



Protecting Tenants at Foreclosure Act

MY RENTAL IS IN FORECLOSURE, AND I GOT A COPY OF THE LAWSUIT. WHAT SHOULD I DO?

Right now, until the bank gets a judgment and the property is sold, you still have to follow your written (or oral) lease. Continue as if your rental was not in foreclosure. Your rent payments, your rental responsibilities, and everything else stay the same until the property is transferred or sold. This will probably happen at the foreclosure sale. If the property is transferred or sold to a new owner before the foreclosure lawsuit has ended, you may have different rights and you should talk to a lawyer as soon as possible.

THE PROPERTY I RENT HAS *ALREADY BEEN FORECLOSED*. DO I HAVE RIGHTS?

Yes. After a property is foreclosed, a new owner takes over. The new owner may be the bank which foreclosed the property or someone who bought the property at an auction. Some new owners want to continue renting the property to tenants. Some new owners don't want the responsibility of being a landlord. Either way, most tenants have rights under the federal Protecting Tenants at Foreclosure Act (PTFA).

ARE ALL TENANTS PROTECTED BY THE PTFA?

Most tenants are protected. The PTFA does not protect 1) the mortgage holder, their child, spouse, or parent; 2) leases that aren't the result of an "arms-length" transaction (you got a special deal because of your relationship with the landlord); and (3) leases that charge rent substantially less than fair market value (unless the unit's rent is reduced or subsidized due to a federal, state, or local subsidy).

The PTFA protects tenants whose leases began before a new owner takes over. If your lease expires prior to the end of the foreclosure lawsuit, and you renew the lease for a new term while the foreclosure lawsuit is still going, the lease may be protected by the PTFA. However, a court may have questions about the integrity of a lease agreement entered into after the foreclosure has begun. Strongly consider moving. Also, be sure to file a "notice of tenancy" with the court in the foreclosure lawsuit to make sure the court is aware that you're there (and aware of your rights)!

HOW MUCH TIME DO I GET TO MOVE IF THE NEW OWNER ASKS ME TO LEAVE?

If you don't move out before 90 days after receiving the written notice to vacate, the new owner may get a "writ of possession" (a court order to vacate within 24 hours), and the Sheriff will force you to leave as soon as 24 hours after the writ of possession is posted on the property.

WHAT IF I HAVE A LEASE THAT HAS MORE THAN 90 DAYS LEFT?

Under the PTFA, the lease continues after the foreclosure. You may stay in the property for the entire term of your lease or 90 days, whichever is longer. The only exception to this rule is if the new owner wants to live in your unit, in which case you are still entitled to a 90-day notice before you can be forced to move. The new owner will also have the right to end your lease if you break any of the rules of your lease.

WHAT IF I HAVE A SECTION 8 VOUCHER?

The new owner has to continue your Section 8 lease and the Housing Assistance Contract (HAP contract) with the housing authority. Make sure you tell the housing authority about the foreclosure. You have the same protections after foreclosure as any other tenant with a lease. The new owner cannot evict you before your lease is up unless you break the rules of your lease, or the new owner is planning to move into the property. In most cases, the new owner doesn't have to renew your Section 8 lease when it ends.

WHAT ARE THE RESPONSIBILITIES OF THE NEW OWNER?

Whether the new owner is a bank, an investor, or a person who wants to live there, the new owner can't engage in prohibited practices (e.g., shut off a utility, change the locks, or use self-help eviction measures). The new owner has the same responsibilities as your old landlord. The new owner has to keep the building in good repair. Tell the new owner if you need repairs by phone and in writing. The new owner has to provide the same utilities for you that your old landlord provided.

The new owner also has to follow your lease terms concerning access to your rental. If there is no lease term, then they have to give at least 24 hours' notice before they enter. If you feel harassed by unreasonable requests to inspect or enter the rental, you may decline. If the landlord threatens you, you have the right to contact law enforcement.

HOW DO I PAY THE RENT?

Find out who the new owner is and give them the rent. Do not pay the previous owner. Always write on the rent check or money order, "Rent for the month of ____." Keep your proof of payment in a safe place. If you cannot find the owner, or the new owner refuses to take your rent payment, keep a record showing you tried to pay the rent. Save the rent money in a bank account or other safe place. Watch out for a new "fake landlord." Before you pay to anyone who says they are the new owner, ask for proof that they own the rental (like a copy of the certificate of title or recorded deed).

WHAT IF THE NEW OWNER OFFERS TO PAY ME TO LEAVE?

The new owner might offer you money to move out. For your protection, any agreement to move should be in writing and signed by the owner or an authorized representative. Before accepting, you should consider the costs of moving, including the first month's rent and security deposit for a new place. Because you might not be able to get the deposit back from your old landlord,

it is important to consider that cost in any deal with the new owner. In some cases, the 90 days you get to stay in the rental might be better than the new owner's offer.

WHAT HAPPENED TO MY SECURITY DEPOSIT?

Your old landlord should give back your security deposit. Write a letter to your old landlord and ask them to give back your deposit. Keep a copy for your records. Send one copy regular mail and another copy certified mail return receipt requested.

HOW CAN I MAKE SURE THE COURT AND NEW OWNER KNOW I'M A TENANT?

You can file a "notice of tenancy" in your landlord's foreclosure case. A sample notice is attached to this brochure. If a Sheriff posts a "writ of possession" from the court on the property before you get a written 90-day notice from the new owner, or before your 90 days to leave have passed, then you should speak with an attorney right away.

THE BANK/NEW OWNER TOLD ME THE PTFA EXPIRED, AM I STILL PROTECTED?

Yes, you are still protected. The PTFA did expire in 2014, but a permanent extension was signed into law in 2018. The PTFA applies in all 50 states. If the PTFA gives a tenant more protection than state law, it overrides the state law.

This fact sheet is for general education only it is not intended to be used to solve individual problems. If you have specific questions contact a lawyer. The laws described here may change without notice. You may find additional resources at: <https://www.jaxlegalaid.org/get-help/self-help/pamphlets-videos/>. Revised December 2023.

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IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
_____ COUNTY, FLORIDA

CASE NO.: _____
DIVISION: _____

Plaintiff,

vs.

Defendant(s).

NOTICE OF TENANCY

I, _____ [tenant's name], hereby give notice to this Court that I am a tenant residing at _____ [property address], which is the property involved in this foreclosure case, and I further state as follows:

1. I rent the property from _____ [landlord's name], and my rent is \$ _____ [amount of rent] per week / month [circle one].
2. I am not the mortgagor (borrower) on the mortgage loan that is being foreclosed in this case, nor am I the mortgagor's parent, spouse or child.
3. My agreement to rent this property was the result of an arm's-length transaction.
4. The amount of my rent: [check one]
 is not substantially less than the fair market rent for this property; or
 is reduced or subsidized due to a Federal, State or local subsidy (e.g., public housing).
5. The Protecting Tenants at Foreclosure Act (Pub. L. No. 111-22, 123 Stat. 1660 (2009) (amended 2012, expired 2014, permanently restored effective June 23, 2018, by Section 304 of the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (Public Law 115-174)), protects me from immediate eviction after a foreclosure sale. It allows me to remain at this property: [check one]
 for 90 days following the date of the purchaser's delivery to me of a written 90-day notice to vacate; or
 until the end of my lease, which exceeds 90 days and ends on _____ [date lease ends]. A copy of my lease is attached to this Notice. [attach lease]

Therefore, no Writ of Possession should be issued by this Court or by the Clerk of the Court to order my removal from the property.

WHEREFORE, I, _____ [tenant's name], respectfully request this Court not to issue any Writ of Possession following the foreclosure sale of the subject property, unless or until the purchaser complies with each and every term of the Protection Tenants at Foreclosure Act.

Tenant's signature

Tenant's name printed

Address

Phone number

CERTIFICATE OF SERVICE

I hereby certify that a copy of this notice was sent to the Plaintiff's attorney, _____
_____ [attorney's name], at _____
[attorney's address] by U.S. mail on _____ [date].

Tenant's signature

This form was prepared by Jacksonville Area Legal Aid, Inc., for use by tenants *pro se*, and should be filled out, or used as a template, ONLY if the statements in paragraphs 2, 3, and 4 are true. JALA provides this educational information as a public service. It is not legal advice. Sometimes the laws change. Always consult a lawyer, if you can, before taking legal action.