



The Protecting Tenants at Foreclosure Act is Back!

QUESTION: I read somewhere that the President signed into law a permanent extension of the Protecting Tenants at Foreclosure Act (the “Act”). I’m confused because I thought that federal law was discontinued at the end of 2014 and then replaced by a similar new North Carolina statute. What’s going on?

ANSWER: What you read is correct. The Act was originally enacted into law 2009 in response to the financial crisis, which resulted in a high number of foreclosures across the United States. The spike in foreclosures impacted many renters when the property they were renting went into foreclosure and they were subject to being evicted on short notice. The Act created certain protections for such tenants.

There was a “sunset” provision in the Act that caused it to automatically expire December 31, 2014. The sunset provision has now been repealed by Congress, which means that the Act is once again federal law.

QUESTON: Can you refresh my memory on what protections the Act provides for tenants?

ANSWER: Sure. Under the Act, in the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property, the “immediate successor in interest in such property” (i.e., the person or entity who buys or otherwise acquires title to the property) has to provide notice to vacate the property to any tenant under a “bona fide lease” at least 90 days prior to the effective date of the notice. In addition, the tenant under a “bona fide lease” may occupy the premises until the end of the remaining term of the lease.

QUESTION: Let me make sure I understand. If there are more than 90 days left on the lease, the tenant can stay for the rest of the lease term. And if there are less than 90 days on the lease, he or she can stay for 90 days. Correct?

ANSWER: Correct.

QUESTION: What is a “bona fide lease?”

ANSWER: A lease will be considered “bona fide” if it was entered into before the notice of foreclosure and:

- the mortgagor (i.e., the borrower who was foreclosed on) or the child, spouse, or parent of the mortgagor under the loan is not the tenant;
- the lease was the result of an arms-length transaction; and
- the lease requires the receipt of rent that is not substantially less than fair market rent for the property or the rent is reduced or subsidized due to a Federal, State or local subsidy.

QUESTION: Are there any exceptions?

ANSWER: Yes. If the person who purchases the property in the foreclosure proceeding intends to occupy the premises as their primary residence, that person may terminate a lease on the property effective on the date of the foreclosure purchase. However, they still must give the tenant a 90-day notice to vacate.

QUESTION: So, to sum it up, a tenant under a bona fide lease who is living in property that has been sold at foreclosure may continue to occupy the property for a minimum of 90 days after the sale and possibly more, correct?

ANSWER: If they choose to do so, yes.

QUESTION: What do you mean, “if they choose to do so?”

ANSWER: I say that because under North Carolina law, any tenant who resides in residential property containing less than 15 dwelling units that is being sold at foreclosure has the right to terminate his/her lease after receiving notice of the sale. See [NC General Statutes Section 42-45.2](#).

QUESTION: What about tenants living in a property containing more than 15 units, like an apartment complex?

ANSWER: Tenants residing in residential property containing 15 or more dwelling units do not have the same right of termination.

QUESTION: Is Section 8 Housing covered by the Protecting Tenants at Foreclosure Act?

ANSWER: Yes. The Act provides that if there’s a foreclosure on a property where a tenant resides under the Section 8 Program, the tenant is allowed to keep their Section 8 lease and the person or entity who acquires title in the foreclosure proceeding is required to assume the housing assistance payment contract associated with the lease. There is an exception for a person who will occupy the premises as their primary residence. In such a case, that person may terminate the Section 8 lease effective on the date of the foreclosure purchase. However, they must give the tenant a 90-day notice to vacate.

QUESTION: What about the North Carolina law that was enacted after the Federal law sunsetted in 2014? Is it still in effect?

ANSWER: Yes, NC General Statutes Section 45-21.33A is still on the books. However, legislation has been introduced in the current session of the NC General Assembly that would repeal the NC law, which gives similar, but not identical, protections to those given under the Protecting Tenants at Foreclosure Act. At the present time, the legislation has been approved by the House of Representatives and although it has yet to be approved by the Senate, passage appears likely. Stay tuned!

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