



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

2019-2020 General Assembly

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| Committee: | Senate Judiciary. If favorable, re-refer to Rules and Operations of the Senate | Date: | May 31, 2019 |
| Introduced by: | Reps. Hanig, Stevens | Prepared by: | Bill Patterson* |
| Analysis of: | First Edition | | Committee Co-Counsel |

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 protections when 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 allowed a tenant in a residence sold at foreclosure to remain in the residence until the end of the lease if the purchaser of the property did not use the property as his or her primary residence. A tenant without a lease or with a lease terminable at will under State law was entitled to a 90-day notice before the purchaser could seek possession. 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. Section 2.(a) of S.L. 2015-174 amended G.S. 45-21.29 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.

Section 2.(b) of S.L. 2015-174 enacted G.S. 45-21.33A, which 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.

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.

This section does not apply to the option to purchase terms of an option contract, or to a lease of a residence with an imminently dangerous condition on the premises as of the date of acquisition of title by the purchaser.

On May 24, 2018, Congress restored the federal 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 makes changes to the General Statutes to reflect the restoration of the federal Protecting Tenants at Foreclosure Act and deletes provisions of State law that were enacted to provide protections when the federal act had sunset.

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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.*