



HOUSE BILL 531: Protecting Tenants at Foreclosure Act Restored.

2019-2020 General Assembly

Committee:		Date:	December 12, 2019
Introduced by:		Prepared by:	Bill Patterson Staff Attorney
Analysis of:	S.L. 2019-53		

OVERVIEW: *S.L. 2019-53 repeals protections for tenants in foreclosed properties enacted after the 2014 sunset expiration of substantially similar protections under federal law. This act reflects the restoration by Congress in 2018 of the expired federal protections.*

This act became effective October 1, 2019, and applies to petitions seeking an order for possession of property sold at foreclosure filed on or after that date.

CURRENT LAW: Before expiration by sunset of the federal Protecting Tenants at Foreclosure Act (PTFA) on December 31, 2014, federal law provided that in the event of a foreclosure on any dwelling, the successor in interest pursuant to the foreclosure was required to provide tenants occupying the foreclosed property without a lease or with a lease terminable at will under State law with at least 90 days' notice to vacate.

If the foreclosed property was occupied 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. By operation of a sunset provision, the federal protections expired on December 31, 2014.

In 2015 the General Assembly enacted G.S. 45-21.33A, "Effect of foreclosure on preexisting tenancy," and amended G.S. 45-21.29 governing the issuance of orders for possession in foreclosure proceedings.²

G.S. 45-21.33A provides 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.

In addition, this section provides that 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.

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.

² [S.L. 2015-174](#), s 2.

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

House Bill 531

Page 2

As amended in 2015, G.S. 45-21.29 provides that before an order for possession occupied under a lease may be issued in a foreclosure sale of a single-family residence, the requirements of G.S. 45-21.33A must have been met, and the occupant must have been given at least ten days' notice.

In 2018, Congress restored the PTFA protections that had expired in 2014.

BILL ANALYSIS: This act repeals G.S. 45-21.33A in its entirety. The act also amends G.S. 45-21.29 to provide that an order for possession for property that is subject to the requirements of the federal PTFA may not be issued unless the federal law's provisions have been satisfied.

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

Legislative Analysis Division Staff Attorney Brad Krehely substantially contributed to this summary.