

### Protecting Tenants at Foreclosure Act of 2009

#### Introduction

On May 20, 2009, the Helping Families Save Their Homes Act of 2009, Public Law 111-22 was signed into law. Included in the public law is the Protecting Tenants at Foreclosure Act (PTFA) (Division A, Title VII), which provides protections for tenants, including tenants in housing subsidized by Section 8 of the United States Housing Act of 1937, who are living in homes subject to foreclosure. The protections are intended to provide tenants a reasonable amount of notification of the need to find alternative housing. Initially, this title, and any amendments made by this title were to be statutorily repealed on December 31, 2012.

Subsequently, Section 1484 of the [Dodd-Frank Wall Street Reform and Consumer Protection Act \(Pub. L. 111-203](#), signed into law July 21, 2010) amended PTFA and extended the PTFA protections to December 31, 2014. Section 1484 of the Dodd-Frank Wall Street Reform and Consumer Protection Act also defined when “date of notice of foreclosure” occurs. Section 1484 provides in relevant part as follows: “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.” On December 31, 2014, the Act terminated according to the amended sunset date.

On May 24, 2018, the Protecting Tenants at Foreclosure Act of 2009 was reinstated through the signing of the [Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018](#). The effective date for compliance was June 23, 2018. The law is self-executing and no agency can issue a regulation or interpretation of the law.

#### Major provisions of the PTFA include:

##### Foreclosure Covered Mortgages

The PTFA covers foreclosure on:

a federally-related mortgage loan<sup>1</sup>; or  
any dwelling or residential real property after the date of enactment of this title. (June 23, 2018)

The protections of this law apply to tenants under a “bona fide” lease or tenancy. A lease or tenancy is “bona fide” only if:

1. the mortgagor or a child, spouse, or parent of the mortgagor under the contract is not the tenant;
2. the lease or tenancy was the product of an arm’s-length transaction; and
3. the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent or the rent is reduced or subsidized due to a federal, state, or local subsidy.

##### Responsibilities of Successor in Interest

Upon the complete transfer of title to the successor as a result of foreclosure, it is the responsibility of the successor in interest to:

Provide Notice to Vacate – Provide tenant(s) Notice to Vacate 90 days before the effective date of such notice in all instances; and

Adhere to Tenant Protections – Tenants with bona fide lease agreements entered into prior to the date of notice of foreclosure must be allowed to occupy the premises until the end of the remaining term of the lease. However, a successor in interest may terminate a lease upon date of foreclosure and provide the 90-day Notice to Vacate if:

1. successor in interest plans to occupy the property as their primary residence; or
2. a bona fide lease or tenancy agreement is not in place or is allowed to be terminated at will according to State or local law.

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<sup>1</sup> A “federally-related mortgage loan has the same meaning as Section 3 of the Real Estate Settlement Procedures Act of 1974 (12 USC 2602). The definition includes any loan secured by a lien on one-to-four family residential real property, including individual units of condominiums and cooperatives.

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These provisions do not affect any State or local law that provides longer time periods or other additional protections for tenants.

### Examination Objectives

1. Determine the institution's compliance with the provisions of the PTFA, as applicable, based on the institution's product offering and operations, including management of other real estate owned where foreclosures result in tenant eviction(s).
  2. Assess the quality of the institution's compliance management systems and its policies and procedures for implementing the provisions.
  3. Determine the reliance that can be placed on the institution's internal controls and procedures for monitoring the institution's compliance with the provisions.
  4. Determine corrective action when violations of law are identified or when the institution's policies or internal controls are deficient.
- Transaction testing includes samples covering relevant product types and decision centers (for example, mortgage and debt collections departments);
  - The work performed is accurate;
  - Significant deficiencies and their causes are included in reports to management or to the Board of Directors;
  - Management has taken corrective actions to follow-up on previously identified deficiencies; and,
  - The frequency of review/audit is appropriate.
4. If any complaints based on the PTFA have been filed against the institution, determine:
    - why were they filed, and
    - how they were resolved.

### Examination Procedures

#### General

1. Through discussions with management and review of available information, determine whether the institution's internal controls are adequate to ensure compliance with the PTFA. Consider:
  - policies and procedures
  - account documentation
  - checklists
  - computer program documentation, including any computer program testing and validation.
2. Determine the extent and adequacy of the training received by individuals whose responsibilities relate to compliance with the regulation. Review any training materials pertaining to the Act and determine if the training is comprehensive and covers the various aspects of the provisions that apply to the creditor's offerings and operations.
3. Review compliance reviews or audit materials, including work papers and reports, to determine if:
  - The scope of any audits address all provisions of the PTFA, as applicable;

### Disclosure Requirements

5. Determine whether evictions occurred within the requirements of the PTFA.
  - Notice to Vacate provided after the date of the "notice of foreclosure"
  - Notice to Vacate provided 90 days prior to the effective date of the eviction
  - Tenants with bona fide leases were allowed to remain in the property until the original contracted termination of the lease unless an exception (detailed above) was present.

### Examination Conclusions

6. Conclude the examination after taking the following actions:
  - Fully address identified deficiencies and violations, if any
  - Attach appropriate supporting workpaper documentation
  - Discuss findings with management and board of directors
  - Write comments, as applicable, in the Report of Examination
  - Include appropriate violation write-ups
  - Discuss proposed enforcement action, if needed

### References:

[Title VII of the Helping Families Save Their Homes Act of 2009.](#)

[Dodd-Frank Wall Street Reform and Consumer Protection Act \(Pub. L. 111-203\)](#)

*[Economic Growth, Regulatory Relief Consumer Protection Act](#)*  
*[\(Pub. L. 115-174\)](#)*

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Examination Checklist – Protecting Tenants at Foreclosure Act		
	Yes	No
<b>Section 702 - EFFECT OF FORECLOSURE ON PREEXISTING TENANCY</b>		
<p>1. Does the financial institution that takes foreclosure action on a federally-related mortgage loan or on any dwelling or residential real property send any bona fide tenants a notice to vacate at least 90 days before the effective date of such notice?</p> <p><b>(If No, cite a violation of Section 702(a)(1).)</b></p>		
<p>2. Does the financial institution that forecloses on a property and has tenants with a bona fide lease, honor the existing lease for renters until the end of the term of the lease? (An institution 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 required under Section 702(a)(1).)</p> <p><b>(If No, cite a violation of Section 702(a)(2).)</b></p>		
<p>3. Does the financial institution that forecloses on a property with tenants, but without a bona fide lease or has a lease terminable at will under State law, provide the tenant the 90-day notice under subsection 702(a)(1), provide a minimum of 90 days for the tenant to vacate, and - if applicable - honor any additional protections for tenants provided for Federal- or State-subsidized tenancy or of any State or local law?</p> <p><b>(If No, cite a violation of Section 702(a)(2).)</b></p>		