



Utah Housing Coalition
230 South 500 West, Suite 260
Salt Lake City, UT 84101
P: 801-364-0077
F: 801-596-2011
www.utahhousing.org

Promoting affordable housing to ensure healthy and stable communities.

PROTECTING TENANTS AT FORECLOSURE ACT

FACT SHEET

Amended April 4, 2011

On May 20, 2009, a new federal law took effect, which provides protections for renters living in foreclosed residential properties (Public Law 111-22; Title VII- *Protecting Tenants at Foreclosure Act*). The Act known by its PTFA acronym is part of the *Helping Families Save their Homes Act of 2009*. The *Dodd-Frank Wall Street Reform and Consumer Protection Act* further amended PTFA in 2010. It clarified the language and extended the sunset provision from 2012 until 2014. PTFA provides residents with at least 90-days eviction notice in case of foreclosure. The act applies to every residential lease in the country and to all types of mortgages.

One of the Utah law requirements when a property will be sold by the trustee through the foreclosure process is that a notice of foreclosure sale has to be posted in some conspicuous place on the property at least 20 days before the date the sale is scheduled (57-1-25). The notice of foreclosure sale is not an eviction notice. Prior to the new federal law, Utah did not address specifically these types of evictions. A lease was voided once the property was sold through foreclosure. On May 11, 2010, a new law took effect in Utah which requires the public notice of trustee's sale to state clearly what are the protections under the federal law and that the renter needs to continue to pay rent. This disclosure is required though only in multi-family units. Renters living in single-family homes that undergo foreclosure will not receive the notice with this specific disclosure, unless the new owner knows for sure they are renters on the property.

***This information is provided for educational purposes only. Please do not take this as legal advice.
It is for your benefit to know your rights and responsibilities.***

Protecting Renters at Foreclosure Act requires the following:

- Provide bona fide tenants with a minimum 90 days notice prior to eviction
- Allow bona fide tenants to occupy the property until the end of the lease term if it goes beyond the 90 days, except the lease can be terminated on 90 days notice if the unit is sold to a purchaser who will occupy the property
 - ❖ A bona fide lease or tenancy is one in which the tenant
 - It's not the previous owner (mortgagor or the spouse)
 - It's not the parent or child of the mortgagor
 - The lease or tenancy is the result of an arm's length transaction, and
 - The rent is not substantially lower than fair market rent or is reduced or subsidized due to the federal, state, or local subsidy.
- The notice applies to term leases and to month-to-month oral/written leases
- The successor in interest has to honor the lease agreement they took over
- The successor in interest has to continue to honor the contract with the Housing Authorities for the Section 8 rental voucher recipients

- Both renter and successor in interest have to respect the lease agreement, and the rules and regulations of the property

Utah statute on *Notice to tenant on residential property to be foreclosed (78B-6-901.5)* which was amended in 2010, requires in cases where the mortgage was to finance a residential rental property, to have the following in the notice of foreclosure sale (commonly known as the “Notice of Trustee’s Sale”):

- ❖ If the property to be sold has fewer than nine-dwelling units, the notice has to be posted on each primary door
- ❖ If the property has nine or more dwelling units, the notice has to be posted on three conspicuous places or has to be mailed to each resident
- ❖ The section affecting the renters has to be written in at least 14-point font as follows
 - Name and address of the property owner, or the trustee or mortgagee
 - When the property will be sold
 - Renters may continue to leave on the property until the end of the lease(they have to proved the lease) , or at least minimum 90-days after the eviction notice is served
 - Renters have to continue to pay rent and comply with the requirements of the lease
 - The new owners have only the option to contact the renters to let them know where to send the rent payment
 - The new owner of the property may offer the renters a new lease to continue to leave beyond the minimum 90-days or the expiration of the lease
 - If the foreclosure sale notice doesn’t include the above language, a trustee sale can’t be challenged or voided

If you are a renter living in a home that IS IN the foreclosure process:

- If you suspect that the property owner/landlord might be undergoing foreclosure, you can call the county recorder’s office anytime to see if a notice of default was recorded
- The public notice of default will list the current owner and who represents the mortgagee (which will be a trustee/attorney firm)
- Please have in mind that between the notice of default and the actual foreclosure sale, the homeowner can get up to date on the mortgage payments and saved his or her home
- At least 20-days before the foreclosure sale, a public notice of trustee’s sale (public notice of property to be sold at auction) will be issued
- **As a renter you must continue to pay your rent and respect the lease agreement; the property owner retains his or her right as a landlord until to the point where the home is sold at foreclosure**

If you are a renter living in a home that WAS sold at foreclosure:

- Both federal and state law are self-executed. There is no agency or department at either federal or state level to enforce the law. If you are denied your protections, the only legal remedy is to file lawsuit. Other practical ways to make sure you are protected are:
 - ❖ Educate yourself of your rights and protections
 - ❖ Contact local or national advocacy organizations to further answer some of your questions
 - ❖ Negotiate in good faith

- In most cases, the home will be bought by a bank, or it goes back to the bank that owns the mortgage. Walking into a branch probably will not get you to the responsible party in the bank. You need to make an effort to find out who is their legal counsel or the realtor. Ways to find out who represents the bank:
 - The county recorder office can tell you who is the responsible party that filed the notice of default and the notice of trustee's sale
 - The county assessor's office can tell you who is the owner of the property
 - If the names listed are of businesses, you can contact the Utah Division of Corporation and Commercial Code at (801) 530-4849 or (877) 526-3994 Toll-Free for Utah residents during the hours of 7am-6pm, Monday – Thursday
- You must receive an actual eviction notice if the property was sold at foreclosure and the new owner wants you to evacuate the premises. **Notice of trustee's sale (foreclosure sale) doesn't constitute an eviction notice**
- Even if you have a month-to-month oral agreement with the property owner, you must receive the minimum 90-days notice
- If you receive a notice of foreclosure sale or eviction notice due to foreclosure, contact the responsible party immediately to ensure where to send the rent. We recommend that you send a notarized registered letter and keep a copy for yourself. We recommend to state that you want to continue to pay rent and you will set aside the funds. Any bank will guide you on how to open an escrow account
- You should also provide them with a copy of the original lease. If there is no lease, provide them with copies of your checks or money orders of the previous rent payments
- Click here [http://www.nlihc.org/doc/SampleLetter %20Non Section 8 Tenant to New Owner72610.pdf](http://www.nlihc.org/doc/SampleLetter%20Non%20Section%208%20Tenant%20to%20New%20Owner72610.pdf) to download the notice you should give to the property owner or to whomever (bank or attorneys/trustees) sends you the foreclosure sale notice so they will know what kind of proper notice you must receive as a renter
- If you are a Section 8 rental voucher recipient, click here [http://www.nlihc.org/doc/Sample-Letter Section 8 Tenant to NewOwner72610.pdf](http://www.nlihc.org/doc/Sample-Letter%20Section%208%20Tenant%20to%20NewOwner72610.pdf) to download the notice you should give to the property owner or to whomever (bank or attorneys/trustees) sends the foreclosure sale notice. You also should contact the housing authority that pays for your voucher. Click here <http://utahnahro.org/advocacy-resources/housing-authorities/> to see a list of housing authorities in Utah
- If you are a Section 8 rental voucher recipient, keep constant communication with your housing authority. They are your best resource to help with issues arising living in properties undergoing foreclosure
- If you receive an improper eviction notice or if you think your renter's rights are not respected you can hire an attorney, try to find a pro-bono one, OR you can file yourself a claim at the Small Claims Court. For a list of Utah's courts, please click here <http://www.utcourts.gov/directory/> .
- Based on your income, you may qualify for free legal services through Utah Legal Services <http://utahlegalservices.org/> . You can also download different documents related to landlord/renter issues, including how you can respond to an eviction notice by yourself <http://www.utahlegalservices.org/public/flyers#Housing> .
- If your rent checks return, you do not know where to send the payment, or you cannot make contact with any responsible party of the property, you should open a saving account or an escrow account and deposit the rent money. The account should be assigned specifically for rent payments. Remember, if you don't pay your rent or if you will not have available immediately past due rents, you can be evicted in 3-days.

- If you pay your utilities directly to the owner, you should check with Rocky Mountain Power <http://www.rockymountainpower.net/redirect.html> and Questar Gas <http://www.questargas.com/forms/feedback/feedback.php> to make sure utilities won't be cut-off just because the property owner doesn't care anymore about paying the bills. You should try to get the utilities on your name.
- You may qualify for payment assistance for your utilities. Please contact Utah's State Energy Assistance & Lifeline (SEAL) <http://housing.utah.gov/seal/index.html> .
- You should also contact your local municipality to find out who is the water provider for the property. You want to avoid the water being shut off for non-payment. It is very important to contact the water provider right after you know the home was sold at foreclosure. Although the water company might not accept payment from you because you are the renter, contacting them in time will give them acceptable time to track down the new owner.
- We encourage renters to contact their elected officials to let them know about the difficulties you are encountering. If they are not told, a lot of them might not think we have a problem in our communities
 - ❖ Utah Congressional Delegation in Washington DC
 - Senator Orrin Hatch 202-224-5251
 - Senator Mike Lee 202-224-5444
 - Congressman Rob Bishop (District 1) 202-225-0453
 - Congressman Jim Matheson (District 2) 202-225-3011
 - Congressman Jason Chaffetz (District 3) 202-225-7751
 - ❖ Utah State Legislators. You can find your legislators by entering your address here <http://www.utahsenate.org/map.shtml>
 - Utah House of Representatives 801-538-1029
 - Utah Senate 801-538-1035
 - ❖ Utah Local Officials
 - Utah League of Cities and Towns can direct you to the right office and contact information for your city <http://www.ulct.org/ulct/contactus.html>
 - Utah Association of Counties can direct you to the right office and contact information for your county <http://www.uacnet.org/about/mapdirections/>

National Housing Law Project <http://nhlp.org/node/763> created the information that advocates are using to spread the word about the new law.

More information, letters to judges, letters to renters and from renters to property owners can be accessed on the **National Low Income Housing Coalition** <http://nlihc.org/template/page.cfm?id=227> Web site.

For more information on Utah's landlord/tenant law, please visit **Utah Legal Services** Web site <http://www.utahlegalservices.org/public/self-help-webpages/utah-renters-handbook>

For more information on foreclosure, please visit **Utah Foreclosure Prevention** Web site <http://utahforeclosureprevention.com/index.html>

For more information, please contact:

Francisca Blanc
 Policy Analyst, Utah Housing Coalition
 801-364-0077
 fblanc@xmission.com
 www.utahhousing.org