

Federal Law Provides Protections for Tenants in Foreclosed Properties

The Protecting Tenants at Foreclosure Act (“PTFA”) of 2009 (Sec. 701-704 of Title VII of Public Law 111-22, as amended by Sec. 1484 of Public Law 111-203; see 12 USC 5520 note) is a federal law that benefits tenants in foreclosed properties. (here’s a link to its text: <http://www.nlihc.org/doc/701-704-Public-Law-111-22.pdf>) It sunsets the end of 2014.

Basically, this law:

- applies to any foreclosure (if it involves a “federally related” mortgage, which most mortgages are, it should apply regardless of when the foreclosure occurred; for other mortgages it applies if the foreclosure process was not complete before May 21, 2009)
- requires the “successor in interest” (typically the foreclosing lender) of the foreclosed owner to honor the lease of any bona fide tenant in the property or provide at least 90 days notice to vacate to any bona fide tenant;
- says that a lease or tenancy is bona fide if it was the result of an arms-length transaction, the rent is not substantially less than fair market (accounting for subsidies), and the tenant is not the mortgagor (or her child, spouse, or parent);
- makes the successor in interest subject to a Section 8 voucher tenancy and its housing assistance payments (HAP) contract (the foreclosure is not good cause to terminate the voucher tenancy).

Concerning the law's interaction with Michigan law, here are some observations:

- for a right to occupy under a lease until its term ends (so, beyond 90 days after expiration of the redemption period), the lease must have been entered into before the “notice of foreclosure”. Section 1484 of the Dodd-Frank financial reform law (Sec. 1484 of Public Law 111-203) clarifies that “date of a notice of foreclosure” is the date when “complete title” is transferred to the successor in interest. In Michigan, that date is the day after the expiration of the redemption period following a foreclosure sale.
- for the federally mandated PTFA notice to vacate/terminate to be valid and effective, it must be issued after the expiration of the redemption period (again, before then, the vesting of the successor's interest is not complete and is contingent on there not being a redemption);
- the State Court Administrator’s Office (SCAO) has revised its Notice to Quit Termination of Tenancy form (DC 100c) to reflect the new law; (<http://courts.michigan.gov/scao/courtforms/landlord-tenantlandcontract/ltindex.htm>)
- there is a legitimate argument that the federal law protects tenants in properties foreclosed for unpaid real estate taxes under state law (not to mention land contract foreclosures; land contract forfeitures probably not), although the focus of the law is mortgage foreclosure.