant protections guaranteed under PTFA. This is our best guidance with respect to questions we have received.

Does the law require that a notice inform tenants that they have the right to remain in their home until the expiration of their lease?
Yes, the notice must inform tenants that they have the right to remain in their home until the expiration of their lease.

When does the 90-day clock start ticking?
The tenant must be given at least 90 days to vacate from the date stated on the written notice. Oral notice is not sufficient and the method of delivery is governed by state law.

Does the tenant still have to pay rent, and can they be evicted for other things?
If the tenant violates the lease after the new owner takes ownership, the new owner may pursue eviction proceeding for the lease violations pursuant to state landlord-tenant law. However, if the tenant has violated the lease for failure to pay rent, some case law suggests that the 90-day PTFA notice must still be given even where state law provides for a lesser notice period.

Does the property management continue?
Although the effect of the new law would be to treat the existing lease agreement as continuing in effect until its then current expiration date, the contract to manage the property was with the prior owner. With the termination of that prior owner's rights to the property, the agreement to manage the property as the owner's agent must also terminate. As a result, the property manager has no continuing responsibility to maintain the property or right to collect rents. However, tenants are often unaware that their homes have changed ownership, and will continue to send rent to the former owner or property manager. Therefore, the new owner must contact tenants as quickly as possible after the foreclosure to let them know the property has changed hands and provide them with contact information for a new property manager so that the tenants know where to send their rent and who to call if they have questions about the building or need maintenance.

Does the property manager have any ongoing obligations with regard to the property?
We think no. As the management contract is with the prior owner and is based upon the rights of the prior owner, the contract, along with the prior owner's rights, would terminate with the prior owner's ownership.

What happens with the security deposit?
This is another important reason to find out who the new owner or the new owner's agent will be so that the deposits can be transferred to the new party. This should be done in the same way it would normally be done in the state when there is a change in management agents and in compliance with any applicable landlord tenant ordinances or statutes.

Who serves as the landlord during the 90-day period?
The new owner is the landlord and is entitled to the rights and obligations associated with being the landlord. In some cases the landlord may be the bank, who has taken ownership after foreclosure and has yet to dispose of the property. In other cases, a new party who purchases the property at foreclosure would be the landlord.

What is the duty of the manager in marketing the property?
The former owner's property manager would have no authority to market the property or enter into any new leases for the property unless that property manager has entered into a new relationship with the new owner.

Does a manager have any additional duties as a REALTOR® under the Code of Ethics?
As a REALTOR® the manager is bound to conduct all of his or her real estate activities in a manner consistent with the Code of Ethics. Article 1 of the Code states, that the obligation to promote and protect the interests of the client is primary for the REALTOR®, but it does not relieve him or her from the obligation to treat all parties honestly. A REALTOR® should be guided by this principle in their dealing with everyone in what will undoubtedly be a difficult situation.

What advice is there for an agent who lists a bank-owned property following a foreclosure?
The law imposes no specific duties on a listing agent. However, agents are often the first people who come into contact with tenants after a foreclosure, and should be prepared to interact with renters who may not be aware that their homes have been affected by foreclosure. The agent should work with the bank/client to ensure that the necessary procedures are in place to provide the tenant with notice under the PTFA and any relevant state laws, as well as to provide the tenant with contact information for ongoing property management and rent collection issues.

What impact does this law have on purchasers of REOs?
If you are working with a buyer considering the purchase of a property owned by the bank as a result of a foreclosure for use as their principal residence, and that property is currently occupied by a bona fide tenant, the new law may delay the buyer's occupancy of the property pending the completion of the 90-day notice period required under the law. The buyers should consult with their attorney regarding their rights and if this should be addressed in any offer to purchase the property.

**These FAQs were prepared in cooperation with the National Law Center on Homelessness & Poverty. To learn more, please visit http://www.nlchp.org/.*