



SOTTILE & BARILE
ATTORNEYS AT LAW

**THE RETURN OF THE
PROTECTING TENANTS AT
FORECLOSURE ACT OF 2009**

The Protecting Tenants at Foreclosure Act of 2009 (“PTFA”) took effect on May 20, 2009. The law gave certain protections to tenants of a foreclosed property. The tenant protection provisions applied in the case of any foreclosure on a federally related mortgage loan or on any dwelling on residential real property. They provided that any immediate successor in interest in such a foreclosed property, including a bank that takes title to a house upon foreclosure, will assume the interest subject to the rights of any bona fide tenant and must comply with certain notice requirements.

The law required the immediate successor in interest to provide tenants with a notice to vacate at least 90 days before the effective date of such notice. Tenants must be permitted to stay in the residence until the end of the lease, unless the purchaser at the foreclosure sale will occupy the premises as a primary residence and when there is no lease or the lease is terminable at will under state law.

However, even with the above exceptions, tenants must still receive 90 days’ notice before they can be evicted. These protections applied to tenants under a bona fide lease or tenancy, which means: the mortgagor or the child, spouse or parent of the mortgagor under contract is not the tenant; the lease or tenancy was the result of an arms-length transaction; and the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit’s rent is reduced or subsidized due to a Federal, State, or local subsidy.

The provisions of the PTFA were intended to be temporary as Section 704 of the PTFA included a sunset clause. Under Section 704 of the PTFA, the law and the amendments made pursuant to the law terminated on December 31, 2014.

The recently enacted Senate Bill 2155, specifically Title III, Section 304 of the new Act, restored the PTFA, effective 30 days after the date of the enactment of the Act. The return of the PTFA will increase the time in which it takes to complete a post-foreclosure eviction. A time-frame as short as 10-20 days for a post foreclosure eviction, could now take as long as, or longer, than 90 days prior to the initiation of an eviction. To further complicate matters, in the case of a bona fide lease, the successor in interest in a foreclosed property shall assume such lease until the end of the remaining term of the lease (so long as the lease was entered into prior to the notice of foreclosure).

The new Act repealed the sunset provision of Section 704 of the PTFA and made no mention of any new sunset provision. The PTFA is here to stay and all successors in interest to a foreclosed property must take notice that certain requirements must be met before commencing an eviction action, post-foreclosure. For purposes of handling your loan defaults, we intend to prudently interpret the phrase “federally-related” mortgage loan broadly to apply to all mortgage loans in the country and not just a VA, HUD, FNMA or similar GSE-tied loan

For more information, please feel free to contact Partner, Franco Barile, or Senior Counsel, David Cliffe at franco.barile@sottileandbarile.com or david.cliffe@sottileandbarile.com, respectively.