

Renting a Foreclosure Property

Protecting Tenants at Foreclosure Act

Renting a Property in Foreclosure

The Protecting Tenants at Foreclosure Act (PTFA) was initially passed in 2009 and was *permanently* extended in 2018.

This law applies to persons who are currently renting a unit (house, apartment, etc.), which is being foreclosed on.

Ex. You are renting an apartment and the owner stops paying the mortgage forcing the property into foreclosure.

If your new or old landlord is trying to evict you because the property is in foreclosure, there are three things to ask yourself:

1. Are you current on your rent?
 - a. Yes b. No
2. Did your lease start before the notice of foreclosure?
 - a. Yes b. No
3. Do you have a "Bona Fide" lease?
 - a. Yes b. No
 - b.

If all questions are "yes" answers, this law can help you.



How the PTFA can Help You

If you answered "YES" to all the previous questions, then the Tenant (YOU) will be allowed to remain in the property/unit under the following circumstances:

- 1- If the new owner of the property intends to occupy it as a primary residence:
the current tenant(s) must be given a 90-days **written** notice to vacate, and the current tenants must comply (i.e. you have to move out in 90 days).
- 2- If the new owner will not live in the property:
the tenant(s) will be allowed to remain in the property for the remainder of the lease agreement, or for the 90-day written notice to vacate, whichever is greater (i.e. you can stay in the property for the remainder of your lease or 90 days, whichever one is more time).



What is a Bona Fide Lease?

1. The mortgagor (person paying the mortgage), or child, spouse, or parent of the mortgagor under the contract is not the tenant.
(If YOU are the renter and the landlord is NOT you, your child, spouse or parent)
2. The lease or tenancy was made of an arms-length transaction.
(You and the Landlord are acting independently and out of self-interest, i.e. no-one is forcing you to live there, and no-one is forcing the landlord to rent the unit to you)
3. The price of rent for the property/unit is not substantially less than fair market rent, or the price of rent is not reduced or subsidized by Federal, State or local subsidies.
(Your rent is NOT substantially cheaper than other properties similar to yours, and it is not subsidized by the federal, state, or local government)

Section 8 Voucher Additional Protections

The same rules apply for tenants with a Section 8 voucher living in privately owned housing.

The PTFA has **no** protections (1) for non-foreclosure evictions, (2) leases that are deemed fraudulent, (3) leases created after the notice of foreclosure, or (4) homeowners facing foreclosure

Additional Links

National Low-Income Housing Coalition Article:

<https://nlihc.org/article/congress-permanently-authorizes-protecting-tenants-foreclosure-act>

CA 18-4: Restoration of the Protecting Tenants at Foreclosure Act:

<https://www.federalreserve.gov/supervisionreg/caletters/caltr1804.htm>

Nolo Article "Protecting for Tenants After a Landlord's Foreclosure":

<https://www.nolo.com/legal-encyclopedia/protections-for-tenants-after-a-landlord-s-foreclosure.html>

Rights of Rents in Foreclosure:

<https://www.nolo.com/legal-encyclopedia/renters-foreclosure-what-are-their-30064.html>

Protecting Tenants at Foreclosure: Notice of Responsibilities Placed on Immediate Successors in Interest Pursuant to Foreclosure of Residential Property:

<https://www.federalregister.gov/documents/2009/06/24/E9-14909/protecting-tenants-at-foreclosure-notice-of-responsibilities-placed-on-immediate-successors-in>

Idaho Legal Aid Page on Renter Rights, Eviction, etc.:

<https://www.idaholegalaid.org/node/2043/your-home>

Case Law

House v. Fed. Home Loan Mortg. Corp., 261 F. Supp. 3d 623 (E.D.N.C. 2016), aff'd, 699 F. App'x 259 (4th Cir. 2017) (property owner required to comply with both the PTFA and applicable state landlord-tenant law to evict).

Mik v. Fed. Home Loan Mortg. Corp., 743 F.3d 149 (6th Cir. 2014) (no private federal cause of action for tenants for unlawful eviction after foreclosure; PTFA preempts less protective state laws).

Logan v. U.S. Bank Nat. Ass'n, 722 F.3d 1163 (9th Cir. 2013) (no private cause of action under the PTFA).

Joel v. HSBC Bank USA, 420 F. App'x 928 (11th Cir. 2011) (bank who purchased allowed to interpret lease despite not being on original party to the lease agreement).

If you have questions about being a tenant in Idaho renting a property in foreclosure, please contact Idaho Legal Aid at our statewide number:

208-746-7541

Idaho Legal Aid Services – Local Offices

Boise 1447 S Tyrell Lane, Boise, ID 83706

Coeur d'Alene 610 West Hubbard Ave, Suite 219, Coeur d'Alene, ID 83814

Idaho Falls 482 Constitution Way, Ste 101, Idaho Falls, ID, 83402

Lewiston 2230 3rd Ave North, Lewiston, ID 83501

Nampa 212 12th Ave Road, Nampa, ID 83686

Pocatello 109 North Arthur, Ste 302, Pocatello, ID 83204

Twin Falls 496 Shoup Ave West, Suite G, Twin Falls, ID 83301