



HOUSE BILL 531: Protect. Tenants at Foreclosure Act Restored.

2019-2020 General Assembly

Committee: Senate Rules and Operations of the Senate	Date: June 11, 2019
Introduced by: Reps. Hanig, Stevens	Prepared by: Shawn Middlebrooks
Analysis of: Second Edition	Staff Attorney

OVERVIEW: *House Bill 531 makes changes to the General Statutes to reflect the restoration of the federal Protecting Tenants at Foreclosure Act and deletes those provisions of State law that were enacted to provide substantially similar protection to tenants occupying foreclosed property after the federal act had sunset. The act becomes effective October 1, 2019, and applies to petitions filed on or after that date.*

CURRENT LAW: The federal Protecting Tenants at Foreclosure Act of 2009 provided that in the event of a foreclosure on any dwelling or residential real property, the successor in interest pursuant to the foreclosure was required to give a tenant occupying the foreclosed property without a lease or with a lease terminable at will under State law a notice to vacate of at least 90 days before the effective date of the notice.

If the foreclosed property was occupied by a tenant under a bona fide lease,¹ the tenant was entitled to occupy the premises until the end of the remaining term of the lease, except that the successor in interest was permitted to terminate the lease effective on the date of sale of the unit to a purchaser who would occupy the unit as a primary residence. The federal law originally expired on December 31, 2014.

In response to the expiration of the federal law, the General Assembly enacted S.L. 2015-174, which enacted G.S. 45-21.33A, providing that when the purchaser at foreclosure of a single-family residence will not use the residence as his or her primary residence, a tenant can remain in the residence until the end of the term of the lease or one year, whichever is shorter, if the following conditions are met:

1. the tenant is not the debtor or the child, spouse or parent of the debtor; and
2. the lease is in writing, is not terminable at will, and requires the receipt of rent that is not substantially below fair market value if the rent has not been reduced by a federal or State subsidy.

If the tenant does not have a lease that conforms to the criteria above, or if the purchaser will occupy the property as his or her primary residence, the tenant must be given 90 days' notice before the purchaser can apply for an order of possession.

S.L. 2015-174 also amended the G.S. 45-21.29 governing the issuance of orders for possession in foreclosure proceedings, to require that an order for possession cannot be issued in a foreclosure sale of a single-family residence occupied pursuant to a lease unless the requirements of G.S. 45-21.33A have been met, and the occupant has been given at least ten days' notice.

¹ For purposes of the federal law a lease was "bona fide" only if: 1) the tenant was not the mortgagor or the child, spouse, or parent of the mortgagor under the contract; 2) the lease was the result of an arms-length transaction; and 3) the rent under the lease was not substantially less than fair market rent, unless reduced by government subsidy.

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On May 24, 2018, Congress restored the Protecting Tenants at Foreclosure Act. It applies nationwide as of June 23, 2018, and does not have an expiration date.

BILL ANALYSIS: House Bill 531 would repeal G.S. 45-21.33A, and would amend G.S. 45-21.29 to provide that an order for possession may not be issued for property covered by the federal Protecting Tenants at Foreclosure Act unless the requirements of that federal law have been met.

EFFECTIVE DATE: The act becomes effective October 1, 2019, and applies to petitions seeking an order for possession of property sold at foreclosure filed on or after that date.

BACKGROUND: House Bill 531 was requested by the North Carolina Conference of Clerks of Superior Court.

**Brad Krehely, LAD Staff Attorney, substantially contributed to this summary.*